



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 3rd OF SEPTEMBER, 2024

WRIT PETITION No. 3441 of 2024

PRAVEEN GUPTA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Ajay Kumar Mehta – Advocate for the petitioner.

***Shri Vijayendra Singh Choudhary – Government Advocate for respondents
no. 1 to 4 / State.***

Shri Rajesh Maindiretta – Advocate for respondents no. 5 and 6.

ORDER

This petition under Article 226 of the Constitution of India has been filed against order dated 30.1.2024 passed by Naib Tahsildar, Gorakhpur, district Jabalpur.

2. It appears that respondents no. 5 and 6 have purchased the property in dispute from mother of petitioner Smt. Shakuntala Gupta. Respondents no. 5 and 6 filed an application before Superintendent of Police, Jabalpur that they are intending to take possession of shop in question and in order to avoid any untoward incident, police protection may be provided. Accordingly, respondents no. 5 and 6 filed a W.P.No.7807/2021. The said writ petition was dismissed by a Coordinate Bench of this Court by order dated 8.11.2023, against which, respondents



no. 5 and 6 preferred a Review Petition No.27/2024 which was allowed by order dated 16.1.2024 and respondents were directed to decide representation made by respondents no. 5 and 6.

3. It appears that thereafter Naib Tahsildar, Gorakhpur, district Jabalpur issued impugned notice to petitioner to handover vacant possession of the shop to respondents no. 5 and 6 on the pretext that Coordinate Bench of this Court by order dated 16.1.2024 passed in RP No.27/2024 has directed for delivery of possession of the shop to respondents no. 5 and 6.

4. It is submitted that there was no adjudication by any Court in favour of respondents no.5 and 6. By order dated 16.1.2024 Superintendent of Police, Jabalpur was merely directed to decide representation. In absence of any decree for possession, respondents no. 5 and 6 cannot illegally dispossess the petitioner. It is submitted that even if the petitioner is treated to be in encroachment, still he cannot be dispossessed without following due process of law.

5. To buttress his contention, counsel for petitioner has relied upon judgments of the Supreme Court passed in the cases of **Munshi Ram and others vs. Delhi Administration**, reported in **1968 (2) SCR 455**, **Puran Singh and others vs. State of Punjab**, reported in **(1975) 4 SCC 518** and **Ram Rattan and others vs. State of Uttar Pradesh**, reported in **(1977) 1 SCC 188**, in which, it has been held that no one including true owner, has a right to dispossess the trespasser by force, if trespasser is settled in possession of land and in such a case, unless he is



evicted in due process of law, he is entitled to defend his possession even against rightful owner.

6. Per contra petition is vehemently opposed by counsel for respondents no. 5 and 6. It is submitted by Rajesh Maindiretta that petitioner as well as his sisters had relinquished their share in favour of their mother Smt. Shakuntala Gupta. Smt. Shakuntala Gupta in her turn alienated the property to respondents no. 5 and 6. Petitioner had filed a suit for declaration of title and permanent injunction which was dismissed. Civil Appeal was also dismissed.

7. However, it was fairly conceded that no direction was given by Coordinate Bench of this Court by its order dated 16.1.2024 as mentioned by Naib Tahsildar in his impugned notice dated 30.1.2024.

8. It is submitted that respondents no. 5 and 6 are lawful owners of the property having purchased the same from Smt. Shakuntala Gupta in whose favour petitioner had already relinquished her share.

9. Counsel for the State has fairly conceded that first paragraph of the impugned notice dated 30.1.2024 is factually incorrect and no direction was given by Coordinate Bench of this Court to handover vacant possession of the property to respondents no. 5 and 6.

10. Heard learned counsel for the parties.

11. Record of WP No.7807/21 has also been tagged along with this case. Respondent no. 5 had filed WP No.7807/2021 seeking a direction to Superintendent of Police, Jabalpur as well as S.H.O. Police Station Gorakhpur, District Jabalpur to provide police force at the time of taking



of possession. The said application was also given to Tahsildar, Gorakhpur, District Jabalpur.

12. Thus, only contention of respondent no. 5 was that police protection may be provided while taking vacant possession of the shop in question.

13. It appears that the said application was filed on the strength of order passed by the Trial Court on 18.2.2021 in RCSA No. 579/2020. Copy of order dated 18.2.2021 passed in RCSA No.579/2020 was also annexed along with writ petition, according to which, suit filed by petitioner was dismissed under Order 7 Rule 11 of CPC.

14. Be that whatever it may be.

15. Counsel for respondents no. 5 and 6 could not point out as to whether any decree for possession was issued in favour of respondents no. 5 and 6. Merely because suit filed by petitioner was dismissed would not result in decree for possession warranting its execution. Unless and until respondents no. 5 and 6 approach civil court and obtain a decree for possession, they cannot take the law in their own hands by forcibly evicting the petitioner from the property in dispute.

16. Be that whatever it may.

17. Naib Tahsildar, Gorakhpur, District Jabalpur in his notice dated 30.1.2024 has observed as under :-

“उपरोक्त विषयांतर्गत लेख है कि माननीय उच्च न्यायालय के रिब्यूह पिटिशन नं. 27/2024 पारित आदेश दिनांक 16/01/2024 के परिपालन में मौजा गोरखपुर, नं.ब.605 प. ह.न.21 डायवर्सन शीट न. 281 प्लाट नं. 487 पर स्थित जे0के0 काम्पलेक्स के ग्राउण्ड फ्लोर पर स्थित दुकान नं.10 का आधिपत्य श्री मुकेश तार्डे पिता स्व0 श्री मारुतिराव तार्डे, निवासी-फ्लैट नं0 1 दत्त एण्ड चड्डा अपार्टमेंट



जी०एस० कॉलेज के सामने साउथ सिविल लाइन जबलपूर को प्रदाय करने आदेश पारित किये गये हैं।”

18. Thus, it is clear that Naib Tahsildar, Gorakhpur, District Jabalpur had deliberately misinterpreted the order passed by Coordinate Bench of this Court on 16.1.2024 in RP No.27/2024 and wrongly held that this Court has directed petitioner to handover possession of property in dispute to respondents no. 5 and 6. This conduct of Naib Tahsildar is not an indicative of commission of any bona fide mistake but it is a deliberate act on the part of Naib Tahsildar, Gorakhpur, District Jabalpur.

19. Accordingly, Shri V. S. Choudhary was directed to justify the act of Naib Tahsildar, Gorakhpur, District Jabalpur. Counsel for the State also submitted that in absence of any order or in absence of any decree, Naib Tahsildar, Gorakhpur, District Jabalpur should not have mentioned that order has been passed by the High Court to deliver vacant possession of property to respondents no. 5 and 6.

20. Thus, it is clear that by issuing impugned show cause notice, Naib Tahsildar has exceeded his jurisdiction by making false averment in his order.

21. Under these circumstances, order dated 30.1.2024 passed by Naib Tahsildar, Gorakhpur, District Jabalpur is hereby **quashed** on the ground that it has been passed with mala fide intentions by mentioning incorrect facts and the same is beyond his jurisdiction.

22. Accordingly, petition **succeeds** and is hereby **allowed** with cost of **Rs.50,000/-** to be deposited by Naib Tahsildar, Gorakhpur, District Jabalpur in the Registry of this Court within a period of one month



from today, failing which, Registrar General shall not only initiate proceedings for recovery of cost but shall also register a case for Contempt of Court.

(G. S. AHLUWALIA)
JUDGE

JP