
(2007) 09 MP CK 0009

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3919 of 2002 and W.P. No. 952 of 2003

Goverdhan Guijar and Ramavtar

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 25-09-2007

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 234, 235, 237

Citation : (2007) 2 MPJR 261

Hon'ble Judges : A.K. Patnaik, C.J.; S.S. Jha, J.; A.M. Sapre, J

Bench : Full Bench

Advocate : Mukesh Pandey, for the Appellant; Kumaresh Pathak, Dy. Advocate General, for the Respondent

Judgement

A.K. Patnaik, C.J.

A learned Single Judge of this court having found divergence of opinion expressed by the two Division Benches in Amar Singh V. Raghuvir Singh and others, (1980 RN 6) and in Daya Ram and Another Vs. State of M.P. and Others, , on the interpretation of sections 234 and 237 of the M.P. Land Revenue Code (herein after referred to as "the Code"), has, by a common order passed in these two writ petitions, referred the matter to a larger bench to resolve the conflict of opinion in the two decisions.

We have heard Mr. Mukesh Pandey, learned counsel for the petitioner in W.P. No. 952/03 and Mr. Kumaresh Pathak, learned Deputy Advocate General, for the respondents and we find that there is in fact no conflict in the decisions of the two Division Benches in Amar Singh V Raghuvir Singh and others and Daya Ram and another v. State of M.P. and others (supra).

Sections 234 and 237 of the M.P. Land Revenue Code, 1959, which were interpreted by the Division Benches in the two decisions are quoted herein below:

234. Preparation of Nistar Patrak - (1) The Sub Divisional Officer shall, consistently with the provisions of this Code and the rules made thereunder,

prepare a Nistar Patrak embodying a scheme of management of all unoccupied land in a village and all matters incidental thereto and more particularly matters specified in section 235.

(2) A draft of the Nistar Patrak shall be published in the village and after ascertaining the wishes of the residents of the village in the prescribed manner, it shall be finalized by the [Sub Divisional Officer].

(3) On a request being made by the Gram Sabha, or where there is no Gram Sabha, on the application of not less than one-fourth of the adult residents of a village, or on his motion the Sub-Divisional Officer may, at any time, modify any entry in the Nistar Patrak after such enquiry as he deems fit.

Collector to set apart land for exercise of Nistar rights. - (1) Subject to the rules made under this Code, the Collector may set apart unoccupied land for the following purposes, namely,-

- (a) for timber or fuel reserve;
- (b) for pasture, grass bir or fodder reserve;
- (c) for burial ground and cremation ground;
- (d) for gaathan;
- (e) for encamping ground;
- (f) for threshing floor;
- (g) for bazaar;
- (h) for skinning ground;
- (i) for manure pits;
- (j) for public purposes such as schools, play grounds, parks, road, lanes, drains and the like; and
- (k) for any other purposes which may be prescribed for the exercise of right of Nistar.

(2) Lands set apart specially for any purpose mentioned in sub-section (1), shall not otherwise be diverted without the sanction of the Collector.

(3) Subject to the rules made under this Code, the Collector may divert such unoccupied land, which is set apart for the purposes mentioned in clause (b) of sub-section (1) Subject to secure minimum two percent of the agriculture land of that village for the said purposes in to abadi or for agricultural purposes.

On perusal of decision of the Division Bench in Amar Singh V. Raghuvir Singh and others (supra) we find that the Collector exercising the powers u/s 237(2) of the Code had permitted the petitioner in that case to permit him to use land in Khasra nos.182, 198 and 199 recorded as "Charnoi" for cultivation purposes. A

contention was raised before the High Court by the respondent that the Collector did not have the power or jurisdiction to change the classification of the land from non-agricultural purposes to agricultural purposes under sub section (2) of section 237 of the Code and that the power to allow such change of classification vested in the Sub Divisional Officer under sub section (3) of section 234 of the Code. The Division Bench held that under sub section (2) of section 237 the Collector could divert land for purposes mentioned in sub section (1) inter se but did not have the power to divert unoccupied land for non-agricultural purposes for agricultural purposes. The Division Bench also took note of the fact that by the Amendment Act No. 24 of 1961, the legislature intended that instead of Collector, the Sub Divisional Officer must exercise powers to permit modification of any entry in the "Nistar Patrak" and accordingly had vested such powers on the Sub Divisional Officer in sub section (3) of section 234 of the Code and held that this Amending Act brought about a material change in the powers of the Collector bestowing the powers on the Sub Divisional Officer instead of the Collector to change the classification of land.

