
(1958) 03 MP CK 0026

In the Madhya Pradesh High Court

Case No : Rev. Revision No. 1/V-10/56

Lalji Gangaprasad

APPELLANT

Vs

Ramjichirkut and Another

RESPONDENT

Date of Decision : 31-03-1958

Acts Referred:

Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 — Section 4(a), 5, 5(a)

Citation : (1958) MPLJ 462

Hon'ble Judges : R.D. Shukla, Member

Bench : Single Bench

Advocate : B.K. Dixit, for the Appellant; B.S. Bajpai, for the Respondent

Final Decision : Allowed

Judgement

B.S. Shukla, Member

The applicant is cultivator of village Chachedi, tahsil Kawardha, district Durg, and applied for some vacant house-sites adjoining his own house. His application was opposed before the Tahsildar by the non-applicants on the ground that the disputed land was in their possession and could not be allotted to the applicant. The Tahsildar upheld the objection and successive appeals to the Sub-Divisional Officer and the Additional Deputy Commissioner also failed. Hence this revision.

The order passed by the Sub-Divisional Officer and the Additional Deputy Commissioner are really difficult to appreciate on the point whether the land was or was not vacant for allotment, the Sub-Divisional Officer's observations are:

the sites were originally in possession of the objectors (non-applicants) but it is not clear whether the sites were in their continuous possession for 12 years immediately before 1948-49...Leaving apart the question of exclusive title of the objectors..., it is definite that the sites are disputed ones and the Naib-Tahsildar has, therefore, rightly rejected the application.

In second appeal, though the provisions of Section 4(a) and Section 5 of the M.P. Abolition of Proprietary Rights Act were brought to the notice of the learned Additional Deputy Commissioner but without discussing or dealing with their effect on the case, he dismissed the appeal with the following observations:

I find that the possession has been very hotly disputed by both the parties. In view of this dispute over possession it cannot be conclusively said whether the site is vacant or not. I wish the parties had examined the village patwari and the kotwar in support of their contentions. In view of a dispute over possession, the S.D. O. was perfectly justified in rejecting the appeal....

Apart from the failure to deal with the issues involved, the two appellate Courts appear to have been obsessed with the idea that since possession over the land was disputed, they could do nothing in the matter except lamenting over the omissions committed by the parties. Neither Court recorded a finding as to whether the land was or was not vacant. If they thought the enquiry by the Tahsildar was defective or lacking on material points, they could have remanded the case or issued other suitable directions to enable a clear decision to be taken. It appears that, perhaps, on the analogy of partition cases u/s 93, Tenancy Act, the appellate Courts thought that once there was a dispute about title, the revenue Courts' jurisdiction ended and the parties must seek their remedy in the civil Court. If that was behind the back of their mind, they entirely misled themselves.

The Tahsildar attempted to tackle the matter on correct lines and rightly or wrongly, concluded that the disputed land was lawfully occupied by the objectors. It was for the appellate Court to have seen if the findings of the Tahsildar were correct on facts or in law which they entirely failed to do.

All proprietary rights of the erstwhile malguzars in the abadi-site vested in the State after 31-3-51 by operation of law except in case of those possessions that have specifically been saved u/s 5(a), M.P. Abolition of Proprietary Rights Act. If the objectors fail to show that they are protected by the saving provisions of the M.P. Abolition of Proprietary Rights Act, the disputed land would be deemed to have vested in the State and the same may be available for allotment to such persons as may be entitled to hold land within the abadi according to law. Thus the most important issue before the Courts below was to decide how the land stood vis-a-vis the provisions of the M.P. Abolition of Proprietary Rights Act. It was not correct to by-pass this issue on the ground that the objectors ex-malguzars had claimed their possession over the land.

In fact, to use the expression that "possession is hotly disputed by both parties" would be a misnomer. The possession cannot obviously be said to be in dispute between the applicant, on the one hand, and the non-applicants, on the other, for the simple reason that the applicant was only a candidate for the allotment of land and the question of his existing possession did not and could not arise. The dispute, in reality, is referable to the objectors, on the one hand, and the State,

on other, in whom the abadi-site vested. Since in such cases, the State is not represented it was the duty of the Courts to have taken special care to see that the interest of the State was not prejudiced. They should, therefore, have taken steps to bring all material facts on record and to take a decision in the light of available evidence. They could not take their hands off just because a third party had appeared on the scene to claim possession of his site. If the claim of the objectors is spurious, one consequence of the lower appellate Courts in action would be that the objectors will continue to maintain their right and would thereby prevent the land from being allotted to others or to be otherwise disposed of by the State. According to Section 50 of the Land Revenue Code, the present position is that all land belongs to the State and the burden to prove otherwise lies on the person who may lay claim to it.

In the above view, it would be seen that it was not enough to say that the patwari and the kotwar should have been examined by the parties. If the Court thought that their evidence was relevant or necessary, they should have summoned these Government officials and examined them in the interest of justice and fair decision. Similarly, the parties should have been called upon to adduce evidence on such points as were material for decision in the matter.

The conclusion is, therefore, irresistible that the two appellate Courts entirely failed to grasp the issues and to take a judicial decision thereon. Their orders are, therefore, quashed as improper and the case is remanded to the Sub-Divisional Officer to deal with the appeal against the Tahsildar's order in the light of observations made above. Revision petition is allowed accordingly.