
(2024) 12 MP CK 1242

In the Madhya Pradesh High Court, Gwalior Bench

Case No : Review Petition No. 734 of 2020

Ankit Grah Nirman Sahkari Sanstha Maryadit

APPELLANT

Vs

The state of madhya pradesh & Ors.

RESPONDENT

Date of Decision : 19-12-2024

Acts Referred:

Citation : (2024) 12 MP CK 1242

Hon'ble Judges : Prem Narayan Singh

Bench : Division Bench

Advocate : Ritumbhara Pandey, Mohan Sharma,

Final Decision : Disposed Off

Judgement

JUDGMENTTAG-JUDGMENT

1. The present review petition under Order XLVII Rule 1 of the Code of Civil Procedure, 1908 is preferred by the petitioner in respect of judgment dated 09-08-2019 passed in Writ Appeal No.447 of 2016 (The State of Madhya Pradesh Vs. Ankit Grah Niram Sahkari Sanstha) whereby the writ appeal preferred by the State of Madhya Pradesh is allowed and the order dated 28-06-2013 passed in Writ Petition No.2972 of 2008 has been set aside. Said Writ Petition No.2972 of 2008 was dismissed with costs. Therefore, this review petition is preferred seeking review of the judgment dated 09-08-2019 passed by learned Division Bench.

2. Precisely stated facts of the case are that one Gulab Chand Sharma S/o Baldev resident of Ohadpur, Gwalior filed a statement under sub-section (1) of Section 6 of Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the Act of 1976") read with Rule 3 and 9 of the Urban Land (Ceiling and Regulation) Rules, 1976 in respect of the land of his share admeasuring 25.489 hectare in Village Ohadpur, survey numbers of which are referred in the impugned judgment. The competent authority vide order dated 22-09-1989 prepared Draft Statement under Section 8 of the Act of 1976. Holder of land

Gulab Chand was found to be holding the land of 1,26,131 square meters in excess, to what he was entitled for under Section 4 of the Act of 1976 i.e. 1500 square meters. Final draft was prepared on 22-09-1989 under Section 9 of the Act of 1976.

3. Land was declared surplus vide order dated 06-12-1989.

4. That under section 10 (1) of the Act of 1976, notification was issued on 31-03-1990 and under Section 10 (3) of the Act of 1976, notification was issued on 24-05-1990. Under Section 10 (5) of the Act of 1976 notice was issued on 19-06-1990, which was duly received by the holder on 10-07-1990.

5. However, in an appeal under section 33 of the Act of 1976, the Appellate Authority by order dated 30-03-1994 set aside the order dated 06-12-1989 and relegated the matter to the Competent Authority for fresh order after affording opportunity of hearing to the holder.

6. Competent Authority on remand, after affording opportunity of hearing to the holder passed fresh order on 29-02-1996, declaring 113621 Sq. Mt. land with the holder as surplus land. The order was served on the holder on 16-03-1996 under acknowledgment, received by him on 23-03-1996. The copy of acknowledgment is on the record.

7. Once again under Section 10 (1) of the Act of 1976 notification was issued on 16-05-1996, which was also displayed on the notice board of the Court of Competent Authority at Collector's Office, Office of Tahsildar Gwalior and at Municipal Corporation, Gwalior. That notification under section 10 (3) of the Act of 1976 was issued vide No.94/88-89 dated 23-08-1996. Thereafter on 27-09-1996 notice under section 10 (5) of the Act of 1976 was issued; whereby, the holder was called upon to hand over vacant possession of land to Nazul Tahsildar, Gwalior within 30 days from the date of receiving the notice, failing which it was ordered that the action will be taken for taking possession. Copy was endorsed to Tahsildar Nazul, Gwalior for his information and necessary action. The copy of the notice, on record, overleaf records service thereof by the process server (okn rkehy is'k % enuflag % 4@11@1996).

8. That in pursuance to order of Competent Authority in Case No.94/88-89/B-121 the possession of 113621 Sq. Mt. land was taken "Kabja Raseed" on the land reveals that the possession of the same was taken ex parte. The record reveals as noticed supra that the holder also filed an appeal under section 33 of the Act of 1976 which was dismissed on 03-04-2000, in the terms of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as "the Repeal Act, 1999").

9. From the record it is reflected that after notification under Section 10 (3) of the Act of 1976 which was on 23-08-1996 the holder of the land in question executed two sale deeds on 31-12-1999 and 06-02-2001 in favour of Ankit Grih Nirman Sahakari Sanstha (review petitioner).

