



IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE G. S. AHLUWALIA
ON THE 21st OF OCTOBER, 2024
WRIT PETITION No. 32402 of 2024
JAIBHAN MINJ
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Kamal Nayan Dwivedi – Advocate for petitioner.

Shri Swapnil Ganguli – Deputy Advocate General for respondents /State.

ORDER

This petition under Article 226 of Constitution of India has been filed seeking following relief(s):-

"(a) To issue a writ in the nature of mandamus and call for the records of the case and quash impugned order dated 07.07.2023 (Annexure P/3) And impugned order dated 22.02.2024 (Annexure P/4).

(b) To issue a writ in the nature of mandamus to permit the petitioner to execute a sale deed and sell his land as per his wish.

(c) Any other relief which the Hon'ble Court may deem just and fit."

2. It appears that petitioner has filed an application under Section 165(6) of the M.P. Land Revenue Code seeking permission to alienate Khasra No.683 area 0.30 acre i.e. 0.120 hectares situated in village Ratanpur, District Bhopal. The said application was rejected by Collector, Bhopal by order dated 07.07.2023 passed in Case No.0013/A-21/2023-24.



3. Being aggrieved by the said order, petitioner preferred an appeal, which was dismissed by Additional Commissioner, Bhopal Division, Bhopal by order dated 22.02.2024 passed in Case No.32/Appeal/2023-24 (475/Appeal/2023-24). Challenging the order passed by the authorities below, petitioner has filed W.P.No.27135/2024, which was withdrawn on 18.09.2024 with liberty to file a fresh and properly constituted writ petition along with all necessary documents. Accordingly, this second writ petition has been filed.

4. In his application filed under Section 165(6) of MPLR Code, petitioner had claimed that he is a retired government employee and in order to perform the marriage of his son, he had taken money on loan from his friends, which is required to be returned back and for the protection of property he has entered into an agreement to sell with Yogendra Singh on 09.09.2022 and has agreed to alienate the property for a total consideration of Rs.1,17,61,200/- and Rs.1,01,000/- was received by way of advance and Rs.4,00,000/- were received on 28.09.2022 and thus in all petitioner has already received an amount of Rs.5,01,000/- by way of advance.

5. Since, petitioner had not filed any document to show that he is a retired employee and had entered into an agreement to sell, therefore W.P.No.27135/2024 was withdrawn with liberty.

6. It is submitted by counsel for petitioner that petitioner has filed identity card to show that he has retired from the post of General Technitian from BHEL. Petitioner had entered into an agreement to sell Khasra No.683(S) to Yogendra Singh Thakur for a total consideration of amount of Rs.1,17,61,200/- and he has received an amount of Rs.5,01,000/- towards the advance payment.

7. Considered the submissions made by counsel for petitioner.



8. The petitioner in his application filed under Section 165(6) of MPLR Code has pleaded as under:-

“यह कि आवेदक ने अपने पुत्र मनीष का विवाह 18 अक्टूबर 2021 को किया था, और विवाह हेतु उसने अपने मित्रों से रूपये उधार लिये थे, जिसका भुगतान उसे करना है। इस हेतु उसे रूपयों की अत्यंत आवश्यकता है।”

9. Accordingly, counsel for petitioner was directed to disclose the names of his friends from whom he had taken loan to meet out the marriage expenses of his son Manish as well as the details of cheques by which he had taken loan. It is submitted by counsel for petitioner that it was friendly loan transactions and there is nothing with the petitioner to indicate that he had taken any loan.

10. Considered the submissions made by counsel for petitioner.

11. Section 269 SS of Income Tax Act reads as under:-

““269SS. Mode of taking or accepting certain loans, deposits and specified sum.—No person shall take or accept from any other person (herein referred to as the depositor), any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, if,—

- (a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or
- (b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or



(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is twenty thousand rupees or more:

Provided that the provisions of this section shall not apply to any loan or deposit or specified sum taken or accepted from, or any loan or deposit or specified sum taken or accepted by,—

- (a) the Government;
- (b) any banking company, post office savings bank or co-operative bank;
- (c) any corporation established by a Central, State or Provincial Act;
- (d) any Government company as defined in clause (45) of Section 2 of the Companies Act, 2013 (18 of 2013);
- (e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette:

Provided further that the provisions of this section shall not apply to any loan or deposit or specified sum, where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom the loan or deposit or specified sum is taken or accepted, are both having agricultural income and neither of them has any income chargeable to tax under this Act.

Provided also that the provisions of this section shall have effect, as if for the words “twenty thousand rupees”, the words “two lakh rupees” had been substituted in the case of any deposit or loan where,—

- (a) such deposit is accepted by a primary agricultural credit society or a primary co-operative agricultural and rural development bank from its member; or



(b) such loan is taken from a primary agricultural credit society or a primary co-operative agricultural and rural development bank by its member.

Explanation.— For the purposes of this section,—

- (i) “banking company” means a company to which the provisions of the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in Section 51 of that Act;
- (ii) “co-operative bank”, “primary agricultural credit society” and “primary co-operative agricultural and rural development bank” shall have the meanings respectively assigned to them in the *Explanation* to sub-section (4) of Section 80-P;
- (iii) “loan or deposit” means loan or deposit of money;
- (iv) “specified sum” means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.”

12. Therefore, it is clear that any transaction of worth Rs.20,000/- and more is not permissible in cash. If the petitioner and his friends have dealt with cash of more than Rs.20,000/-, then it is in violation of Section 269 SS of Income Tax Act.

13. Accordingly, the Income Tax Department, Bhopal is directed to conduct an enquiry into the claim of the petitioner that he had taken friendly loan from his friends and to find out as to whether any loan was taken or not and if it was taken, then whether it was in violation of Section 269SS of Income Tax Act or not and to submit the report to the Registrar General of this Court apart from taking legal action as provided under the Income Tax Act.



14. It is next contended by counsel for petitioner that while the petitioner was in service he had purchased the land in dispute by his own personal income, however counsel for petitioner was not in a position to inform this Court as to whether the petitioner had ever informed his department about the purchase of the property.

15. Accordingly, BHEL, Bhopal is directed to initiate an enquiry as to whether petitioner had ever informed the department with regard to purchase of the property in question or not and if it is found that no information was given, then the department may take suitable action against him.

16. Since, the petitioner has failed to make out a ground in relation to property, therefore the Collector as well as the Commissioner did not commit any mistake by rejecting the application filed under Section 165(6) of MPLR Code.

17. Petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

VB*