
(2012) 03 MP CK 0101
In the Madhya Pradesh High Court
Case No : Writ Petition No. 13849 of 2010

Puralal

APPELLANT

Vs

Respondent: State of M.P. Collector, Mandsaur and others

RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:

Limitation Act, 1963 — Section 15, 15(3), 17, 5, 6
Madhya Pradesh Land Revenue Code, 1959 — Section 50
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 23(e)

Citation : (2012) 3 MPHT 531

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : Anwar Khan and Ms. Archana Maheshwari, for the Appellant;
Bhuwan Deshmukh, Govt. Advocate for the Respondent Nos. 1 and 2 and Mr.
Vinay Gandhi, Advocate for the Respondent Nos. 3 to 5, for the Respondent

Judgement

N.K. Mody, J.—This order shall also govern the disposal of W.P. Nos. 694/10 and 7845/09 as in all the three cases, the orders under challenge are being passed under the provisions of Madhya Pradesh Samaj Ke Kamjor Vargo Ko Udhar Dene Walo Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Thata Mukti Adhiniyam, 1976 (which shall be referred hereinafter as an "Act"). In W.P. No. 13849/10 and W.P. No. 7845/09, Counsel for the petitioner is Mr. Anwar Khan, Advocate, while in W.P. No. 694/10, Counsel for the petitioner is Ms. Archana Maheshwari, Advocate.

2. In W.P. No. 13849/10, the sale-deed was executed by the petitioner Puralal in favour of respondent Nos. 3 and 4 vide registered sale-deed dated 24-4-01 for a consideration of Rs. 1,37,000/- and the application u/s 5 of the Act is filed by the petitioner on 5-8-08. In W.P. No. 7845/09, the sale-deed has been executed by the petitioner in favour of respondent Nos. 3 and 4 on 22-5-2000 for a consideration of Rs. 1,00,000/- and the application is filed by the petitioner on 7-8-08. In W.P. No. 694/10, the sale-deed is dated 21-12-01 for a consideration of Rs. 2,45,000/-, while the application u/s 5 of the Act is filed on 5-8-08. In all

the applications, it was alleged that the transaction was prohibited transaction as it was a loan transaction and in fact, none of the petitioner has sold the property to the respondent Nos. 3 and 4. In W.P. No. 13849/10, during pendency of litigation, respondent Nos. 3 and 4 have sold the property to the respondent No. 5 vide registered sale-deed dated 29-11-10. In all the cases, undisputedly, the application was filed after a period of six years. The applications were opposed by the respondent Nos. 3 and 4 on various grounds including on the ground that the application itself is not maintainable as the same is barred by time. It was prayed that the application filed by the petitioner be dismissed. After holding summary enquiry, learned SDM dismissed the application holding that the application is barred by time, hence the same is not maintainable, against which in all the petitions appeals were filed, which were also dismissed, hence this petitions.

3. Learned Counsel for the petitioner argued at length and submits that the impugned order passed by the learned Courts below is illegal, incorrect and deserves to be set aside. It is submitted that u/s 15 (3) of the Act the SDO can initiate the action on his own motion or on receipt of the application under sub-section (2) of Section 15 of the Act. It is submitted that since the SDO is empowered to initiate the action on his own motion, therefore, the application could not have been dismissed on the ground of limitation. Learned Counsel placed reliance on a decision in the matter of Mohammad Sagir Vs. Bharat Heavy Electricals and Others, , wherein Full Bench of this Court has held that Section 5 of Limitation Act applies in those cases, which are filed u/s 5 of the Act and SDO can act suo motu u/s 6. Further, reliance is placed on a decision in the matter of Sheikh Amir Vs. Collector and Others, wherein Divisional Bench of this Court Has held that no limitation is prescribed for taking such action. Reliance is also placed on a decision in the matter of Jahar Singh and Another etc. Vs. Collector, Shivpuri District and Others, wherein this Court has held that the power of the SDO to act suo motu u/s 6 is not circumscribed. Indeed, neither in Section 5, nor in Section 6 nor in any other provision of the Adhiniyam, nor in Rule 3 itself, any specified period of limitation is postulated. Limitation is a matter of procedure. Unless it is envisaged as condition precedent annexed to the enforcement of a substantive right, it is not permissible to create any time-bar on the basis of ambiguous subsidiary provision so as to impair the substantive right, making it unenforceable. Law of limitation, it is well settled, is construed always in favour of the right to proceed. Lastly, reliance is placed on a decision in the matter of Ramjilal Munshilal Gaur Vs. Ganesha Mulu and Others, , wherein after taking into consideration Sections 6 (2), 5 and 15 (3) of the Act, this Court has held that suo motu powers can be exercised by Competent Authority even on application and there is no bar of limitation. On the strength of aforesaid position of law learned Counsel submits that the petitions filed by the petitioners be allowed and the impugned order passed by the learned Courts below be set aside.

