

**Mohammad Akram Vs. the State of Madhya Pradesh Judgement Given By:
Hon'ble Shri Justice Keshav Kumar Trivedi**

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Court : Madhya Pradesh

Decided On : Feb-11-2014

Appellant : Mohammad Akram

Respondent : The State of Madhya Pradesh Judgement Given By: Hon'ble Shri Justice Keshav Kumar Trivedi

Advocate for Pet/Ap. : Shri. Narendra Kumar Mishra

Judgement :

WP No.2388/2014 11/02/2014 Shri Narendra Kumar Mishra, learned counsel for the petitioner.

Shri Puneet Shroti, learned Panel Lawyer for the respondents on advance copy Heard on the question of admission.

By this petition under Article 226 of the Constitution of India, the petitioner has claimed the following relief: (i) That this Hon'ble Court may kindly be pleased to quash the notice whereby the petitioner was directed to appear on 22.1.2014, before the Tahsildar District Sagar, and the petitioner was further orally directed to appear on 6.2.2014 and was warned by the respondent Tahsildar that on the same date i.e. on 6.2.2014 his constructions would be demolished.

(ii) That this Hon'ble Court may kindly be pleased to direct the respondents to not to take any coercive action over the shop of Late Shri Kanchedilal situated at Block No.31 Plot No.1 measuring 20x14 = 280 sq.ft.

(iii) Any other relief/reliefs/order/direction/directions which this Hon'ble Court may deems fit and proper may kindly be granted to the petitioner including the cost of petition. 2.

It is contended that one Kanchedilal was granted a lease of land at Block No.31, Plot No.1 measuring 20 ft.

x 14 ft.

= 280 sq.ft. The said lease was to be renewed and an application was made by said Kanchedilal.

However, since the application was not being considered for renewal of the lease, a writ petition was filed by said Kanchedilal before this Court being W.P.No.1639/2005, which came to be decided on 13.12.2005.

It was directed that a fresh application for renewal of lease would be filed by said Kanchedilal in accordance to law supported by necessary documents and the said application would be decided within a period of 90 days from the date of receipt of the application.

The interim relief was granted to the effect that for a period of 30 days from the date of order passed in the said writ petition status quo would be maintained which will continue, in case such an application is made, till the disposal of the application.

It is contended that since the application was made by said Kanchedilal, it was required to be decided expeditiously, but, in stead of deciding the said application, actions are started against the petitioner for his removal from the said plot and demolition of his construction.

Therefore, this writ petition is required to be filed.

3.

It is contended by the learned counsel for the petitioner that since said Kanchedilal had executed a settlement deed in favour of the petitioner putting him in possession of the said plot and authorizing him to look after his interest on the said plot, the petitioner became a lawful holder of the lease on behalf of said Kanchedilal and, therefore, the possession of the petitioner cannot be treated as illegal nor he can be termed as an encroacher.

In view of this, no action whatsoever could have been taken by Tehsildar, Sagar against the petitioner.

It is thus contended that the petitioner is entitled to grant of relief claimed in the present writ petition.

4.

After perusal of the record and the previous order passed by this Court in the writ petition of Kanchedilala, it is clear that the entire claim of the petitioner is wholly misconceived.

The order passed by this Court in W.P.No.1639/2005 on 13.12.2005 is placed on record as Annexure P-2, the relevant part of which reads thus:- Without going into the question of the aforesaid controversy, the matter deserves to be considered by respondent No.3 and the application filed by the petitioner for renewal of the lease is to be considered expeditiously.

Consequently, this petition is finally disposed of with following directions: (i) The petitioner may file a fresh application for renewal of the lease in accordance with law supported by necessary documents and copy of previous lease deed.

(ii) If such an application is filed within 30 days from today, respondent No.3 shall consider and decide the application expeditiously as far as possible within 90 days from the date of receipt of the application.

(iii) For a period of 30 days from today and in case of filing of the aforesaid application within the aforesaid period, then till the decision of the application or for

a period of 90 days, whichever is earlier, status quo as on today be maintained by the respondents.

(iv) If the petitioner has been dispossessed from the leased area, he shall not be entitled for the possession till the decision of the application filed by the petitioner for renewal of the lease, but in case, the prayer is allowed, respondents shall restore the possession of the petitioner in accordance with law. 5.

The order of interim relief contained in paragraph-(iii) makes it clear that the interim stay was only for a period of 30 days from the date of the order in case application was to be filed by said Kanchedilal.

If the application was filed within 30 days then the status quo with respect to the possession over the land in dispute was to be maintained for a period of 90 days or till the decision of the application, whichever is earlier.

Meaning thereby, the interim stay was only for a period of 90 days granted in favour of said Kanchedilal by this Court, in case he had filed an application for renewal of lease within 30 days from 13.12.2005.

Nothing is indicated whether any such application for grant of renewal of lease was made by said Kanchedilal and whether such a lease was renewed in favour of said Kanchedilal.

The lease document itself is not produced on record to show whether said Kanchedilal was competent to transfer the said lease by any settlement deed.

Annexure P-1, the settlement deed, simply indicates that the petitioner was authorized to take all steps in the matter of payment of tax in respect of the lease and in the court proceedings, but the entire rights were transferred to the petitioner by said Kanchedilal as is subsequently mentioned in the settlement deed.

Normally leases are not transferable in case a permanent lease is not granted with such a condition.

Therefore, it cannot be said that the petitioner was lawfully put in possession of the land in dispute.

All applications, which have been filed by the petitioner alongwith this writ petition for renewal of lease indicate that the applications were made in the name of late Kanchedalal.

No lease could be granted to a dead person.

In case the petitioner was interested in obtaining any lease, he should have applied for the same in appropriate manner.

He was required to demonstrate that transfer of the lease by Kanchedalal was done lawfully with the prior approval of the lease granting authority.

Nothing is indicated in the writ petition in this respect.

6.

In the given circumstances, if the petitioner was treated as an encroacher and action was initiated against him, how can it be said that such an action was bad in law.

However, if any such claim for grant of lease is made by the petitioner, it would be necessary for the respondents authorities to decide the same in accordance to the law.

Presently, it cannot be said that the action taken by the respondents is not in accordance to law, in view of the fact recorded hereinabove.

As such no relief, as claimed in the present writ petition, can be granted to the petitioner.

The petition fails and is hereby dismissed without notice to the other side.

(K.K.Trivedi) Judge shukla-

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