

(2011) 06 MP CK 0019

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 5953 and 5954 of 2000

Gajraj Singh (Dead) through L.Rs. Mishrilal and Others,
Bhawut Singh and Others

APPELLANT

Vs

Jagdish and Others, Smt. Asiyabai and Others
 Bhawut
Singh and Others Vs Smt. Asiyabai and Others

RESPONDENT

Date of Decision : 30-06-2011

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 2, 5, 8

Citation : (2011) ILR (MP) 2134 : (2011) 4 MPHT 277

Hon'ble Judges : Ravi Shankar Jha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Jha, J.—The Petitioners (out of which the Petitioner Giriraj Singh has died and has now been represented by his legal representatives) have filed the above writ petitions being aggrieved by orders dated 14-8-2000 passed by the Collector, Raisen in Appeal Nos. 26/Appeal/Collector-96-97, 24/Appeal/Collector-96-97 25/Appeal/Collector-96-97 and 1/Appeal/Collector-96-97 respectively, filed by the Respondents u/s 8 of The 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 (hereinafter referred to as the "Adhiniyam") whereby the appeals have been allowed and the orders passed by the Sub Divisional Officer, Gauharganj, District Raisen in four cases have been set aside.

2. As all the aforesaid petitions have been filed on similar facts and grounds involving similar issues and relief, therefore, they are heard and decided by this common order with the consent of the learned Counsel appearing for the parties.

3. The brief facts of each case which are necessary for adjudication of the

aforesaid writ petitions are as follows:

W.P. No. 5954/2000:

The Petitioners who are all real brothers and are joint holders of land comprising of Khasra Nos. 207 and 215 in village Chaplaser, Tahsil Gauharganj, District Raisen, filed an application before the Sub Divisional Officer, Gauharganj, under the provisions of the Adhiniyam on 4-2-1994 to the effect that they had in fact entered into a loan transaction with one Juggilal for a sum of Rs. 16,000/-and in lieu thereof had executed a sale deed on 20-5-1981 in respect of 8 acres of land out of Khasra No. 207/1. It was alleged that this land was subsequently sold by said Juggilal to the Respondents on 19-5-1989. It was alleged that the Petitioners had subsequently repaid the loan to Juggilal in spite of which the said land was not returned to them and, therefore, they were compelled to file an application under the provisions of Section 5 of the Adhiniyam.

W.P. No. 5955/2000:

In this case, the same Petitioners filed an application before the Sub Divisional Officer, Gauharganj, under the provisions of the Adhiniyam on the same date i.e. 4-2-1994 to the effect that they had in fact entered into a loan transaction with one Bhawani Prasad for a sum of Rs. 2,000/-and in lieu thereof had executed a sale deed on 18-7-1974 in respect of 4.25 acres of land out of Khasra No. 207/2. It was alleged that this land was subsequently sold by said Bhawani Prasad to Abdul Habib on 14-5-1982. It was alleged that the Petitioners had subsequently repaid the loan to Bhawani Prasad in spite of which the said land was not returned to them and, therefore, they were compelled to file an application under the provisions of Section 5 of the Adhiniyam.

W.P. No. 6513/2000:

In this case, the same Petitioners filed an application before the Sub Divisional Officer, Gauharganj, under the provisions of the Adhiniyam on the same date i.e. 4-2-1994 to the effect that they had in fact entered into a loan transaction with one Ramdayal for a sum of Rs. 2,000/-and in lieu thereof had executed a sale deed on 18-7-1974 in respect of 4.25 acres of land out of Khasra No. 207. It was alleged that this land was subsequently sold by said Ramdayal to Abdul Rafiq on 14-5-1982. It was alleged that the Petitioners had subsequently repaid the loan to Ramdayal in spite of which the said land was not returned to them and, therefore, they were compelled to file an application under the provisions of Section 5 of the Adhiniyam.

