HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
W.P. No.9293/2010
Ambrish & Another v/s State of M.P. & Another

Indore, dated 08.03.2018

Shri Pramod C. Nair, learned counsel for the petitioners.

Shri Rohit Mangal, learned Government Advocate for the respondent/State.

The petitioners before this Court have filed the present petition for quashment of proceedings in respect of Case No.391/A-90/C-1 passed by the competent authority in respect of land bearing survey No.1307/2 area-0.395 hectare (14000 Sqft of land) situated at village-Khajrana, Tehsil and District-Indore.

The contention of the petitioners is that the land bearing survey No.1307/2, village-Khajrana was under the ownership of one Devkrishna and Devkrishna has sold the land in the year 1972-73 to one Parmanand. Undisputedly, no document in respect of transfer of title has been filed by the petitioner in respect of the alleged sale, which took place in the year 1972-73.

It has further been stated that Parmanand has subsequently sold the land to certain other persons and the petitioners have finally purchased the land on 05.04.2004 by a registered sale deed from one Khushiram and Girija Agrawal.

Learned counsel for the petitioners has argued before this Court that an order was also passed under the M.P. Land Revenue Code on 18.07.1978 declaring the petitioner to be *Bhumiswami* and his main thrust is that prior to commencement of the Urban Land Ceiling and Regulation Act, the land was already sold by the original owner Devkrishna in 1972-73 to Parmanand, and thereafter, to other

persons and finally to the petitioners.

He has also brought to the notice of this Court an order dated 27.06.1984 passed by the competent authority under the Urban Land Ceiling and Regulation Act and his contention is that Parmanand, who has purchased the land from Devkrishna in year 1972-73, submitted an application under Section 6 of the Urban Land Ceiling and Regulation Act, 1976 and the matter was closed by the competent authority, as the land was less than the ceiling limit i.e. less than 0.450 hectares. He has stated that in light of the aforesaid order, as competent authority has exempted the land Urban Land Ceiling and Regulation Act, 1976, the land has to be mutated in the name of the petitioners, who are *bonafide* purchaser and the order passed by the competent authority in Case No. 391/A-90/C-1 deserves to be quashed.

He has also argued that Division Bench of this Court in the case of ***State of M.P. & Others v/s Yatiraj Das & Others*** (L.P.A. No.170/2001) in similar circumstances, where there was no proper notice was given under Section 10(5) to the persons, who were in possession of the land, has quashed the order passed by the competent authority.

He has also placed reliance upon a judgment delivered in the case of ***Ram Prasad & Others v/s State of M.P. & others 2002 (5) M.P.L.J. 417*** and his contention is that portion of land reserved in the master-plan for agricultural purposes could not be treated as urban land, and therefore, in the present case, as the land in question is an agricultural land, the order passed by the competent authority deserves to be set aside.

Reliance has also been place upon a judgment delivered

in the case of ***Sohan Singh & Others v/s State of M.P. & Others reported in 2008 (3) M.P.L.J.*** and it has been argued that as possession was not taken from the persons, who were in possession of the land and paper possession was taken without notice to the holder, hence proceedings be set aside.

Lastly, reliance has been placed upon a judgment delivered in the case of ***Amarnath Ashram Trust Society and another v/s Governor of Uttar Pradesh & Others*** *reported in* ***AIR 1998 SCC 477***. Heavy reliance has been placed upon paragraph-8 of the same judgment. Paragraph-8 of the aforesaid judgment reads as under:-

> On the question of giving reasons the learned counsel of the State heavily relied upon the decision of this Court in Special Land Acquisition Officer, Bombay vs. Godrej and Boyce (1988 (1) SCR 590). In that case this Court examined the nature and extent of the power of the Government to withdraw from acquisition after issuance of notification under section 4 of the Act. In that case the Sate Government had passed an order under section 48 of the act withdrawing the lands of Godrej and Boyce from acquisition. The owner the thereupon challenged the withdrawal order as mala fide and prayed for quashing of the same. The writ petition was allowed by a single Judge of the High Court and his decision was affirmed by a Division Bench. In an appeal filed by the state this Court held that under the scheme of the Act neither the notification under section 4 not the declaration under section 6, not the notice under section 9 is sufficient to divest the original owner of, or other person interested in, the land of his rights therein. Section 16 makes it clear beyond doubt that the title of the land vests in the Government only when possession is taken by the Government and till that point of time, the land continues to be with the original owner and he is also free to deal with the land just as he likes. So long as the possession is not taken over, the mere fact of a notification issued under Section 4 or a declaration under Section 6, does not divest the owner of his rights in the land just as he likes. So long as the possession is not taken over, the mere fact of a notification issued under Section 4 or a declaration under Section 6, does not divest the owner of his rights in the land to take

