
(1980) 03 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 84 of 1978

Krishnarao Govind Rao Shinde and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 20-03-1980

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 181, 182

Citation : (1982) MPLJ 97

Hon'ble Judges : K.K. Dube, J;A.R. Navkar, J

Bench : Division Bench

Advocate : V.K. Sapre, for the Appellant; Swami Saran, Govt. Advocate for Respondents Nos. 1 to 3, N.P. Bhatnagar, R.D. Jain and R.C. Lahoti, Amicus Curiae, for the Respondent

Final Decision : Allowed

Judgement

K.K. Dube, J.

The short question that arises for consideration in this petition is whether the Gwalior Dairy Ltd., was holding the lands as a Government lessee as laid down by section 181 of the M. P. Land Revenue Code, 1959, (hereinafter referred to as "the Code") and, consequently, could be evicted u/s 182 of the Code from such holding.

The Gwalior Dairy Ltd., was incorporated in 1942 under the Gwalior Companies Act and it is undisputed that it is deemed to have been incorporated under the Indian Companies Act. The company obtained two leases from the erstwhile State of Gwalior. The lease was given of plots No. 4-A south, 4-A north and 7-A, the whole land admeasuring 104 acres, and a second lease of land bearing Plot Nos. 1-A, 2-A, 3-A, 5-A, 6-A, 1-B, 2-B, 3-B, 4-B, 5-B and 6-B near Hanuman Temple and the plot of land between Sonrekha and its tributary admeasuring 391.05 acres were also given. To start with, the lease of the land admeasuring 104 acres mentioned above was for one year, but subsequently the period was

extended to 10 years. The other lands were leased out for a period of 25 years from 1-7-1942. On the expiry of the lease, the Additional Collector, Gwalior, started proceedings for taking possession of the land u/s 182 of the Code. By his order dated I-10-1977 the Additional Collector ordered eviction of the company from the land. It appears, symbolic possession was also taken by the State Government, but it is also clear from the record that the Company is in actual possession of the land. The Government has been accepting rent from the company. The fact that it is in actual possession is beyond dispute, as it has been pointed out that by an order of the High Court a receiver has been appointed to manage the affairs of the company and also the property held by the Company. The petitioners seek to challenge the order of the Additional Collector as being illegal and without the authority of law.

The Gwalior Dairy Ltd., had instituted a suit in the Court of Additional District Judge, Gwalior, being Civil Suit No. 14 of 1960 [Gwalior Dairy Ltd. v. United States of Indore, Gwalior and Malwa (Madhya Bharat)] for a declaration that the company held the land as a pucca tenant and for permanent injunction restraining the Government from interfering with its possession of the land. The Additional District Judge dismissed the suit holding, inter alia that the Gwalior Dairy Ltd., was not a gair Mourusi tenant of the land in question. Accordingly, the Gwalior Dairy could not become a pucca tenant of the land under the provisions of the M. B. Land Revenue and Tenancy Act, Samvat 2007 (Act No. 66 of 1950) (hereinafter referred to as "the Act 66 of 1950"). The Additional District Judge remarked in passing, that the Gwalior Dairy was inducted as a simple tenant as defined in section 2 (27) of the Kanun-e-Mal, Gwalior State. It would now be a Government lessee u/s 181 of the Code, entitled to rights and liabilities as enumerated in section 182 of the Code. The Gwalior Dairy cannot be held to be an occupancy tenant u/s 185 of the Code, as it had not become an ordinary tenant under Act 66 of 1950. Aggrieved by this order, the Gwalior Dairy preferred an appeal before the High Court. This Court also dismissed the suit of the plaintiff-Gwalior Dairy. This Court summarised the status of the plaintiff vis-a-vis the land held under the leases as under:

the position with regard to the lands in suit, therefore, after they have been occupied by the Government, of erstwhile Gwalior State and comprised of separate "Mahal", was that they ceased to be "Zamindari" land and nothing was ever done to settle them on the Ryotwari system or to notify the "Mahal" in they were comprised to be deemed to be a Ryotwari village. The Zamindari Abolition Act did not apply to these lands by reason of the fact that since long before the date, when that Act came into force all proprietary rights therein had already vested in the State." The High Court further observed:-

No analogy can be drawn between leases covered by the Notification and the special leases granted in the present case to the plaintiff....

