

(1991) 08 MP CK 0015
In the Madhya Pradesh High Court
Case No : S.A. No. 18 of 1978

Basant Singh @ Biahn Singh Road Singh	APPELLANT
Vs	
State of Madhya Pradesh	RESPONDENT

Date of Decision : 19-08-1991

Acts Referred:

Madhya Pradesh Land Utilisation Act, 2007 — Section 3(1), 3(6), 3(8), 3(9)

Citation : (1992) 37 MPLJ 401 : (1992) MPLJ 401

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

Bench : Single Bench

Advocate : M.L. Agrawal, for the Appellant; D.D. Vyas, for the Respondent

Final Decision : Allowed

Judgement

S.D. Jha, J.

This second appeal by unsuccessful plaintiff in the two Courts below was by order dated 10-3-1978 admitted for final hearing on the following substantial questions of law : -

1. Whether the Jagirdar could grant lease of the suit land of his Jagir village independently without a notice of the Tahsildar under the Land Utilisation Act?

Whether the Jagirdar even after receiving a notice from the Tahsildar u/s 3 of the Land Utilisation Act allot the land to the appellant?

Whether the appellant had acquired the rights of pacca tenant with respect to the suit land on 4-12-1952 u/s 20 of the M. P. Abolition of Jagirs Act?

Whether the land in question being a kankad it could not have been allotted to the appellant by the Jagirdar?

Plaintiff filed suit on 28-11-1964 in the Court of Civil Judge, Class II, Badnawar, for declaration of title, confirmation of his possession and permanent injunction in respect of Survey No. 361/1, area 3 Bighas, 2 Biswas land revenue Rs. 7.32.

Plaintiff's case was that before abolition of Jagirs in the then Madhya Bharat on 4-12-1952 the land in question belonged to Jagirdar of Kachhi Badoda Thikana then within princely State of Dhar. The plaintiff had in public auction purchased the land (hereinafter called "suit land") from the Jagirdar, deposited the purchase money and obtained possession of the land on 3-6-1951 (Samvat 2008). The Jagirdar had issued in respect of the purchase money and also issued Patta to him on the same day and the plaintiff had been in possession of the land since then and had become Pattedar-tenant of the Jagirdar. After abolition of Jagirs on 4-12-1952, he became tenant of the Government and after coming into force of M. P. Land Revenue Code, 1959, he became Bhumiswami of the land. The Jagirdar had informed the Tahsildar, Badnawar in this respect, who had mutated the name of the plaintiff in the record. Later the Sub-Divisional Officer and Deputy Commissioner of the District declared possession of the plaintiff over the land as unauthorised and deleted his name from the revenue record and directed his eviction from the suit land. The plaintiff, therefore, after serving notice u/s 80, CPC filed suit against the defendant claiming relief as aforesaid.

The defendant-State of M. P. in its written statement denied the contentions of the plaintiff. It was submitted that even before abolition of Jagirs on 4-12-1952, in Madhya Bharat, Government had control over Jagir village and the lands in Jagir used to be administered in accordance with laws of M. B. Government and Jagirdar did not have full rights with respect to lands in Jagir. The plaintiff had, abusing M. B. Land Utilisation Act, Samvat 2007 got Charnoi and pasture land illegally and unauthorisedly without permission of "Suba" i.e. Collector, got transferred in his name which included the suit land on the strength of Ex. P/1 dated 7-5-1951 issued by Tahsildar, Badnawar Ex. P/4 dated 3-6-1951 by the Jagirdar in favour of the plaintiff which was void and for this reason he was not recognized tenant of the land but only treated as trespasser. He acquired no right or title to the land. Mutation done in his favour was revoked and this was upheld by the superior authorities as per details in para 7 of the written-statement. The suit was not cognizable by Civil Court and barred by limitation.

Civil Judge, Class II by judgment and decree dated 28-6-1974 found that Patta dated 3-6-1951 Ex. P/5 in respect of the suit land was issued in favour of the plaintiff and that it was illegal "Avaiddh". Plaintiff did not acquire the status of "Pakka Tenant " on 4-12-1952. The orders passed by the revenue authorities revoking the "Patta" granted in favour of the plaintiff were not null and void. The Civil Court had jurisdiction. The suit was within limitation. The suit land is "Kankad" pasture or grazing land. The plaintiff was not in possession of the land. The plaintiff in collusion with the Patwari had succeeded in obtaining order in favour by the Tahsildar and got his name mutated. With these findings, he dismissed the suit. The plaintiff was unsuccessful in his appeal to the II Additional District Judge, Dhar. Hence this appeal.

