

(1982) 02 MP CK 0003

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 17 of 1982

Laloo Singh Tituria

APPELLANT

Vs

State of M. P. and others

RESPONDENT

Date of Decision : 03-02-1982

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1982) JLJ 586 : (1983) MPLJ 453

Hon'ble Judges : R.C. Shrivastava, J;A.R. Naokar, J

Bench : Division Bench

Advocate : A.K. Barua, for the Appellant;

Final Decision : Dismissed

Judgement

A.R. Navkar

Shri A. K. Barua, counsel for the petitioner is heard on the question of admission.

This is a petition under Article 226 read with Article 227 of the Constitution of India for issuance of a writ in the nature of certiorari or any other appropriate writ, order or direction for quashing the order dated 27-3-1979, passed by non-petitioner No. 2 in case No. 141-B/21 and that of non-petitioner No. 3, dated 31-1-1981 in Case No. 10/79-80 Appeal Revenue.

The facts of the case are that the non-petitioner No. 4 is alleged to have sold his land which was in his possession as Bhumiswami situated in village Rai, survey No. 748 and 749, admeasuring 11 Bighas 13 Biswas, vide registered sale-deed dated 17-7-1973, in favour of the petitioner. On the same day, the petitioner executed an agreement to resale the land in favour of non-petitioner No. 4 within five years. The said land was mutated in favour of the petitioner and since then, he is in continuous physical possession of the land. The khasra entries to that effect have been made. Non-petitioner No. 4 owns other properties in Gwalior city as well as in other villages. On 28-6-1978, non-petitioner No. 4 lodged a complaint u/s 5 of the Madhya Pradesh Samaj Ke Kamjor Vargaon Ke Krishi

Bhumi Dharkon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 (hereinafter referred to as the Adhiniyam). The case was registered as case No. 141 /77-78-B/I 21 and the non-petitioner No. 2 issued summons to the petitioner and on receipt of the said summons the petitioner submitted his reply on 19-7-1978. After recording the evidence and hearing the parties, non-petitioner No. 2 dismissed the application vide his order dated 27-3-1979. Against that order, the non-petitioner No. 4 went in appeal before non-petitioner No. 3, who, after hearing the arguments, reversed the order of the trial Court and allowed the appeal by his order dated 31-1-1981. But it is alleged that no intimation of the said order was given to the petitioner. After enquiring in the office of non-petitioner No. 3, the petitioner came to know about the decision, which he has challenged before us.

The first submission made before us by the learned counsel is that there was no enquiry either by non-petitioner No. 2 or by non-petitioner No. 3 in the present case. But after going through the orders of the trial Court as well as the appellate Court, we find no substance in the submission made by the learned counsel.

The other submission made before us was that the trial Court had no jurisdiction to entertain the application as it was not covered by the said Adhiniyam. This submission also has no force. The Adhiniyam in the definition clause defines "holder of agricultural land" as under :

"holder of agricultural land" in the weaker sections of the people means a holder of land used for purposes of agriculture not exceeding eight hectares of unirrigated land or four hectares of irrigated land within the State whether as a Bhumiswami or an occupancy tenant or a Government lessee either in any one or all of the capacities together within the meaning of the Code.

Explanation :-One hectare of irrigated land shall be equal to two hectares of unirrigated land and vice versa." So also, the "lender of money" is defined as under :-

"lender of money" means a person advancing loan to a holder of agricultural land, whether registered under the Madhya Pradesh Money Lenders Act, 1934 (No. 13 of 1934) or not;"

Lastly, the Adhiniyam defines what is the prohibited transaction of loan. It is as under : -

Prohibited transaction of loan" means a transaction in which a lender of money advances loan to a holder of agricultural land against security of his interest in land, whether at the time of advancing the loan or at any time thereafter during the currency of the loan in any of the following modes, namely:-

- (i) agreement to sell land with or without delivery of possession;
- (ii) outright sale of land with or without delivery of possession accompanied by separate agreement to re-sell it;

- (iii) Outright sale of land with or without delivery of possession with a distinct oral understanding that the sale shall not be acted upon if the loan is re-paid;
- (iv) outright sale of land with or without delivery of possession with a condition incorporated in the sale deed to re-sell it on re-payment of the loan;
- (v) transaction in any modes other than those specified in clauses (i) to (iv) affecting interest in land including a fraudulent transaction or a transaction designed to defeat the provisions of any law regulating money lending of interest, for the time being in force, and includes all those transactions in which a lender of money has, after the appointed day but on or before the date of publication of this Act in the Gazette obtained possession of land of the holder of agricultural land through court or by force or otherwise or obtained a decree for such possession towards satisfaction of loan;

Section 4 of the Adhinyam says that all prohibited transactions of loan to be subject to protection and relief under this Act. So, to get jurisdiction under this Act, the main point to be seen is whether the applicant was holder of an agricultural land. Secondly, whether the person who was advanced the money is covered by the definition of "lender of money" and lastly, whether the transaction is a prohibited transaction of loan. If these three things are satisfied, then the Sub-Divisional Officer gets jurisdiction to entertain the complaint of the petitioner filed under the Adhinyam. The Sub-Divisional Officer as well as the Collector both have elaborately discussed as to how the transaction is a prohibited transaction and how the person who filed the complaint is a holder of the land. Therefore, the submission of the learned counsel for the petitioner that the Sub-Divisional Officer had no jurisdiction to entertain the petition or complaint cannot be accepted.

As all the submissions made by the learned counsel for the petitioner, fail, the result is that the petition is dismissed summarily.