

(2010) 03 MP CK 0037

Madhya Pradesh High Court

Case No: Writ Petition No. 2853 of 1997

Ravindra Bajpai

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision: March 17, 2010

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (2010) 4 MPHT 343 : (2010) 2 MPJR 119 : (2010) 4 MPLJ 474

Hon'ble Judges: S.R. Alam, C.J; Alok Aradhe, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Alok Aradhe, J.

The petitioner who is a journalist by occupation has filed this petition pro bono publico in which challenge has been made to legality and the validity of the order; Annexure P-1, dated 26-7-1996/22-8-1996 issued by the State Government, by which the State Government allotted the land admeasuring 6.16 acres on lease to respondent No. 2, namely, M.P. Rajya Sahkari Awas Sangh, Bhopal for the purpose of construction of residential houses for existing as well as ex-MPs and MLAs.

The petitioner, as stated supra, is a journalist and is engaged in social activities of various types. There is a State Capital Project area in the city of Bhopal. Aforesaid capital project area is situate in prime locality of city of Bhopal. By order dated 26-7-1996/22-8-1996 (Annexure P-1), the land admeasuring 6.16 acres of khasra No. 1 situated at capital project area has been allotted on permanent lease for a premium of Rs. 22,70,068 and annual ground rent of Rs. 1,13,503/- on terms and conditions mentioned therein to ex as well as existing Members of Parliament and MLAs. The petitioner has further averred that the Collector, Bhopal has issued

guidelines regarding valuation of lands contained in Annexure P-3 for the purpose of registration. Market value of the land in question in no case can be less than Rs. 160/- per sq. ft. as the land is situated in prime locality. However, the same has been allotted at a throw-away price of Rs. 11.25 per sq. ft. Premium fixed by the State Government in respect of the land under the allotment is shockingly disproportionate. There is no justification for reserving the land for sale of plots/houses in favour of present or past MPs or MLAs as no privilege can be given to them as they do not form a class by themselves. Accordingly, the petitioner has sought relief for issuance of a writ of certiorari for quashment of the order dated 26-7-1996/22-8-1996 (Annexure P-1) and a writ of mandamus directing the respondent-State not to issue any lease in favour of respondent No. 2 for allotment of plots to ex as well as existing MPs and MLAs.

A return has been filed on behalf of respondent Nos. 1 and 3, namely, the State Government and the Collector, Bhopal in which inter alia, it is pleaded that the petitioner is a busy body and has no concern whatsoever with the public interest or public activities. The State Government has allotted the lands to journalists also at concessional rates. The petitioner belongs to a class which has already availed the benefit of allotment of land at concessional terms and, therefore, he cannot be permitted to turn around and challenge the same benefit extended to another class of persons. Initially 52 acres of land was reserved for respondent No. 2 in the year 1975. Unfortunately only 29.17 acres of land out of the aforesaid 52 acres of lands was vacant. Aforesaid 29.17 acres of land was allotted to respondent No. 2 at concessional rates. On the land admeasuring 29.17, respondent No. 2 has already constructed a housing residential colony known as Rachna Nagar. Land admeasuring 6.16 acres of the remaining area was lying vacant. On an application being made by M.P. State Housing Co-operative Society for allotment of the aforesaid land for the purpose of construction of houses for ex as well as existent MPs and MLAs, the State Government took a decision to reserve the land for the aforesaid purpose vide order dated 5-1-1996. Ultimately, after approval of the Cabinet, Revenue Department has issued the order of allotment. It has been pointed out that as per provisions of revenue book circular whenever the land is allotted to any housing society for construction of residential colony, premium and lease rent is calculated only on 60% of the total area allotted as 40% of the land is utilized on account of development activities such as roads, drainage, etc. Accordingly, the premium and lease rent in the instant case were fixed at Rs. 22,70,068 and Rs. 1,13,503/- respectively. It has further been pleaded that land in question has not been allotted to existing as well as ex MPs and MLAs but to the respondent No. 2 which shall develop the land and shall construct houses thereon and thereafter the same shall be allotted and sold to existing as well as ex MPs and MLAs, who are interested in purchasing the residential houses. The contention of the learned Counsel for the petitioner, that land has been allotted at Rs. 14.10 per sq. ft. incorrect as the land shall be developed by respondent No. 2- federation and

residential houses shall be constructed thereon as stated supra and, therefore, the rate of dwelling houses shall be fixed subsequently by federation in accordance with law. It has further been submitted that previously also the State Government has allotted land to persons belonging to particular categories or professions such as doctors, advocates, etc. Land was also allotted to M.P. Police Housing Development Society for allotment of plots to police officers. Land has also been allotted on earlier occasion to Shramjivi Patrakar Housing Society for allotment of plots to journalists. Similarly, M.P. Railway Workers Housing Development Society has also been allotted the land by the State Government for allotment of plots to Railways workers. Therefore, by no stretch of imagination the action of allotment of land to respondent No. 2, which is in question in present petition can be said to be either arbitrary or discriminatory. It has further been pleaded that rate fixed by the Collector as contained in Annexure P-3 are in respect of developed plots and the same cannot furnish the basis for assessing the market value of the land allotted to respondent No. 2, which is undeveloped. By the time the development takes place the market value of the rate may be more. It is further stated that the land in question is situate adjacent to an area of 2 acres which is earmarked for shifting the slum dwellers and also in close vicinity of cremation ground and, therefore, there would be no appreciation in the market value of the land even after development. It has been pleaded that pursuant to the order (Annexure P-1) the federation has paid the premium and possession has already been handed over to the respondent No. 2 and lease deed has already been executed in favour of the respondent No. 2 on 17-12-1998 in respect of land in question.

Respondent No. 2, namely, the MP. State Housing Co-operative Federation has also filed a return in which it is inter alia stated that there was persistent demand from existing as well as ex-MPs and MLAs for allotment of land to built up their houses. In the year 1986-87, a scheme was formulated for allotment of land by M.P. Housing Board, pursuant to which 113 applications were received for allotment of houses. However, the aforesaid scheme could not be implemented as the land was allotted to respondent No. 2 by the Government of M.P. in the year 1986. In Paragraph 13 of the return filed by the respondent No. 2 it has been pleaded that on the land which has been allotted to it by the State Government answering respondent proposes to construct approximately 350 flats in high-rise building. It has further been stated that answering respondent would incur an amount of Rs. 2,12,13,326/- on account of development charges. The details of cost which have been given in Paragraph 13 has been worked out by the technical experts and architects of the respondent No. 2 and have been quantified at Rs. 79.07 per sq. ft.

Learned Counsel for the petitioner has drawn attention of this Court to the orders dated 22-7-2002 and 9-8-2002 pursuant to which affidavits of one Govind Singh and S.S. Vankhede, Secretary to the State Government, Department of Revenue were filed. Thereafter this Court vide order dated 9-8-2002 asked the respondent No. 2 to file affidavits giving some more particulars. Pursuant to the aforesaid order

affidavits of Sushil Kumar Vasvani, Chairman of respondent No. 2 and affidavit of M.M. Upadhyaya, Principal Secretary, Government of M.P. Department of Revenue were filed. Learned Counsel for the petitioner has taken us through the contents of the aforesaid affidavits and has contended that it is apparent that at the relevant time, i.e., in July, 1996, price of the land was Rs. 150 per sq. ft. It has further been argued that from perusal of the affidavits filed on behalf of the respondents it is apparent that the State Government had never allotted the land in favour of respondent No. 2 for construction of houses/flats in respect of a particular class or categories except in the present case. From perusal of affidavits it is axiomatic that the respondent No. 2 had never floated any scheme for construction of building in favour of ex-MPs and MLAs except in the present case. Learned Counsel for petitioner has assailed the order of allotment (Annexure P-1) as arbitrary as the same has been made in favour of respondent No. 2 at concessional rates for allotment to a particular class, namely, ex-MPs and MLAs which is not permissible. It is further contended that respondent No. 2 can allot the flats/houses only to its members and ex as well as existing MPs and MLAs are not members of the respondent No. 2 and, therefore, an indirect benefit is sought to be granted to ex as well as existing MPs and MLAs through respondent No. 2 which amounts to colourable exercise of power. It has further been argued that properties are held in trust by the State Government and cannot be allotted at a throw-away price as the same would amount to loss to public ex-chequer. In support of his contention learned Counsel has placed reliance on the decision of the Supreme Court reported in [Ramana Dayaram Shetty Vs. International Airport Authority of India and Others](#), [Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another](#), and [Common Cause, A Registered Society Vs. Union of India and Others](#),

On the other hand, learned Advocate General appearing for the respondent Nos. 1 and 3 contended that no special concession has been given to respondent No. 2. No rates have been fixed as on today. The petitioner is a journalist and society of journalists has also been allotted the land by the State Government for allotments of plots and, therefore, the petitioner belongs to a class which has enjoyed the same benefit and, therefore, he cannot make a complaint in this regard. It is further contended that land in question is undeveloped land and is yet to be developed and its price shall be determined once it is developed and flats are constructed. Learned Advocate General for the State has drawn attention of this Court to Paragraph 20 of decision of Supreme Court in [Chairman and M.D., B.P.L. Ltd. Vs. S.P. Gururaja and Others](#), to contend that fixation of price in respect of land is a matter of policy and until and unless the Court finds that the decision is taken for unauthorized or illegal purpose the Court should not interfere with the decision taken by executive authorities.

Learned Senior Counsel for the respondent No. 2 has drawn attention of this Court to Paragraph 3 of the affidavit filed by the Chairman of respondent No. 2 and has

pointed out that respondent No. 2 has allotted the land to various Co-operative Societies whose details are given in the documents annexed to the affidavits. Learned Senior Counsel has also referred to document No. 6 annexed to the affidavit of the Chairman of the respondent No. 2 which is a standard form of lease deed of plots for construction of houses executed between the respondent No. 2 federation and the primary co-operative societies. He has taken us through various clauses of standard lease deed and has contended that land can be allotted to respondent No. 2 to its members, namely, primary co-operative societies only for limited purpose and is subject to conditions and restrictions contained in the lease deed and, therefore, no parity can be drawn between the plots available in open market and the plots or land which is subject to certain restrictions and conditions. It has further been contended that guidelines contained in Annexure P-3 in fact reflect the price of developed residential plots and the same cannot be made the basis for determining the market value of the land in question which is undeveloped.

In aforesaid factual matrix and submissions made by learned Counsel for parties issues which arise for our consideration are (i) whether the action of the State Government in allotting the land to respondent No. 2 for construction of houses/flats violates the constitutional guarantee enshrined in Article 14 of the Constitution of India? (ii) whether the lands in question have been allotted at a throw-away price? and (iii) whether action of allotment of land amounts to colourable exercise of power? We shall proceed to deal with issues in seriatim.

In celebrated case of *Ramana Dayaram Shetty (supra)*, Supreme Court has held as follows:

12. ...The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure. This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of larges, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant, The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational,

unreasonable or discriminatory.

In [Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another](#), it has been held that every activity of the Government has a public element in it and it must therefore, be informed with reason and be guided by public interest. If the Government leases out or otherwise deals with its" property, it's action would be liable to be tested for its validity on the touchstone of reasonableness and public interest and if it fails to satisfy either tests it would be arbitrary, unconstitutional and invalid. The same view has been reiterated in subsequent decisions, namely, [Mahabir Auto Stores and others Vs. Indian Oil Corporation and others](#), [Sterling Computers Limited and Others Vs. M and N Publications Limited and Others](#), , [ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others](#), and [Meerut Development Authority Vs. Association of Management Studies and Another](#). Thus, it is well settled that once the State decides to grant any right or privilege to anybody its action has to be adjudged and tested in the light of Article 14 of the Constitution of India.

In the backdrop of the aforesaid well settled legal position, the facts of the case may be adverted to. At the outset it is noteworthy that allotment of the land in the instant case has been made by the State Government in favour of respondent No. 2 under the provisions of Revenue Book Circular which are in the nature of executive instructions and have no statutory force. The order of allotment (Annexure P-1) is neither issued under any statutory provision nor under any statutory rule. In the instant case, the land has been allotted on lease to the respondent No. 2-society which in an apex society. From perusal of bye-laws of the respondent No. 2, it is apparent that it has been constituted mainly with the object of providing housing facility through housing co-operative societies. From perusal of Bye-law 4 (2), it is clear that one of the objects of the respondent No. 2 is to implement the housing schemes and for that purpose to obtain the lands either by purchase or on lease or by any other mode to either develop it itself or get it developed. The State Government while passing the order of allotment Annexure P-1 has entrusted respondent No. 2 the task of development of land. Respondent No. 2 after development of the land shall construct 350 flats in high-rise building and shall allot them to the existing or ex-MPs and MLAs who are interested in allotment. We find the allotment of the land vide Annexure P-1 falls within the scope and ambit of Clause 4 (2) bye-laws of the respondent No. 2-society. Land has been allotted earlier on several occasions by the State Government to various sections of the society such as doctors, professors, etc. The land has also been allotted by the State Government to M.P. Police Housing Development Society for allotment of plots to the police officers, M.P. Shramjivi Patrakar Housing Development Cooperative Society has also been allotted land for journalists and similarly M.P. Railway Workers Housing Development Society has also been allotted land for allotment of plots to railway workers. In view of the aforesaid, we find that in previous several occasions the