10. Vide sale deed dated 31-12-1999 the holder sold the following land; viz.

Vide sale deeds dated 31-12-1999 and 06-02-2001 holder of the land Gulab Chand sold the land, part of which are reflected in the judgment passed in Writ Appeal viz.

11. Evidently, the land which has been declared surplus and vested with the State Government vide Notification under section 10 (3) of the Act of 1976 dated 23-08-1996 was sold by the erstwhile holder.

12. Review petitioner society which was respondent in Writ Appeal purchased the land vide sale deed dated 31-12-1999 and 06-02-2001, filed writ petition No.2972 of 2008 seeking direction for correction of Khasra entries and for recording the name of the society on the plea that with the promulgation of the Repeal Act, 1999, all the proceedings under the Act of 1976 stood abated. It was urged that when the society purchased the land vide registered sale deed dated 31-12-1999 and 06-02-2001 they were not aware that the holder of the land had preferred an appeal against the order dated 29-02-1996 before the Commissioner under section 33 of the Act of 1976 and that the appeal was dismissed on 03-04-2000.

13. It was further urged that the right accrued in favour of the society over the land on the basis of said registered sale deeds. No action having been taken by the State of Madhya Pradesh and its functionaries in taking physical possession of the property in question resulted in abatement of all the proceedings as per the Repeal Act, 1999.

14. On behalf of the State of Madhya Pradesh it was stated that with the passing of order on 29-02-1996 declaring the land in question as surplus and the vesting of land in the State Government. With the issuance of notification under section 10 (3) of the Act of 1976 and taking physical possession thereof on 15-06-1997, no right remained in the holder as could have led him sell the surplus land to the Society; therefore, it was urged that no vested right accrued in the favour of society on the basis of sale deeds dated 31-12-1999 and 06-02-2001 which were void ab initio. It was urged that the petitioner-Society had no locus standi to maintain the writ petition.

15. Learned Single Judge after considering the rival submissions, passed the order dated 28-06-2013 and allowed the writ petition preferred by the petitioner and proceedings of ceiling initiated under the provisions of the Act of 1976, declared to be abated in relation to half share of the land as mentioned in para 5.2 and 5.3 of the writ petition with a further declaration that petitioner is legally entitled to hold the land as owner in accordance with law. Against that order, writ appeal was preferred by the State of Madhya Pradesh which was barred by time. Vide order dated 03-07-2019 passed in writ appeal after considering the rival submission and the judgments of Apex Court, delay in filing the writ appeal was condoned and matter was posted for hearing on admission.

16. Thereafter the present review petitioner (respondent society in writ appeal) sought adjournments time and again but ultimately, matter was heard finally on 09-08-2019. Vide order dated 09-08-2019, the writ appeal preferred by the State of Madhya Pradesh was allowed and the impugned order dated 28-06-2013 passed in writ petition No.2972 of 2008 was set aside. Resultantly, the writ petition No.2972 of 2008 was dismissed with costs.

17. Against the said order, instant review petition was preferred by the petitioner society which was earlier dismissed for want of prosecution on 14-03-2024 by learned Division Bench. Later on, vide order dated 01-07-2024, the review petition was restored to its original number subject to payment of cost of Rs.2,000/-. Since then, review petition is pending.

18. It is the submission of learned senior counsel appearing for the review petitioner/society that the moot questions that arise for consideration are two fold (i) What is the effect of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 and (ii) How the possession can be said to be taken under the Urban Land (Ceiling and Regulation) Act 1976.

19. According to learned senior counsel, possession was never taken from the land holder and the appeal preferred against the order dated 29-02-1996 when the land was declared surplus, got abated because of the effect of the Repeal Act, 1999. Therefore, learned Writ Appellate Court erred in passing the impugned judgment and ignoring the judgment of Apex Court in the case of State of Uttar Pradesh Vs. Hari Ram, (2013) 4 SCC 280, on the contrary learned Writ Court rightly applied the judgment passed in the case of Hari Ram (supra) in the given facts situation.

20. According to learned senior counsel appearing for the review petitioner, one more aspect deserves consideration is that possession of holder of the land Gulab Chand was recorded in Khasra entries of year 2006-2007, therefore, it is reflected that possession was never taken from holder of the land Gulab Chand Sharma. Therefore, the instant review petition deserves to be allowed.

21. Per contra, learned counsel for the respondents/State (appellant in writ appeal) opposed the prayer. According to him, learned Writ Appellate Court has taken all aspects into consideration including the effect of Section 10(3), 10(5) and 10(6) of the Act of 1976. Possession was taken from earlier land holder. He prayed for dismissal of the present review petition.

