

(2022) 06 MP CK 0038
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 200 Of 2021

Garvit Khandelwal

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 15-06-2022

Acts Referred:

Constitution Of India, 1950 — Article 243Q
Madhya Pradesh Land Revenue Code, 1959 — Section 2(k), 2(XXIX), 11, 44(2), 58, 59, 59B, 68, 69, 72, 80, 108, 109, 110, 113, 114, 116, 172, 245
Madhya Pradesh Municipalities Act, 1961 — Section 5, 5A, 7, 8
Madhya Pradesh Municipal Corporation Act, 1956 — Section 2(31), 7, 135
Madhya Pradesh Panchayat Raj Avarm Gram Swaraj Adhiniyam, 1993 — Section 3, 10(1), 10(2), 10(3), 74

Citation : (2022) 06 MP CK 0038

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : Girish Kumar Purwar, Vaibhav Bhagwat

Final Decision : Allowed

Judgement

Vivek Rusia, J

The appellant has filed this Writ Appeal being aggrieved by the order dated 05.06.2020 whereby Writ Petition No.2191/2020 has been dismissed in limine by the Writ Court without notice to the respondents.

The facts of the case in short are as under:

1. The appellant submitted an application before the Tehsildar on 18.05.2017 seeking correction of the land record that land use of the remaining land area of 0.134 hectares of survey No.219/2 be recorded for residential purposes. According to the appellant her grandmother Smt.Kalawati Devi had sold her agricultural land (total area of 0.125 hectares) to eight persons thereafter she had also sold part of the land for other than agriculture purposes to five persons (a total area of 0.0454 hectares). Although along with the aforesaid application,

no sale deeds were annexed, and no other details were disclosed in it. The aforesaid application has been filed by the appellant through his power of attorney holder, the contents of the application are very vague in nature, even then the Tehsildar has entertained the application and obtained a report from Patwari but dismissed the application that the land being a diverted land to other than agriculture purpose, revenue authority under M.P. Land Revenue Code, 1959 is Tehsildar does not have jurisdiction to grant any relief.

2. Being aggrieved by the aforesaid order, the petitioner preferred an appeal before the Sub Divisional Officer Susner- Nalkheda, Agar Malwa, which has also been dismissed vide order dated 30.05.2018. Thereafter, he approached the Court of Additional Commissioner by way of an application under Section 44(2) of M.P. Land Revenue Code, 1959 that too has been dismissed vide order dated 14.11.2018. Being aggrieved by the order of the Additional Commissioner, a review petition was filed that has been dismissed vide order dated 08.01.2019 and thereafter, a writ petition has been filed.

3. Vide order dated 05.06.2020, the Writ Court has dismissed the Writ Petition solely on the ground that the land in question had already been diverted, therefore revenue authorities lack jurisdiction to correct the revenue entries in respect of diverted land, hence, this writ appeal before this Court.

4. The respondents were called upon to file a reply to clarify the legal position in this matter. The respondents have filed a brief reply by submitting that the appellant filed the application before the Tehsildar without the necessary documents. It is further submitted that the actual owner of the land Kalawati Devi, never applied for correction of record after selling the agricultural land to 13 different people. Jurisdiction is vested with Sub Divisional Officer for correction of land records before whom no application has been filed, hence no interference id call for writ appeal is liable to be dismissed.

We have heard learned counsel for the parties.

5. All the Revenue Authorities have dismissed the application inter -alia on the ground that the land in question is a diverted land and no correction can be made in the revenue records by them under the provisions of M.P. Land Revenue Code, 1959 hence, the issue which requires our consideration is whether the provisions of M.P. Land Revenue Code, 1959 apply to those lands which are being used for other than agricultural purposes or diverted land?

6. The M.P. Land Revenue Code, 1959 consolidate and amend the law relating to land revenue, the powers of Revenue Officers, rights and liabilities of holders of land from the State Government, agricultural tenures and other matters relating to land and the liabilities incidental thereto in Madhya Pradesh. Section 2 (k) defines "land" means a portion of the earth's surface whether or not underwater, it shall be deemed to include all things attached to or permanently fastened to anything attached to such land. The buildings standing on the land are fictionally made to mean land by this clause. The "landless person" defines under 2(l) and

according to which person who is a bonafide agriculturist and who whether individually or jointly with other members of his family hold no lands or land less than the area which may be prescribed on this behalf. As per the definition of 2 (m) " land records" means the record maintained under the provisions of this Code.

