
(2002) 06 MP CK 0003
In the Madhya Pradesh High Court
Case No : M.P. No. 2784 of 1994

Basant Kumar Jain

APPELLANT

Vs

Sub-Divisional Officer, Patan and others

RESPONDENT

Date of Decision : 27-06-2002

Acts Referred:

Madhya Pradesh Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharakon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 — Section 5

Citation : (2003) 1 MPLJ 460

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : D.N. Shukla, for the Appellant; Sanjay K. Agrawal for Respondent Nos. 1, 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

This writ petition has been filed seeking the relief of quashment of the order passed by the SDO and Additional Collector, District Jabalpur as contained in Annexure-P/9 and P/12, declaring the transaction dated 21-6-1986 as prohibited transaction under the M.P. Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharakon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 (M.P. Act No. 3 of 1977).

Respondent No. 4; Mahendra Pratap Singh Chouhan filed an application u/s 5 of the Act No. 3/77 for declaring the transaction dated 21-3-1986 as prohibited transaction of loan and to annul the transaction. In the application filed it has been alleged that an agreement was entered into on 21-3-1986, Rs. 10,000/- was the principal amount advanced as loan, as respondent No. 4 required the money for performance of marriage of his sister. The value of land was Rs. 15,000/- per acre. It was mentioned that the land in question was the only land held by the petitioner within the State of Madhya Pradesh which is in area 1.558

hectares. Respondent No. 4 further alleged that he has been ready and willing to pay the amount of the loan, if transaction is not annulled irreparable injury will be caused to him.

It appears that though several opportunities were granted, no detailed reply was filed by the petitioner. However, a short reply/objection petition was filed on 10-8-1990 in which it has been mentioned that respondent No. 4 has suppressed the factum of filing of previous application as to the same transaction which application was disallowed on 21-9-1989. The application is barred by limitation and it was the case of sale as such provisions of Act No. 3/77 are not applicable. No other ground was raised. The SDO after conducting an enquiry and recording the evidence has come to the conclusion that it was case of prohibited transaction of loan. Value of the land was Rs. 15,000/- per acre. Thus, 1.558 hectares of land could not be alienated for a sum of Rs. 20,000/-. Consideration was found inadequate on the strength of statement of witness Shri Jagdish Prasad examined on behalf of the petitioner that the petitioner is a money lender and has been doing the business of Money Lender and also Gold smith. No licence has been obtained by the petitioner for doing such a business. The value of the land has been determined by the SDO on the basis of the compensation awarded in the land acquisition case. As to limitation, SDO has relied upon the decision of this Court in Jahar Singh and Another etc. Vs. Collector, Shivpuri District and Others, .

An appeal was preferred before the Additional Collector. That has been dismissed. The order passed by the SDO has been affirmed. Hence, the present writ petition has been filed before this Court assailing the order passed by the SDO and Additional Collector.

Shri D.N. Shukla, learned counsel for the petitioner has raised three fold submission. First submission is that the application is barred by limitation. Thus, the SDO erred in law in entertaining the same and allowing it. Second submission of learned counsel for the petitioner is that the respondent No. 4 cannot be said to be an holder of agriculture land as defined u/s 2(c) of the Act No. 3/1977. Thus, he is not entitled for the protection of Act No. 3/1977. The third submission raised by learned counsel for the petitioner is that the petitioner has filed previously an application under the M.P. Gramin Rin Vimukti Adhiniyam, 1983 which was registered vide No. 502/B-121/87-88, which was dismissed on 21-9-1989 by the SDO, thus, the fresh application under Act No. 3/1977 could not be entertained and allowed.

The first submission raised by learned counsel for the petitioner is about the limitation. The transaction in question was entered into on 21-3-1986. The application u/s 5 was filed by the respondent No. 4 in 1989.

