
(1967) 07 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 358 of 1966

Dolumal Sunderdas

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 13-07-1967

Acts Referred:

General Clauses Act, 1897 — Section 6

Citation : AIR 1971 MP 127 : (1970) ILR (MP) 930 : (1970) JLJ 249 : (1970) 15 MPLJ 188 : (1970) MPLJ 188

Hon'ble Judges : P.V. Dixit, C.J.; R.J. Bhavé, J

Bench : Division Bench

Advocate : P.R. Padhye, for the Appellant; K.K. Dubey, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Bhavé J.

By this petition under Article 226 of the Constitution, the petitioner seeks a writ of certiorari for quashing an order dated 28th July 1965 passed by the Commissioner, Raipur, and the order of the Board of Revenue, Madhya Pradesh, passed on 16th February 1966 upholding the Commissioner's order.

The petitioner had applied for allotment of Khasra Nos. 52 and 54 in mouza Purena u/s 162 (as it stood then) of the Madhya Pradesh Land Revenue Code, 1959. The Additional Collector, Raipur, after inviting objections, allotted the land to the petitioner by order dated 17th October 1963 and directed that the Nistar Patrak be accordingly modified. In pursuance of the said order a patta was also granted to the petitioner.

The Commissioner, Raipur Division, Raipur, however, set aside the order of the Additional Collector in exercise of suo motu revisional powers on the ground that the Additional Collector had no jurisdiction to allot the land u/s 162 (1) of the M. P. Land Revenue Code, 1959. In appeal the Board of Revenue also came to the

same conclusion. The Board of Revenue was of the view that u/s 162 (1) the competent officer to allot the land was the Tahsildar and not the Collector. The petitioner's prayer for regularising the proceedings and for remitting the case to the Tahsildar was also rejected.

Shri Padhye, learned counsel for the petitioner, urged that the Commissioner as well as the Board of Revenue were in error in holding that the Tahsildar alone could allot the land and not the Collector or the Additional Collector. He referred to Section 162 (as it stood then) of the M. P. Land Revenue Code, 1959 and pointed out that the provisions of that section specifically authorised the Collector to dispose of Government land subject to the rules made by the State Government. He urged that when Rule 7 framed u/s 162 authorised certain revenue officers to dispose of certain lands, it had not the effect of taking away the jurisdiction of the Collector conferred u/s 162 of allotting Government lands and that the revenue authorities were in error in holding that the Additional Collector had no jurisdiction to allot the land. We need not decide this question, in this petition, as we are satisfied that the allotment of the land to the petitioner by the Additional Collector was without jurisdiction for other reasons. Rule 2 framed u/s 162 provides that the land belonging to the State Government should be allotted to the Co-operative Societies of landless persons or landless persons of such village in the order of priority indicated under that rule. Rule 3 provides that if after allotment of land of any particular village to the Co-operative Societies of landless persons and the landless persons, more land is available for allotment, it may be allotted to the Cooperative Societies of landless persons and the landless persons of the neighbouring villages in the order of priority mentioned in Rule 2. Rule 4 thereafter provides that if no Co-operative Society of landless persons or landless persons are forthcoming to take up any land in any village, the land may be allotted to a Co-operative Society of other persons, if any; and if no Cooperative Societies are forthcoming to take up land, the land may be disposed of by auction. Sub-rule (2) of Rule 4 further provides that if any land is not disposed of in accordance with the provisions of Sub-rule (1), the Collector may, with the approval of the Commissioner, allot such land to such person as he may deem fit. It would thus appear that if no application is made by the Co-operative Societies of landless persons or by the landless persons, the Government land can be allotted by auction. If the method of auction is not resorted to, in that case the Collector can allot the land to any person by a private treaty only with the approval of the Commissioner. Neither was any auction held in this case; nor was any previous approval of the Commissioner obtained by the Additional Collector when he allotted the land in exercise of powers of a Collector. The order of the Additional Collector is thus without jurisdiction and was rightly quashed by the revisional authorities, though on different grounds.

Shri Padhye, however, urged formality was not observed by the Additional Collector, the case can be remanded to him for taking appropriate steps on the application hied by the petitioner. This prayer cannot be granted in view of the

fact that by Act No. 25 of 1964 the M. P. Land Revenue Code, 1959, has been amended with the result that Section 162 has been omitted. There is no power left now with the Collector to allot any land and no useful purpose can be served by remitting the case to the Additional Collector. This Court in *Jatari v. Collector, Durg*, Misc. Petn. No. 7 of 1966. D/- 10-10-1966 (Madh Pra), held:

"The effect of the amendment is that the authority of the Collector to allot the land has been withdrawn. The Ordinance came into force on 23-4-1964, while the impugned order was passed on 31-7-1964. On that date, it is obvious, the Additional Collector had no authority and jurisdiction to sanction the exchange. The order is without jurisdiction and is liable to be quashed."

The same is the position here. The Collector has no jurisdiction now to pass any order u/s 162. The fact that the application for allotment was filed before the amendment of the M. P. Land Revenue Code, 1959, is of no consequence. The Amending Act No. 25 of 1964 has not preserved the applications previously filed. Shri Padhye, however, urged that by operation of Section 10 of the M. P. General Clauses Act (equivalent to Section 6 of the Central Act) the rights accrued are saved even when a statute is repealed. The petitioner, according to Shri Padhye, is thus entitled to pursue his application. This contention is not correct. Except as to transactions past and closed, a statute after its repeal is as completely obliterated as if it had never been enacted. The result is that all the proceedings pending at the time of the repeal must be rendered ineffective unless the repealing statute provides otherwise. Section 10 of the M. P. General Clauses Act, however, provides an exception that even when the repealing statute is silent, all the rights acquired and all the liabilities incurred can be worked out as if the statute was not repealed. But it must be noted that what is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere "hope or expectation of," or liberty to apply for, acquiring a right. (*Director of Public Works v. Ho Po Sang*. 1961-2 All ER 721 . 731). A distinction is drawn between a legal proceeding for enforcing a right acquired or accrued and a legal proceeding for acquisition of a right; the former is saved whereas the latter is not. The dictum of the Privy Council in *Abbot v. Minister for Lands*, 1895 AC 425 . 431, to the effect that "mere right to take advantage of an enactment without any act done by an individual towards availing himself of that right cannot properly be deemed a right accrued" was approved by their Lordships of the Supreme Court in *Sakharam @ Bapusaheb Narayan Sanas and Another Vs. Manikchand Motichand Shah and Another*, , though that dictum was not applied in the circumstances of that case. We are, therefore, of the view that the mere right existing at the date of a repealing statute to take advantage of provisions of the statute is not a right accrued and that the Collector lost all right of granting applications pending before him on the date of the repeal of Section 162 of the M. P. Land Revenue Code.

For the abovesaid reasons, we are of the view that the petition is without substance. It is accordingly dismissed. The petitioner shall pay costs of the

respondents 1 to 3. Hearing fee Rs. 100. The balance of the security deposit, if any after deduction of costs, shall be refunded to the petitioner.