7. Chapter III deals with the appointment of Revenue Officers and their classes and powers. Chapter VI deals with land and land revenue. As per Section 58, all land, to whatever purpose applied and wherever situate, is liable to the payment of revenue to the State Government, except such land as has been wholly exempted from such liability by the State Government. As per the proviso, Abadi land is subject to the provisions of Section 245, and the land which is situated in non-urban areas and used for agricultural purposes is liable to the payment of revenue to the Gram Sabha. Section 59 provides that the assessment of land revenue on any land shall be made with reference to the use of land and the use of land is described from (a) to (e). The land use for other than agricultural purposes is also subjected to the payment of land revenue. Section 59-B provided the reassessment of revenue after coming into force of the M.P. Land Revenue Code, 1959. The land assessed earlier for any purposes was subsequently diverted for use to another purpose and is also liable to be altered and assessed accordingly. Therefore, it is clear from the aforesaid definition that land whether agricultural or used for other than purposes is subjected to the payment of the land revenue to the State. It is also clear that provisions of the M.P. Land Revenue Code, 1959 apply to all categories of the lands situated within the State of M.P.

8. That section 68 provides the formation of survey numbers and villages and under which the settlement officer after measuring the land may divide such lands into survey numbers and group them into villages. Section 69 provides separate demarcation of land diverted or specially assigned. The land which is diverted under section 172 to any non-agricultural purposes or any portion of land where the assessment is altered, the Settlement Officer may make such portion into a separate survey number or sub-diversion of a survey number. Section 72 defines the determination of Abadi of the village. Section 80 makes it clear that the Settlement Officer shall have the power to make a fair assessment on all lands whatsoever to which the settlement extends.

9. Section 108 provides that there shall be a record-of-rights be prepared and maintained for every village and such record shall include the particulars of the name of Bhumiswamis, name of occupancy tenants, Government lessees, nature and extent the of the respective interest of such persons, the rent or land revenue if any payable or such other particulars. Section 108 of MPLRC is reproduced below:-

108. Record of rights.-3[(1)1 A record-of-rights shall in accordance with rules made in this behalf be prepared and maintained for every village and such record shall include following particulars : —

- (a) the names of all bhumiswamis together with survey numbers or plot numbers held by them and their area, irrigated or unirrigated;
- (b) the names of all occupancy tenants and Government lessees together with survey numbers or plot numbers held by them and their area, irrigated or unirrigated;
- (c) the nature and extent of the respective interests of such persons and the conditions or liabilities, if any, attaching thereto;
- (d) the rent or land revenue, if any, payable by such persons; and
- (e) such other particulars as may be prescribed.

[(2) The record-of-rights mentioned in sub-section (1) shall be prepared during a [revenue survey] or whenever the State Government may, by notification, so direct.]

10. Section 110 gives the right to Patwari to make entry into the register prepared under Section 109. Section 113 gives the right to Sub Divisional Officer to correct the clerical error or any other errors in the records of rights. Section 114 deals with the land records in addition to the map and Bhoo Adhikar Pustikas and such record shall be prepared for each village in the nature of Khasra or field book, therefore, there shall be a land record for each village and Tehsildar is competent authority to make entries in it, irrespective to the fact that whether the land is in use as agricultural or for other than agricultural purposes. The disputes regarding entries in Khasra or any other land records are liable to be examined under Section 116 by the Tehsildar.

11. In view of the above the land situated in the village area recorded in the Land Records or Record of Rights, such entries are liable to be entered or corrected as the case may be by the revenue authorities, irrespective of the fact that such the land is agricultural land or non-agricultural land.

12. The land revenue is liable to be charged on land situated in the village area as held above. The issue which requires further consideration is whether the notified village after the inclusion in the limits Municipalities or Municipal Corporation ceases its status of a village and if yes then the land which was situated in the said village is still subjected to the imposition of land revenue and for such land, Khasra Panchshala, Form-II and other Land records are liable to be maintained the under the M.P. Land Revenue Code, 1959 ?

13. Section 2(XXIX) defines the 'village' according to which village means a village specified by the Governor by public notification to be a village for the purpose of Madhya Pradesh Panchayat Raj Avarm Gram Swaraj Adhiniyam, 1993 and also includes the group of villages so specified. By way of explanation, the term 'village' includes revenue village and the forest village. Section 3 of Adhiniyam, provides issuance of notification by the Governor specifying a village or group of villages to be the village for the purpose of this Adhiniyam . Sub

Section (1) of Section 10 provides that there shall be a Gram Panchayat for every village specified as a village for the purposes of this Adhiniyam, under Section 3 and as per Sub Section (2) of Section 10 for every block there shall be a Janpad Panchayat and as per sub-section (3) of Section 10 (3) there shall be a Zila Panchayat for every district Under section 11 every Gram Panchayat, Janpad Panchayat and Zila Panchayat shall be a body corporate by the name specified and shall have power to acquire, hold or transfer property movable or immovable under the Act. Section 74 of the Adhiniyam, gives power to every Panchayat to levy a cess other than the land revenue payable under the MPLRC, 1959, therefore, there shall be a Gram Panchayat in every village under Section 10.