> care of its and conger on the State Government any right whatsoever to interfere with the ownership of the land or safeguard the interests of the owner. Section 48 gives liberty to the State Government to withdraw from the acquisition at any stage before the possession of the land is taken by it. By such withdrawal, no irreparable prejudice is caused to the owner of the land and, if at all the owner has suffered any damage in consequence of the acquisition proceedings or incurred costs in relation thereto, he will be compensated therefore under Section 48(2) of the Act. This Court further observed that the State can be permitted to exercise its power to withdraw unilaterally. It further observed that having regard to the scheme of the Act it is difficult to see why the state Government should at all be compelled to give any cogent reasons for its decision not to go ahead with the acquisition of any land. it is well settled in the field of specific performance of contracts that no person will be compelled to acquire any land, as breach of contract can always be compensated for by damages. That is also the principle of Section 48(2) of the Act. In that case the Court found that the withdrawal was bona fide and was justified in view of the facts and circumstances of the case. That was a case where the decision of the Government to withdraw from acquisition was challenged by the owner of the land on the ground that the withdrawal was mala fide and it was bad because no show cause notice was served to the company before the withdrawal order was passed. It was in that context that this Court made the above quoted observations. That was not a case where proceedings were initiated to acquire land for a company under part VII of the Act. Therefore, it is not an authority laying down the proposition that in all cases where power is exercised under section 48 of the Act it is open to the State Government to act unilaterally and that it can withdraw from acquisition without giving any reason or for any reason whatsoever.

This Court has carefully gone through the aforesaid judgments. In the present case, the undisputed fact is that there is no sale deed on record to establish that Devkrishna has sold the land in the year 1972-73 to Parmanand and by no statute of imagination, Parmanand without having any title, could not have sold that land to subsequent purchasers. In fact the land was sold by Parmanand without having any title in

his favour, and therefore, the sale deed in favour of the petitioner, which has been executed by the person, who was not having any title will not confer any right upon the petitioner so far as the title of the land is concerned.

The another important aspect of the case is that Devkrishan, the original land owner has preferred a writ petition before this Court in respect of the same land i.e. W.P. No.1226/2001 ***Devkrishn S/o Shaligram v/s Principal Secretary Revenue, Ministry of Urban, Vallabh Bhawan, Bhopal***.

In the aforesaid case, the claim made by Devkrishn, the original land owner has been turned down. The order dated 17.04.2007 reads as under:-

> "In this second round of litigation is assailing the order dated 25.04.2001 passed by the Commissioner, Indore in appeal holding that the appeal preferred by the petitioner does not pertain to section 11 to 14 of the Urban Land (Ceiling and Regulation) Act, 1976, therefore, the appeal against the order of the competent authority declaring surplus land under abated in view of the provisions contained in the Urban Land (Ceiling and Regulation) Repeal Act, 1999 in respect of the order made under the principal Act declaring that the surplus land would vest in the State Government.
>
> 2. Facts in short are as under. Petitioner was a Bhumiswami of certain land situated in Khajrana district Indore admeasuring 5.644 hectares coming into force of the Urban land (Ceiling and Regulation) Act, 1976 (for short 'the Act') Petitioner filed return under Section 6 of the Act in respect of the holding held by him within the urban agglomeration. Based upon the return the competent authority issued the draft statement under Section 8 on 1.11.1996 and after allowing the entitlement of the petitioner, declared 3.37 hectares of land as surplus. The final statement declaring the land surplus was passed thereafter. The notification under Section 10(1) of the Act was passed in the M.P. Rajpatra dated 30.01.1993. Thereafter, the competent authority issued notice to petitioner under Section 10(5) of the Act. Since petitioner failed to

deliver the possession of surplus land on 23.06.1999 the possession of the surplus land vested in the State Government was taken over and Panchnama to that effect was prepared.

