(1997) 02 MP CK 0004

In the Madhya Pradesh High Court

Case No : M.P. No. 3932 of 1986 (J)

Gram Panchayat Imlaj APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 21-02-1997

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 251

Citation : (1997) 2 MPJR 353

Hon'ble Judges : Ramesh Surajmal Garg, J

Bench : Single Bench

Advocate : Sanjay Yadav, for the Appellant; S.P. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Garg, J.

Respondent No. 3 being aggrieved by the order passed u/s 251 of the M.P. Land Revenue Code, directing that the tank in dispute stands vested in the State Government, challenged the order. The matter went upto the Board of Revenue and was remanded back. Even after the remand, no orders could be passed in favour of the respondent No. 3 but the Board of Revenue ultimately decided in favour of respondent No. 3 holding that an order u/s 251 of the M.P.L.R. could not be passed against the interest of respondent No. 3. The said order is under challenge before this Court.

It was contended by the learned counsel for the petitioner that as it was a public tank and the people had their nistar rights, the competent authority, i.e. the Sub-Divisional Officer was empowered to pass an order u/s 251, directing vesting of the tank in the State.

The fact appear to be that the properties originally belonged to an ex-proprietor. After coming into force of the M.P. Abolition of Proprietory Rights (Estates, Mahals. Alienated Land) Act, 1950 (No. 1 of 1951), certain properties, which though belonged to the proprietor, vested in the State and certain properties were to confine in the possession of the proprietor or other persons. It appears that the tank in dispute did not vest in the State under the provisions of section 3 of the Act. The consequences of vesting did not unsue u/s 4 of the 1950 Act. In fact the property continued to remain in possession of the proprietor u/s 5 (e) as it was found by the State that the tank was situated on occupied land which belonged to and was held by an outgoing proprietor. As a consequence of the finding the tank did not vest in the State and continued to belong to the proprietor. As the public at large had certain nistar rights in the property it appears that the Grain Panchayat (petitioner) made certain proposals to the S.D.O. that the proprty be directed to vest in the State u/s 251 of the MPLR Code so that their nistar rights are not adversely affected.

Shri Sinha learned counsel for the petitioner submits that the Board of Revenue misdirected itself by relying upon the revenue entries without appreciating that the presumption attached to the revenue entries as provided u/s 117 of the Code is in relation to the entry made under Chapter IX only. He submits that as the entries are in relation to nistar and Wajub-ul-arz, the presumption available u/s 117 would not be available.

The argument submitted by the learned counsel for the petitioner loses sight of section 108 of the Code. According to section 108, record of rights shall, in accordance with rules made in this behalf be prepared and maintained for every village and such record shall include particulars relating to the names of all Bhumiswamis, names and details of occupancy tenants, nature and extent of the respective interest of such persons, rent or land revenue payable and such other particulars as may be prescribed. The entries made u/s 108 are entries made under Chapter IX and if certain lands are recorded in Bhumiswami rights of a particular person, then the presumption is available u/s 117 in favour of such entry which benefits such Bhumiswami.

So far as section 242 relating to Wajib-ul-arz is concerned, it only gives power to the S.D.O. to record the custom in each village in relation to the right to irrigation or rights of way essment, right to fishing in any land or water not belonging to or controlled or managed by the State Government of a local authority. So far as the nistar rights are concerned, these are provided u/s 234, of the M.P.L.R. Code, According to section 234, the S.D.O. shall prepare a nistar Patrak embodying a scheme of management of all un-occupied land in a village and all matters incidental thereto and more particularly matters specified in section 235. It is clear from the language of section 234 that a nistar patrak is to be prepared in relation to unoccupied land. Unoccupied land is defined in section 2 (z-3) of the Code meaning land in a village other than the abadi or service land or the land held by a Bhumiswami, a tenant or a Government lessee. From the very definition, it is clear that the land held by a Bhumiswami would not fall within the mischief of unoccupied land. It is not disputed before me that the record of rights record the land in Bhumiswami rights of the respondent No. 3 and the land is not unoccupied land. The provisions of section 234 would not apply but section 242 alone would apply to the present case.

Section 251 of the M.P.L.R. Code gives certain powers to the Sub-Divisional Officer to declare that a particular tank situated on unoccupied land or before the date of coming into force of the M.P.L.R. Code shall vest absolutely in the State.

For appreciation of section 251 (1), the section is quoted as under:

Vesting of tanks in State Government -

(1) All tanks situated on unoccupied land on or before the date of coming into force of the Act providing for the abolition of the right of intermediaries in the areas converted and over which members of the village community were, immediately before such date, exercising rights of irrigation or Nistar, shall, if not already vested in the State Government vest absolutely in the State Government, with effect from the 6th April 1959:

Provided further that no tank shall vest in the State Government, unless-

(a) after making such enquiry as he deems fit, the Collector is satisfied that the lank fulfils the conditions laid down in this sub-section: and

(b) Notice has been served on the parties interested and opportunity given to them for being heard.

The language of the section provides that all tanks situated on unoccupied land, shall, if not already vested in the State, went absolutely in the State with effect from 6-4-1959. The provisions shall apply only to the unoccupied land which had not already vested in the State, before coming into force of the M.P. Land Revenue Code. Section 251 does not clothe the authority with the power to vest any tank which is on private land or is on the occupied land not vested in the State.

In the instant cases, admittedly, the land is recorded in the Bhumiswami rights of respondent No. 3 and it is not unoccupied land, provisions of section 251 of the M.P.L.R. Code shall not apply. The Sub-Divisional Officer shall have no right to give a declaration that the property vested or would vest in the State. The Board of Revenue was certainly justified in granting order in favour of respondent No. 3.

In view of the discussion aforesaid, the petition deserves to and is accordingly dismissed. There shall be no orders as to costs. Security amount, if any deposited by the petitioner be refunded after due verification.