22. Heard learned counsel for the parties and perused the documents/record appended thereto.

23. The instant review petition is preferred by the society which was petitioner in writ petition and was respondent in writ appeal.

24. Scope of review is well defined. In the case of Kamlesh Verma Vs. Mayawati and Others, (2013) 8 SCC 320, principles relating to review jurisdiction have been laid down.

The principles relating to review jurisdiction may be summarized as follows:

When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in *Chhajju Ram Vs. Neki*, (1921-22) 49 IA 144 and approved by this Court in the case of *Moran Mar Basselios Catholicos Vs. Most Rev. Mar Poulouse Athanasius*, AIR 1954 SC 526 to mean "a reason sufficient on grounds at least analogous to those specified in the rule".

When the review will not be maintainable:

- "(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the face of order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
- (vi) The mere possibility of two views on the subject cannot be a ground for review.
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- (viii) The appreciation of evidence on record is fully within the domain of the appellate Court, it cannot be permitted to be advanced in the review petition.
- (ix) Reviews is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

25. It is also held by the Apex Court in the case of *State Of West Bengal & Ors. Vs. Kamal Sengupta & Anr.*, (2008) 8 SCC 612 that mistake or error apparent on the face of the record means that mistake or error which is prima facie visible and does not require any detail examination. Erroneous view of law is not a ground for review and review cannot partake the category of the appeal.

26. Now the factual matrix of the present case is to be tested on the anvil of the guidance delineated by the Apex Court as referred above.

27. Learned Writ Court considered the aspect of vesting of land under sub-sections (3) and (4) of Section 10 of the Act of 1976. Section 10(3) and 10(4) of the Act of 1976 read as under:

"10(3). At any time after the publication of the notification under subsection (1), the competent authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to, in the notification published under sub-section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.

10(4). During the period commencing on the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made under sub-section (3)-

(i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void; and

(ii) no person shall alter or cause to be altered the use of such excess vacant land.

28. Considering the effect and impact of Section 10(3) and (4) of the Act of 1976, learned Writ Appellate Court relying upon the judgments passed in the case of State of Uttar Pradesh and others Vs. Adarsh Seva Sahkari Samiti Limited, (2016) 12 SCC 493 and State of Uttar Pradesh and others Vs. Surendra Pratap and others, (2016) 12 SCC 497 came to the conclusion that the land was vested in State of Madhya Pradesh free from all encumbrances. When the land was vested in State way back in 1996 itself then previously the land holder namely Gulab Chand who was holder of the land prior to vesting, had no authority to execute the sale deeds on 31-12-1999 and 06-02-2001. In fact it was a sale void-ab-initio.

29. The Apex Court has considered the question of locus standi also in those judgments cited above and rightly came to the conclusion that the person like petitioner in the present case has no locus standi to challenge the proceedings and question of possession once they came to concluded in respect of original land holder.

30. In the case of Sulochana Chandrakant Galande Vs. Pune Municipal Transport and others, (2010) 8 SCC 467, the Apex Court discussed the scheme of the Act of 1976 qua terms of "Vesting", "Encumbrances" and "Free from Encumbrances" and discussed that provisions of Land Acquisition Act, 1894 and General Clauses Act, 1897. The decision in the case of Sulochana Chandrakant Galande (supra) was later followed in the case of Omprakash Verma and others Vs. State of

Andhra Pradesh and others, (2010) 13 SCC 158, wherein it is held:

"53 Once vesting takes place under Section 10 (3) of the Ceiling Act, the State has absolute title and ownership over it. The owner has no further say in respect of the land that has vested in the State....."

31. To bring clarity in respect of "locus standi", relevant discussion in the case of Adarsh Seva Sahkari Samiti Limited (supra) is reproduced as under:

"3. Since, the purchase of the lands is after the statutory vesting of the land with the State Government, therefore, at the instance of the respondent herein, the relief ought not to have been granted by the High Court in its favour. The correctness of taking over possession of such excess vacant land declared by the competent authority in the notification published or his authorised officer could not have been examined and granted the relief by the High Court at the instance of the respondent herein, who has purchased the lands, after vesting of the lands with the State Government, which is statutorily void, the learned Senior Counsel for the appellants Mr Misra submits that the respondent is not entitled for the relief granted by the High Court in the impugned judgment order. This aspect of the matter has not been examined by the High Court, though it is not urged before the High Court. Since it is a legal question and it can be urged at any time, therefore, the said contention is pressed into operation by the learned Senior Counsel in these proceedings.