lands were allotted to the persons belonging to different classes or sections of the society. Therefore, it is clear that the State Government while passing the order (Annexure P-1) has not given any preference to existing or ex-MPs and MLAs. In our considered opinion, it is not the case of treating the existing or ex-MPs and MLAs as privileged class but their persistent demand for allotment of land which was pending since long, i.e., 1986-87 has been met while passing the order contained in Annexure P-1. Thus, housing need of a particular section of the society has been met with by the State Government while passing the order (Annexure P-1) which has undisputedly been done on previous occasions as well by the State Government. Therefore, we have no hesitation to hold that the order is neither arbitrary nor mala fide. It is well settled in law that passing of an order of unauthorized purpose would constitute malice in law. [See : [K.K. Bhalla Vs. State of M.P. and Others](#), . In the absence of any legal malice no interference can be made with the decision of the Administrative Authority. For this proposition we may refer to the decision of the Supreme Court in [Chairman and M.D., B.P.L. Ltd. Vs. S.P. Gururaja and Others](#), . In view of the aforesaid, we hold that order in question is not violative of Article 14 of the Constitution of India.

Next question which arises for consideration in the instant case is whether the land in question which has been allotted to respondent No. 2 at a throw-away price. It is well settled that the Government cannot be permitted to squander away or allot its property at throw-away price. It is relevant to mention here that the land in question which has been allotted to respondent No. 2 is undeveloped land and adjacent to an area which has been marked for the purpose of settlement of slums. A cremation ground is also situate in close vicinity of the land in question. In respect of land which has been allotted to the respondent No. 2, as stated in Paragraph 13 of the return of the respondent No. 2, it has prepared a scheme for construction of 350 flats in high-rise building. Therefore, the value of land in question cannot be compared with the value of a developed plot for two reasons, namely, that it is undeveloped land and secondly after development it would not be open plot but on the land in question 350 flats would be constructed in high-rise building which shall be allotted to existing or ex-MPs or MLAs who may be interested in allotment of the same. Locality of the land is also a governing factor for determination of its market price. The land is situate in close vicinity of cremation ground and is situate adjacent to land admeasuring 2 acres which has been earmarked for settlement of slum dwellers. Therefore, reference to market value of developed land in residential locality which do not suffer from such locational disadvantage is not relevant. From perusal of Annexure P-3 we find that it discloses the rates of developed plots and is in the nature of guidelines. Therefore, it is of no assistance to the petitioner. It is also to be borne in mind that 40% of the land would be utilized for development activities such as construction of roads, drainage, open space, etc. Thus, for the reasons aforesaid, we find from material available on record, it cannot be said that the land in question has been allotted to respondent No. 2 at throw-away price.

Contention of the learned Counsel for the petitioner that market value of the land at the relevant time was Rs. 160/- per sq. ft. cannot be accepted for the aforesaid reasons.

From perusal of the bye-law of the respondent No. 2- society, it is apparent that members of respondent No. 2 can be primary Housing Co-operative Society, other co-operative societies which are involved in housing activities and the State Government. Clause 52 of the bye-law of respondent No. 2 provides that Managing Director of respondent No. 2 shall be appointed by the State Government. From perusal of Clause 40 of the bye-law, it is apparent that State Government has power to nominate such number of persons not exceeding four as it may deem fit of any or all of the committees of such societies. From perusal of bye-law of respondent No. 2-society, it is graphically clear that the State Government exercises control over the affairs of the respondent No. 2 society. Land has been allotted to respondent No. 2 which is an agency of the State Government for purpose of construction of residential houses for existing as well as ex-MPs and MLAs. Since, it has already been stated that allotment of land could be made to respondent No. 2 for the purpose mentioned in the order (Annexure P-1) falls within the scope and ambit of Bye-law 4 (2) of the respondent No. 2 society, therefore, the contention of the learned Counsel for the petitioner that allotment of land to the respondent No. 2 amount to colourable exercise of power cannot be accepted. No relief can be granted to the petitioner yet for another reason. In Paragraph 11 of the return filed by respondent Nos. 1 and 3, it is categorically stated that respondent No. 2 federation has already paid the premium and the possession of the land has been handed over to it and further a lease deed has already been executed on 17-12-1998 in favour of respondent No. 2 federation. However, the petitioner has not chosen to amend the petition and to challenge the lease deed dated 17-12-1998 executed in favour of respondent No. 2.

In view of preceding analysis, the writ petition, being devoid of any substance, deserves to and is hereby dismissed. However, there shall be no order as to costs.