(2001) 03 MP CK 0039

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1145/97

Banwarilal Gupta and others APPELLANT

Vs

State of M.P. and others RESPONDENT

Date of Decision : 16-03-2001

Acts Referred:
Limitation Act, 1963 — Section 14
Madhya Pradesh Land Revenue Code, 1959 — Section 237(1), 50

Citation : (2004) ILR (MP) 527 : (2001) 2 MPHT 307 : (2002) 1 MPLJ 420

Hon'ble Judges : Mr. S.S. Jha, J

Bench : Single Bench

Advocate : Shri R.D. Jain and Mr. Sangam Jain, for the Appellant; Shri K.N. Gupta, Government Advocate and Shri V.K. Yogi, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Jha, J.

The present petition is filed by the petitioners challenging the order dated 19-3-1997, Annexure P-11, passed by State of Madhya Pradesh.

Brief facts of the case are that the Collector, Morcna has passed an order for exchange of Government land with the agricultural land of Ban-warilal vide order dated 20-3-1985. Banwarilal s/o Murarilal, through natural guardian Murarilal, has moved an application that he wants to exchange his agricultural land bearing survey No. 84 with the Government land bearing survey Nos. 904 and 942. The matter was sent for enquiry and report of Tehsildar, Jora. Tehsildar, Jora after proclamation enquired into the matter and wrote a letter to Gram Panchayat for its opinion about the exchange. The Sarpanch and four panchas of the village had no objection to exchange of land. Tehsildar, Jora recorded statement of Patwari of the village and Murarilal.

After recording the statement, a memorandum was forwarded to Sub-Divisional Officer for his opinion. The Sub-Divisional Officer has submitted the opinion and forwarded the papers to the Court of Collector. The Collector, after examining the case, allowed the application for exchange and further ordered that recording of land as "extra-Municipal Nazul Ooser" be deleted u/s 237 (2) of the Madhya Pradesh Land Revenue Code and, declared the land fit for agriculture (Kabil Kasht). It was further ordered that the land of applicant is reserved for pasture u/s 237 of Madhya Pradesh Land Revenue Code. An appeal was filed before the Additional Commissioner, Chambal Division, Gwalior under the provisions of Revenue Book Circular. The Commissioner, after examining the matter, found that the Collector has passed orders for exchange of Government land under the provisions of Para 20 (3), Part-IV, Chapter 3 of Revenue Book Circular. The appeal was treated under Para 30 of Chapter 3. On examining the case the Commissioner found that since the dispute is still subjudice before the Collector, therefore, he refused to entertain the order passed by the Collector. The respondents then challenged the order before Board of Revenue. The Board of Revenue vide its order dated 26-3-1988 held that the second appeal is not maintainable before the Board and dismissed the appeal. Thereafter, the respondents preferred a revision before the State Government. The State Government after examining the matter found that the allotment is contrary to provisions of Para 20 of Revenue Book Circular, Part IV, Chapter 3 and, cancelled the exchange. After the order was passed by the State Government, the petitioners filed writ petition before this Court which was numbered as Misc. Petition No. 1366/91. This Court directed that as regards maintainability of revision under the rules should be decided by the State and the parties were directed to appear before the State Government. Parties appeared before the State Government and State Government has again passed an order that the exchange of land is contrary to provisions of Para 20, Part IV, Chapter 3 of Revenue Book Circular. The petitioners then moved an application for review stating therein that in fact the case was to be decided on an application u/s 14 of the Limitation Act but the State Government has decided the case on merits. The revisionist has decided to withdraw the revision on 11 -2-97 and the application was argued on the prayer for withdrawal of revision, therefore, the order of State Government treating the revision as a suo-motu revision is improper and State Government has no jurisdiction to exercise suo-motu revisional power. This application for review is rejected without assigning any reason.

