HIGH COURT OF MADHYA PRADESH
AT JABALPUR

R.P. No.757 of 2021

Between

P.P. Agarwal (Dead) through his Legal Heirs:

1. Shri Atul Agarwal S/o Late Shri P.P. Agarwal, aged about 58 years.

2. Shri Vivek Agarwal S/o Late Shri P.P. Agarwal, aged about 54 years.

Both permanent R/o HIG-10, Near Motel Shiraz, Shivaji Nagar, Bhopal (M.P.)

….PETITIONERS

AND

1. State of Madhya Pradesh,
Through the Principal Secretary,
Revenue Department, Government of M.P.,
Mantralaya, Vallabh Bhawan, Bhopal, (MP)

2. The Collector, District Bhopal (M.P.)

3. The Sub-Divisional Officer, T.T. Nagar,
Capital Project Division, Bhopal (M.P.)

4. The Tahsildar, T.T. Nagar Circle, Capital Project, Nazul Bhopal (M.P.).

5. Madhya Pradesh Housing and Infrastructure Development Board,
Through : The Commissioner, Paryawas Bhawan, Bhopal (M.P.).

….RESPONDENTS

Date of Order	04.05.2022
Bench Constituted	Single Bench
Order delivered by	Hon'ble Shri Justice Sanjay Dwivedi, J.
Whether approved for reporting	----
Name of counsels for the parties	For Petitioners : Shri Sanjay K. Agrawal, Advocate. For Respondent Nos.1 to 4/State : Shri Devendra Gangrade, Panel Lawyer. For respondent No.5 : Shri R.P. Nema, Advocate.

Reserved on : 27.01.2022
Delivered on : 04.05.2022

(O R D E R)

By the instant review petition, the petitioners are seeking review/recall of order dated 11.02.2021 passed in W.P. No.2728/2016.

2. This Court vide order dated 11.02.2021 dismissed the said writ petition wherein the original petitioner had assailed the validity of the demand order dated 30.12.2015 (Annexure-P/1 therein) whereby the demand of Rs.9,26,202/- was made from the petitioner. The ground of challenge was mainly that over the land given to the Housing Board by the State, the petitioner made an application for allotment of the house and a lease-deed was executed in his favour in the year 1977 and the said lease-deed was renewed in the year 2008 for a further period of 30 years. According to the petitioners merely because the lease-deed

executed by the State Government leased out the land to respondent No.5, does not confer any right on respondent No.2 i.e. the Collector Bhopal to reassess the conversion charge as per market value of the land prevailing in the year 2015. According to him, assessment had already been made by the Tahsildar on the basis of Collector guidelines of the year 2012-13 and an amount i.e. R.2,30,207/- was determined as conversion charge for getting leasehold land converted into freehold land, therefore, no reassessment was required merely because the State made formal allotment in favour of Housing Board in the year 2015.

3. Counsel for the petitioners has submitted that this Court has not considered the material aspect of the matter that in the M.P. Grant of Freehold Right in respect of the Land on Lease Situated in Urban Area Rules, 2010 (for short 'Rules of 2010') there is no provision for calculating the charges by the authorized officer and he cannot take assistance of his subordinate officer. He submitted that when the Tahsildar has calculated the conversion charge under the provisions contained in the rules then non-consideration of the same to be a final assessment, is nothing but a glaring mistake committed by this Court which is apparent on the face of record. He further submitted that this Court has not taken note of the material aspect of the matter that delay occurred on the part of the State for issuing formal order of allotment for which the petitioners cannot be held responsible and they cannot be made to suffer by paying higher rate of conversion that too on the basis of prevailing market rate of the land of the year 2015. According to the counsel for the petitioners, the eligibility of the petitioners has

to be considered in view of Rules 5 of the Rules of 2010.

4. The counsel for the respondents submitted that this is not a case in which power of review can be exercised because the order passed by this Court dismissing the writ petition is a reasoned one and if any view taken by the Court is not justifiable as per the petitioners, then they are free to assail the same in a higher forum. He sanguinely submitted that the ground raised by the petitioners for seeking review of the said order is baseless.

