(1995) 01 MP CK 0005

In the Madhya Pradesh High Court

Case No : F.A. No. 78 of 1987 (J)

Gram Panchayat Pathariya APPELLANT

Vs

Dr. K.K. Tiwari RESPONDENT

Date of Decision : 18-01-1995

Acts Referred:
Madhya Pradesh Land Revenue Code, 1959 — Section 251

Citation : (1995) 2 MPJR 223

Hon'ble Judges : P.N.S. Chauhan, J

Bench : Single Bench

Advocate : B.M. Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

D.P.S. Chauhan, J.

Plaintiff Rao Bahadur Gourishankar Tiwari filed a suit before the Civil Court in connection with the possession of the land and also for damages. During the continuance of the suit, the plaintiff died and his L. Rs. were substituted.

There is no dispute that the plaintiff Rao Bahadur Gourishanker was, as a consequence of Abolition of Proprietory Rights in Estates by means of M. B.

Abolition of Proprietory Rights (Estates, Mahals and Alienated Lands) Act. 1950 (for brevity hereinafter referred to as the Act). The estate of the deceased by virtue of the provisions of section 3 thereof vested in the State of Madhya Pradesh. Section 5 of the said Act provides for certain properties to continue in possession of proprietor or other person. Sub-section (g) of Section 5 is extracted below :

(g) All tanks and embankments (bandhans) belonging to or held by the outgoing proprietor or any other person which are situate on land other than village site or occupied land and the beds of which are under cultivation of such proprietor or such other person shall belong to or be held by such proprietor or such other person and the land under such tanks and embankments shall be settled with such proprietor or such other person on such terms and conditions as the State Government may determine.

The land is question was settled with the proprietor of the estate Rao Bahadur Gourishankar Tiwari, the original plaintiff by the State Government and in respect thereof a lease was executed. Subsequently the Act known as M. P. Land Revenue Code, 1959 (for brevity hereinafter referred to as the Code) came into existence. Section 251 (I) of the Code provides for vesting of the tanks in the State Government. Section 251 (1) of the Code is extracted below:-

251. 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 rights of intermediaries in the areas concerned 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 that nothing in this section shall be deemed to affect any right of a lessee in the tank under the lease subsisting on the date of vesting of the tank which shall be exercisable to the extent and subject to the terms and conditions specified in the lease;

Provided further that no tank shall vest in the State Govt. Unless -

(a) after making such enquiry as he deems fit, the Collector is satisfied that the tank fulfills 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 fact and law both in the present case are in a circumscribed limit. Here the question is different. In clause (g) of Section 5 of the Act, the word "settle" had been used and the settlement can be done only when one gale rights in his favour.

Learned counsel for the appellant submitted, relying on a decision of this Court in Seth Rishabh Kumar Vs. State of M. P. 1970 MPLJ 202 that there is no question of dual vesting. According to him, once vesting was done under the Abolition of Proprietory Rights Act, second vesting u/s 251 (1) of the Code is not permissible. The said question was considered in the said case. It is not necessary to go into the facts of the case.

As staled above, the facts and law both in the present case are in a circumscribed limit. Here the question is different. Clause (g) of Section of the Act, the word settle has been used, and the settlement can be done only when one gets rights in his favour. In the absence of the rights, no person has got the right to settle any property in favour of any body either by lease or otherwise.

No body has appeared for the respondents - State.

So far as the facts are concenred, the learned counsel for the appellants has no dispute. It is an admitted fact that under clause (g) of Section 5 of the Act. the settlement of the tank has done in favour of the plaintiff. Now, the question for consideration is regarding the extent of the applicability of Section 251 of the Code. Under Clause (g) of Section 5 of the Act, the settlement of only those tanks can be done in favour of the proprietor or other persons which belong to or are held by the outgoing proprietor or any other person which are situate on land other than village site or occupied land, Section 251 which deals with an unoccupied land, but it mentions that if such tanks are not already vested in the State Government, shall vest absolutely in the State Government w.e.f. 6.4.59 from the words "settle" with such proprietor indicate that the tank in dispute had vested in the State Government. Therefore, there is no question of vesting of the plot. So far as the question of lease in concerned, there is no dispute regarding the subsistence of the lease. The provisos to section 251 give an indication that the section would not affect the rights in the lease subsisting on the date of the vesting. Here the lease was in continuation of vesting. Though the land is vested in the State Government, but the lease has to continue and no long the lease continues, the plaintiff cannot be deprived of his right to use and the occupation of the land.

In view of the above, I find no merit in the Appeal. The Appeal is accordingly dismissed. Since nobody has opposed the case, no orders as to costs.

It may not go unnoticed that in such important cases, the State is not extending any assistances. It is expected from the State to take care in future.

