

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 26th OF JULY, 2024

MISC. PETITION No. 3996 of 2024

MOHAMMAD AYUB @ MUNNA ANSARI AND OTHERS

Versus

DASHRATH PRASAD GUPTA AND OTHERS

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Appearance:

Shri Ashok Kumar Gupta - Advocate for the petitioner.

Shri Ved Prakash Tiwari - Government Advocate for the State.
.....

ORDER

The present petition has been filed challenging the order Annexure P-11 as well as Annexure P-12, whereby the petitioners have been held to be in unauthorized possession of land and order to be evicted from the said land.

2. Learned counsel for the petitioners submits that by the order Annexure P-11, the Sub Divisional Officer has ordered that the petitioners are in possession of some lands of National Highway on which previously National Highway was constructed, but after a new four lane National Highway was constructed, the said land was unutilized and the petitioners have encroached upon the said unutilized land of National Highway.

3. Learned counsel for the petitioners has further relied on some earlier report of encroachment, wherein by Annexure P-4 dated 22.12.2021, it was found that there is no encroachment of the petitioners in private land of complainants in Survey Nos. 693, 694, 696 and 697. Thus, once the complaint against the petitioners was disposed of, now the proposed eviction of the petitioners is

victimization.

4. Per contra, learned Government Advocate for the State has opposed the petition and has stated that as per the instructions received from the authorities the action is being taken in response to order passed by the Hon'ble Supreme Court in W.P. (Civil) No.1272/2019 on 30.04.2024, whereby the Hon'ble Supreme Court has directed the action of removal of encroachment made on the National Highways. It is further contended that the petitioners have been found to be on encroachment in land of National Highway.

5. In rejoinder submission, learned counsel for the petitioners has argued that the Sub Divisional Officer is not the National Highway authority in terms of National Highway land and Traffic Act, 2002 and even if, the petitioners are indeed encroaching on land of National Highway, then only the National Highway Authority under the Act of 2002 could have taken action in terms of Section 26 thereof.

6. Heard learned counsel for the parties.

7. From perusal of the earlier order passed by the Tahsildar Annexure P-4 heavily relied by learned counsel for the petitioners, it is evident that in the said order, it has been found that the petitioners are not occupying the private lands of Survey Nos.693, 694, 696 and 697. The said proceedings were under Section 250 MPLRC, which relates to eviction of unauthorized occupants from private lands.

8. Now by the order Annexure P-11, it has been held that the petitioners are in occupation of Government land, which was thereafter taken for construction of Highway in Survey No.691. The earlier order of Tahsildar Annexure P-4 does not speak anything about Survey No.691 and the reliance of the petitioners on the said order is utterly misplaced.

9. It was vehemently argued by learned counsel for the petitioners

that if the petitioners are encroachers of land of National Highway, then only the National Highway authority can take action in terms of Section 26 of Act of 2002. This submission is noted to be discarded.

10. The Hon'ble Supreme Court in W.P. (Civil) No.1272/2019 has issued instructions from time to time in the matter of removal of encroachments from National Highways, one such order has been relied by the State counsel dated 30.04.2024. It is the contention of the State that in terms of such directions actions are being taken by the State authorities to remove encroachments from the lands of National Highways.

11. In view of the aforesaid submission of the State counsel, no error can be found in the action being undertaken by the State for removal of encroachment from land of National Highways. The petitioners have not seriously contended that they are not encroachers on Survey No.691, which is the land of National Highway. Their only contention is that the SDO is not the notified Highway authority as per Act of 2002 and could not have taken action against the petitioners.

12. The petitioners are seeking equity jurisdiction before this Court. The allegation of they being in possession as encroacher on Government land of National Highways is not contested by the petitioners. They are thus encroachers on Government land as Survey No.691 and the aspect of authority is being raised by the petitioners by relying on Act of 2002.

13. It is settled in law that equity jurisdiction cannot be exercised to set aside an order, which remedies a wrong, even if there may be defect of jurisdiction. In the case of *Gadde Venkateswara Rao v. Govt. of A.P.*, 1965 SCC OnLine SC 25 : also reported as AIR 1966 SC 828 , the Apex Court has held as under:-

"19. The result of the discussion may be stated thus : The Primary Health Centre was not permanently located at Dharmajigudem. The representatives of the said village did not comply with the necessary conditions for such location. The Panchayat Samithi finally cancelled its earlier resolutions which they were entitled to do and passed a resolution for locating the Primary Health Centre permanently at Lingapalem. Both the orders of the Government, namely, the order dated March 7, 1962, and that dated April 18, 1963, were not legally passed : the former, because it was made without giving notice to the Panchayat Samithi, and the latter, because the Government had no power under Section 72 of the Act to review an order made under Section 62 of the Act and also because it did not give notice to the representatives of Dharmajigudem village. In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government dated April 18, 1963? If the High Court had quashed the said order, it would have restored an illegal order — it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case."

14. In the case of *Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar*, (1999) 8 SCC 16, the Apex Court has also held as under:-

"38. For what has been stated above we hold that the order of the learned Member of Board of Revenue directing action to be taken for refund of the excess compensation was valid and proper though he had no jurisdiction to pass the order. In the event it is set aside it would amount to reviving an invalid order of payment of excess compensation to the appellant."

15. Consequently, the present petition is devoid of merits and stands dismissed. However, 15 days' time is granted to the petitioners to remove the encroachment and for a period of 15 days only the

authorities are restrained from taking any action against the petitioners.

16. With the aforesaid direction, the petition is **dismissed**

(VIVEK JAIN)
JUDGE

rj