The question as to limitation came to be considered in the context of section 5 before the Division Bench of this Court in Jahar Singh vs. Collector, Shivpuri (supra) which has been followed in W.P. No. 3683/2000 (Pannalal Chourasia and

another vs. State of M.P. and ors.). It has been in paras 12 and 13 of *Jahar Singh vs. Collector, Shivpuri* (supra) as under:

12. Although an application u/s 5 may be made in "such form and within the time and manner as may be prescribed" to avail protection and relief under the Adhiniyam, the power of the Sub-Divisional Officer to act suo motu u/s 6 is not affected thereby. True, there is some doubt about the time within which such application may be made as Rule 3 of 1978 Niyam is not clear. But, on that account, due to defect in Rule 3, jurisdiction to initiate, continue or conclude proceedings by the Sub-Divisional Officer under the Adhiniyam cannot be denied to him, when a defective application is made, not conforming to the requirement of Rule 3 law is well-settled. Rules cannot control or defeat any provision of the parent Act. According to us, it would be competent for the S.D.O. to act "on his own motion" when any "prohibited transaction of loan" is brought to his notice informally, in other words, in a manner which does not conform to the strict requirement of section 5 of the Adhiniyam or Rule 3 of 1978 Niyam.

The power of the S.D.O. to act suo motu u/s 6 is not circumscribed. Indeed, neither in section 5, nor in 6, nor in any other provision of the Adhiniyam, nor in Rule 3 itself, any specified period of limitation is postulated. Limitation is a matter of procedure. Unless it is envisaged as a condition-precedent annexed to the enforcement of a substantive right, it is not permissible to create any time-bar on the basis of ambiguous subsidiary provision so as to impair the substantive right, making it enforceable. Law of limitation, it is well-settled, is construed always in favour of the right to proceed (see- *Lala Balmukund (Dead) through Lrs. Vs. Lajwanti and Others*, .

Thus, application cannot be said to be barred by limitation. In *Vijay Singh @ Vijendra Singh vs. Shyamlal and others*, 2000(2) MPLJ 131 this Court considered. Section 15 as amended which has provided the limitation to challenge the alienation made by the lender of money and the limitation prescribed to challenge such a transaction by lender of money is six years of the date of such transaction. Section 15 is applicable when lender of money has alienated the land which is subject matter of prohibited transaction of loan land, such alienation by lender of money is null and void. Section 15 also give an indication that Act No. 3/77 has not been enacted with the temporary life. Thus, following *Jahar Singh and anr. (supra)*, in my opinion it cannot be said that the application filed u/s 5 is barred by limitation.

Coming to the second submission raised by learned counsel for the petitioner that the respondent No. 4 cannot be said to be a "holder of agriculture land" as defined u/s 2(c) there is clear averment made in para 4 of the application that in the State of M.P. the only land held by respondent No. 4 is Survey No. 35A area 1.558 hectares, that is also unirrigated one. Section 2(c) of the Act defines holder of agriculture land to mean a person who hold of land used for purpose of Agriculture not exceeding eight hectares of unirrigated land or four hectares of irrigated land within the State whether as a Bhumiswami or an occupancy tenant

or a Government lessee either in any one or all of the capacities together within the meaning of the Code of 1959, such person has to be treated as holder of agriculture land in the weaker sections of the people.

In the reply filed by the petitioner it was not the ground raised that averment made in para 4 as to the total land held by the respondent No. 4 is incorrect or that he has suppressed some other piece of land held by him as a Bhumiswami, an occupancy tenant or a Government lessee. This question was also not raised before the competent authority, thus, it cannot be allowed to be raised in the instant writ petition. The averment made in the application remains untraversed and that is sufficient to come to the conclusion that respondent No. 4 has to be treated "holder of agriculture land in the weaker section of people" as contemplated u/s 2(c) of the Act No. 3/77.

Coming to the last submission raised by learned counsel for the petitioner that decision under the M.P. Gramin Rin-Vimukti Adhiniyam, 1993 operates res judicata, hence, present application is not entertainable. Perusal of the order passed in the said proceedings Annexure-P/4 passed on 21-9-1989 indicates that the dispute was not adjudicated on merits, no finding on merit has been arrived at. Only facts have been referred in the order P/4, thereafter it has been recorded that transaction was entered into between the parties on 21-9-1986. Thus, the application cannot be entertained as per section 3 of M.P. Gramin Rin-Vimukti Adhiniyam, 1983. The Act was held inapplicable to the transaction in question. Thus, it cannot be said that the order in question operates res judicata. Application was not received for consideration at all.

Thus, all the three submissions raised by learned counsel for the petitioner fail. No other question has been raised.

Writ petition is without merit and dismissed. However, as no one appeared on behalf of respondent No. 4, no order as to costs.