3. Learned counsel for the petitioner submitted that Panchnama is a sham document and it was prepared in the office in order to get over the effect of the Repeal Act. Which was adopted by the State Legislature on 17.02.2000. It was also contended that land belonging to some other persons were also included in the Panchnama therefore according to him the entire proceedings are vested as a result not only the order impugned but also the order passed by the competent authority deserves to be quashed. Per contra learned GA in view of the pleadings made in the return supported the action taken by the respondents and submitted that vesting of surplus alnd shall not be affected by the Repeal Act.

4. After hearing learned counsel for the parties and going through the material available on record in the opinion of this court there is no merit and substance in the present writ petition so as to warrant interference under Article 227 of the Constitution of India. From the documents, it is clear that first possession of the land was taken through a Panchnama. Before possession of the land was taken the proceeding as contemplated under Section 8 to 10 to the Act were completed and the land was declared surplus which stood vested in the State Government. There is no force in the contention of learned counsel that the Panchnama includes even those survey numbers which were sold by the petitioner prior to coming into force of the principal Act. Petitioner had all the opportunity to agitate and prove every fact before the competent authority before final order was passed but it appears that nothing in this regard was done by the petitioner before the competent authority and he suffered an adverse order and allowed the respondents to take the possession even though symbolic of the surplus land. Thus before coming into force of the Repeal Act. The land was declared surplus and the possession as already taken as found by the Commissions in appeal after the remand order passed by the Commissioner are pure findings of fact which are not open to challenge in the present writ petition under article 227 of the Constitution of India. The order impugned does not suffer from any jurisdictional error or the procedural irregularity so as to warrant interference in the exercise of the limited jurisdiction conferred by Article 227 of Constitution of India.

> 5. Accordingly, I find no merit and substance in the writ petition. It is dismissed. However, there shall be no order as to costs."

The facts of the case further reveal after the original land owner has been unsuccessful in getting the land exempted under the provisions of Urban Land Ceiling and Regulation Act, it is now the petitioner, who is agitating the matter.

Another important aspect of the case is that in the present case, the notification under section 10 (3) Urban Land Ceiling and Regulation Act, 1976 was issued on 09.04.1999 and the petitioners have purchased the land on 05.04.2004. The Hon'ble Apex Court in the case of ***State of Uttar Pradesh & Others v/s Adarsh Seva Sahkari Samiti Limited*** *reported in* ***(2016) 12 SCC 493*** in paragraph 2 to 8 has held as under:-

> "2. Our attention was drawn to the original records, the order under Sections 8(4) and 9 and notification issued under Sections 10(1) and 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976 (now repealed) and possession certificated in respect of each case respectively. All the aldn which are the subject matter in these appeals have been purchased by the respondent herein from the original declarants/landowners during the years 1991-1992. After the order under Section 8(4) of the Act was passed, and notification was issued under Section 10(3) of the Act, the same was followed by issuance of notice under Section 10(5) of the Act to the declarant calling upon him to deliver possession of the land declared as surplus. Indisputably, the respondent has purchased the said property after the notification was issued under Section 10(3) of the Act. However, no person is permitted to transfer the tile of excess vacant land after the publication of notification, which is prescribed under Section 10(4) of the Act, Section 10(4) of the Act reads thus:-
>
> > "10.Acquisition of the vacant land in excess of ceiling limit
> >
> > (4) During the period

commencing on the date fo publication of the notification sub section (1) and ending with the date specified in the declaration made under sub section (3)-

(i) no person shall tranfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void: and

(ii) no person shall alter or cause to be altered the use of such excess vacant land."

3. Since, the purchase of the lands is after the statutory vesting of the land with the State Government, therefore, at the instance of the respondent herein, the relief ought not have been granted by the High Court in its favour. The correctness of taking over possession of such excess vacant land declared by the competent authority in the notification published or his authorised officer could not have been examined and granted the relief by the High Court at the instance of the respondent herein, who has purchased the land, after vesting of the lands with the State Government, which is statutorily void, the learned Senior Counsel for the appellant Mr Misra submits that the respondent is not entitled for the relief granted by the High Court in the impugned judgment/order. This aspect of the matter has not been examined by the High Court, though it is not urged before the High Court. Since it is legal question and it can be urged at any time, therefore, the said contention is pressed into operation by the learned Senior Counsel in these proceedings.

4. We have examined this aspect. Having regard to the undisputed fact that the respondent has purchased the property from the decalrant which is vested with the State Government under Section 10(5) of the Act in terms of Section 10(3) notification, therefore, the transfer of property in favour of the respondent, who is claiming its interest in the said property is void ab initio in law. On this ground alone, the order passed by the High Court cannot be allowed to sustain.

