

The High Court Of Madhya Pradesh
MP-5104-2019

(SMT. KAPOORI Vs THE STATE OF MADHYA PRADESH)

Gwalior, Dated: 30.09.2019

Shri R.P. Singh, learned counsel for the petitioners.

Shri R.K. Upadhyay, learned Government Advocate for the respondents/State.

This petition under Article 227 of Constitution of India has been filed against the order dated 16/01/2019 passed by District Judge, Ashoknagar in M.A.No.23/2018 thereby affirming the order dated 23/08/2018 passed by 4th Civil Judge, Class-II, Ashoknagar in Civil Suit No.100-A/2018, by which the application filed by the petitioners under Order 39 Rule 1 and 2 of CPC has been rejected.

It is submitted by learned counsel for the petitioners that on 27/09/2015 a Panchnama was prepared and it was found that the petitioners are in possession of Survey Nos. 38, 39 and 40 situated in village Saiji, Tehsil Shadoura, District Ashoknagar. The Principal Secretary, Department of Revenue, by his letter dated 19/02/2015 had forwarded the application to the Collector which was made by the petitioner for settlement of the said land in favour of the petitioners on the ground that according to the petitioners, they are in possession of the land in dispute from the year of 1994 to 1995. Similarly, the Tehsildar, Tehsil Shadoura, District Ashoknagar by his letter dated 05/10/2016 had directed the SHO, Police Station Shadoura, District Ashoknagar to bound over one Govind Singh

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who was interfering with the peaceful possession of the petitioners. It is further submitted that in the month of June, 2015, Gram Panchayat Saiji, Tehsil Shadoura, District Ashoknagar had also passed a resolution pointing out that it has no objection if the land in dispute is settled in favour of the petitioners.

It is further submitted that show cause notices have been issued to the petitioners on 03/09/2019 on the allegation that they have encroached upon Survey No.39 min. area 0.105 hectare, Survey No.38 min. area 0.105 hectare, Survey No.40 min. area 0.105 hectare, Survey No.38 min. area 0.209 hectare and Survey No.40 min. area 0.209 hectare situated in village Saiji, Tehsil Shadoura, District Ashoknagar. Accordingly, it is submitted that the petitioners are still in possession of the land in dispute, therefore, it is clear that even if the petitioners were dispossessed by the Revenue Authorities in the year 2018, then it appears that the petitioners have maintained their possession over the land in dispute and accordingly, both the Courts below have committed a mistake by rejecting application filed under Order 39 Rule 1 and 2 of C.P.C. It is further submitted by the counsel for the petitioners that when a person is found to be in possession of the land in dispute, then the possession must be protected by issuing a temporary injunction order against the defendants. To buttress his

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contentions, the petitioners have relied upon the judgments passed by the Co-ordinate Bench of this Court in the cases of **Pooran Vs. Shakuntala and another** reported in **2003 (II) MPJR SN 11** and **Gajendra Singh Vs. Maan Singh and others** reported in **2000 (I) MPJR 465** and **Soorajmal Vs. Keshav** reported in **1988 (I) MPWN 149 (SN)**.

Per contra, learned counsel for the respondents/State submitted that the trial court as well as appellate Court have specifically mentioned that the defendants/State has filed certain documents to show that not only the notices under Section 248 of MPLR Code were issued to the petitioners but they have also deposited the penalty and they were dispossessed.

Heard the learned counsel for the parties.

The petitioners in order to dislodge the stand of defendants that the petitioners have already been dispossessed in the year 2018, have relied upon the notices dated 03/09/2019 issued by the SDO (Revenue), District Ashoknagar, according to which, the petitioners are found to be in possession of the lands in dispute.

In the present case, the suit has been filed by the petitioners against the State. If the petitioners have encroached upon the agricultural land then the respondents/State has a remedy of proceeding under Section 248 of MPLR Code to dispossess the

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encroacher. The State is not required to file a suit for possession.

So far as the judgments passed by this Court in the cases of **Pooran (supra), Gajendra Singh (supra) and Soorajmal (supra)** are concerned, in all those cases, the litigation was between two private individuals and any private individual petitioner does not enjoy any specific provision of law for dispossessing the plaintiff/encroacher but he has to adopt due procedure of law for taking possession. Thus, where a person is found to be in possession and if another individual is trying to interfere with the possession of the said person, then the temporary injunction can be granted. However, in the present case, the State has a special provision under Section 248 of MPLR Code for dispossessing the encroacher and if the State wishes to exercise the said power, then by issuing a temporary injunction, this Court cannot restrain the State from dispossessing the plaintiff unless and until *prima facie* it is shown that the plaintiffs are having any title in the property in dispute.

It is in order to establish his title, the petitioners have relied upon the letter dated 15.02.2015 written by the Principal Secretary, Department of Revenue, Bhopal, in which he has mentioned that the petitioners have made an application for settlement of the land on the ground that they are in possession since from the year 1994-

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1995. Even, otherwise it is clear from the order passed by the trial Court that the petitioners have filed the Khasra Panchshala of Samvat 2051 to 2056 to show that their names are recorded in the Khasra Panchshala. If Samvat 2051-2056 is compared with the claim of the petitioners that they are in possession from 1994-1995 then it is clear that the petitioners are in fact claiming their possession as an encroacher from the year 1994-1995 onwards. In order to perfect a title, not only the long possession is necessary but the claimant must *prima facie* show that he was in open and hostile possession against the true owner of the land in dispute. In the present case, it is clear from the impugned orders passed by the Courts below that the proceedings under Section 248 of MPLR Code were initiated against the petitioners and the fine was also imposed. Thus, by no stretch of imagination, it can be said that the petitioners are in hostile and open possession of the land in dispute. Even otherwise, for the settlement of the possession against the State, a person is required to be in adverse possession for a period of 30 years. Even if the period of 30 years is calculated from the year 1994-1995, then it is clear that the petitioners are not in possession for the last 30 years. Furthermore, once a notice under Section 248 of MPLR Code was issued, then it is clear that the possession of the petitioners was not open and hostile against the

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true owner. Under these circumstances, where the petitioners have *prima facie* failed to establish their entitlement to remain in possession of the land in dispute, this Court is of the considered opinion that by issuing a temporary injunction against the State authorities, they cannot be restrained from following the due procedure of law for dispossession of the petitioners.

Accordingly, this Court is of the considered opinion that the Courts below did not commit any mistake in rejecting the application filed under Order 39 Rule 1 and 2 of C.P.C. Accordingly, the order dated 23/08/2016 passed by 4th Civil Judge, Class-II, Ashoknagar in Civil Suit No.100-A/2016 and the order dated 16/01/2019 passed by District Judge, Ashoknagar in MA.No.23/2018 are hereby affirmed.

The petition fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge