

(1971) 04 MP CK 0004

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 362 of 1969

Raghubar Singh

APPELLANT

Vs

The State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 05-04-1971

Acts Referred:

Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 — Section 3, 4, 4(1), 5, 5
Madhya Pradesh Land Revenue Code, 1959 — Section 251, 251(1)

Citation : AIR 1971 MP 209 : (1973) ILR (MP) 385 : (1971) JLJ 387 : (1971) MPLJ 594

Hon'ble Judges : S.P. Bahrgava, J; R.J. Bhawe, J; P.K. Tare, J

Bench : Full Bench

Advocate : R.K. Pandey, Y.S. Dharmadhikari, for the Appellant; K.P. Munshi, Government Advocate for Respondent Nos. 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tare, J.

The Division Bench has referred this case to a Full Bench for decision of the Writ Petition without framing any specific question for the opinion of the Full Bench. Therefore, we propose to decide the entire matter by resolving the conflict of views as indicated in the order of reference.

The facts leading to the present reference are as follows: In this petition under Articles 226 and 227 of the Constitution of India, the petitioner seeks a Writ of Certiorari in respect of the orders of the Revenue Courts (Exs. P/1 to P/4) holding that the tanks recorded as Khasra Nos. 461 and 542 in village Gorra had vested in the State by virtue of Section 251 of the M. P. Land Revenue Code, 1950.

Prior to the merger of the Chhattisgarh States into the old Central Provinces, the petitioner was a Gaonthia and a protected Thekedar of village Gorra and his rights were governed by the Raigarh State Wajib-ul-arz. