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**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
WP No. 10187 of 2022
(VIJAY MAHOBIYA Vs THE STATE OF MADHYA PRADESH AND OTHERS)**

Dated : 04-05-2022

Shri Yash Sharma, learned counsel for the petitioner.

Smt. Padamshree Agarwal, learned Panel Lawyer for the respondent/State.

The instant petition under Article 226 of the Constitution of India is preferred by the petitioner not against any order or directions of any Authority, but is directed against the alleged action of the respondents in trying to oust the petitioner from a property of his legal ownership, that too flouting the order dated 18/03/2021 passed by DRT, Lucknow, wherein the respondent-Bank was directed to maintain status quo with regard to auction held on 04/02/2021.

Learned counsel for the petitioner vehemently argued that even though there is a status quo order in favour of the petitioner, the private respondent No.6 in connivance with the Bank, is trying to demolish/oust him from the property in question, which is violative of Article 300A of the Constitution of India, which speaks of persons not to be deprived of the property save by authority of law.

The Government Advocate on the other hand submitted that under the garb of the present petition, the petitioner wants to agitate dispute against private respondent no.6, against whom the petitioner had already filed a Civil Suit and had sought injunction restraining him from interfering with his peaceful possession and since already a remedy is being persuaded by him this petition is not maintainable and prayed for its dismissal.

Heard the learned counsel for the parties and perused the record.

Article 300A was inserted to the Constitution in the year 1978 by the 44th Amendment. This was done to declare right to property as a legal or constitutional right as it was removed to be a fundamental right by deletion of Article 19(1)(f) and Art- 31 of the Constitution. This article was drafted in a

way to create a balance between the interest of property owners and interest of the state. The Article says that- "No person shall be deprived of his property save by the authority of law." This means that nobody can be deprived from his right over property except if it is prescribed by law. This Article emphasizes on the doctrine of eminent domain which means that state can take over any private land if it is for public use. Therefore, the law prescribing the acquisition needs to be valid and the acquisition of the land by the state must be for public purpose. Though the provision for providing compensation to the property owners has not been mentioned in the article, but the Hon'ble Supreme Court through interpretation in numerous cases has held that if the state acquires a land for public use it has to provide compensation to the owner according to Article 300A. Therefore, Article 300A acts as a protector of individual interest and a tool for the state for infrastructural and various other development.

Thus, the scope of Article 300A is not for invoking it against any action of an individual, for that there lay the civil remedy rather it is for protection against the State, wherein acquisition is done for public purpose. The provision indicated that a person can be deprived of his property only through an Act passed by the Parliament/State Legislature and not by executive order or fiat. The word "LAW" in Article 300A means an Act of Parliament or a State Legislature, a rule or a statutory order, having the force of law.

In the above context, if the contentions as raised in the arguments as well as in the petition are seen, it is observed that the grievance of the petitioner basically is against the private respondent no.6 and though it was tried to demonstrate that his act is in connivance with respondent No.5 Bank, so as to bring within the purview of Article 226 of Constitution of India and a writ could be issued in that situation, but nothing of that sort appears in the present matter. The petitioner is asserting his right against private individual for which remedy lay somewhere else, which according to him has already

been availed, as it is a settled proposition that a Writ under Article 226 of Constitution of India can be issued when a fundamental right is violated and a Writ cannot lie against a private individual where he violates any fundamental rights.

Thus, keeping in view the above legal position, this petition is misconceived and being sans merit, is hereby dismissed.

(MILIND RAMESH PHADKE)
JUDGE

Pawar

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