

(2013) 10 MP CK 0279
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5319 of 2012

Virendra Singh

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 10-10-2013

Acts Referred:

Citation : (2013) 10 MP CK 0279

Hon'ble Judges : U.C. Maheswari, J

Bench : Single Bench

Advocate : Vijay Kumar Shukla, for the Appellant; Sanjay Dwivedi, GA for the Respondents No. 1 to 4, for the Respondent

Final Decision : Disposed Off

Judgement

U.C. Maheswari, J.—Heard on IA No. 14230/13. This is additional rejoinder in response of the additional return of the respondent/state authorities filed in the shape of the application. The same is taken on record. Heard on the question of admission as well as for final disposal.

2. The petitioner, an agriculturist of village Panwar Chouhanan Tola, District Sidhi has filed this petition under Article 226 of the Constitution of India for issuing the appropriate writ for the following relief:--

(a) To direct the respondents to carry out the construction of canal of Gulab Sagar Canal as per the revised map and the land which has been sought to be acquired by notification u/s 4 of the Land Acquisition Act.

(b) To direct the respondents not to make any construction before considering the objections of the petitioner in respect of survey of land.

(c) To direct the respondents to go for the acquit ion and construction as per the survey reports earlier conducted for the same purpose.

(d) To grant any other relief, which this Hon''ble Court may deem fit and proper in the facts and circumstances of the case including cost of the litigation in favour

of the petitioner.

3. Petitioner's counsel after taking me through the averments of the petition as well as the papers placed on the record along with the averments of the return of the respondents as well as the rejoinder filed on behalf of the petitioner by referring the earlier order dated 6.1.12 passed in his earlier W.P. No. 207/12 said that such petition was disposed of by extending the liberty to file the elaborate representation in the office of the authorities of respondent No. 2 within two weeks and such authority was directed to consider and decide the same expeditiously in accordance with the law with a view to minimize the loss of public and private property as well as the natural resources. In continuation, he said that subsequent to passing such order he has filed the elaborate representation in the office of respondent No. 2 but the same has not been considered in accordance with the spirit of the aforesaid earlier order of this court. In continuation he said that whatsoever averment is made on behalf of the respondents regarding consideration of the aforesaid representation, in the available circumstances, the same does not appear to be reliable. In further arguments, he said that the impugned canal is being constructed by the respondents/authorities by changing the initial plan and due to such change, some public properties as mentioned in the petition may be damaged or destroyed and, in such premises, the petitioner has to suffer in a lot. In spite of query of the court, the petitioner's counsel could not show any specific property of the petitioner which is going to be affected on carrying out the construction of the impugned canal according to the existing sanctioned plan of such canal. In continuation petitioner's counsel prayed that in any case the respondents be directed to construct the impugned canal strictly in accordance with the initial plan which was prepared and sanctioned by the authorities and not contrary to that and prayed to admit and allow this petition accordingly.

4. On the other hand, responding the aforesaid arguments, the State counsel has argued that the impugned canal is being/to be constructed strictly in accordance with the initial plan which has been prepared and sanctioned by the authorities. Subsequent to sanctioning the plan, no change has been carried out. In view of such submission, he said that the impugned petition being filed only in the light of some apprehension in the mind of the petitioner that on constructing such canal, his right may be affected, could neither be entertained nor allowed because mere apprehension in the mind, on account of whims, the petitioner is not entitled to get any relief under inherent powers of this court enumerated under Article 226 of the Constitution of India. He also said that in compliance of the aforesaid earlier order of this court on filing the representation by the petitioner, the same has been considered in accordance with the spirit of the aforesaid order and on holding the proceedings for deciding the representation, no force was found on the allegations of the petitioner. In response of some query of the court he fairly said that if this petition is disposed of with a direction to the state authorities to construct the impugned canal strictly in accordance with the prepared and sanctioned plan then the state authorities did not have

any objection in giving such direction and prayed for dismissal of this petition.

5. Having heard the counsel, keeping in view their arguments, I have carefully gone through the pleadings and the annexed documents placed by the parties on record. It is apparent fact on record that the petitioner has not stated any specific averment that on carrying out the construction of the impugned canal in accordance with the prepared and sanctioned plan how his right or the property shall be affected and, in such premises, what loss he has to suffer. It appears from the record that the petitioner has filed this petition under the apprehension that by changing the sanctioned plan, the authorities of the respondents shall construct the canal and in that circumstance his right and the property may be affected.

6. I am of the considered view that mere at the whims or apprehension in the mind of the petitioner, without any sound foundation, could not be a ground or cause of action to entertain this petition for issuing any writ against the respondents for the prayer mentioned in the petition.

7. Apart this, in the lack of any specific cause of action in favor of the petitioner to grant the relief prayed in the petition, the same could neither be admitted nor allowed for the prayer made in the petition. Specially in that circumstance when in compliance of the earlier order of this court, on filing the representation by the petitioner, the same has been considered by the respondents/authorities then on such consideration nothing was found in favor of the petitioner.

8. Besides the aforesaid, in view of the submission of the State counsel that the State authorities are not going to construct the impugned canal in any manner contrary to the initial prepared and sanctioned plan, the petitioner is not entitled for the relief mentioned in the petition.

9. In view of the aforesaid discussion, in the available circumstances, in order to do justice with the parties so also to avoid the further complications and the unnecessary litigation, instead to dismiss this petition, the same is hereby disposed of with a direction to the authorities of respondents No. 1 to 4 to carry-out the construction of the impugned canal at the site strictly in accordance with the initially prepared and sanctioned plan and not contrary to that.

10. However, it is observed that if any construction of the impugned canal is made contrary to the aforesaid initial prepared and sanctioned plan on the property of the present petitioner, except the property which has already been acquisitioned as per procedure for such construction, then the petitioner shall be at liberty to approach the appropriate forum for redressal of his grievance. In view of aforesaid disposal of this petition, IA No. 8108/12 and IA No. 16486/12 respondents application for vacating the ex-parte stay do not require further consideration, hence the same are hereby disposed of. No cost.