
(1972) 02 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 299 of 1970

Radhika Prasad

APPELLANT

Vs

State of M.P., Bhopal and Others

RESPONDENT

Date of Decision : 08-02-1972

Acts Referred:

Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 — Section 13(1), 14(2), 15(4), 5

Citation : AIR 1972 MP 124 : (1972) J LJ 338 : (1972) 17 MPLJ 530 : (1972) MPLJ 530

Hon'ble Judges : Bishambhar Dayal, C.J; A.P. Sen, J

Bench : Division Bench

Advocate : P.C. Pathak, for the Appellant; J.P. Bajpai, D.A.G. for Respondents Nos. 1, 3, 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Sen, J.

This is a petition by Radhika Prasad directed against the orders of the Board of Revenue, Madhya Pradesh and the revenue authorities subordinate to it rejecting his claim to settlement of khasra No. 194, area 1.55 acres, situate in village Karela, u/s 5(h) of the M.P. Abolition of Proprietary Rights Act, 1950.

The relevant facts are these. During the Chakbandi proceedings of the year 1937, old khasra Nos. 1172/2 and 1195/2, area 1.55 acres which were then recorded as bagicha, were renumbered as khasra No. 194 and entered as khudkasht as presumably the land had been brought under cultivation. In the subsequent years, the land was apparently allowed to be fallow. So, in the annual papers for the years 1950-51 and onwards, the land was recorded as grass. It was, therefore, treated as having vested in the Stats u/s 4 of the Act.

After a lapse of 16 years from the date of vesting, the petitioner on 13-2-1967. applied to the Sub-Divisional Officer u/s 47(2) of the M.P. Land Revenue Code,

1959, alleging that the land was grove and, therefore, should have been settled with him u/s 5(h) , but had been wrongly recorded as grass in the annual papers and so, wrongly treated as having vested in the State, In support of his application, the petitioner filed the Chakbandi Adhikar Abhilekh of the year 1937, showing the land as bagicha prior to the consolidation of holdings. He also filed the khasra Panchsala for the years 1950-51 to 1955-56, showing that there were trees standing on the land, though it had by then been recorded as grass. Later on, the land was entered as Nazul Sarkar.

The revenue authorities have rejected the claim on the ground that the land was not recorded as a "grove" in the annual papers for the year 1950-51 and, therefore, did not fall within the purview of Section 5(h) of the Act. and even if it was a grove, the petitioner not having made a claim to the settlement of the land, before the Compensation-cum-Claims Officer, his claim, if any, to its settlement is now barred under the provisions of the Act.

Section 5(h) of the M. P. Abolition of Proprietary Rights Act reads as follows:

"(h) all groves wherever situate and recorded in village papers in the name of the outgoing proprietor or any other person shall continue to belong to or be held by such proprietor or such other person and the land under such groves shall be settled with such proprietor or such other person by the State Government on such terms and conditions as it may determine." It is urged that the land having been recorded as bagicha in the Chakbandi Adhikar Abhilekh of the year 1937, was a "grove" within the meaning of Section 5(h) of the Act. It is further urged that the word "recorded" in the section, means "recorded at any time". The contentions cannot be accepted.

In our opinion, the word "recorded" in Section 5(h) of the Act must, in the context in which it appears, mean "recorded in the year of vesting, i. e., in the annual papers for the year 1950-51. That is the one and the only meaning of the word "recorded" used in the section. Any other construction of the word "recorded" would defeat the entire scheme of the Act. u/s 3 of the Act, on and from 31-3-1951 all the proprietary rights in an estate or mahal vesting in a proprietor of such estate or mahal passed from such person to and vested in the State for the purposes of the State free of all encumbrances. Section 4 specifies the consequences of the vesting. When the notification u/s 3 has been published in the Gazette, then, notwithstanding anything contained in any contract, grant or document or in any other law for the time being in force and save as otherwise provided, all rights, title and interest vesting in the proprietor, in an estate or mahal, including all grass lands, scrub jungles, forest, trees etc., ceased and became vested in the State. u/s 7 the Collector took charge of all the lands, other than occupied lands and homestead, and of all interests vesting in the State u/s 3 on the date of vesting. Under the scheme of the Act, therefore, the crucial date was 31-3-1951, the date of vesting. The state of affairs existing as on that date, as reflected in the annual papers for the year 1950-51, determined the rights, title and interest of the outgoing proprietor vis-avis the

State, That being so, the word "recorded" in Section 5(h) must bear the meaning as indicated above.

Even on merits, the petitioner has no case. A "grove" is a cluster of trees sufficient in number specially planted by human agency to prevent its use for any other purpose, but not large enough to constitute a forest. In *Shrimant Sardar Chandrojirao Angre Vs. State of Madhya Pradesh*, their Lordships of the Supreme Court stated as follows¹-

"..... the word "grove" conveys compactness or at any rate substantial compactness as to be recognised as a unit by itself which must consist of a group of trees in sufficient number to preclude the land on which they stand from being primarily used for a purpose such as cultivation, other than as a grove-land. The language of Section 5(b)(iv) does not require however that the trees need be fruit-bearing trees nor does it require that they should have been planted by human labour or agency. But they must be sufficient in number and so standing in a group as to give them the character of a grove and to retain that character the trees would or when fully grown preclude the land on which they stand from being primarily used for a purpose other than that of a grove-land. Cultivation of a patch here and a patch there would have no significance, to deprive it of its character as a "grove"."

In the *Chakbandi Adhikar Abhilekh* for the year 1937, the land stood recorded as *khudkasht*, i. e., under personal cultivation. Such land, on the principles laid down by their Lordships, could not be treated as a "grove". The very fact that the petitioner never made such a claim before the Compensation-cum-Claims Officer shows that the land was not a "grove" within the meaning of Section 5(h) of the Act. If the petitioner had any kind of right to reservation of the land as a grove u/s 5(h) of the Act, he should have made that claim before the Compensation-cum-Claims Officer and applied for its settlement under the terms of the section. Under the frame-work of the Act, the petitioner having failed to make such a claim, at the appropriate time. the record prepared by the Compensation-cum-Claims Officer, in Form No. III u/s 13(1) showing the land as having vested, has now attained a finality which cannot be upset under Sections 14(2) and 15(4) of the Act.

The result, therefore, is that the -petition fails and is dismissed with costs. Counsel's fee Rs. 100/-. The remaining amount of security deposit if any, shall be refunded to the petitioner.