After the judgment was delivered by the Division Bench in *Amar Singh V. Raghuvir Singh and others* (supra), sub-section (3) was introduced in section 237 of the Code by M.P. Act no. 1 of 1998 with effect from 5.1.1998 and in this sub section (3) of section 237 it was provided that subject to the rules made under the Code, the Collector may divert such unoccupied land, which is set apart for the purposes mentioned in clause (b) of sub section (1) to secure a minimum of 5% of the agricultural land of the village for abadi or agricultural purposes. Subsequently, by M.P. Act no.23 of 2000, brought into force with effect from 16.8.2000 the minimum 5% of the agricultural land of the village was reduced to 2% of the agricultural land of the village.

This Amendment Act No. 23 of 2000 was challenged before this court in *Daya Ram and another V State of M.P. and others* (supra) and Mr. Imtiaz Hussain appearing for the petitioners in the writ petitions contended that when sub section (3) of section 234 of the Code has not been amended, sub section (3) of section 237 of the Code cannot be implemented and in support of his contention Mr. Hussain relied upon the Division Bench decision in *Amar Singh V Raghuvir Singh and others* (supra). While repelling this contention, the Division Bench held in *Daya Ram and another V State of M.P. and others* (supra) that sub section (3) of section 234 and sub section (3) of section 237 operate in two separate spheres. The Division Bench pointed out that while sub section. (3) of section 234 deals with preparation of "Nistar Patrak", sub section (3) of section 237 provides for diversion of certain land. The Division Bench also look note of the fact that the decision of the Division Bench in *Amar Singh V. Raghuvir Singh and others* (supra) was delivered before sub section (3) of section 237 was introduced by way of amendment and that section 237 now authorised the Collector to divert unoccupied land which is set apart for the purpose mentioned in clause (b) of sub section (1) for abadi or agricultural purposes to secure minimum of 2% of the agricultural land of that village.

It will be clear from the analysis of the two Division Bench decisions in Amar Singh V Raghuvir Singh and others (supra) and Daya Ram and another V State of M.P. and others (supra) that when the Division Bench rendered the decision in Amar Singh V Raghuvir Singh and others (supra), sub section (3) of section 237 authorising the Collector to divert unoccupied land for agricultural purposes was not in existence and hence the Division Bench held, in that case, that the power of the Collector to divert land in sub section (2) of section 237 was only for the purposes mentioned in sub section (1) of section 237 inter se and that the power to permit change of classification from "Charnoi" land used for non-agricultural purposes to cultivable land used for agricultural purposes was vested in the Sub Divisional Officer under sub section (3) of section 234 of the Amendment Act no.24 of 1961 but by the time, the Division Bench rendered the judgment in Daya Ram and another V. State of M.P. and others (supra), sub section (3) had been introduced in section 237 of the Code with effect from 5.1.1998 by M.P. Act No. 1 of 1998 empowering the Collector to divert unoccupied land set apart for "Charnoi" purposes as mentioned in clause (b) of sub section (1) of section 237 to abadi or agricultural purposes subject to the minimum percentage of agricultural land mentioned therein and subject to rules made under the Code and for this reason the Division Bench held in that case that sub-section (3) of section 234, which deals with preparation of "Nistar Patrak" by the Sub Divisional Officer and modification of entires in the "Nistar Patrak" by him, and sub section (3) of section 237, which authorizes the Collector to divert unoccupied land for purposes mentioned in clause (b) of sub section (1) of section 237 in to abadi or for agricultural purposes, operate in two different fields.

We, therefore, do not find any conflict in the two Division Bench decisions in Amar Singh V Raghuvir Singh and others (supra) and Daya Ram and another V State of M.P. and others (supra). Since we have answered the reference made to us, the two writ petitions will now be placed before the appropriate bench for hearing on merits.