

(1980) 09 MP CK 0003

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 40 of 1979

Jamnaprasad Bhagwandas and others

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 30-09-1980

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1980) 09 MP CK 0003

Hon'ble Judges : K.K. Dube, J;H.G. Mishra, J

Bench : Division Bench

Advocate : V.K. Sapre, for the Appellant; M.A. Shah, Dy. Govt. Advocate for State, for the Respondent

Final Decision : Allowed

Judgement

H.G. Mishra, J.—This is a petition under Article 226 read with Article 227 of the Constitution of India, for issuance of a writ of Certiorari and/or any other writ, order or direction for setting aside the order dated 23-9-78 (Annexure XL) passed by the Board of Revenue confirming on appeal the order passed by the Competent Authority dated 28-9-77 (Annexure XXXIV).

2. In proceedings initiated by the Competent Authority under the M. P. Ceiling on Agricultural to defend transfers by way of sale in their favour (Annexure VIII to XI) the petitioners examined as many as 19 witnesses (their statements are Annexure XVI to XXXIV) and produced agreement chitthies (Annexure I to VII) sale deed (Annexure VIII to XV) besides other documents pertaining to purchase of spare parts and accessories of the tractor (Annexure XXXVI) purchase of the two tyres (Annexure XXXVIII), and khasra panchsala for the years 1969 to 1973 (Annexure XLI, XLII and XLIII).

3. By this order dated 23-9-1977, the competent Authority held that the sale-deeds have been executed in anticipation of the act and are not genuine transactions. Aggrieved by this order the petitioner preferred an appeal u/s 4 (3)

of the Act to the Board of Revenue which has been dismissed. Hence this petition.

4. The petitioners contend that the order passed by the Tribunal, cannot be regarded to be a judicial decision inasmuch as it does not disclose application of mind to the evidence on record and amounts putting merely a seal of affirmance on the order passed by the Competent Authority. On behalf of the State of Madhya Pradesh, Shri M. A. Shah, learned Deputy Government Advocate argued in support of the impugned order.

5. After having heard the learned counsel for the parties, we have come to the conclusion that the petition deserves to be allowed. The order passed by the Tribunal in paras 1, 2, 3 and 4, contains resume of the facts leadings upto passing of order by the Competent Authority. It is only para 5 that contains reasoning employed to uphold the order under appeal. Analysis of reasoning employed in para 5 is as under:

(i) that the competent Authority has given reasons in detail from which it appears that it was not necessary for the transferor to have sold the land measuring about 100 acres,

(ii) that person possessing such a large holding must be possessed of sufficient means for spending on land held by him,

(iii) that it is not conceivable that one will sell about 100 acres of land to purchase a tractor for the land remaining unsold with him.

After giving these reasons the Tribunal expressed agreement with the findings recorded by the Competent Authority and dismissed the appeal.

6. The proceedings u/s 4 (1) of the Act are serious proceedings. They have the effect to void the transfers. When an appeal is preferred u/s 4 (3) of the Act challenge to the findings recorded by the competent Authority is open both on law as well as on facts. As such, it is a bounden duty of the appellate Court to evaluate the entire evidence documentary and/or oral. This duty is all the more heavier because the law attaches finality to the decisions. The order (Annexure XL) passed by the Tribunal in appeal does not disclose application of judicial mind to the evidence on record. Even if an appellate judgment or order is of affirmance, the Court or Tribunal cannot be regarded to have discharged the duty cast on it by law by merely putting a seal of agreement on the order passed by the lower Court. This is what appears to have been done by the Tribunal in this case. Moreover, the reasoning employed in para 5 as analysed above, appears to be merely conjectural and imaginary. It, therefore, cannot be regarded as a judicial order. Being based on assumptions and conjectures and on no evidence whatsoever, it is amenable to challenge under Article 226 read with Article 227 of the Constitution of India. It occasioned miscarriage of justice and cannot be allowed to stand.

7. Accordingly, the petition is allowed. The order passed by the Tribunal (Annexure XL) dated 23-9-1978 is hereby quashed. The case will now go before

the Tribunal who will decide the appeal de-novo in accordance with law and the observation made hereinabove. No order as to costs. The outstanding security amount, if any, shall be refunded to the petitioner.