5. it is also brought to our notice by the learned Senior Counsel Mr Misra that after the proceeding under Section 10(3) and 10(5), notice and the alleged taking over possession of the land in question, the subsequent event has taken place, namely, the said

> property has been transferred to the Lucknow Development Authority by the State Government and the Development Authority has laid a park for public use. On this , the learned Senior counsel for the respondent submits that the said event has taken place during the pendency of the proceedings before the High Court. Though it may be the fact, subsequently, after the transfer of the property in favour of the Development Authority, the Authority has developed a park is an undisputed fact. This is also a very relevant aspect of the matter for this Court to annul the impugned judgment/order passed by the High Court.
>
> 6. In our opinion, the respondent herein has no locus standi to challenge the inaction on the part of the appellants viz. not taking possession legally strictly complying with the statutory provisions under Section 10(5) of the Act and taking over possession as provided under Section 10(6) fo the Act. At this juncture, this aspect need not be examined by this Court at the instance of the respondent.
>
> 7. For the reasons stated supra, the impugned order passed by the High Court to the extent it granted relief to the respondent herein is liable to set aside and is hereby set aside accordingly, the appeals are allowed accordingly. Tehre shall be no order as to costs.
>
> 8. Having allowed the appeals, considering the respondent's submission that the possession of the land was taken over under Section 10(6) of the Act, it is open for the respondent to prefer a claim under Section 11 of the Act for compensation by filing an appropriate application under the provisions of the Act before the appropriate authority, which claim shall be examined independently by the competent authority and pass appropriate orders in accordance with law expeditiously but not later than six months from the date of receipt of such application."

In the aforesaid, it has been held that the third party purchaser purchasing property after issuance of notification under Section 10(3) of the Urban Land Ceiling and Regulation Act, 1976, does not have any locus to claim the same.

The Hon'ble Apex Court in the case of ***State of Uttar Pradesh v/s Surendra Pratap & Others*** *reported in* ***(2010) 12 SCC 497***, in paragraphs 7 to 9 has held as under:-

> "7. We have heard Mr. Irshad Ahmad, learned Additional Advocate General for the State in support of the appeal and Mr. Aarohi Bhalla, learned Advocate for respondent Nos.1 and 2. The record indicates that notification u/s 10(3) of the Act was published in the official gazette on 29.04.1986 and an appropriate notice u/s 10(5) of the Act was issued by the Competent Authority on 31.03.1993. These aspects of the matter are not disputed by respondent Nos.1 and 2 but in their submission, despite such notice u/s 10(5) of the Act, the possession was never taken over. The factum about taking over the possession finds clear mention in the possession certificate dated 20.08.1994. Further, the objections preferred by respondent Nos.1 and 2 were dismissed vide order dated 30.06.1995 which order also records the fact that possession of the land already stood taken over. In the premises, all requisite actions contemplated under the Act were taken in accordance with law well before the enactment of the Repeal Act and the surplus vacant land stood vested with the State Government of which the possession was also taken over. The Writ Petition preferred in the year 2005, therefore, had no stateable claim and the High Court was completely in error in accepting the submissions advanced on behalf of respondent Nos.1 and 2.
>
> 8. Moreover, in Civil Appeal Nos. 369-370 of 2016 (State of U.P. and Ors. v. Adarsh Seva Sahakari Ltd.) decided on 19.01.2016, this Court has observed that after the vesting of the surplus land with the State Government u/s 10(5) of the Act, if any transfer of the property in question is effected, such transfer would be void ab initio and the transferee would not be entitled to challenge the alleged inaction on part of the State Government or the Competent Authority in not taking possession in compliance with the provisions u/s 10(5) of the Act.
>
> 9. In the aforesaid circumstances, the view taken by the High Court in the instant case is completely unsustainable. This appeal is, therefore, allowed and the Writ Petition preferred by the respondent Nos.1 and 2 herein stands dismissed with costs."

In the aforesaid cases also, it has been held that the third party purchaser purchasing property after issuance of notification under Section 10(3) of the Urban Land Ceiling and Regulation Act, 1976, has no locus standi to claim the

same.

In light of the aforesaid judgments, this Court is of the opinion that no case for interference is made out in the matter.

Accordingly, the present petition stands dismissed.

Certified copy as per rules.

(S.C. Sharma)
Judge

Ravi