

## Kailashchand Vs State of M.P. and Others

**Court:** Madhya Pradesh High Court

**Date of Decision:** Feb. 24, 2011

**Citation:** (2011) 3 MPHT 23 : (2011) 2 MPLJ 554

**Hon'ble Judges:** A.K.Shrivastava, J

**Bench:** Single Bench

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

A.K. Shrivastava, J.

The Petitioner submitted an application before Collector and Nazul Officer, Khandwa on 8-3-1995 praying to allot the land of Nazul to the

Petitioner admeasuring 10" x 45" total area 540 square feet which is adjoining to Plot No. 73 in the township of Khandwa. It has also been

pleaded in the application that except Petitioner this land cannot be used by any other person for the simple reason that adjoining to this land

Petitioner is having his four-storied building. In para-6 of the application it has been pleaded that since that portion of land is lying idle and is on the

rear side of his building and is being used by the public at large as an open public urinal, therefore, if the said land is allotted to the Petitioner on

Patta, it can be utilised for fruitful purpose. Hence, it has been prayed in the application that the premium as well as the rent be settled and the said

land which is of Nazul, be allotted in favour of the Petitioner by granting a Patta to him. A map has also been attached along with the application.

The Nazul Officer called the recommendation of Town and Country Planning, Khandwa and also of the Municipal Corporation.

On bare perusal of Annexure P-4 dated 28-7-1995 which is the recommendation of the Executive Engineer of the Municipal Corporation, this

Court finds that on certain conditions the land was recommended for allotment to the Petitioner. In similar manner vide Annexure P-2 the Town

and Country Planning Department also gave its recommendation in favour of the Petitioner. However, the Collector did not allow the application

and rejected the same on 13-9-1999 as a result of which Petitioner submitted an appeal before Commissioner, Indore Division at Indore. The

Revenue Commissioner, Indore vide its order dated 24-1-2001 (Annexure P-7) dismissed the appeal of Petitioner by affirming the order of the

Collector. Against the said order, Petitioner submitted a representation before the State Government who vide order dated 25-10-2001

(Annexure P-8) did not allow the application of the Petitioner and affirmed the order passed by the Collector and Commissioner.

In this manner this petition has been filed by the Petitioner.

The contention of Shri Avinash Zargar, learned Counsel for the Petitioner is that the Collector, Revenue Commissioner as well as the State

Government has not taken into account the merit of the application of the Petitioner and has rejected his application solely on the ground that

Petitioner is an encroacher on the said land, although the Town and Country Planning as well as the Municipal Corporation recommended to allot

the land in favour of the Petitioner. By inviting my attention to Revenue Book Circular Chapter IV(1) Clause 13 it has been put forth by learned

Counsel that the Nazul land can be allotted to the Petitioner even though he is an encroacher on the said land. Hence it has been put forth by him

that in complete derogation to the aforesaid provision, his application which has been rejected, be allowed by allowing this petition.

On the other hand, Shri Shroti, learned Panel Lawyer for the Respondents/State argued in support of the impugned orders and submitted that since

Petitioner is an encroacher, therefore, Nazul land cannot be settled in his favour.

Having heard learned Counsel for the parties I am of the view that this petition deserves to be allowed.

On bare perusal of the order (Annexure P-5) dated 13-9-1999 of the Collector, (Annexure P-7) dated 24-1-2001, order of the Revenue

Commissioner as well as the order (Annexure P-8) dated 25-10-2001 of the State Government this Court finds that the application of the

Petitioner was not considered on its own merit but has been simply dismissed on the ground that Petitioner is an encroacher on the said land and

therefore, the land in question which is of Nazul cannot be settled in his name. According to me, there is no bar under the aforesaid provision of the

Revenue Book Circular that if a person is an encroacher on the particular land of the Nazul, it cannot be settled in his name. In this regard the

Revenue Book Circular Chapter IV(1) Clause 13 is very clear. On bare perusal of this provision particularly sub-Clauses (1), (2) and (6) it is

gathered that the Nazul land can be given on Patta without it being auctioned in favour of a person who has applied for its allotment, in case the

land is not useful for any other person except the Applicant who has applied for obtaining the Patta. The said land can also be settled if the act of

encroachment of the Applicant is condoned and a decision is taken to give Patta to the encroacher. For better understanding it would be profitable

to quote the relevant provision which reads, thus:

On bare perusal of the aforesaid provision it is luminously clear that there is no bar to allot the land in favour of a person who is an encroacher on

the land for which he has submitted the application for obtaining the Patta. On bare perusal of Sub-Clause (1) and (2) of the aforesaid provision it

is as clear like a noon-day that if the land which is to be allotted is adjoining to the land of the Applicant who has applied for obtaining the Nazul

land on Patta and the same cannot be used by any other person except the Applicant, it can be allotted to the Applicant who has filed application

to grant Patta under the aforesaid provision.

On going through the averments made in the application of the Applicant dated 8-3-1995 (Annexure P-I) which is also annexed with the map it is

gathered that there is specific pleading in the application that the Petitioner's immovable property is situated adjacent to the land in question for

which he has applied for obtaining the Patta and further that piece of land can be utilised only by the Petitioner. Apart from this, even if the

Petitioner is an encroacher, there is no bar in the Statute not to allot the land in his favour if his said act is condoned and in this regard Sub-clause

(2) of the said provision is very clear wherein it has been specifically mentioned that after condoning the action of encroachment of the Applicant,

decision may be taken for allotting the Nazul land on Patta.

The Collector, Revenue Commissioner as well as the State Government has not allowed the application of Petitioner only on the ground that he is

an encroacher. Be that as it may, since there is no bar in the law and as per the aforesaid provisions the land can be settled on certain conditions

embodied in Sub-clause (2) of the said provision in favour of the encroacher and particularly when the said land for which allotment is sought, can

be used only by the Petitioner and none else because adjoining to it Petitioner is having his own immovable property, therefore, I am of the view

that his application is liable to be considered on its own merit. The Collector, Revenue Commissioner as well as the State Government have failed

to exercise their jurisdiction by not considering the application on its own merit and without going through the provisions has rejected the

application of Petitioner for allotment of the Nazul land on Patta to him....

Hence, the order (Annexure P-5) dated 13-9-1999 of the Collector, order (Annexure P-7) dated 24-1-2001 of the Revenue Commissioner as

well as the order (Annexure P-8) dated 25-10-2001 of the State Government are hereby quashed and the matter is sent back to the Collector,

Khandwa to decide the application of the Petitioner on its own merit by taking into account the aforesaid provision of the Revenue Book Circular.

Since the matter is quite old, this Court hopes and trust that the application of the Petitioner shall be decided as early as possible preferably within

a period of six months from the date of receipt of the certified copy of this order. The Petitioner is hereby directed to furnish the certified copy of

this order to the Collector, Khandwa on or before 31st March, 2011.

This petition is accordingly allowed. No order as to costs.