W.P. No. 5953/2000:

In this case also, the same Petitioners filed an application before the Sub Divisional Officer, Gauharganj, under the provisions of the Adhiniyam on the same date i.e. 4-2-1994 to the effect that they had in fact entered into a loan transaction with one Smt. Asiya Bai for a sum of Rs. 14,000/-and in lieu thereof had executed a sale deed on 12-3-1976 in respect of 8.2 acres of land out of

Khasra No. 215. It was alleged that the Petitioners had subsequently repaid the loan to Smt. Asiya Bai in spite of which the said land was not returned to them and, therefore, they were compelled to file an application under the provisions of Section 5 of the Adhiniyam.

4. The various Respondents on being noticed, filed their reply and thereafter necessary evidence was adduced by the parties. The Sub Divisional Officer, Gauharganj, by order dated 26-3-1997 in W.P. Nos. 5954/2000 5955/2000, 6513/2000 and the order dated 23-7-1996 in W.P. No. 5953/2000 allowed the applications filed by the Petitioners and after setting aside the sale deeds directed that the Petitioners be handed over possession of the lands in question. The Respondents in the above petitions being aggrieved filed appeals against the order passed by the Sub Divisional Officer u/s 8 of the Adhiniyam before the Collector, Raisen, which have been allowed by similar orders passed in different appeals on the same day i.e. dated 14-8-2000. Hence these petitions before this Court.

5. It is submitted by the learned Counsel for the Petitioners that the Petitioners were joint holders of agricultural land bearing Khasra No. 207, area 10.732 hectares (26.52 acres) and Khasra No. 215, area 3.22 hectares (8.21 acres) i.e. total being 14.954 hectares (34.73 acres) situated at village Chaplaser, Tahsil Gauhargaj, District Raisen. It is stated that the Petitioners took a loan from the Respondents Juggilal, Ramdayal, Bhawani Prasad and Asiya Bai in W.P. Nos. 5954/2000, 5955/2000, 6513/2000 and 5953/2000 respectively and as a security thereof they executed a sale deed in each case in their favour which was in fact not to be acted upon. It is alleged that on repayment of loan when the land was not re-conveyed to the Petitioners, they filed applications before the Sub Divisional Officer, Gauharganj, under the provisions of the Adhiniyam which were rightly allowed after recording a finding to the effect that the transactions in question were prohibited transactions of loan as the Petitioners were the holders of agricultural land in the weaker section inasmuch as each of them held less than 8 hectares of un-irrigated land as prescribed by Section 2(c) of the Adhiniyam and that the transactions were loan transactions in which agricultural lands of the Petitioners were mortgaged and loans were existing as on the date of coming into force of the Adhiniyam.

6. It is submitted that by the impugned order dated 14-8-2000 the Collector has failed to take into account the aforesaid findings recorded by the Sub Divisional Officer or the averments made by the Petitioners and, therefore, he has committed manifest irregularity while deciding the appeal. It is submitted that the impugned orders passed by the Collector being perverse deserve to be set aside.

7. The learned Counsel appearing for the Respondents, per contra, submit that the Collector has strictly looked into the matter in accordance with the provisions of the Adhiniyam and having found that the Petitioners were not holders of agricultural land belonging to the weaker section, that the Respondents were not

money lenders, that the sale deeds executed by the Petitioners were absolute which were duly acted upon by the parties and that the Petitioners had filed the applications under the Adhiniyam in the year 1994, i.e., several years after execution of the sale deeds, has rightly set aside the orders passed by the Sub Divisional Officer and dismissed the applications filed by the Petitioners. It is submitted that the Collector having appreciated the facts on record in accordance with law has passed the impugned orders which do not call for any interference of this Court.

8. I have heard the learned Counsel for the parties and gone through the record. From a perusal of the provisions of the Adhiniyam it is clear that the holder of agricultural land in the weaker section has been defined u/s 2(c) thereof to mean a person who holds land used for purposes of agriculture not exceeding eight hectares of un-irrigated land or four hectares of irrigated land. In the present petitions, the Petitioners admittedly are joint owners and holders of 14.054 hectares (34.73 acres) of land. In their applications before the Sub Divisional Officer or the petitions before this Court they have not specified or clearly stated as to whether the alleged loan transactions were entered into by any one of the Petitioners in his individual capacity or as to whether the alleged loan was taken by all of them jointly or as to whether there was any partition or family arrangement between them dividing the land amongst them. In the absence of any such pleading or statement of the Petitioners on record it is clear and in fact undisputed that each one of them was joint holder and owner of the entire land i.e. 14.054 hectares and, therefore, they do not fall within the definition of holder of agricultural land in the weaker section as specified in Section 2(c) of the Adhiniyam.

