

(1999) 09 MP CK 0014

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1434 of 1998 (G)

Yashwant Kadam

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 21-09-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2000) 1 MPJR 535

Hon'ble Judges : S.P. Shrivastava, J; R.B. Dixit, J

Bench : Division Bench

Advocate : S.B. Mishra, with Mr. S.A. Goswami, for the Appellant; K.B. Chaturvedi, Advocate For Respondent No. 1, Mr. R.D. Jain with Mr. S.K. Jain, Advocate For Respondent No. 4, Mr. P.D. Bidua, Advocate For Respondent No. 5 and Mr. S.K. Bajpai, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Shrivastava, J.

The Petitioner, claiming to be a social worker and public spirited citizen, feeling aggrieved by the action of the Respondent No. 4, the Indian Red Cross Society, in building eight shops for being let out, has approached this Court by means of the present writ petition under Article 226/227 of the Constitution of India, filed as a public interest litigation, seeking a direction in the nature of mandamus requiring the said Respondent not to allot the shops to the general public and has further sought for a direction requiring the Municipal Corporation, Gwalior/the Respondent No. 5 to demolish the entire constructions.

We have heard the learned Counsel for the Petitioner as well as the learned Counsel representing the Respondents and have carefully perused the record.

The Petitioner has claimed that the Indian Red Cross Society, which has its brench at Gwalior, whose ex-officio Chairman is the Collector, Gwalior, was constructing a building near Kamla Raja Medical in the name and style of "Red

Cross Bhawan", wherein on the ground floor it was raising construction of eight shops. The Petitioner claimed that these shops in the building were being constructed in utter violation of the norms and rules and the lay out plan of Greater Gwalior. It was asserted that the shops were being constructed over the footpath and adjacent to the Nala. The Municipal Corporation, it was alleged, had closed its eyes towards this illegal activity.

It was further asserted by the Petitioner that the Respondent No. 4, the Indian Red Cross Society, had invited applications from general public for allotting the said shops earmarking them for pathology, surgical equipments, sonography, etc. and shop No. 5 was proposed for being utilised as a shop for refreshment and fruits. The shops No. 6 to 8 were to utilise by the Chemists and Druggists. It was claimed that the Indian Red Cross Society cannot either run the shop through its employees or through the co-operative societies like Super Bazar.

On 11.9.98, the Petitioner moved an application (I A. No. 9223/98) to bring on record the copy of the lease deed executed by the Governor of Madhya Pradesh in favour of the Indian Red Cross Society, branch Gwalior, whereunder an area of approximately 4434 sq. feet, forming part of Nazul survey plot Nos. 1589 and 1590. had been leased out in favour of the Indian Red Cross Society subject to certain terms and conditions. This lease had been executed on 1.4.95. However, on 11.2.99, the Governor of Madhya Pradesh passed an order granting permission to the Red Cross Society to let out eight shops in question subject to the condition that the shops shall be utilised only for providing medical facilities. This order had been issued by the Governor in the exercise of the rights reserved under the lease as envisaged under Sub-clause (3) of Clause 1 thereof.

The writ petition was contested by the Indian Red Cross Society, Gwalior, the Respondent No. 4A, by filing a separate return/counter-affidavit. It was asserted that the building was being constructed on the land which did not form part of the hospital area. It was also asserted that in all eight shops had been constructed which had been allotted after inviting tenders from the public. The allottees had also given donation to the tune of Rs. 9,46,800/- towards first instalment. It was also asserted that the Government had not allotted any shop to the Red Cross Society. The Red-cross Society, it was claimed, was functioning with the object of distribution of medicines to poor people, financial assistance to the poor persons, holding of blood donation camps, distribution of tricycles to the handicapped persons, holding of T.B. treatment camps, arrangement for blood donation and activities relating to provide medical facilities and philanthropic activities. It was asserted that the site of the building had been allotted by the State Government for construction of the office of the Society and to facilitate advancement of the activities of the Red Cross Society for carrying out the said activities. The Society had already spent about 8 lacs of rupees in the construction activities on the spot. The proposed shops were to be used for the benefit of the patients. They had been allotted for the business of Chemist and Druggist, pathology laboratory, fruit sellers and for installing x-ray machine, etc.

The Red Cross Society also asserted that on the upper floor of the building besides its office, the blood bank will also be established. The activity of Red Cross Society was claimed to be in the interest of general public.

