

---

**(1960) 07 MP CK 0037**  
**In the Madhya Pradesh High Court**  
**Case No : M.P. No. 185 of 1959**

|                                           |            |
|-------------------------------------------|------------|
| Deviprasad minor, through Nanhelal Ramdin | APPELLANT  |
| Vs                                        |            |
| Board of Revenue M.P. and another         | RESPONDENT |

---

**Date of Decision :** 22-07-1960

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (1960) JLJ 779 : (1960) MPLJ 990

**Hon'ble Judges :** P.V. Dixit, C.J.; K.L. Pandey, J

**Bench :** Division Bench

**Advocate :** M.M. Sapre, for the Appellant; B.L. Seth for opponent No. 2, for the Respondent

---

## Judgement

K.L. Pandey, J.

This petition under Articles 226 and 227 of the Constitution is directed against an order of the Board of Revenue, Madhya Pradesh (Respondent No. 1) dated 8th December 1956 by which an order of the Commissioner, Jabalpur Division, placing Mahesh Prasad (Respondent No. 2) in possession of khasra Nos. 231, 232 and 263 of village Kachhpura was upheld.

The facts of the case, briefly stated, are these. Mahesh Prasad is the malik-makbuza of the disputed plots of which one Kallu was the occupancy tenant. By a registered sale deed dated 27th July 1954, Kallu sold these plots to one Kapurchand, who, in his turn, sold them to Devi Prasad (Petitioner) by a deed dated 27th September 1956. Since the Madhya Pradesh Land Revenue Code, 1954 (II of 1955) had then come into force, Mahesh Prasad challenged the second sale as one made in contravention of Section 175 of the Act and claimed possession thereof u/s 175 of that Act. While the Sub-Divisional Officer, by his order dated 18th November 1957, allowed the application, in appeal the Additional Collector, Jabalpur, took a contrary view and dismissed the application on 8th July 1958. On a further appeal, the Commissioner, Jabalpur Division, by his order dated 2nd August 1958, reversed the decision of the Additional

Collector and restored that of the Sub-Divisional Officer. By the order dated 8th December 1958, which is challenged before us, the Board of Revenue, Madhya Pradesh, dismissed the Petitioner's revision.

One of the contentions urged in support of the petition is that the order of the Board of Revenue is illegal because the procedure prescribed by Section 176 read with Section 237 of the Land Revenue Code, 1954, was not followed. Since this point was not raised before the Revenue Authorities, it cannot be permitted to be urged here for the first time.

The only other point canvassed for acceptance is that since Kapurchand or his predecessor was not declared an occupancy tenant of a malik-makbuza before the Land Revenue Code, 1954, came into force, he could not be regarded as an occupancy tenant within the meaning of Section 169(1) of the Code. By a harmonious construction, the apparent conflict between Sections 145 and 147 of the Code should be resolved in favour of the view that the words "every person" in Clause (a) of Section 147 mean every person holding land from the State. Any other view would render the special provision contained in Section 169 of the Code meaningless and otiose. In this view, the Petitioner's predecessor-in-title was not a Bhumidhari within the meaning of Section 147 of the Code. If, as claimed, he was also not an occupancy tenant u/s 169(1) of the Code, there was no provision in the Code to govern his tenure. We are, however, of the view that that is not the true position.

Section 169 (1) of the Land Revenue Code, 1954, reads as follows:

Every person, who, before the coming into force of this Code, has been declared an occupancy tenant of a malik-Makbuza, shall be called an occupancy tenant and shall have all the rights and be subject to all the liabilities conferred or imposed upon an occupancy tenant by or under this Code.

In our opinion, the section is not restricted to cases in which a sub-tenant of a malik-makbuza recorded as such, was declared an occupancy tenant under the provisions of Section 41 of the Central Provinces Tenancy Act, 1920. This would be clear from the definition of malik-makbuza occurring in the two previous Acts-

Malik-Makbuza" means any person owning one or more plots of lands separately assessed with revenue in a mahal, and who is not a malguzar, inferior proprietor or member of the proprietary body of the mahal. [Section 4 (10) of the Land Revenue Act, 1881.]

Malik-Makbuza" means any person who owns one or more plots of land separately assessed to land revenue in a mahal." [Section 2 (9) of the Land Revenue Act, 1917.]

If any of these definitions is substituted in place of the word "malik-makbuza" in Section 169(1) of the Land Revenue Code, 1954, it would appear that all that is required to attract the section is that the occupancy tenant should be tenant of a person owning plots of land separately assessed to land revenue. It is conceded

before us that the predecessor-in-title of Mahesh Prasad held the plots as a Muafidar Sarkar. Invariably, such plots were separately assessed to land revenue. Also, as pointed out by Baden Powell in his Land Systems of British India, Vol. II, page 481, holders of resumed rent-free grants were uniformly recognised as malik-makbuza. In the circumstances, the predecessors-in-title of the Petitioner must be regarded as persons holding the disputed plots from a malik-makbuza.

The further question is whether the person, who first acquired the tenancy right was or was not "declared" an occupancy tenant of the malik-makbuza who then held the disputed plots. In the arguments addressed to us, it was urged that Section 169(1) of the Land Revenue Code, 1954, contemplated only the declaration envisaged by Section 41 of the Central Provinces Tenancy Act, 1920. It is not a sound principle of construction to interpret words and expressions used in one Act with reference to their use in another Act. The meaning of words and expressions used in an Act must take their colour from the context in which they appear. The word "declared", which is a word of wide connotation, also means "authoritatively recognised". In our opinion, the expression "declared an occupancy tenant of a malik-makbuza" occurring in Section 169(1) of the Land Revenue Code, 1954, would include a person who was authoritatively recognised an occupancy tenant of a person, who held plots of land separately assessed to land revenue. In this view, the predecessor of the Petitioner was an occupancy tenant within the meaning of that provision.

In the view that we have taken of this case, there is no error apparent on the face of the record and there should be no interference with the order of the Board of Revenue, Madhya Pradesh. The petition accordingly fails and is dismissed. The Petitioner shall bear his own costs and pay out of the security deposit the costs of the Respondents. The outstanding amount of security shall be refunded. Counsel's fee Rs. 50.