

WP-3975-2016

(SHANTI DEVI Vs THE STATE OF MADHYA PRADESH)

09-02-2017

Shri Veer Kumar Jain, learned counsel for the petitioner.

Shri Romesh Dave, learned Deputy Government Advocate for the respondents/State.

Shri A.S. Kutumbale learned Senior counsel with Shri V.P. Bhagwat, learned counsel for the respondent No.3.

The petitioner has filed the present petition being aggrieved by order dated 16/03/2016, 04/07/2013 and 02/07/2011, passed by M.P. Board of Revenue, Revenue Commissioner, Indore and Additional Collector, Indore respectively.

Brief facts of the case are that a part of land of Survey No.1352 (Sindhi Colony) was decided to be allotted to Mr. Sangatmal being the displaced person from Pakistan by way of lease by the Government. By notice dated 16/08/1982, the demand of lease rent was made by Nazul Officer, Indore for execution of lease deed but no lease deed was executed between Mr. Sangatmal and the Government. Mr. Sangatmal constructed a shop admeasuring 150 sq. ft. over the said land and agreed to sale the same to the petitioner by way of agreement dated 13/12/1980. The petitioner paid the sale consideration and was put into the possession. Municipal Corporation gave a number to the said shop. The petitioner let out the said shop to respondent No.3 for non-residential purpose. By notice dated 30/11/1999, the petitioner terminated the tenancy and filed the suit for

eviction. The said suit was decreed by judgment and decree dated 12/02/2002, by directing respondent No.3 to handover the vacant possession of the shop within a period of two months. Respondent No.3 preferred First Appeal No.6-A/2003, which was dismissed vide judgment dated 26/07/2003. Both the judgment and decree were affirmed in Second Appeal No.393/2003 by this High Court vide judgment dated 06/08/2004. During pendency of the second appeal No.293/2003, respondent No.3 approached to respondent No.1 and 2 and obtained the *âPattaâ* of the said land on 22/09/2003, by concealing the fact of eviction decree against him. In the said *âPattaâ*, the property in question was shown as open land. After dismissal of the second appeal, the petitioner filed the execution proceedings, in which, respondent No.3 filed the objections under Order 21 Rule 97 of CPC, which was rejected by order dated 02/08/2008 and against which, Writ Petition No.1033/2009 was also dismissed by this Court vide order dated 24/04/2009. Thereafter, the petitioner obtained the possession of the said suit shop from respondent No.3.

Respondent No.3 filed a Suit No.134-A/2008 seeking possession and *mesne* profit from the petitioner by virtue of registered lease deed dated 22/09/2003. In the said suit, the specific issue was framed that whether the State Government has executed the registered deed in favour of the plaintiff on 22/09/2003? Vide judgment dated 03/12/2010, the suit was dismissed and the finding was recorded that no lease was allotted in favour of respondent

No.3. During pendency of the aforesaid suit, an inquiry was got conducted by respondent No.2, in which, the report was submitted that the lease deed in favour of respondent No.3 has been illegally given. Respondent No.3 filed a review application before the Civil Judge and that too has been dismissed vide judgment dated 25/02/2011.

The petitioner made a complaint to the Additional Collector, Indore under Section 182(2) of M.P. Land Revenue Code (for short 'MPLRC') against the 'Patta' granted to respondent No.3. Vide order dated 02/07/2011, the order was passed against the petitioner and the finding has been recorded that there is no violation of terms and conditions of the 'Patta'. Against the said order the petitioner filed an appeal before the Revenue Commissioner, Indore, which, was also dismissed vide order dated 04/07/2013. Thereafter, the petitioner preferred a revision before the Board of Revenue and the same has also been dismissed.

During pendency of above mentioned proceedings, respondent Nos.1 & 2 have illegally put-up the lock over the shop, hence, the petitioner sought relief that orders (Annexures P/12, P/13 & P/14) be quashed and respondent Nos.1 & 2 be directed to remove the lock by way of filing the present writ petition.

After notice in the writ petition, respondent Nos.1 & 2 filed the return, in which, it is stated that respondent No.3 was allotted the 'Patta' under the circular of the State Government dated 09/07/1986, which is filed as Annexure R/1 and R/2 and there is no illegality in the same.

Respondent No.3 has also filed the return and submitted that while deciding the Second Appeal No.393/2003, this Court has observed that even if the plot, on which the suit shop is situated belonged to the Nazul Department, the super structure or building of the shop certainly belonged to the respondent (present petitioner). The tenancy is on the shop not on the land, on which the shop is situated. It is submitted that the land was never allotted to Mr. Sangatmal by the State Government, as no lease deed is on record and Mr. Sangatmal only agreed to sale the shop to the petitioner and even the sale deed has not been executed. Therefore, the petitioner has no title over the shop as well as over the land; whereas, under the circular of the State Government the land has been allotted to the petitioner, therefore, he has the right to obtain the possession from the petitioner. Since, the answering respondent has not breached any condition contemplated under Section 182 (2) of MPLRC, therefore, the Revenue Courts have rightly dismissed the complaint and appeal, filed by the petitioner. The petitioner is neither the predecessor of Mr. Sangatmal nor the legal owner / *Bhumi-swami* of the land, hence, prayed for dismissal of the writ petition.

