

(1975) 08 MP CK 0021

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 67 of 1970

Chandroji Rao

APPELLANT

Vs

The State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 12-08-1975

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Bharat Abolition of Jagirs Act, 1951 — Section 29

Madhya Bharat Jagirs Land Records Management Act, 1949 — Section 3, 4

Citation : AIR 1976 MP 119 : (1980) ILR (MP) 827 : (1975) JLJ 867 : (1975) 20 MPLJ 822

Hon'ble Judges : Shiv Dayal Shrivastava, J; J.P. Bajpai, J

Bench : Division Bench

Advocate : V.K. Sapra, for the Appellant; S.N. Tandon, Dy. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Dayal, J.

By this petition under Arts. 226 and 227 of the Constitution the petitioner, Col. Sardar Angre, has sought a writ of certiorari to quash the order of the Commissioner dated Dec. 14, 1962, and the order of the Board of Revenue, dated Sep. 22, 1969, and a writ of mandamus directing the State of Madhya Pradesh and the Commissioner not to deduct the amount of Rs. 1,33,897/8/3 from the amount of compensation payable to him under the M. B. Abolition of Jagirs Act, 1951, and to enhance the compensation to the extent of Rs. 3,738/- (being 7 times of Rs. 534/- representing the Tanka of village Bhaisakhedi).

The petitioner Col. Sardar Angre was a Jagirdar of Tahsil Nevri Bhorasa and Panbihar in the erstwhile Gwalior State. In 1948, by merger of several princely State, a new State of Madhya Bharat was constituted. Under the Madhya Bharat Abolition of Jagirs Act, 1951, (hereinafter referred to as the Abolition Act), the petitioner's Jagir was resumed on December 4, 1952, u/s 3 of the Act, by the

State, of Madhya Bharat. Section 4 of the Act enacts the consequences of the resumption. Section 8 of the Act provides for determination of compensation to be paid to Jagir-dars in consequence of the resumption. Accordingly, proceedings were taken for the determination of the compensation payable to the petitioner. The manner of determining compensation is provided in Schedule I to the Act. Clause fi) of the schedule defines "basic year"; Clause (2) defines "gross income"; Clause (3) defines "basic income"; Clause (4) defines "net income" and Clause (5), which defines "compensatory amount" reads thus :--

"The compensation payable u/s 8 to a Jagirdar shall be seven times his net income calculated in accordance with the provisions hereinbefore- contained."

By his order dated January 11, 1958, the Commissioner determined the Compensation payable to the petitioner. Aggrieved by that order, the petitioner preferred an appeal to the Board of Revenue. That appeal (D. B. Appeal No. 16/1958) which was decided on Nov. 9, 1969, was partly allowed. The case was remanded to the Jagir Commissioner with certain directions, holding that (1) Rs. 30,000/- on account of Paiga shall not be deducted as Tanka (per discussion in para. 12); (2) proportionate amount of Tanka for village Bhaishakhedi shall not be deducted as discussed in para. 13 (a)); and (3) no deduction shall be made on account of land records management (as discussed in paragraph 16).

The Jagir Commissioner, by his order dated December 14, 1962, re-determined the amount of compensation. Regarding the question of Paiga, the Commissioner gave effect to the aforesaid decision of the Board of Revenue and did not deduct Rs. 30,000/-. The State preferred an appeal to the Board of Revenue (D. B. Appeal No. 31-I of 1963) contending that in the earlier decision of the Board of Revenue (dated November 9, 1960), all that was held was that Rs. 30,000/- could not be deducted "as Tanka," but the Commissioner should have held that, that amount could be deducted under Item No. 6 of paragraph 4 of Schedule I to the Act. A preliminary objection was raised by Sardar Angre that a new ground could not be taken in that subsequent appeal before the Board of Revenue inasmuch as it was barred as constructive res judicata. That preliminary objection was rejected by the Board. Sardar Angre filed a writ petition in this Court (Misc. Petition No. 307 of 1963).

A Division Bench consisting of Dixit, C. J. and Pandey, J. held that the new plea raised by the State Government in the subsequent appeal (No. 31-I of 1963) was barred by constructive res judicata, as it had not been raised in the earlier appeal (No. 16 of 1958). Aggrieved by that order of the High Court, the State preferred an appeal to the Supreme Court (Civil Appeal No. 459 of 1966)*. It was held by the Supreme Court that by virtue of Section 151 of the M. B. Land Revenue and Tenancy Act, the provisions of the CPC applied, so that u/s 11 of the Code a new plea was barred on the principle of constructive res judicata. It was further held that even if Section 11 of the Code did not in terms apply, the principle of res judicata would certainly be applicable for the purpose of achieving finality in the litigation. Thus the question of the amount of Rs. 30,000/- finally

came to an end.

