

(2007) 05 MP CK 0027
In the Madhya Pradesh High Court

Chote Lal

APPELLANT

Vs

Smt. Mulabai and Others

RESPONDENT

Date of Decision : 07-05-2007

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, 6

Citation : (2007) 3 MPHT 37

Hon'ble Judges : Shantanu Kemkar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shantanu Kemkar, J.—On 11-10-2004 the first respondent Smt. Mulabai widow of Karodilal filed an application before the second respondent u/s 5 of the Madhya Pradesh Samaj Ke Kamjor Vargaon Ke Krishi Bhumi Dharakon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 (for short "the Act") alleging therein that on 4-5-1979 the petitioner had entered into a prohibited transaction of loan with her husband Karodilal by getting sale deed executed from her husband in his favour in respect of lands bearing Khasra Nos. 454/2, 455/2, 462/1 and 462/2 admeasuring three acres. She alleged that the said sale deed was executed by her husband in favour of the petitioner in consideration of the loan with an oral agreement to re-convey the land after the re-payment of the loan by her husband. In the circumstances, she prayed for protection and relief under the Act.

2. The petitioner submitted a preliminary objection before the second respondent stating therein that the application filed by the first respondent u/s 5 of the Act is not maintainable being barred by limitation and as such deserves to be dismissed.

3. The second respondent Sub Divisional Officer, Khurai after hearing the parties on the preliminary objection about the maintainability of the application vide its order dated 12-1-2005 (Annexure P-8) held that even though the application

filed by the first respondent may not be within limitation but to ascertain whether the transaction of loan is a prohibited transaction of loan, the suo motu powers vested u/s 6 of the Act, can be exercised at any time and for that no limitation is prescribed. Accordingly, he rejected the preliminary objection of the petitioner.

4. Against the aforesaid order dated 12-1-2005 (Annexure P-8) passed by the Sub Divisional Officer the petitioner preferred an Appeal No. 1-B-1121/2005-06 before the Collector, Sagar. The Collector, Sagar dismissed the appeal vide order dated 26-10-2005 (Annexure P-9), holding it to be not maintainable. Feeling aggrieved by the order dated 12-1-2005 (Annexure P-8) and the order dated 26-10-2005 (Annexure P-9), the petitioner has filed this petition.

5. The petitioner contends that the said transaction was entered on 4-5-1979 between the petitioner and Karodilal husband of the first respondent. Late Karodilal died on 8-7-1992 and during his life time he did not challenge the transaction. After more than 12 years of death of Karodilal and after a period of more than 25 years from the date of transaction the first respondent filed the aforesaid application on 11-10-2004. In the circumstances, the application was being hopelessly time barred could not have been entertained by the Sub Divisional Officer even in exercise of his suo motu powers. The petitioner contends that though for exercising the suo motu powers no fixed period of limitation has been prescribed under the Act, however, such powers cannot be exercised after such a long lapse of time and the powers can only be exercised within a reasonable period.

6. The first respondent contends that in the preliminary object raised by the petitioner it has not been stated that there was unreasonable delay on the party of the first respondent. She further contents that the Sub Divisional Officer has rightly exercised its jurisdiction conferred upon him u/s 6 of the Act.

7. On a deep scrutiny of the provisions of the Act it is revealed that for exercising suo motu powers u/s 6 of the Act no period of limitation is prescribed. It is now well settled that when no period of limitation has been prescribed for exercising suo motu powers of revision, such powers has to be exercised within a reasonable period of time. What would be a reasonable period will depend upon the facts and circumstances of each case. See *The State of Gujarat Vs. Patil Raghav Natha and Others*, , *State of H.P. and Ors. v. Rajkumar Brijender Singh and Ors.* AIR 2004 SC 3218, *State of M.P. and Anr. v. Board of Revenue, Gwalior and Ors.* 2006(2) M.P 440 and *State of M.P. and Ors. v. Harcharan Singh* 2001(3) MP 389.

8. From the facts as stated above, it is clear that the transaction was entered into between the petitioner and Karodilal husband of the first respondent on 4-5-1979. The said Karodilal died on 8-7-1992. During his life time he did not challenge the transaction entered into between him and the petitioner. After more than 12 years of his death and after 25 years from the date of the said transaction the first respondent approached to the second respondent by filing an

application u/s 5 of the Act. In the said proceedings the second respondent decided to exercise suo motu powers provided u/s 6 of the Act. In my considered view, the delay of 25 years in exercising the suo motu powers can by no stretch of imagination be termed as a reasonable period. After a lapse of 25 years, the second respondent cannot be permitted to invoke suo motu powers. The delay being unreasonable, the orders impugned cannot be allowed to sustain.

9. Accordingly, the petition is allowed. The impugned order dated 12-1-2005 (Annexure P-8) and the order dated 26-10-2005 (Annexure P-9) are quashed. No orders as to costs.