Shri V.K. Jain on behalf of the petitioner at the very outset submits that the petitioner is admittedly not having the title over the shop in dispute but she is in settled possession since 1980 by virtue of agreement to sale dated 23/12/1980. Therefore, she can not be dispossessed by the State Government illegally by putting the lock. If, respondent No.3

is having *Patta* or the land belongs to State Government, then they ought to have resorted the remedy of filing suit for eviction against the petitioner.

The possession of the petitioner is not at all disputed by virtue of eviction decree in her favour. The only controversy involved in this petition is whether the *Patta* in favour of respondent No.3 has legally been issued and whether the same was issued to frustrate the eviction decree and whether the respondent Nos.1 & 2 have a legal authority to put a lock on the premises, which is in possession of the petitioner? He submitted that the State Government has allotted the land to respondent No.3 under the circular dated 09/07/1986, which is applicable for the displaced persons from Pakistan. Respondent No.3 born in India, therefore, can not be termed as displaced person. Therefore, under the said circular, *Patta* can not be granted to him and the benefit of circular is liable to be given to those displaced persons, who have encroached the Government land on or before 13/12/1976. Admittedly, respondent No.3 is in possession from 13/03/1981. He further submits that respondent No.3 has obtained the *Patta* in collusion with the Revenue Authorities only to frustrate the eviction decree in favour of the petitioner.

Shri Romesh Dave, learned Deputy Government Advocate on behalf of the State submits that the circular dated 09/07/1980 is applicable to displaced family and not to the individual. Respondent No.3 might have born in India but he is from the family, who migrated from Pakistan.

Shri A.S. Kutumbale learned Senior counsel on behalf of respondent No.3 submits that the petitioner is not having any document of ownership of the shop in her favour. The shop / structure might be belonging to her but the land is a Nazul land and for which, the Government is having authority to allot to respondent No.3. The shop has been constructed without any permission of the Municipal Corporation and the petitioner has no right to continue into the possession. The Revenue Courts have rightly decided the application under Section 182 (2) of MPLRC.

ORDER

1. It is not disputed that, the petitioner is in possession of the shop by virtue of agreement to sale. No lease deed is on the record, by which, land was leased out to Mr. Sangatmal in Sindhi Colony. He was only directed to deposit the lease rent so that the lease can be executed. It is also not disputed that decree of eviction is in favour of the petitioner, which has been affirmed upto the High Court on the ground of *bona-fide* need.
2. In the said suit the relation of landlord-tenant has not been disputed by respondent No.3. The specific issue regarding ownership of the petitioner was framed and it was answered in favour of the petitioner. This issue was specifically raised before the Appellate Court also and the same was rejected by the Appellate Court. Again, respondent No.3 raised this issue before the High Court in second appeal. The issue framed in the second

appeal is reproduced below :-

1. ***â(B) Whether the plea of the tenant asking the landlord to prove her ownership amounted in this case to disclaimer of landlord's title so as to provide a ground for eviction under Section 12 (1)(c) fo the M.P. Accommodation Control Act?â***
2. The High Court has dealt the said issue as under :-
 1. ***â Thereafter, he has taken and produced the lease-deed from Nazul department in respect of the land, on the suit shop is situate. This certain that evern if the plot on which the suit shop was situate, belonged to Nazul department, the super structural or the building or shop certainly belonged to the respondent. Tenancy mainly consisted of the shop and not of the plot of the land on which the same was situate. This act of obtaining a lease of the plot on which suit shop is situate from Nazul department during the currency of statutory tenancy in favour of the appellant, in which proceedings of the respondent/landlady never heard could depends herself certainly has amounted to dis-claimer of the title of the respondent/landlord âwhich is likely to affect adversely and substantially the interest of the landlord thereinâ within the meaning of Section 12 (1)(c) of the Act and thus, clearly this ground of eviction had also been proved. The question is answered accordingly.â***
 2. The High Court has held that the shop belongs to the petitioner and the land is a Nazul land.
1. Respondent No.3 has obtained the lease of the land for a period of 30 years from the State Government by way