At the hearing of the appeal Shri M. L. Agrawal learned counsel representing the plaintiff-appellant narrated the history of the case and read out the provisions of

M. B. Land Utilisation Act, Samvat 2007 and submitted that even if for any reason the direction Ex. P/I dated 7-5-1951 issued by the Tahsildar to the Jagirdar was invalid that would not affect of the right of the Jagirdar to grant Patta to plaintiff independently. In the instant case provisions of M.B. Land Utilisation Act, Samvat 2007 were not attracted. In that connection Shri Agrawal referred to Section 95 of M.B. Land Revenue and Tenancy Act, Samvat 2007 dealing with assignee of proprietor's right inter alia explaining the meaning of "Jagirdar" in explanation 1. He also referred to Section 20 of M. B. Abolition Act, Samvat 2008 which provides for conferral of "pakka" tanancy right on "sikmi" inter alia of Jagirdar from the date of resumption of Jagir. Shri Agrawal emphasized that even if notice Ex.p/1 from Tahsildar, Badnawar to Jagirdar, Kachhi Badoda, Thikana suffered from infirmity for want of previous consent of "suba" which was necessary u/s 3(1) of the M.B. Land Utilisation Act of Samvat 2007, that would not affect the power of Jagirdar himself to allot land in his Jagir to any cultivator. In the instant case, the plaintiff had applied on 17-5-1951 to Jagirdar for allotment of land on proper tribute (Nazrana) and the Jagirdar held auction which was struck down at Rs. 300/- in favour of the plaintiff. In support of his argument Shri M. L. Agarwal relied on certain observations of the Supreme Court in L. Hazarimal Kuthilal v. Income Tax Officer, Special Circle, Ambala Cantt. and Anr. AIR 961 SC 200, (paras 11 and 12). Proceeding further Shri M. L. Agarwal submitted that plaintiff ought to be held "Pakka Tenant" with respect to the suit land with effect from 4-12-1952 when Jagir was abolished u/s 20 of M. B. Abolition of Jagirs Act. He also submitted that the Courts below were in error in holding that Jagirdar could not have allotted pasture land to the plaintiff. No law placing any such restriction on the Jagirdar was shown or proved at the trial.

Shri D. D. Vyas, learned Government Advocate, strongly controverted the contention of Shri Agrawal and defended the impugned judgment.

Taking up the first two substantial questions of law formulated above, the M.B. Land Utilisation Act, Samvat 2007, as its title and preamble show was enacted to provide for the utilisation of uncultivable land in Madhya Bharat. The main purpose was to overcome shortage of food and in that direction to provide for power to utilise uncultivated land with a view to increasing production of food stuffs. The Act was not so much concerned with law relating to land revenue, the powers of revenue officers' right and liabilities of holders of land from the State Government or from the Jagirdars and other intermediate land owners like the M.P. Land Revenue Code, 1959, now in force. This Act as would be seen came to be enacted in Samvat 2007 corresponding to year 1950 of Gregorian Calendar. The Jagirs were pre-existing even before the passing of this Act and came to be abolished only on 4-12-1952 after the M.B. Abolition of Jagirs Act, Samvat 2007 was passed and came into force on 4-12-1952. It is unfortunate that none of the parties cared to place on record a copy of the grant of Sanad, if any, in favour of Jagirdar Kachhi Badoda Thikana which would have thrown light on power of Jagirdar and restriction, if any, on him in the matter of allotment of land. The State of M.P. placed no material to substantiate its plea that even before

abolition of Jagirs on 4-12-1952 in Madhya Bharat, Madhya Bharat Government had control over Jagir villages and the lands in Jagir used to be administered in accordance with laws of M.B. Government and that Jagirdar did not have full rights with respect to lands in Jagir. The point need not, however, be laboured further because the Additional District Judge himself in para 8 of his Judgment held that Jagirdar had a right to allot land independently of any direction from the Tahsildar and this finding has not been challenged by State of M. P. respondent.

