

HIGH COURT OF MADHYA PRADESH**W.P.No. 19146/2021****(Smt. Jalbhartha Devi and another Vs. State of M.P. and others)****Jabalpur, Dated : 23.09.2021**

Shri Anuj Shrivastava, learned counsel for the petitioners.

Shri Ankit Agrawal, learned Govt. Adv. for respondent -State.

The present petition has been filed challenging the order dated 20.7.2021, (Ann. P-9) passed by the SDO, (Revenue), whereby the order dated 23.09.1987 granting permission for sale of land in question was set aside.

It is argued that no proper opportunity of hearing was granted to the petitioner nor the proper enquiry was made with respect to the land in question and despite permission being granted for sale of the land as reflected from Annexure P-2, dated 23.9.1987. The order has been passed only on the ground that certified copy of the order dated 23.9.1987 could not be filed by the petitioner. It is submitted that records pertaining to the orders is in possession of the authorities itself. The aforesaid aspect could have been verified. Even in the absence of complete enquiry into the matter as is reflected from the impugned order, the Patwari has not conducted the complete enquiry and has only produced the enquiry for the year 1988-1989, the order is passed by the learned SDO. In such circumstances, it is a non speaking order. It appears to be without application of mind, therefore, prays for quashment of the order.

Per contra, learned counsel appearing for the State has pointed out that alternative remedy of filing of an appeal against the impugned order is available to the petitioner. But, he could not dispute this fact that the order impugned does not reflect the enquiry being conducted by the Patwari and also the fact that the order has been passed only on the ground that the certified copy of the same could not be filed by the petitioner. The

order appears to be non speaking order and without application of mind by the authorities.

The law is settled with respect to following the Principles of Natural Justice and assigning reasons in the impugned order, as has been held in by Hon'ble Supreme Court in **Kranti Associates Private Limited and Anr. vs. Masood Ahmed Khan and others**, reported in **(2010) 9 SCC 496** the Hon'ble Supreme Court has held as under :-

"47. Summarizing the above discussion, this Court holds:-

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior Courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually

the life blood of judicial decision making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to

the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See *David Shapiro in Defence of Judicial Candor* (1987) 100 *Harvard Law Review* 731-737).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 *EHRR* 553, at 562 para 29 and *Anya vs. University of Oxford*, 2001 *EWCA Civ* 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

After going through the impugned order, dated 20.7.2021, (Ann.P-9), it is reflected that the guidelines as formulated by the Supreme Court in the case of *Krinti Associate*, (supra) are not followed by the learned SDO. In such circumstances, despite there being an alternative remedy available to the petitioner, this court is having jurisdiction to entertain the petition under Article 226 of the Constitution of India as same is passed without following the Principles of Natural Justice and fair play.

Accordingly, the petition is entertained by this court and the order impugned dated 20.7.2021, (Ann. P-9) passed by the SDO, (Revenue) is quashed. The matter is remanded back to the learned SDO, (Revenue), Manpur, district Umaria for reconsideration of the matter of the petitioner and pass a well reasoned order after providing the opportunity of hearing to them.

The aforesaid exercise be completed within a period of three months from the date of receipt of the certified copy of the order.

The petition is disposed of.

C c as per rules.

(VISHAL MISHRA)
JUDGE

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