

(2003) 05 MP CK 0044

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 319/92

Vikas Gupta and Another

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 06-05-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 MPHT 330

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : M.L. Jaiswal and Mamta Billore, for the Appellant; S.D. Khan, Government Advocate, for the Respondent

Judgement

Arun Mishra, J.—Petitioner in this writ petition has prayed for writ of certiorari to quash the orders (Annexures-D, I, J, K and L) and from prohibiting the respondents from interfering with the possession and enjoyment of petitioners or acquiring the same.

2. It is averred in the petition that the petitioners are father and son and petitioner No. 2 carried on business of refractories. Petitioner No. 1 Vikas Gupta purchased a piece of land, area 1.307 hectares out of Khasra No. 528, area 1.388 hectares situate in Mouza Jhinjhari, Tehsil Murwara, District Jabalpur, vide registered sale-deed (Annexure-A), dated 27-6-80 for a consideration of Rs. 11,500/- from Punaua and others, who delivered possession of the said land to him. He is in peaceful possession of the said land since then in Bhumiswami rights. Mutation was made in Khasra (Annexure B).

3. It is further averred that the State Government allotted an area of 8 acres for building a Sub-Jail in Mouza Jhinjhari, over survey No. 812, which is situate at a distance of about 200 meters off the land of petitioner No. 1. Lay out plan of Sub-Jail was prepared and existence of private land was clearly shown. Petitioner No. 1 started building activity by raising boundary walls all around the area. Notice Annexure-D, dated 15-2-1989 was received from Additional Collector, Katni to

stop the construction on the ground that they had encroached over survey No. 812, area 6.25 acres, which was the land allotted for the construction of Sub-Jail, and since the land of petitioners fell within the circle of 30 meters from the said Sub-Jail, it amounts to encroachment and no construction could be carried out by them. The petitioners got the area demarcated and it was found that the construction carried out by them was within the area which belonged to them, and was at a distance more than 30 meters from the premises of the Sub-Jail. Report (Annexure-E) was submitted. It was found that the construction is over the area which belongs to the petitioners and was at a distance of more than 30 meters from the premises of Sub-Jail. Superintendent, Central Jail wrote a letter on 26-12-1990 to the Additional Collector, Katni to the effect that the construction activity carried out by petitioner be directed to be stopped and some other land be allotted to them in lieu of their existing land. It is further averred that the Inspector General of Prisons addressed a letter (Annexure F), dated 5-12-1990 to the Additional Collector, Katni, for acquisition of Khasra Nos. 806, 807, 810 and 811, in area 3.82 acres. It is further averred that on the demarcation being made, it was found that the boundary of petitioners' land was at a distance of 66 ft. from the jail premises towards north and south and 50 ft. east-west from the said jail premises. Petitioners submit that the land is situated at a proper distance from jail premises. Hence, no restriction of any kind on construction activity could be imposed. Petitioners have incurred a huge expenditure for development of the said land and in raising a boundary wall and other structure thereon. Respondents want to acquire the land of the petitioners, which is unjustified. A telegraphic message (Annexure-G), dated 4-1-1991 was sent by Inspector General of Prisons, whereby the petitioner was directed to stop construction activity. The Additional Collector as per order (Annexure-I), dated 10-1-1991 stopped the work. Nazul Officer also issued a similar direction as per order (Annexure-J), dated 21-1-1991. Patwari report (Annexure-L), dated 31-1-1991 is also filed by the petitioner. It is averred that the land is situated adjoining to the National Highway and is a valuable piece of land. Rule 30 of the M.P. Prison Rules, 1968 has also been relied upon. There still lies about 7 acres of vacant land all around the jail.

4. This writ petition was admitted on 30-1-1992. This Court directed maintenance of status quo. The interim order was confirmed on 15-4-1992.

5. No return has been filed by the respondents for the last 10 years. It is regrettable situation, it is noticed that in the writ petitions of the year 1991/1992, the State Government has not filed the return in majority of cases. That is how the interest of the State is protected in the writ petitions. Prayer is made by learned Counsel for the respondents to give opportunity to file return. Now such a prayer cannot be acceded to.

6. Shri M.L. Jaiswal, learned Senior Counsel appearing for the petitioner has submitted that it is a case of high handedness on the part of the respondents when the land belongs to the petitioners. It was not open to the respondents to

put restriction on construction activities. Counsel also relied upon letter (Annexure-F) of Superintendent, Central Jail, dated 26-12-1990 proposing that some other land be allotted in lieu of land in question to Shri Gupta.

7. It is clear from various documents that the construction activities was stopped on the ground that there is encroachment. However, at the same time it was mentioned that the action be taken to transfer the land to Sub-Jail. It is so mentioned in letter (Annexure-I) of Additional Collector, Katni addressed to Tehsildar. Tehsildar wrote a letter to police to the effect that it is a case of encroachment being made. Patwari's report (Annexure-L) indicates that the map was required so as to fix the boundary of the Sub-Jail by the Patwari concerned. May be that it is true that the land belong to the petitioner. However, the fact is writ large from the documents that same was sought to be stayed on the ground that construction is very near to Sub-Jail. It does not appear that the question has been finally decided as per report of the Patwari after measurement, steps are to be taken by the respondents whether it is a case of construction activities carried out by the petitioner on his own land or it is a case of encroachment. In any case this question has also not been decided whether the construction activity which is being taken is at the distance which is claimed by the petitioner about 50 feet from Sub-Jail and whether it is prejudicial or not for safety of Sub Jail.

8. In the circumstances, let the Secretary, Ministry of Jail take a decision after hearing the petitioner in the matter within 4 months from today and matter be decided by reasoned and speaking order. It be gone into whether construction made by the petitioner is going to be prejudicial in any manner to the safety and security of Jail and in case petitioners' land is required by the respondents, appropriate steps have to be taken. However, if the land is at the safe distance, obviously respondents cannot put restriction on construction activity until unless it is found to be prejudicial to the safety and security of Sub-Jail. Let a decision be taken as directed within the period fixed by this Court. It would be open to the Secretary to call for the report of measurement for the purpose of fixation of boundary.

9. Writ petition is disposed of with the above direction. No order as to costs.