
(2007) 10 MP CK 0003
In the Madhya Pradesh High Court

Kashiram

APPELLANT

Vs

Hariram and Others

RESPONDENT

Date of Decision : 11-10-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 211, 65

Citation : (2008) 1 MPHT 170 : (2008) 1 MPLJ 651

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Abhay M. Naik, J.

In short, the petitioner was allotted a land comprised in Survey No. 204 in area 2 hectares by way of settlement vide order of Tehsildar, Tehsil Kolaras (District Shivpuri) marked as Annexure P-3, dated 23-5-1987. It is stated that possession was handed over to the petitioner pursuant to the order of settlement and since then the petitioner has been continuing in cultivating possession as revealed in the Khasra of the 2004-05 marked as Annexure P-4. It is pertinent to note that in column No. 5 crops of soyabean and wheat are mentioned whereas in column No. 12 it is mentioned that the land has facility of irrigation by a personal tube well. Name of the petitioner is also recorded as Bhumiswami, however, with a prohibition of sale.

Respondent Nos. 1 and 2 submitted a revision after a lapse of 13-14 years before the Additional Commissioner, Gwalior Division against the order of settlement dated 23-5-1987. This was allowed vide order dated 14-9-2001 vide Annexure A-2 on the ground that notice of thirty days was not issued and case number was also not mentioned in the notice. Similarly no date was shown in the proceedings about fixation of the notice. It was further, observed that entire proceeding for settlement was concluded within a month and order of settlement was issued. In view of this, order contained in Annexure P-2 was passed with an observation

that prima facie the order of settlement seems to have been passed forgiving undue advantage to unqualified persons.

Aggrieved by the aforesaid, the petitioner preferred Revision No. 1841 - PBR/2001 before the Board of Revenue which, too, has been dismissed on 30-4-2005 vide Annexure P-1. Present petition has been preferred against Annexures P-1 and P-2.

Shri P.D. Agrawal, learned Counsel for the petitioner contended that the revision application was preferred by respondent Nos. 1 and 2 after a period of 13-14 years without seeking condonation of the delay, therefore, the same was liable to be dismissed on the ground of limitation. Secondly, it is contended that suo motu revision after a lapse of 13-14 years was not liable to be entertained in view of the facts and circumstances of the case. Thirdly, there may, at the most, be irregularities having no vitiating effect on the case. According to the learned Counsel, the learned Courts below have proceeded on surmises and conjunctures and the impugned orders containing no specific findings are not sustainable in law.

Shri Sunil Jain, learned Counsel for respondent Nos. 1 and 2 and Shri K.M. Mishra, learned Panel Lawyer for respondent No. 3 supported the to impugned orders.

Admittedly, respondent Nos. 1 and 2 while preferring revision before the Additional Commissioner did not submit an application for condonation of the delay. Thus, revision application preferred by them was obviously barred by time. Although, the Board of Revenue in its order has given an impression that the matter could be treated under suo motu revision, but the same is nowhere revealed in the order passed by the Additional Commissioner, Gwalior Division. Moreover, order contained in Annexure P-2 has proceeded on the basis of revision application submitted by respondent Nos. 1 and 2 as mentioned in the order itself. Thus, the order contained in Annexure P-2 is not found to be in exercise of powers of suo motu revision and, in the absence of application for condonation of the delay, the revision application preferred before the Additional Commissioner was hopelessly barred by time and the same was liable to be dismissed.

This Court gave an anxious consideration to the contention that the matter could be dealt with under the powers of suo motu revision. Admittedly, the order of settlement was passed on 23-5-1987 whereas, revision application was submitted by respondent Nos. 1 and 2 in the year 2000. Hon''ble Supreme Court of India in case of *The State of Gujarat Vs. Patil Raghav Natha and Others*, , has observed as under:

11. The question arises whether the Commissioner can revise an order made u/s 65 at any time. It is true that there is no period of limitation prescribed u/s 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined of the facts of the case

and the nature of the order which is being revised.

It seems to us that Section 65 itself indicates the length of the reasonable time within which the Commissioner must act u/s 211. u/s 65 of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading Sections 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission. In this case the Commissioner set aside the order of the Collector on October 12, 1961, i.e., more than a year after the order, and it seems to us that this order was passed too late.

Relying on the aforesaid, the learned Division Bench of this Court in the case of Rammulal and Ors. v. State of M.P. 1990 RN 407 has held that exercise of suo motu power of revision after a period of eight years is bad in law.

In the present case, firstly the Additional Commissioner has nowhere mentioned in its order dated 14-9-2001 (Annexure P-2) that he was exercising suo motu power of revision. Secondly, the same having been exercised after a period of 13-14 years without assigning any specific reason for such exercise, is also not sustainable in law. Although, the Board of Revenue vide Annexure P-1 has given an impression that the order contained in Annexure P-2 was passed in exercise of suo motu revision, the same ought to have been made out from Annexure P-2 itself. Secondly, after a lapse of 13-14 years, the power was not available for being exercise without special reason. Nothing has been mentioned in specific except that the order of settlement seems to have been passed in order to give undue advantage to unqualified person. Thus, it cannot be concluded after 13-14 years that the order of settlement was passed with some ulterior motive.

Shri Sunil Jain, learned Counsel appearing for respondent Nos. 1 and 2 submitted that the petitioner was not entitled to settlement because he had other pieces of land as observed in Annexure P-1 by the Board of Revenue. I have perused the order of the Board of Revenue wherein it is merely mentioned that the petitioner did not appear to be landless in view of copies of Khasra which were produced before the Additional Commissioner. It was similarly observed by the Additional Commissioner without giving particulars of the land allegedly held by the petitioner. It is nowhere stated in the writ petition that any particular land was held by the petitioner which could have disentitled him from obtaining land by way of settlement. Respondent Nos. 1 and 2 have submitted their return with no documents. No proof has been placed on record to show that the petitioner held any other land in his Bhumiswami rights which could have disentitled him from

obtaining the land by way of settlement. Neither the Board of Revenue nor the Additional Commissioner have specifically mentioned any fact with preciseness and specific details which would have vitiated the order of settlement.

Shri P.D. Agrawal, the learned Counsel for the petitioner contended that since respondent Nos. 1 and 2 were not party to the proceedings of settlement, they had no right to file revision in view of Division Bench decision of this Court in the case of *Devi Prasad v. Nake and Ors.* 1975 RN 67. Shri Sunil Jain countered this submission on the ground that respondent Nos. 1 and 2 being aggrieved on account of settlement with respect of the land which was occupied by them, accordingly, it is contended that the revision application at the instance of respondent Nos. 1 and 2 was well maintainable.

It may be seen that the Additional Commissioner as well as the Board of Revenue have given no finding about the possession of respondent Nos. 1 and 2 over the subject land. No Khasra or any other proof is placed on record. No objection was submitted by respondent Nos. 1 and 2 in settlement proceedings which ultimately ended in favour of the petitioner. Thus, in view of the Division Bench decision in the case of *Devi Prasad (supra)*, the respondent Nos. 1 and 2 failed to establish locus standi to prefer any revision.

In the result, this petition deserves to be allowed and is hereby allowed. Orders Annexures P-1 and P-2 are hereby quashed. No order as to costs.