From the decision of the Commissioner dated December 14, 1962 (supra), Sardar Angre also preferred an appeal (No. 36-I of 1963) to the Board of Revenue on two points.

First Point :-- The Commissioner was in error in holding that the Tanka of Rs. 21,664/- did not include the amount of Tanka pertaining to village Bhaisakhedi.

Second Point :-- The Jagir Commissioner erred in deducting Rs. 1,33,897/8/3 on account of the charges for the management of the land records,

The Board of Revenue decided both these points against the petitioner and dismissed the appeal by its order dated September 22, 1969, aggrieved by which he has invoked the jurisdiction of this Court under Articles 226 and 227 of the Constitution by this petition. In this petition, the same two points have been canvassed.

FIRST POINT

Shri Sapre, learned counsel for the petitioner, has advanced three alternative arguments before us. His first contention is that the Tanka of Rs. 21,664/- included the Tanka of Rs. 534/- payable in respect of Bhaisakhedi and that village was taken out from the Jagir in the year 1953, and the Tanka of Rs. 21,664/- was fixed as back as in the year 1924, at the time of mutation of the petitioner.

It may now be mentioned that Tanka means the amount payable by a Jagirdar to the State. In determining compensation, net income is arrived at by deducting from the gross income the Tanka payable by the Jagirdar to the State Government for the basic year, besides some other items enumerated in paragraph 4 of the first schedule. Thus, if the amount of Tanka is reduced, the net income increases and consequently the amount of compensation also increases.

It was contended by the learned counsel for the petitioner that out of Rs. 21,664/- Rs. 534/- had to be deducted so that the amount of compensation had to be enhanced to the extent of 7 times of Rs. 534/-. The Commissioner was patently in error when he held that this amount was not included in the Tanka amount of Rs. 21,664/-.

A notice dated October 14, 1957, was issued by the Commissioner Land Reforms and Jagirs. Madhya Bha-rat, to the petitioner calling upon him to file objections, if any, by October 25, 1957. At item No. 13, the amount of Tanka has been shown as Rs. 51,664/-, which comprises of Rs. 30,000/- in lieu of Paiga and Rs. 21,664/- in respect of the Jagir. Although Sardar Angre did not file any objection at that time, the Board of Revenue, in its order in D. B. Appeal No. 16 of 1958, considered the objection and held that the amount of Tanka for village Bhaisakhedi could not be deducted.

However, there is no substance in Shri Sapre's contention. The learned

Commissioner found as a fact that in the Tanka of Rs. 21,664/- was not included the Tanka of village Bhaisakhedi. This is a finding of fact. Moreover, the amount of Tanka, which is to be taken into consideration, is that amount of Tanka which was payable by the Jagirdar in the basic year (1951-52) and in the basic year, the amount of Tanka payable by the petitioner was Rs. 21,664/-. Furthermore, before the Board of Revenue, Shri Sapre conceded that in the Tanka of Rs. 21,664/-, the Tanka for village Bhaisakhedi was not included.

The second limb of the argument is that the Commissioner had no jurisdiction to refuse to reduce the amount of Tanka, when the Board of Revenue in D. B. Appeal No. 16 of 1958 gave specific directions in that behalf. Clearly, this contention is without substance. The Board of Revenue did not give any definite finding but merely said that the amount of Tanka for village Bhaisakhedi was not to be deducted and observed that the matter needed further enquiry. The Commissioner had, therefore, jurisdiction to go into that question afresh. Moreover, once it was conceded before the Board of Revenue that the Tanka of Rs. 21,664/- did not include the Tanka payable for village Bhaisakhedi. the objection before us is without meaning.

The third argument advanced before us by Shri Sapre is the same which was endeavoured to be taken for the first time before the Board of Revenue in Appeal No. 36-I of 1963. It was a new point. It was this. The amount of Tanka of Rs. 21,664/- was not fixed after deducting the amount of Rs. 2,797/- on account of muafi and this amount should now be deducted from the total Tanka of Rupees 21,664/-, in order to arrive at the correct amount of Tanka for the basic year. The Board of Revenue did not permit the petitioner to raise this objection on the ground that it was constructive res judicata. The Board relied on the above-mentioned decision of the Supreme Court, which was rendered between the same parties in a matter arising from this very case.