The learned Additional District Judge, however, proceeded to hold that as Tahsildar on application of the plaintiff had issued notice Ex. P/I, dated 7-5-1951 to the Jagirdar, the Jagirdar on application dated 1-6-1951 presented by the plaintiff to him could not allot land to the plaintiff. At this stage Section 3 of the M. B. Land Utilisation Act, Samvat 2007 and its relevant sub-sections may be noticed :

3(1) - Notwithstanding anything contained in the "Qanoon Mal, Gwalior State, Samvat 1983, or in any other enactment for the time being in force, the Tahsildar may with the previous permission of the Suba of the District by notice in writing in the form specified in the Schedule, call upon any Malguzar or on assignee of proprietary rights, within his jurisdiction to let out or allot for cultivation any land lying unoccupied and uncultivated in a village or part of a village held by him within 30 days from the date of the service of such notice or within such further period as the Tahsildar may extend or to arrange for its cultivation himself-from the agricultural year following next:

Provided that no notice shall be issued under this sub-section in respect of any land which is considered necessary to be continued as pasture land (charnoi), or which is, by force of any custom, used as threshing floor, road, path. Guha or such other purposes :

3(2) - The decision of the Suba whether a particular land is required to be left for pasture (charnoi) or other purposes as required under proviso to sub-section (1) shall be final.

3(5) - If the Malguzar, or the assignee of proprietary rights shows to the satisfaction of the suba within 30 days from the date of the service of the notice that the land is not capable of being cultivated or that it is already being cultivated or has already been let out or allotted for cultivation, the Suba shall cancel the notice.

3(6) - If the Malguzar or the assignee of proprietary rights desires to make arrangement for the cultivation of the land himself, he shall inform the Tahsildar accordingly in writing within 30 days from the date of the service of the notice or within such further period as the Tahsildar may extend.

3(7) - If the land is let out or allotted as required under sub-section (1), the Malguzar or Assignee of proprietary rights shall produce the quabuliyat or patta

and get it verified by the tenant before the Tahsildar within 30 days from the date of the service of the notice or within such further period as the Tahsildar may extend.

3(8) - If neither the provisions of sub-section (5) or (7) are complied with, nor the notice issued under sub-section (1) is cancelled under sub-section (5), the Tahsildar may, subject to the rules made under this Act let out or allot such land to a bona fide agriculturist or a co-operative farming society for cultivation.

From the sub-section (1) of Section 3 of the Act, it would be seen that even after notice by the Tahsildar was received by Jagirdar (parties agreed that the Jagirdar would be covered with the expression "Malguzars" or assignee of proprietary right used in sub-section (1) of Section 3, it was open to the Jagirdar to inform the Tahsildar of his desire to make arrangement for cultivation of the land himself and inform the Tahsildar of his such intention in writing within 30 days. Under sub-section (8) the Tahsildar subject to rules made under the Act got jurisdiction to let out or allot such land to bona fide agriculturist or a co-operative farming society for cultivation only when provisions of sub-section (6) or (7) were not complied with. If the Jagirdar even after receipt of Tahsildar's notice still decided to cultivate the land himself, one fails to appreciate why he could not allot the land to the plaintiff, on the plaintiff filing an application within limitation for the purpose to him. The Act has no prohibition that the Jagirdar after receipt of notice from the Tahsildar was divested of his rights over the land situated within his Jagir.

Besides the reasoning of the learned Additional District Judge is contradictory. He holds that notice u/s 3(1) of the M. B. Land Utilisation Act, Samvat 2007 issued by the Tahsildar was without jurisdiction because previous permission of Suba of the District mandatory u/s 3(1) of the Act was not obtained but he relies on the same notice to hold allotment made by Jagirdar in favour of the plaintiff as void and illegal even when the plaintiff made an application dated 1-6-1951, Ex. P/2, to Jagirdar for allotment of land. When notice, Ex. P/I, issued by the Tahsildar was found to be illegal it cannot be used to get at naught the right of Jagirdar to allot land within his Jagir which the learned Additional District Judge has found established.

The ratio of observation of the Supreme Court in *L. Hazari Mal Kuthiala Vs. The Income Tax Officer, Special Circle, Ambala Cantt.*, on which Shri M. L. Agrawal, learned counsel for the appellant has placed reliance to the effect that "duplication of power is sometimes noticeable in statutes and does not destroy effectiveness of the powers conferred" and "if a particular action is valid under one section it cannot be rendered invalid because identical action can also be taken under another section and it makes no difference if two empowering provisions are in the same statute" would support the above view. The Tahsildar with previous consent of Suba had power to order allotment of land under the M. B. Land Utilisation Act, Samvat 2007 and Jagirdar of the Jagir had power to allot the land in his Jagir though not under any statute. If the order of the Tahsildar

suffers from any infirmity that would not affect the power of Jagirdar himself to allot the land unless it be shown that Jagirdar's power to allot lands was restricted in any way which has not been done in the present suit.

