

THE HIGH COURT OF MADHYA PRADESH

W.P. No.24191 of 2018

(Shanti Bai Sharma & others vs. The State of M.P. & others)

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Jabalpur, Dated 22.10.2018

Shri Samresh Katare, learned counsel for the petitioners.

Shri Samdarshi Tiwari, learned Additional Advocate General for the respondents/State.

Heard.

This petition has been filed by the petitioners, who are sought to be removed as encroachers from the area of Madan Mahal Hills and adjoining areas reserved in the Master Plan for the purposes of Environmental Parks, Recreational Areas, Zoo, Garden, Urban Green Area etc.

This Court, way back in the year 1996 in W.P.Nos.1591/1995, 11270/2012 and other connected matters, had passed orders for removal of encroachments from these areas. Repeated orders thereafter have also been passed by this Court. The State authorities are now taking steps to remove the encroachments and several of them have already been removed. The State authorities have also made a statement before this Court that as these areas are reserved for other public purposes under the relevant statutory provisions, even in cases where pattas have been granted, the same are being cancelled in view of the provisions of Section 3(A) of Madhya Pradesh Nagirya Kshetron Ke Bhumiheen Vyaktiyon Ke Pattadhikaron Ka Pradan Kiya Jana Adhiniyam,

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1984, and steps for clearing this area from all encroachers or occupiers are being taken up by them. The State authorities have also made a statement that, though there is no direction to that effect by this Court, it is taking up steps to provide alternative accommodation to those persons who are entitled to the same in accordance with law on account of patta rights or other rights conferred in accordance with the scheme.

This Court in a similar petition, W.P No.22922/2018, having considered all these aspects, has already dismissed the petition, moreso, as no individual right is created or exists in the petition and that the order passed by this Court way back in the year 1996 and the subsequent orders passed by this Court in the writ petition have become final and have been passed in public interest and are in consonance with the statutory provisions of the Madhya Pradesh Municipal Corporation Act, The Madhya Pradesh Municipalities Act, The Madhya Pradesh Panchayat Raj Adhiniyam and The Madhya Pradesh Town and Country Development and The Madhya Pradesh Nagirya Kshetron Ke Bhumiheen Vyaktiyon Ke Pattadhikaron Ka Pradan Kiya Jana Adhiniyam, 1984 and in such circumstances, as the action of the respondent authorities are in furtherance and in consonance with the said provisions mentioned

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above, the question of preventing or prohibiting the State from taking up action for removing the encroachments or corrective measures for cancelling the pattas that have wrongly been granted, contrary to the provisions of law, does not call for any interference.

It is also worth noting that since the litigation in this respect for removal of encroachments is pending since the last three decade and repeated drives have been undertaken by the authorities, we do not find any force in the submission of the learned counsel for the petitioners that the authorities have taken the petitioners unaware and are taking action abruptly without giving any opportunity to them.

The contention of the learned counsel for the petitioners that the encroachments made by the petitioners or the Patta granted to them under the Act of 1984, have matured into Bhoomi Swami rights in view of the provisions of Section 158 of the M.P. Land Revenue Code, is heard only to be rejected, firstly, on account of the fact that the area in question is urban area which has been reserved and earmarked for a specific purpose under the master-plan and cannot be distributed to encroachers by granting them Patta thereon. Secondly, the Patta, if any, granted to some of the petitioners have been granted under the statutory

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provisions of the Act of 1984 and are governed strictly by the terms of the statutory provisions of the Act of 1984, including the provisions of Section 3-A of the Act of 1984, which clearly provides for cancellation of Patta that have been granted contrary to the master-plan or have been granted contrary to public purpose as well as in cases where the land is required for some other public purpose and, therefore, these occupational pattas cannot and do not mature into Bhoomi Swami rights conferring absolute title on the Patta holders.

In the circumstances, we are of the considered opinion that the reliance placed by the petitioners on the provision of the M.P. Land Revenue Code and the claim that the petitioners have acquired absolute title on the land is absolutely misconceived and is hereby rejected.

We are also of the considered opinion that the action being taken by the respondent authorities as well as the Corporation and all other authorities and bodies concerned for removing the encroachments, for reclaiming the area and putting it to use which is for the benefit of public at large pursuant to the orders passed by this Court in W.P No.1591/1995 as well as in W.P No.11270/2012 and connected matters, is in public interest. We are also of the considered opinion that preventing such activities and drives taken up by the State for

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implementing the orders passed by this Court as well as the statutory provisions relating to local bodies, Town and Country Development and others is in fact opposed to public interest and is not in public interest and, therefore, the present petition filed by the petitioner is not in public interest and is held to be against the same.

In view of the aforesaid, while we do not find any merit in the petition filed by the petitioners for permitting them to occupy the land that has been earmarked for other public purposes and we dismiss the same, however, without issuing any positive direction in this regard, it is observed that in case the petitioners feel or are so advised, they may move an application before the authority concerned for claiming benefit of the rehabilitation measures taken by them in case they feel that they are entitled for the said benefits in accordance with law and in case they do so, the authority concerned may consider the same in accordance with law.

With the aforesaid observations, the petition filed by the petitioners being meritless is accordingly dismissed.

(R.S. Jha)
Judge

(Sanjay Dwivedi)
Judge