9. It is also clear from a perusal of Section 2(f) of the Adhiniyam that a prohibited transaction of loan is one where there is sale of land with or without delivery of possession with a stipulation in the sale-deed to the effect that it is not to be acted upon or there is a clause to resell it on repayment of the loan or there is a distinct and clear oral understanding that the sale is not to be acted upon. In the aforesaid petitions before this Court from a perusal of the sale deeds which have been filed by the Respondents as well as the finding recorded by the Collector on the basis of the evidence on record it is clear that there is no stipulation in the various sale deeds to resell the lands on repayment or any stipulation therein that they are not to be acted upon. Furthermore, there is nothing on record as held by the Collector, to indicate that there was any oral understanding between the parties to the effect that the sales would not be acted upon if the loan was repaid.

10. Quite apart from the above, from the applications filed by the Petitioners and the documents on record it is also not clear as to whether the loan, if any, was taken by all the Petitioners jointly or by one of them in their individual capacity or as to whether the liability to repay the loan was of the Petitioners jointly or of any one of the Petitioners in his individual capacity. Furthermore, there is nothing

on record to indicate as to the duration within which the loan was to be repaid by the Petitioners. The Petitioners have also not stated anywhere in their applications or on record as to the amount repaid by them to the Respondents from time to time and the exact date or dates when the amount was repaid to the Respondents and that thereafter the Petitioners asked them for return of the land or served any notice to that effect upon the Respondents.

11. From a perusal of the record, it is also undisputed that the possession of the lands in question was also delivered by the Petitioners to the Respondents immediately on execution of the sale deeds and that the entire consideration amount was also paid before the concerned Registrar. It is pertinent to note that the Petitioners had in fact sold 8 acres of land out of the aforesaid Khasra No. 207/1 to Juggilal on 20-5-1981 (in W.P. No. 5954/2000), 4.25 acres of land out of Khasra No. 207 to Ramdayal on 18-7-1974 (in W.P. No. 5955/2000), 4.25 acres of land out of Khasra No. 207 to Bhawani Prasad on 18-7-1974 (in W.P. No. 6513/2000) and 8.21 acres of land out of Khasra No. 215 to Smt. Asia Bai (in W.P. No. 5953/2000) and handed over possession of the lands to them on the date of execution of the sale deeds and did not raise any objection in this respect even on coming into force of the Adhinyam in the year 1976 but waited till 1994 to file applications against all these transactions under the Adhinyam on the same date i.e. 4-2-1994 which fact in itself casts a deep shadow on the allegations and assertions made by the Petitioners. While the delay and laches on the part of the Petitioners has rightly been held to be fatal to their claim by the Collector, the fact that the land was sold to different persons and not to one individual also indicate that the parties were not involved in any transaction of money lending. Apart from the above, the Petitioners have also not established that the sale deeds executed by them were for an unrealistic sale consideration and the value of the lands on the concerned dates was much more than the value indicated in the sale deeds.

12. In the absence of any such averments or assertions by the Petitioners, I am of the considered opinion that the finding recorded by the Collector to the effect that the transactions in question were not prohibited transactions of loan and in fact were absolute sale is based on cogent evidence on record and cannot be held to be manifestly illegal or perverse.

13. In view of the aforesaid facts and circumstances of the case, I do not find any ground or reason to interfere in the identical impugned orders passed in the separate appeals of the Respondents by the Collector, Raisen dated 14-8-2000 in the aforesaid four petitions as they are based on proper analysis and assimilation of the oral and documentary evidence on record and is in consonance with the provisions of the Adhinyam. The petitions filed by the Petitioners being merit less are accordingly dismissed. The impugned orders passed by the Collector, Raisen, dated 14-8-2000 in the aforesaid four petitions are accordingly upheld.

14. In the facts and circumstances of the case there shall be no order as to costs. A copy of this order be placed in the records of W.P. Nos. 5955/2000,

6513/2000 and 5953/2000.