Learned counsel for the petitioners submitted that powers of suo-motu revision are not vested with the State Government. Counsel for petitioners invited attention to the order-sheets of the State Government and submitted that there was no hearing and on 11-2-97 revision was sought to be withdrawn by the revision petitioner. This application was not opposed by the petitioner. However, the order sheet discloses that the case was heard with the consent of both the counsel and order was reserved. Counsel for the petitioner further submitted that the direction of this Court in writ petition has not been complied with. The question as to maintainability of revision was not considered by the State Government. The State Government was of the opinion that the reason for withdrawal of revision will not be ground to dismiss the revision, as the dispute is not related to personal property but it relates to the dispute of the Government land, therefore, the matter should be decided on its merits. It was done earlier and the case is being heard in the light of the directions of the High Court. Both the parties have been given opportunity of hearing. The State Government found that the Government land was not agricultural land and was a Nazul land. The Nazul land could be allotted under Part IV, Chapter 1 of Revenue Book Circular, whereas the orders for exchange of land have been passed under Part IV, Chapter 3 of Revenue Book Circular. Para 20 provides for exchange of agricultural land of Bhumiswami with agricultural land of the Government. Nazul land cannot be treated as an agricultural land and there is no provision for exchanging Nazul land from the private land. The State Government has held that this exchange of land is contrary to law and set aside the exchange.

Counsel for petitioners has contended that State Government has no power to exercise suo-motu revisional jurisdiction. He invited attention to sub-para (3) of Chapter 3 of Revenue Book Circular and submitted that against the order of Commissioner revision lies to the State Government but the rule does not provide for taking action by exercising power of the suo-motu revision. The order is, therefore, without jurisdiction. When the person filing revision has prayed for withdrawal of revision, the State has no other alternate but to dismiss the revision as withdrawn.

Counsel for the petitioner then submitted that suo-motu revision after inordinate delay is improper. He referred to the judgment of this Court in the case of Rammulal and others Vs. State of M.P., reported in 1990 RN 407, and submitted that suo-motu revisional power can be exercised within a reasonable time. He invited attention to Para 5 of the judgment. Division Bench held that no period of limitation is provided for exercise of suo-motu revisional jurisdiction, yet, as held in The State of Gujarat Vs. Patil Raghav Natha and Others, , such power must be exercised within a few months. Counsel for the petitioners, therefore, submitted that the Commissioner has passed orders on 12-1-1988; thereafter respondents had filed second appeal before the Board of Revenue but the Board of Revenue has held that this appeal is not maintainable and dismissed the appeal vide order dated 26-5-1988. After the order of the Board of Revenue, revisional proceedings were initiated before the State Government. The State Government examined the matter and though the applicant/petitioner was absent yet it decided the matter on its merits. After examining the case the State Government found that the agricultural land alone can be exchanged but the land reserved u/s 237 (2) of the M.P. Land Revenue Code, cannot be exchanged and the Collector cannot change the nature of land u/s 237 (2) without following the due process of law. The orders of Commissioner and Collector were set aside.

Counsel for the petitioners submitted that the revision ought to have been filed within a reasonable time but the revision was filed after inordinate delay. The revision was filed on 10-1-1989 whereas the Board of Revenue has passed the order on 26-5-1988. Though the application u/s 14 of the Limitation Act was filed, without considering the application power of suo-motu revision has been exercised which could not be exercised for exchange of land in the year 1985. The act of State Government in exercising the power of suo-motu revision is improper and the petition be allowed.

Counsel for the petitioners has also relied upon the judgment in the case of Sitaram Vs. State of M.P. and others, reported in 1999 RN 82, wherein it is held that power of suo-motu revision should be exercised within a reasonable time and even one year may be unreasonable time. In this case house was constructed over the land granted on patta. Therefore, this Court held that the lease cannot be cancelled after a period of 10 years. Counsel for the petitioners submitted that hearing of the case without record was not permissible and, submitted that when records were not available the case could not have been examined. He further submitted that the order passed by this Court has been ignored.

Only question involved in the case is whether petitioners have right of exchange and there were grounds for exchange of land ? If the order of exchange of land is contrary to provisions of law then whether the State Government has power to examine the matter in a suo-motu revision ?

So far as revisional powers are concerned and if it is found that the order of sub-ordinate authority is without jurisdiction, the authority would be entitled to act suo- motu. The principle was laid down in the case of AIR 1943 333 (Nagpur) Bose, J. (as he then was) has held as under :--

"Any person can bring an irregularity to the notice of the Court. It is true that a Court will very seldom act unless the aggrieved party comes before it, but its power to do so is undoubted. In my opinion, a general and very important principle is involved here and as the Lower Court''s order is without jurisdiction, I would be entitled to act suo-motu."