4. We have examined this aspect. Having regard to the undisputed fact that the respondent has purchased the property from the declarant which is vested with the State Government under Section 10(5) of the Act in terms of Section 10(3) notification, therefore, the transfer of property in favour of the respondent, who is claiming its interest in the said property is void ab initio in law. On this ground alone, the order passed by the High Court cannot be allowed to sustain.

5. It is also brought to our notice by the learned Senior Counsel Mr Misra that after the proceedings under Sections 10(3) and 10(5), notice and the alleged taking over possession of the land in question, the subsequent event has taken place, namely, the said property has been transferred to the Lucknow Development Authority by the State Government and the Development Authority has laid a park for public use. On this, the learned Senior Counsel for the respondent submits that the said event has taken place during the pendency of the proceedings before the High Court. Though it may be the fact, subsequently, after the transfer of the property in favour of the Development Authority, the Authority has developed a park is an undisputed fact. This is also a very relevant aspect of the matter for this Court to annul the impugned judgment/order passed by the High Court.

6. In our opinion, the respondent herein has no locus standi to challenge the inaction on the part of the appellants viz, not taking possession legally strictly complying with the statutory provisions under Section 10(5) of the Act and taking over possession as provided under Section 10(6) of the Act. At this

juncture, this aspect need not be examined by this Court at the instance of the respondent.”

32. Not only this, a fraud is perpetrated by petitioner in collusion with erstwhile land holder Gulab Chand. The present society made an attempt to snatch the land which is already vested with the State. The Repeal Act, 1999 was published on 22nd March, 1999 and became effective in State of Madhya Pradesh w.e.f. 17-02-2000. Review petitioner society and erstwhile land holder knew this fact very well that the Repeal Act, 1999 has been promulgated and soon it will be given effect to, therefore, they entered into illegal and unholy transactions just to defraud the State of Madhya Pradesh from the valuable piece of land. In fact one sale deed dated 06-02-2001 was executed even after the Repeal Act, 1999 was notified and came into effect on 17-02-2000. This was nothing else than a fraud and mischief.

33. Fraud vitiates all solemn proceedings. It is well settled principle of law that Fraud Vitiates Everything. This principle has been dealt with by the Apex Court in its various judgments viz. in the case of R. Ravindra Reddy Vs. H. Ramaiah Reddy, (2010) 3 SCC 214, Badami Bai (D) Tr. L.R. Vs. Bhali, (2012) 11 SCC 574, Uddar Gagan Properties Ltd. Vs. Sant Singh, (2016) 11 SCC 378, K.D. Sharma Vs. SAIL, (2008) 12 SCC 481, Express Newspapers (P) Ltd. Vs. Union of India, (1986) 1 SCC 133, DDA Vs. Skipper Construction, (2007) 15 SCC 601 and in the case of Jai Narain Parasrampuriah Vs. Pushpa Devi Saraf, reported in (2006) 7 SCC 756.

34. In R. Ravindra Reddy (supra), the Apex Court held as under:

“39. As far as fraud is concerned, it is no doubt true, as submitted by Mr Ramachandran, that fraud vitiates all actions taken pursuant thereto and in Lord Denning’s words “fraud unravels everything…….”

35. When the State of Madhya Pradesh took specific stand that possession has already been taken way back in 1996 itself and even the appeal preferred by the land holder was suffering from inordinate delay and laches and apparently at the instance of review petitioner society, then the finding regarding possession, cannot be altered because even at that point of time when possession was taken, present petitioner was not in picture at all. Petitioner society came much later in picture when proceedings were concluded under the Act of 1976. Therefore, petitioner never had any occasion to challenge the factum of proceedings including the factum of possession. Writ Appellate Court rightly taken all these aspects into consideration.

36. Simply on the basis of Khasra entries of year 2006-2007 of erstwhile land holder, cannot give any right or cause of action to the present petitioner society to agitate. Khasra entries are presumptive in nature and it does not confer any right, title or interest. Khasra entries in fact were having no meaning when possession of the land had already been taken from the original land holder Gulab Chand Sharma.

37. In the cumulative analysis no case for review of a well reasoned order is made out. The points which are being raised by the review petitioner in the review petition are already decided by learned Division Bench in the order dated 09-08-2019 passed in Writ Appeal. Scope of review is not to re-appreciate the points already decided, it is well defined and limited as referred above. Thus, in the considered opinion of this Court, no case for review is made out. Review petition stands dismissed. Order dated 09-08-2019 passed by learned Division Bench in Writ Appeal No.447 of 2016 stands affirmed.

38. Review petition sans merits and is hereby dismissed.