..The special leases granted by the erstwhile Gwalior State in respect of such lands as had been acquired for a public purpose, namely, construction of a

sewage system, were governed not by any law for the time being in force but by the terms of the lease in each case.... To these lands the provisions of the Zamindari Abolition Act did not apply, since they were already held by the State when that Act came into force.

A preliminary objection has been raised by the respondents as to the maintainability of the petition at the instance of the share-holders. It may be stated that the petitioners are two share-holders of the Gwalior Dairy Ltd., and after the Company lost cases before the Revenue Tribunals, it has come before this Court challenging some of the orders apprehending that if that was not done, the company will be liquidated. The preliminary objection further goes on that the share-holders have no authority to maintain the petition. The management of the company has not taken any action to challenge the various orders of the revenue tribunals. On the contrary, the managing director Shri M. R. Phalke, had acceded to in taking over the company's lands by the Government.

In *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, the Supreme Court observed as under:-

Jurisdiction of the Court to grant relief cannot be denied, when by State action the rights of the individual share-holder are impaired, if that action impairs the rights of the company as well. The test in determining whether the share-holder's right is impaired is not formal, it is essentially qualitative; if the State action impairs the right of the share-holders as well as of the company, the Court will not, concentrating merely upon the technical operation of the action, deny itself jurisdiction to grant relief." In the instant case, if the land is taken over by the Government, the company has essentially to be thrown into liquidation. The petitioners being the shareholders have an interest in the profits and continuance of the company. The share-holders' rights are undoubtedly affected if the entire land is taken over by the Government. Relying on *The Godhra Electricity Co. Ltd. and Another Vs. The State of Gujarat and Another*, , we are clearly of the view that in circumstances of the case the petitioners would be entitled to challenge the validity of the action taken by the Government, as it seeks to threaten the very existence of the company and, accordingly, the rights of the share-holders.

We, therefore, come to the important point raised by the petitioners as to the validity of the Additional Collector's orders as to whether or not the State could proceed to take possession of the land belonging to the Gwalior Dairy Ltd., u/s 182 of the Code. Section 182 of the Code provides a speedy remedy to eject a Government lessee when he has failed to pay the rent for a period of 3 months, or the term of lease has expired, or that he has contravened any of the terms and conditions of the grant, or used the land for purposes other than for which it had been leased. A Government lessee is one who holds land from Government as indicated in a special sense and who is of the description adumbrated in section 181 of the Code. The question that arises for consideration in this case is whether the Gwalior Dairy Ltd., was holding the land as a Government lessee, for

it is only a Government lessee who could be summarily evicted by taking recourse to the procedure laid down u/s 182 of the Code. Section 181 of the Code reads as under :-

Government lessees.-(1) Every person who holds land from the State Government or to whom a right to occupy land is granted by the State Government or the Collector and who is not entitled to hold land as a Bhumiswami shall be called a Government lessee in respect of such land.

(2) Every person who at the coming into force of this Code-

(a) holds any land in the Madhya Bharat region as an ordinary tenant as defined in the Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 (66 of 1950);

(b) holds any land in the Vindhya Pradesh region as a special tenant as defined in the Vindhya Pradesh Land Revenue and Tenancy Act, 1953 (III of 1955) or as a Gair Haqdar tenant any grove or tank or land which has been acquired or which is required for Government or public purpose; or

(c) holds any land from the State Government in the Sironj region as a Gair Khatedar tenant as defined in the Rajasthan Tenancy Act, 1955 (3 of 1955) shall be deemed to be a Government lessee in respect of such land.

Government leases contemplated u/s 181 of the Code fall under two categories. By sub-section (2) of section 181 certain leases existing prior to coming into force of the Code were deemed to be Government leases in respect of such lands. Though they were not leases by the Government, yet by applying a fiction they were deemed to be Government leases. This sub-section is significant because by a fiction such leases existing in Madhya Bharat, Vindhya Pradesh and Sironj regions before the States Re-organisation are sought to be recognised as Government leases. If it were desired that other similar leases existing prior to the coming into force of the Code ought to be recognised as Government leases, it was easy to mention them here by adding more sub-sections to section 181 and meeting various other situations. Sub-section (1) of section 181, in our opinion, deals with leases created after the coming into force of the Code. The following persons are stated to be Government lessees under sub-section (1):-

(a) Every person who holds land from the State Government.