Though the plaintiff-appellant claims to be in possession of the land, the trial court in paras 9 and 13 of the judgment found that he had left his possession over the land in 1954 after he executed a bond stating that he would remove his possession or the suit land after harvesting crop and suit was within limitation. The first appellate court did not make any observation or record any finding as to possession of the plaintiff-appellant over the suit land.

In view of the foregoing answer to substantial questions of law 1 and 2 would be that Jagirdar could grant lease of the suit land of his Jagir village independently without notice of the Tahsildar under the M. B. Land Utilisation Act, Samvat 2007, and even after receiving notice from Tahsildar u/s 3 of the Act the Jagirdar could allot land to the appellant. Further the notice u/s 3 from the Tahsildar to the Jagirdar being illegal, previous consent of Suba not having been obtained, the invalid notice could not be utilised to set aside the allotment made by Jagirdar in favour of plaintiff on his application dated 1-6-1951.

The remaining two questions, taking up the 4th question first, the Additional District Judge in para 9 of the Judgment observed that according to Khasra Ex. P/8 for the year 1927-28 the land was recorded as "Kankad" "charnoi" i.e. pasture land. He proceeded further to observe that since kankad could not be allotted by the Jagirdar the said allotment was clearly invalid and as such the Patta itself became invalid on the basis of which the plaintiff could not claim any right though he might be in possession of the same.

The learned Additional District Judge did not quote or cite any authority for his observations that "kankad" land i.e. pasture land could not be allotted by the Jagirdar. Besides, Ex. P/8 was Khasra for the year 1927-28 i.e. some nearly 22 years prior to date of allotment by the Jagirdar. What was the position of the land about the time of allotment has not been placed on record. The proviso to Section 3(1) prohibits issue of notice u/s 3(1) by the Tahsildar inter alia in respect of land which is considered necessary to be continued as pasture land "charnoi". As would be seen that prohibition is on the Tahsildar and not on Jagirdar himself. Besides the expression "considered necessary to be continued as pasture land" would imply that in a given situation it would be permissible to discontinue the use of land as pasture land "Charnoi". It is not an absolute prohibition regarding allotment of land. This view would also find support from Section 60 of M.B.L.R. and Tenancy Act, 1950 dealing with "grazing" "Nistar":

Section 60 Grazing (Nistar) :

Subject to rules made under this Act, a tenant shall have the right, free of charge, to graze his agricultural cattle in the waste land of the village so long as it is not allotted for cultivation, in which his holding is situated and to collect from such waste land dry-wood, thorns and leaves for his domestic or agricultural

purposes.

Sections 234 and 237(2) of Madhya Pradesh Land Revenue Code, 1959 dealing with preparation of "Nistar Patrak" would also show that "Nistar rights" over land may in given circumstances be modified or their use diverted.

In view of the foregoing the learned Additional District Judge without any material before him was legally in error in holding that the Jagirdar was legally prohibited from allotting to the plaintiff "Charnoi" land. It was not disputed that if the allotment of land made by Jagirdar in favour of the plaintiff be found to be valid the plaintiff would be held to have acquired right of "Pakka Tenant" on 4-12-1952 over the land u/s 20 of the M. B. Jagirdari Abolition Act, 1950 and on coming into force of M. P. Land Revenue Code, 1959 would acquire status of Bhumiswami in respect of the suit land. Answer to substantial question No. 4 would be that the appellant-plaintiff must be held to have acquired rights of Pakka-tenant with respect to the suit land on 4-12-1952 u/s 20 of M. B. Abolition of Jagirs Act, 1950.

Reference during arguments was made to two D. B. decisions of this Court in Krishnarao v. State of M. P. 1974 MPLJ 110 and Chhel Bihari Lal and Anr v. State of M. P. and Ors., 1976 MPWN 211. These two decisions are on different points and are not helpful for deciding the point in controversy in the present appeal.

As a result of the aforesaid discussion the appeal is allowed. The judgment and decree passed by the courts below are set aside and the plaintiff-appellant's claim for declaration of title in respect of the suit land and to continue in possession of the same and permanent injunction restraining the defendants from interfering with possession of the plaintiff of Survey No. 361/1 area 3 bighas and 2 biswas is granted. If the plaintiff-appellant during the pendency of suit or the appeal has been dispossessed from the land and the land is in possession of the defendant-State of M. P. or its servants he shall be put in possession of the same by the defendant-State of M. P. If the possession of the land be with some other person the plaintiff-appellant shall be entitled to its possession in accordance with law. Looking to the circumstances of the case, parties shall bear their costs as incurred in all the courts. Appeal allowed. A decree be drawm up accordingly. Counsel's fee according to schedule or certificate whichever is less.