4. Learned Counsel for respondent Nos. 3 and 4 submit that since the application filed u/s 5 of the Act was not within the prescribed period of limitation as

prescribed by sub-section (2) of Section 15 of the Act and also the application was not supported by any application for condonation of delay, therefore, the learned SDO was left with no choice except to dismiss the application. It is submitted that the application was rightly dismissed by the learned Courts below, which requires no interference. It is submitted that for challenging the validity of the transaction alleging as prohibited transaction the limitation prescribed is of six years. It is submitted that the Law of Limitation is a Law of Peace and if a remedy available is not availed by the petitioner in a period of six years, then after expiry of that period the application without supporting with any application for condonation of delay cannot be entertained. It is submitted that it is true that suo motu powers has been given to the SDO under sub-section (3) of Section 15 of the Act, but similar type of powers has been given u/s 23(e) of M.P. Accommodation Control Act to this Court and u/s 50 of Land Revenue Code. It is submitted that so far as suo motu powers given under MPLRC is concerned, that powers can be exercised at any time, While in the present statute, the words "at any time" is missing. It is submitted that the very purpose for not mentioning the words "at any time" is because a long limitation of six years is given to the petitioner to challenge the validity of any transaction. It is submitted that a Full Bench of this Court in the matter of Ranveer Singh and Others Vs. State of M.P., had a occasion to examine the Section 50 of MPLRC and has held that suo motu powers can be exercised by the Revisional Authority within a period of 180 days from the date of knowledge of illegality, impropriety and irregularity of the proceedings committed by any Revenue Officer subordinate to it. Further reliance is placed on a decision in the matter of The State of Gujarat Vs. Patil Raghav Natha and Others, , wherein power of Commissioner to revise order made u/s 65 of Bombay Land Revenue Code was taken into consideration, and it was held that the power must be exercised within a few months and the Commissioner must give reasons for his conclusions. It is submitted that the Law laid down by the Hon"ble Apex Court was taken into consideration by this Court in the matter of Chote Lal Vs. Smt. Mulabai and Others, which was arising out of the same Act and it was observed that suo motu powers of revision should be exercised within the reasonable time and cannot be exercised after 25 years of transaction. Further reliance is placed on a decision in the matter Ravi Narayan Vs. State of M.P. and Others, , wherein this Court held that suo motu revisional powers should be exercised within reasonable time and even one year in a given case may be unreasonable. On the strength of aforesaid position of law, learned Counsel submits that the petitions filed by the petitioners have no merits and the same be dismissed.

5. In W.P. No. 13849/10, wherein petitioner is Puralal the delay in filing the application is more than one year four months. In W.P. No. 7845/09, the delay is of two years and three months and in W.P. No. 694/10, the delay is of 8 months. So far as Law laid down by this Court in the matter of Sheikh Amir (Supra), is concerned, in that case, while the Hon"ble Divisional Bench has held that no limitation is prescribed for taking such action, this Court has not taken into

consideration the impact of Section 15 of the Act.

6. Section 15 of the Act as is exists is reproduced hereinbelow:-

15. Transfer of land, which is subject matter of prohibited transaction of loan to be null and void.-- (1) Notwithstanding anything contained in any law for the time being in force, where a lender of money transfers any land, which may be a subject matter of a prohibited transaction of loan, by way of sale, gift, exchange, lease or otherwise, such transfer shall be deemed to have been made to defeat the provisions of this Act and be null and void;

(2) If any question arises as to whether a transaction is prohibited transaction of loan to which the provisions of sub-section (1) applies, the holder of agricultural land who is a party to such transaction shall apply to the Sub-Divisional Officer:-

(i) where such transaction was entered into after the 31st January, 1977, but prior to the commencement of the Madhya Pradesh Samaj Ke Kamjor Vargo Ke Krishi Bhumi Dharakon Ka Udhar Dene Walo Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Thata Mukti (Sanshodhan) Adhiniyam, 1988 within 5 years of such commencement; and

(ii) where such transaction is entered into after the commencement of the said Act within 6 years of the date of such transaction in the form and manner prescribed u/s 5, the provisions of Section 17 of the Limitation Act, 1963 (No. 36 of 1963) shall apply for computing limitation under this sub-section.

(3) The Sub-Divisional Officer may, on his own motion or on receipt of the application under sub-section (2) proceed to deal with the matter as if it were an action taken on his own motion u/s 6 or an application u/s 5 as the case may be and the provisions of this Act shall so far as may be apply thereto as they apply to an action taken on his own motion u/s 6 or to an application u/s 5.

7. Sub-sections (2) and (3) of Section 15 has been inserted by M.P. Act No. 29 of 1988. Prior to it no limitation was prescribed for moving an appropriate application u/s 5 of Limitation Act.

8. In the present cases, the applications filed by the petitioners has been dismissed only on the ground that the application filed by the petitioner is barred by time. Learned SDO has not bothered to examine the cases in exercise of powers conferred by sub-section (3) of Section 15 of the Act. Even if, the application was barred by time, then too, when the facts were brought to the notice of the SDO by moving the application, then it was the duty of the SDO to examine the case and form an opinion as per Section 6 (1) of the Act. Since no opinion was formed in spite of bringing the facts into the knowledge of the SDO, therefore, this Court is of the view that the learned SDO was not justified in dismissing the application at the threshold only on the ground that the application is barred by time specially in the circumstances that in all the cases purchaser is one and the same.

9. In the facts and circumstances of the case, petitions filed by the petitioners are allowed and the impugned orders passed by the learned Courts below are set aside with a liberty to the petitioner in all the petitions to move an appropriate application u/s 5 of Limitation Act, which shall be decided by the learned Court below after giving an opportunity of hearing to the respondent Nos. 3 to 5. It is made clear that while deciding the application, learned Court below shall not be impressed by any of the observations made by this Court. Parties are directed to remain present before the learned Court below on 16-4-2012. With the aforesaid observations, petition stands disposed of. Copy of this order be placed in the record of W.P. Nos. 694/10 and 7845/09.

No order as to costs.