of registered deed dated 22/09/2003 for residential purpose with the condition that he will start the construction within two years. The petitioner made a complaint to the Collector under Section 182 (2) of MPLRC and prayed for cancellation of *Patta* dated 22/09/2003, in favour of respondent No.3. In the said proceeding, the Nazul Officer was directed to conduct an inquiry and to submit its report. Vide letter dated 20/05/2009, the Nazul Officer, Indore submitted the report to land Superintendent, in which, he recommended for cancellation of the lease in favour of respondent No.3 on the ground that the entire area is commercial area and the lease was given for residential purpose. The operative part of the report is reproduced below :-

mDr yht MhM vkoklh; gsrq yh xbZ gS Lfky ij 15 @10 QhV dh nqdkj fLFkr gS] mDr nqdku ds nksuks vkSj vU; nqdkus fLFkr gS ,oa lkeus IM+d gSA mDr LFkku vkokfl; u gksdj O;olkf;d gS] tcfD Hkxokunkl igyokuh dks fn;k x;k iV~Vk vkoklh; gS] mDr LFkku ds ikl nqdkus cuh gqbZ gS] ,oa Jh lqaxrey firK Mksyqey] lh/kh }kjk Hkh mDr LFkku dks Jhefr 'kakfr nsOh islwey th cugkuh dks nqdku fedzh fnukad 12@01@1980 dks dh xbZ Fkh A vr% mDr LFkku iw.kZr% O;olkf;d gksus ls Jh Hkxokunkl igyokuh dks fnukad 23@09@2003 dks QkeZ&m ls fn;k x;k iV~Vk 'kwU; gS D;ksafd ;g iV~Vk o mDr LFky iV~Vs 'krksZ ds vuqlkj ugh gS ,oa Lo;a Jh Hkxokunkl igyokuh mDr nqdku esa Jherh 'kkafr nsOh ifr islwey ds fdjk;snkj jgs gS ftldh iqf"V U;k;ky; vkns'k ,oa buds fdjk;snkj vuqca/k i= ls gksrh gSA Jh

**Hkxokunkl igyokuh dks fn;k x;k iV~Vk
fujLr fd;k tk ldrk gSA**

**U;k;ky;hu vkns'k ds ifjis}; esa mDr nqdku ij
Jherh 'kkafr nsoh ifr islwey mDr nqdku ds
vf/kdkjh.kh gSA**

6. Learned Collector while deciding the application under Section 182 (2) of MPLRC also framed the issue regarding ownership of the petitioner and decided against her. To answer the question whether the "Patta" was rightly granted to respondent No.3, the Collector placed reliance over the circular dated 09/07/1988, on the ground that name of respondent No.3 is in the list of displaced persons and the fact is established from the report of Nazul Adhikari dated 17/06/2011. Neither the list of displaced persons nor the report of Nazul Officer has been filed by the State Government as well as by respondent No.3 in this petition. In the record also, which, has been produced by the State Government, no such list is available. The list, which is available on record is the list of displaced persons, who have been granted "Patta" by the Government. At the end of this list name of respondent No.3 is recorded as "Patta" has been granted to him on 22/09/2003. No such proceedings are available on record about issuance of "Patta" to respondent No.3. Only in the letter of Nazul Officer dated 17/06/2011, it is mentioned that name of respondent No.3 is mentioned in the list of displaced persons. It is also wrongly mentioned by the Nazul Officer that he is

in possession since 1975-80 when the Trial Court has held that he is in possession as tenant in the shop since 1981. The findings of all the Revenue Courts are perverse. The Collector, Additional Commissioner as well as Board of Revenue have also not considered the record. All the three Revenue Courts have gone into the issue of ownership of the petitioner. The petitioner has categorically stated that she has never claimed the ownership of the shop as well as of the land. She is only claiming that she is in possession since 1980 and urged that she can not be removed by putting a lock. The Government is required to initiate the eviction proceedings against her as per law. There is a decree of eviction in favour of the petitioner, which, has been affirmed upto the High Court. All the objections taken by respondent No.3 in Civil Courts were rejected upto the High Court. The possession of the shop was given to the petitioner in compliance of the execution of the decree. High Court held that the petitioner is owner of the super structure i.e. shop, not the owner / lease holder of the Nazul land. Therefore, the Government was required to initiate proceedings against the petitioner in accordance with law for her eviction from the Government land. The civil suit for eviction and possession filed by respondent No.3 has already been dismissed by the Civil Court vide judgment dated 03/12/2010.

7. In view of the above discussion, the impugned orders

(Annexures P/14 dated 16/03/2016, P/13 dated 04/07/2013 and P/12 dated 02/07/2011) are hereby quashed. The matter is remitted back to the Collector to decide the application under Section 182 (2) MPLRC as afresh as whether respondent No.3 is entitled for lease of the land under the circular dated 09/07/1986, within a period of three months from the date of receipt of certified copy of this order. The respondents are also directed to remove the lock from the shop in question.

With the aforesaid, the petition is **partly allowed**.
Certified copy as per rules.

(VIVEK RUSIA)
JUDGE