In the case of Parasram and another Vs. Board of Revenue and others, reported in 1994 RN 183, it is held that the mischief resulting from the order which required to be rectified and if the suo-motu powers of revision are exercised for correcting a such needed error and as such the procedural aspect of the matter cannot be permitted in this petition to prevail over the interest of substantive justice.

On bare perusal of Para 20 of Part IV, Chapter 3 of Revenue Book Circular, it is apparent that the Government agricultural land can be exchanged with the agricultural land of the Bhumiswami. The procedure does not provide for exchange of any other land of Government with the agricultural land. Thus, the action of the Collector which is wholly without jurisdiction and contrary to the provisions of Revenue Book Circular, has been set aside. The procedural aspect of the matter can be ignored as the improper action has been set aside.

On reading of sub-para (2) of Para 30, Chapter 3, Part IV of Revenue Book Circular, it provides for filing an appeal. Sub-para (2) provides for revision by Commissioner against the original order of allotment or appellate order passed by the Collector. Sub-para (2) also empowers the Commissioner to exercise suo-motu revisional powers. Thus, power of suo-motu revision is conferred upon the Commissioner against the appellate order of the Collector. Sub-para (3) relates to revision against the order of Commissioner. On going through the scheme of the provisions of sub-paras (2) and (3), it is apparent that the revisional power can be exercised against the appellate order. In sub-para (2) appellate order of the Collector can be examined by the Commissioner in revision either on its own motion or on an application and in sub-para (3) appellate order of Commissioner can be revised by the State Government. Though in sub-para (3) it is not mentioned that the State can revise the appellate order of Commissioner on its motion, on composite reading of sub-paras (2) and (3) the power of suo-motu revision is inherent upon the State Government. If the Commissioner has power to hear suo-motu revision against the appellate order of the Collector then the State Government has inherent power of suo-motu revision against the appellate order of the Commissioner though not mentioned in so many words in Para 3. Thus, the contention of the petitioners that the State Government has no right to exercise suo-motu revisional power is not correct. On complete reading of Para 30 of Revenue Book Circular it is apparent that against the appellate order of the Collector, the Commissioner has right to exercise suo-motu revisional power and against the appellate order of the Commissioner revision lies before the State Government. Thus, the State Government has power to exercise suo-motu revisional power. Even otherwise, if the dispute relates to a Government land and involves the interest of the public at large, the Government has right to exercise its power and set aside unlawful order or orders passed ignoring the settled principles of law.

Learned counsel for the petitioners then submitted that the directions of this Court have not been complied with. This Court has directed in Writ Petition No. 1366/91 that the State Government has passed the order without affording an opportunity of hearing to the petitioners, therefore, the case was remanded back to State Government for its decision on merits. The State was also directed to decide whether revision is maintainable or not. Parties were directed to appear before the State Government.

The question as to maintainability of revision before the State Government, as discussed above, is not germane. As discussed above, the State Government has power to hear revision against the appellate order under the provisions of Revenue Book Circular. Since the State has power to hear revision, it has also power to exercise its power of suo-motu revision against an improper and incorrect order.

On perusal of order, passed by the State Government, it is clear that the Collector while ordering exchange of land has not followed the procedure laid down in Chapter 3, Part-IV of Revenue Book Circular. When the land is recorded as ''Nazul'', it could not be transferred. The powers u/s 237 (2) of the M.P. Land Revenue Code can be exercised for the lands which are reserved u/s 237 (1) of the Code. As long as land is reserved, its nature cannot be changed under sub-section (2) of Section 237 unless procedure laid down for changing the nature of land under the rules framed under sub-section (2) of Section 237 of the Code is followed. Even otherwise, Para 20 of Chapter 3, Part-IV of Revenue Book Circular permits exchange of Government land with private agricultural land. A Bhumiswami can request for exchange of his agricultural land with the agricultural land of the Government or the land which is suitable for agriculture. In the present case, the land was not ear-marked for agriculture and has been recorded as ''Nazul''. Such ''Nazul'' land cannot be exchanged with the agricultural land. The State Government has not committed any error in deciding the dispute.

Petition fails and is dismissed without any order as to costs.

Writ Petition dismissed.

