

**Damodar Prasad and Another Vs. State of M.P. and Others**

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**Court :** Madhya Pradesh

**Decided On :** Mar-24-2000

**Reported in :** 2001(1)MPHT79

**Judge :** Mr. Dipak Misra, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Sections 9 and 11

**Appeal No. :** Writ Petitioner No. 5118/98

**Appellant :** Damodar Prasad and Another

**Respondent :** State of M.P. and Others

**Advocate for Def. :** Shri Rajeev Shrivastava and ;Shri S.P. Khirwadkar, Adv.

**Advocate for Pet/Ap. :** Shri B.P. Sharma, Adv.

**Disposition :** Remand order quashed

**Judgement :**

ORDER

**Dipak Misra, J.**

1. Invoking the extra-ordinary jurisdiction of this Court of petitioner seeks a writ of certiorari for quashment of the impugned orders contained in Annexures 8 and 9 and further for quashing of the proceeding of the revenue appeal No. 35/89-90

pending before the respondent No. 2 namely Sub-Divisional Officer, Bareilly.

2. The facts as have been unfolded are that the petitioners, resident of village Deori Distt. Raichur, were permitted by the Sarpanch of Gram Panchayat, Deori to construct the house in Abadi land situated at village Deori. The said permission was taken in the month of September, 1994. On the basis of the aforesaid permission the huts were constructed by the petitioners and subsequently the Patta was granted to them on 10-5-88 and 10-3-89 respectively by the concerned Tahsildar in consultation with the Sarpanch under Gramin Avas Yojna. The said certificates have been brought on record as Annexures P-3 and P-4. It is stated in the writ petition that the lands given to the petitioners is situated in Khasra No. 108/2, Village Deori Marked as Plot No. 1 and Plot No. 2. After being so allotted the aforesaid plots the petitioners started construction of small houses. At that juncture some of the villagers raised objections on the construction and made a complaint before the SDO alleging that the Pattas were given in an illegal manner. The SDO made an enquiry and found that the complaint was baseless and the Pattas allotted in favour of the petitioners are valid. This order was passed by the SDO on 16-10-89 vide Annexure P-5.

3. Feeling aggrieved by this order the respondent No. 3 preferred an appeal and in appeal the appellate authority came to hold that a Patta was granted in an illegal manner and accordingly cancelled the same. Being dissatisfied with the aforesaid order, the petitioners filed appeal before the Additional Commissioner, Bhopal who allowed the case and remanded the matter to respondent No. 2. The respondent No. 2 thereafter, in appeal No. 35/89-90 on 6-2-95 held that Pattas granted to the petitioners are valid and accordingly dismissed the appeal. No second appeal was preferred and the matter was put to rest.

4. After this controversy was over and the petitioners were enjoying their possession in a peaceful manner, a group of other villagers tried to dispossess the petitioner from the plot allotted to them. Because of this disturbance, the petitioners filed a suit before the Civil Judge, Class II, Udaypura, for injunction. The learned Civil Judge decreed the suit and restrained the villagers from dispossessing the petitioners. The copy of the judgment and decree passed by the

learned Civil Judge have been brought on record. The learned Civil Judge, passed the decree holding inter alia that the land was allotted to the petitioners according to law. After passing of the judgment and decree by Civil Court the respondents 3 and 4 filed an application before the Revenue Court for re-opening the case. The SDO again re-opened the case and by order dated 6-12-96 set aside the previous order dated 6-2-95. Against the order dated 6-12-96 the petitioners preferred appeal before the Additional Commissioner, Bhopal. The Additional Commissioner, Bhopal allowed the appeal and passed the order on 6-9-97 remanding the case before respondent No. 2 to decide the matter afresh. This is the cause of the grievance of the present petitioners.

5. It is averred in the writ petition that once the case is finally decided and it was held that the grant of Patta in favour of the petitioners was just and fair, and there was no justification to reopen the same. It is also put forth that once the Civil Court has passed a decree coming to hold that the Patta was granted in a proper manner, the same was not subject to further scrutiny. It is also highlighted that the matter has already been put to rest and it cannot be re-opened by another group of people from time and again.

6. I have heard Mr. B.P. Sharma, learned counsel for the petitioner, Mr. Rajeev Shrivastava, learned panel lawyer for the respondents 1 and 2 and Mr. S.P. Khirwadkar for respondents 3 to 6.

7. The moot question that arises for consideration is whether there was justification on the part of the SDO to re-open the case and whether there was propriety on the part of the Additional Commissioner to remand the matter. On a perusal of the writ petition it clearly transpires that the concerned Gram Panchayat had permitted the petitioners to construct the houses in Abadi land situated in village Deori. Patta was duly granted. This was done under the Gramin Avasi Yojna. It is averred that the petitioners are in possession of the land since 1984 and initially there was objection from some of the villagers and the SDO had made an enquiry and found that complaint was baseless and Patta allowed was justified.

8. Evidentially as has been narrated that earlier the said order was challenged in appeal before the Additional Commissioner, Bhopal who remanded the matter and

the Patta was again settled in favour of the petitioners. That order had become final. Once the order had become final there was no justification for re-opening the same. I have perused the order passed by the Competent Authority. Though they have taken note of the fact the petitioners had constructed their houses on the land in question, they have been sued by some of the villagers on the plea that the land in question is utilised for the Dusshera. This fact was negated earlier on. It is well settled in law, a particular situation comes when the matter has to be put to rest. The SDO has not narrated anything new to come to a different conclusion. The Additional Commissioner has not found anything to set aside the order passed by the SDO but on considering the totality of facts remanded the matter. Appreciating all the orders passed by the Courts below, I am of the considered opinion, the matter did not require review or a re-opening. The review of the case was totally unwarranted. Accordingly, the order directing review of the matter and re-opening of the case by way of remand is unjustified and unwarranted. Another factor which requires to be taken note of is that initially some of the villagers had objected and the SDO had conducted an enquiry. Thereafter, another group of villagers objected and an enquiry was directed to be conducted. In the meantime the petitioners had filed civil suit and succeeded and the villagers were aware of the pendency of the civil suit and the status of land. During the pendency of the civil suit they did not agitate their grievance before the competent authority and they proceeded to contest the suit. This clearly goes to show that they wanted the matter to be re-opened only after they lost in their civil suit. The delay in their part is also against them.

9. Considering from all angles the remand order is unjust, improper and invalid and accordingly the same is quashed.

10. In the result, the writ application succeeds and the order passed vide Annexures 8 and 9 are quashed. However, in the facts and circumstances of the case, there shall be no order as to costs.