The Municipal Corporation/Respondent No. 5 filed a separate return/counter-affidavit in opposition to the writ petition. It was asserted that the Corporation had granted the requisite permission for the construction of the building in question. It was pointed out that there was no encroachment on the footpath and there was no obstruction in the flowing of the water through the Nala which had a width of 7.50 meters. The building in question had been raised leaving sufficient space from the existing Nala. It may however be noticed that initially there was some defect in the proposed construction of the building but later on a revised building plan had been submitted and taking into consideration the nature of the deviations and the proposed alternations, the Corporation had passed an order relating to compounding and the permission for raising constructions according to the revised plan had been granted. The constructions raised, as is apparent from the order dated 15.12.98 passed by the Nagar Palika Nigam, Gwalior, had been found to be not otherwise than in accordance with the law.

During the pendency of the writ petition, the Petitioner moved an application (I.A. No. 5613/99) on 19.7.99. In this application, a dispute was sought to be raised in regard to the validity of the lease granted in favour of the Red Cross Society. It was asserted that the land in dispute was situated in Municipal Corporation limits of Gwalior and after coming into force the Municipal Corporation Act, 1956, all lands situated within the Municipal Corporation limits vested in the Municipal Corporation and did not remain Nazul land in respect whereof the State could exercise any rights. In this view of the matter, it was claimed that the order dated 11.2.99 passed by the State Government granting permission to the Respondent No. 4A for letting out the shops was also manifestly illegal. Reliance in support of the above was sought to be placed on the decision of a Division Bench of this Court in the case of Sind Mahajan Exchange Limited v. State of M.P. and Anr., reported in 1980 J.L.J. 581. It was prayed that the order dated 15.12.98 passed by the Nagar Palika Nigam, Gwalior sanctioning the building plan and the order dated 11.2.99 passed by the State Government may be quashed.

The aforesaid application has been vehemently opposed.

The Petitioner in support of his case heavily relied upon a decision of this Court in the case of Ram Krishan Tiwari and Anr. v. State of M.P. and Anr. dated 30.4.97 rendered by a Division Bench, whereunder it has been clarified that by the Govt. order dated 17.2.92, a shop situate in the Government hospital premises could only be allotted to the Super Market or to the Red Cross Society on the advise of the Hospital Advisory Committee. The Red Cross Society could not let out the shop allotted to it to a private person after inviting tenders, etc. The order passed by the State Government, it was pointed out, only permitted the

establishments of the shops in the government hospital premises either by the Super Market which is run by a co-operative society or the Redcross Society, but there was no implicit sanction that the Redcross Society would pass on its interest to third party. It was observed that the Redcross Society cannot further auction the shop allotted to it in favour of any private party and that will be a clear violation of the direction contained in the Government order.

In the aforesaid connection, suffice it to say that in the present case the Government order referred to in the decision indicated hereinabove does not come in the picture at all. The shops in question, it is not disputed by the Petitioner, are not situate within the government hospital premises. Further, the State Government itself vide its order dated 11.2.99 had granted the requisite sanction for letting out the shops exercising its jurisdiction envisaged under Sub-clause (3) of Clause 1 of the lease deed. In the circumstances, the aforesaid decision cannot come to the rescue of the Petitioner.

So far as the decision in the case of Sind Mahajan Exchange Limited (supra) is concerned, the learned Counsel for the contesting Respondent has brought to our notice that the Apex Court in its decision in the case of State of M.P. and Anr. v. Sind Mahajan Exchanged Limited (Civil Appeal Nos. 1793-94 of 1982) decided on 3.2.1999 while allowing the aforesaid appeals had set-aside the judgment and order of the Division Bench of this Court, which is relied upon by the learned Counsel for the Petitioner. Since the decision in the case of Sind Mahajan Exchange Limited (supra) has been set-aside by the Hon''ble Apex Court, the question of taking into consideration the implications arising under the ratio of the aforesaid decision does not arise. Even otherwise, in the present case, what we find is that there is no dispute inter se between the State Government and the Municipal Corporation in regard to the ownership of the land in dispute or its nature being that of Nazul, in respect whereof the State Government could exercise its ownership rights. In such a situation, we do not find any justification at all for any interference or holding of any inquiry into this aspect of the matter at the instance of the Petitioner in the present proceedings.

Taking into consideration the facts and circumstances brought on record and the implications arising under the lease deed executed by the State Government in favour of the Indian Redress Society/Respondent, and the grant of sanction of the lay out/building plan by the concerned Municipal Corporation, which sanction has not been challenged before the appropriate appellate forum, and further the fact that the utilisation of the building in question is for the proposed activities beneficial to the general public, we are clearly of the opinion that the present one is not a case fit for the intervention of the equity.

No justifiable ground has been made out for any interference by this Court while exercising the extra ordinary jurisdiction envisaged under Article 226 of the Constitution of India at the instance of the Petitioner.

This writ petition is accordingly dismissed.

There shall, however, be no order as to costs.