

(2000) 02 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 720/91

Ghanshyam Singh and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 08-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Bharat Abolition of Jagirs Act, 1951 — Section 29

Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 — Section 11, 12

Citation : (2000) 1 MPHT 684

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Advocate : Shekhar Bhargava and Vivek Patwa, for the Appellant; Amit Agarwal, for the Respondent

Final Decision : Allowed

Judgement

N.K. Jain, J.—By this petition (though filed under Article 226 of the Constitution, but in fact this is petition under Article 227 of the Constitution), the petitioners seek quashment of the order Annexure D, passed in Review by respondent No. 3, the Sub Divisional Officer Jaora and all consequential proceedings taken thereafter.

2. The petitioners are the joint tenure holders of certain agricultural lands situated at village Rignod, Tehsil Jaora, District Ratlam. Proceedings under M.P. Ceiling on Agricultural Holdings Act, 1960 were initiated against petitioner No. 1 in 1970 and final order was passed on 16-2-89 (vide Annexure A) by the S.D.O. Jaora in Case No. 193-A/90-B-3/74-75. Certain lands were declared as surplus and vested in the State under Sections 11 & 12 of the Act. However, the S.D.O. on its own motion and after seeking permission of the Collector on 20-3-81 (vide Annexure C) undertook review of the order Annexure A. Final order of review was passed on 23-3-91 vide Annexure D, whereby the original order Annexure A was reviewed and certain modifications were made in that order. It is this order

Annexure D, which is sought to be impugned in this petition.

3. The main grievance of the petitioners is that the S.D.O. acted without jurisdiction in reviewing its own order inasmuch as the Act of 1960 did not confer any such power of review on any authority acting under the Act. It was further submitted that the order of review was passed in undue haste and without giving any opportunity of hearing to the petitioners; while the petitioners No. 2 & 3 were not at all noticed. Service on petitioner No. 1 was also not valid.

4. Nothing substantial could be argued by Shri Amit Agarwal in oppugnation of the averments made on behalf of the petitioners. In fact no ground existed in favour of the respondent-State to oppose this petition and probably that is why no written reply has been filed on behalf of the respondents in this case.

5. The point projected in this petition stands concluded by several decisions of the Supreme Court as also of this Court. In Patel Chunibhai Dajibhai etc. Vs. Narayanrao Khanderao Jambekar and Another, , the apex Court while dealing with the provisions of Bombay Tenancy and Agricultural Lands Act has held :

"In absence of any power of review, the Collector could not subsequently reconsider its previous decision...."

Similar view was taken by the apex Court in Harbhajan Singh Vs. Karam Singh and Others, and it was held that in absence of any express provision, there is no power of review.

6. Full Bench of this Court in Himat Singh v. Board of Revenue and Anr.1966 J LJ 119, while dealing with the provisions of Abolition of Jagirs Act, 1951 clearly held that the Board of Revenue has no power to review its own decision giving in appeal u/s 29 of the Act. This Court, again, in Chitra Rekha Bai alias Usha Devi (Smt.) v. Board of Revenue 1995 Rev Nir 150, while dealing with the provisions of M.P. Ceiling on Agricultural Holdings Act, 1960 has clearly held :

"It is settled proposition of law that power to review is a creature of statute and if express power is not conferred then this power cannot be exercised."

7. Admittedly and as pointed out in Chitra Rekha Bai (supra), there existed no provisions under the M.P. Act, 1960 conferring power of review on any revenue authority. There is also no provision in the Act providing for taking recourse to the provisions of M.P.L.R. Code, 1959 while dealing with the proceedings under the Act. The S.D.O. Jaora as also Collector Ratlam clearly acted illegally and without any jurisdiction in taking suo motu review of granting permission for review of the order passed earlier by the S.D.O. under Sections 11 & 12 of the M.P. Act, 1960. The order Annexure D and the entire proceedings taken in consequence thereof, therefore, deserve to be quashed.

8. Accordingly, I allow the petition and quash the aforesaid order and proceedings. No order is, however, made as to the costs of this petition. The security amount, if any, deposited by the petitioners be refunded to them.