(b) every person to whom a right to occupy land is granted by the State Government or the Collector, subject to a rider that such a person is not entitled to hold the land as a Bhumiswami:

When the above conditions are satisfied the person was to be called a Government lessee in respect of such land. While leases under sub-section (2) were deemed to be Government leases, under sub-section (1) Government leases were created after the Code came into force. Subsection (1) does not apply to leases which were in existence when the Code came into force. This would be clear from the second part of subsection (1) referred as (b) above, as

here the right to occupy the land is granted by the State Government or the Collector and this could never happen in a pre-existing lease. Then, under sub-section (1) the lessee must be one who is not entitled to hold the land as a Bhumiswami. The conjunctive clause takes away from the class "lessees" those who are entitled to hold the land as a Bhumiswami.

By section 157 of the M. P. Land Revenue Code, 1959, there shall be only one class of tenure holders holding lands from the State and such tenure holders would be called Bhumiswamis. Section 158 lays down how a person holding land in various regions in Madhya Pradesh shall be recognised as a Bhumiswami on the coming into force of the Code. The entitlement alluded to in sub-section (1) regarding the holder of land as a Bhumiswami would arise u/s 158. The entitlement also arises when a person is an occupancy, holder u/s 185 and, when the conditions u/s 189 are satisfied. u/s 57(1) all lands belong to the State Government. The proviso to sub-section (1) of section 57 declares that the rights of any person subsisting at the coming into force of the Code in such property shall not be affected by the Code. Therefore, when Government leases were envisaged u/s 181 of the Code it took into account the existing entitlements. It would be observed that the entitlement to hold the land in Bhumiswami rights was recognised for the first time under the Code. Bhumiswami is a creature of the Code. Therefore, the exclusion of such entitlement to hold the land as Bhumiswami could not apply to any Government lease other than the one created after the coming into force of the Code under sub-section (1). The latter part of this clause seeking to exclude the Bhumiswami entitlements when Government leases were created clearly indicated that section 181 deals with, leases created after the coming into force of the Code. It is apparent that no such entitlement could be excluded or could be conceived in an old lease by sub-section (1).

The company's leases are old existing leases and are neither covered by sub-section (2) of section 181 of the Code. The High Court in the suit instituted by the Gwalior Dairy Ltd., held that the company did not hold the land in Madhya Bharat region under the leases granted to it as an ordinary tenant. They were not the leases granted by the Kanoon Mal or the Kanoon Ryotwari of the Gwalior State. They were leases which were governed by their own terms evidenced by the indentures. Clearly the Gwalior Dairy Ltd., did not hold the land as an ordinary tenant under Act 66 of 1950. We need not dwell on this point because we have the finding of the High Court in the suit filed by the Gwalior Dairy Ltd., and the decision is binding inter parts. We are not disposed to take any other view than the one already taken by this Court in the first appeal referred to above. The Gwalior Dairy Ltd., under the two indentures was holding the lands on terms of its own and the leases were not governed by the Kanoon Mal or the Kanoon Ryotwari of the erstwhile Gwalior State. The Gwalior Dairy Ltd., after the expiry of the period of the leases would be a tenant holding over under the Transfer of Property Act, which will govern the rights of the parties.

We are further of the view that the Gwalior Dairy Ltd., is not a Government lessee u/s 181 of the Code and, therefore, the summary manner to evict the Company from the lands adopted u/s 181 of the Code would be clearly without authority of law. We would quash the order dated I-10-1977 passed by the. Additional Collector, Gwalior, and direct that the State Government shall not take recourse to section 182 to evict the Gwalior Dairy Ltd., from the lands held under the two leases.

The petition succeeds and is allowed with costs. Counsel's fee Rs. 200. The outstanding amount of security be refunded to the petitioners.