Shri Sapre contends that his application for amendment ought to have been allowed. In the first place, a new point is not allowed to be raised for the first time in appeal when it will require a fresh enquiry on a question of fact. See Chavalier I.I. Iyyappan and Another Vs. The Dharmodayam Company, . Besides, the Board of Revenue has rightly held, on the principles laid down by their Lordships, that the petitioner was debarred, on the principles of constructive res judicata, from raising the new plea. We would add further that in the relief clause in this petition, what has been claimed is enhancement of compensation "to the extent of 7 times the amount of Rs. 534/- representing the Tanka of village Bhaisakhedi". Therefore, the petitioner has really confined the first point to the Tanka payable for village Bhaisakhedi.

SECOND POINT :--

Learned counsel for the petitioner urges that the amount of Rupees 1,33,897/8/3 could not be deducted as charges for the management of land records.

The State of Madhya Bharat had taken over the management of the land records

of the Jagirs. Necessary expenditure was to be realised from the Jagirdars. For that purpose, the Madhya Bharat Jagir Land Records Management Ordinance, Samvat 2005, was promulgated. It was replaced by Jagir Land Records Management Act, No. 25 of 1949. Sections 3 and 4 enacted as follows :--

"Management of the Land Records of Jagirs and the appointment of village Patwari by the Government.--Notwithstanding anything contained in any Act, Regulation or Rule in force in any covenanting State of the United State, the preparation of the papers of Land Records of all the Jagirs within the United State, and the management of establishing an office for it and the appointment of the village Patwari shall be done by the Government and cost, which will be incurred by the Government in all this management shall in proportion to the land revenue of the Jagirs, be realised from them as arrears of Tanka.

Power of Government to determine the amount and proportion of the cost to be realised.--The power to determine the amount and the proportion of the cost to be realised under the foregoing section shall vest in the Government." In accordance with the above sections, the State Government, in the revenue department, issued a memorandum dated July 2, 1953, (Annexure VI) whereby the management charges were fixed at 10 per cent of the Nikasi of a Jagir, less the income from the forest. However, Section 1 of the Act provided that it would come into force from a date to be notified by the Government. Since no date was actually notified, the Madhya Pradesh Jagir Land Records Management (Validation) Ordinance No. 1 of 1961, was promulgated, which was subsequently replaced by Act No. 6 of 1961. It was thus that the aforesaid Act 25 of 1949 was brought into force from the date of its publication in the Madhya Bharat Gazette and all appointments made, costs realised and other things done or actions taken under that Act were validated.

Before the Board of Revenue, the petitioner contended that the Validation Ordinance and the Validation Act themselves were not valid. But that point has not been canvassed before us, except that the cost of management has been, fixed arbitrarily. The Board has held that by virtue of Sections 3 and 4 of the Act, it was not necessary for the Government to give details of the calculations in the order and if the cost of management was fixed at 10 per cent of the Nikasi of all the Jagirs, it could order realisation of the dues at 10 per cent from each Jagir. That is how the Board of Revenue interpreted the word "proportionately". We do not see any error in it. Once a percentage is fixed instead of the actual amount, it necessarily fixed the proportionate cost of management within the meaning of Section 3.

Certiorari is issued (1) for correcting errors of jurisdiction, i. e., when an inferior Court or tribunal acts without jurisdiction or in excess of it or refuses to exercise it; or (2) when the Court or tribunal acts illegally in the exercise of its undoubted jurisdiction, e. g., when it decides without giving opportunity to the parties to be heard, or when the Court or tribunal violates the principles of natural justice; or (3) when the order of the inferior tribunal is shown to suffer from an error Which

is apparent on the face of the record. The High Court in issuing a writ of certiorari acts in exercise of supervisory, and not appellate jurisdiction. The High Court does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. The Court demolishes the order which it considers to be without jurisdiction or palpably erroneous; but does not substitute its own view for those of the inferior tribunal. What is done by certiorari is that the offending order or proceeding is put out of the way as one which should be used to the detriment of any person. In the present case, the petitioner has not been able to make out any case of defect of jurisdiction, nor is there any error apparent on the face of the record.

The high prerogative writ of mandamus is issued when there is a specific legal right but no specific legal remedy for enforcing such right. Two conditions must be satisfied for issuance of a mandamus. The petitioner must show that he has a legal right to the performance of a legal duty by him against whom mandamus is sought. Secondly, there must be a legal duty incumbent on the officer or authority in his or its public character. Here, on neither of the two points has the petitioner made out a case for a mandamus to direct the State Government to enhance the petitioner's compensation.

The petition is dismissed. The petitioner shall pay Rs. 250/- as costs to the State Government to be realised from the security deposit and the deficit, if any, shall be recovered from the petitioner.