14. Section 5 of the M.P. Municipalities Act, 1961 provides the constitution of Municipal Councils and Nagar Panchayats and according to which a Municipal Council for a smaller urban area; and a Nagar Panchayat for a transitional area, that is to say, an area in transition from a rural area to an urban area. The establishment of the Municipal Council is provided under Article 243 -Q of the Constitution of India Section 5-A of the Act of 1961 gives power to the Governor to include or exclude certain areas of the village into the Municipalities area. The Governor may, by notification in the Gazette, declare the intention to include within or exclude from the limits of a municipal area, any specified area. Section 7 of the Act of 1961 provides the effect of establishing Municipality for a local area which ceases to be a Town area or Panchayat and according to which when any local area ceases to be a Town Area under the Bhopal State Town Area Act, 1954(XIV of 1954), or a Panchayat under the Panchayat Law and immediately following such cessation a Municipality is established under Section 5 for such area and as a consequence of which the Town Area Committee or the Panchayat, as the case may be, shall cease to exist and all the Panchayat fund and the property including arrears of rates, taxes, rent and fee belonging to the Panchayat, all rights and power shall vest in the council. Section 8 of the Act of 1961 provides the effect of including a local area in a Municipality. Once the Local area has been included in a Municipality, all notifications, rules, bye-laws, orders, and directions, issued under the Act of 1961 shall apply to such local area. Once the area which has been excluded from the village or the entire village included in the municipalities shall cease to be a village and shall be part of the municipalities.

15. Likewise, section 2 (31) of the Municipal Corporation Act, 1956 also defines 'the land' which includes benefits arising out of land, houses and things attached to the earth. Section 7 of the Act of 1956 provides the constitution of Municipal Corporation and there shall be constituted a Municipal Corporation for a larger Urban area in accordance with the provisions of this Act. Section 135 of the Act of 1956 provides the imposition of Property Tax by the Municipal Corporation. Land which has been included in the Municipalities or the Municipal Corporation as the case may be is subjected to the imposition of taxes as it no more remains the land of the village. There are no provisions for charging land revenue on such land under the Act of 1956 or the Act of 1961, as provided in Adhiniyam, 1993.

The land within the village area forming the Gram Panchayat is liable to be entered in the land record maintained by the Revenue Authorities under the M.P. Land Revenue Code, 1959 . Once the village has been included into the Municipalities or the Municipal Corporation as the case may be, it ceases the status of the village, hence, there would be no need to maintain the Khasra Panchshala or other land Records by the Revenue Authorities for such land. All these lands are subjected to the property tax and other tax payable under the Municipalities Act as well as Municipal Corporation Act, therefore, the Government is directed to examine as to why all revenue authorities are maintaining the land record of those land which are no more in the village and are included into municipalities or Municipal Corporation. A copy of this order be sent to the Advocate General of State of M.P., Principal Secretary of the Department of Revenue for taking necessary action.

16. Till than so far as the land situated in other than village area, but the land records are being maintained by the Revenue Authorities of the respective areas, such records are also liable to be corrected or updated by the Revenue authorities under M.P. Land Revenue Code, 1959. In some urban areas where land is within the limits of Local Bodies like Municipal Corporation or Municipal Councils / Nagar Parishad still, the land records are being maintained by the revenue authorities despite that no agricultural activities are going on there hence such records are liable to be corrected or updated despite the nature of the land.

17. Apart from the above legal position the appellant has nowhere stated that he is the only legal successor of late Kalawati Devi, who had sold the land to various persons. The petitioner has not filed any document to show that his name has been mutated in the revenue records as an exclusive owner of survey No.219/2 area 0.134 hectares. Therefore, the matter is remitted back to the authorities to examine and decide the application filed by the petitioner irrespective of the fact that the land is diverted land.

18. Accordingly Writ Appeal is allowed, the order dated 05.06.2020 passed in Writ Petition No.2191/2020 is set-aside, and resultantly all the impugned orders therein are also set aside.

No order as to cost.