5. Considering the rival submissions of the counsel for the parties and perusal of record, it is clear that it is a case in which the original petitioner was allotted a house on his application made to respondent No.5 in the year 1977 under the Higher Purchase Scheme. The lease was further renewed in the year 2008 w.e.f. 01.06.2007 for a period of 30 years.

6. After the Rules of 2010 were introduced, the original petitioner made an application claiming that the house/plot be also converted into freehold land from leasehold land. As per Rule 6 of Rules of 2010, the Authorized Officer may convert the leasehold right into freehold right after processing the application made under Rule 8 on payment of conversion charge. On the said application, the proceeding was initiated by the Tahsildar and after inviting objection, the conversion charges were assessed that comes to Rs.2,30,207/- that too on the basis of Collector Guidelines of the year 2012-13 because Rules of 2010 for conversion of leasehold right into freehold right were introduced in the year 2010 only and application for conversion was moved by the petitioner only after

enforcement of the Rules of 2010.

7. As per the counsel for the petitioners, there was no reason for ignoring the said assessment and making fresh assessment demanding an amount of Rs.9,26,202/- on the basis of market value of the land as per guidelines prevailing in the year 2015-2016. I find substance in the submissions made by the counsel for the petitioners that when the house/plot had already been leased out by the Housing Board and lease was further extended in the year 2008 for a further period of 30 years. On an application submitted by the original petitioner for conversion of house/plot from leasehold land to freehold land, the case was registered, objections were invited and the Tahsildar assessed the conversion charge on the basis of guidelines of the year 2012-2013 which was prevailing at the time of assessment made and processing the application of conversion. Merely because there is a delay on the part of the authority for making formal allotment, conversion charge cannot be changed in view of the lapses made on the part of the State if unnecessarily consumed time to make a formal order of allotment. As per settled principle of law, for the lapses on the part of the respondent/authority, party cannot put suffer owing to administrative lapse on the part of the government or public authority when there is no fault on its part.

8. Apparently, there was a delay on the part of State but when the land had already been given to respondent No.5 on lease and an application for allotment has been considered in the year 1977 and in 2008 the year lease had been renewed for a period of 30 years then assessment has rightly been made by the authority i.e.

the Tahsildar because no provision is available under the Rules specifying as to which authority can make assessment of conversion charge. The Tahsildar, being a revenue authority registered a case of conversion of leasehold land to freehold land and if any assessment is made by him, the same cannot be considered to be illegal in view of the law laid down by the Supreme Court in a case of **P.N. Premachandran Vs. State of Kerala** reported in **(2004) 1 SCC 245**, in which the Supreme Court has clearly held that the parties cannot be made to suffer owing to the administrative lapse on the part of the State and no fault can be found with on the part of the petitioner. The Supreme Court in the said case in paragraph-7 has observed as under:

> "7. It is not in dispute that the posts were to be filled up by promotion. We fail to understand how the appellant, keeping in view the facts and circumstances of this case, could question the retrospective promotion granted to the private respondents herein. It is not disputed that in view of the administrative lapse, the Departmental Promotion Committee did not hold a sitting from 1964 to 1980. The respondents cannot suffer owing to such administrative lapse on the part of the State of Kerala for no fault on their part. It is also not disputed, that in ordinary course they were entitled to be promoted to the post of Assistant Director, in the event, a Departmental Promotion Committee had been constituted in due time. In that view of the matter, it must be held that the State of Kerala took a conscious decision to the effect that those who have been acting in a higher post for a long time although on a temporary basis, but were qualified at the time when they were so promoted and found to be eligible by the Departmental Promotion Committee at a later date, should be promoted with retrospective effect."

9. Accordingly, the order dated 11.02.2021 passed in W.P. No.2728/2016 is hereby recalled. Consequently, the order passed by the authority which was impugned in the said petition, is hereby

set aside. The petitioners since are willing to deposit the amount of conversion charge assessed by the Tahsildar which came to Rs.2,30,207/-, the same be paid by them and if already paid, the respondent/authority may proceed to convert the leasehold land into freehold land in favour of the petitioners.

10. With the aforesaid, the review petition filed by the petitioners is **allowed**.

(Sanjay Dwivedi)
Judge

ac/-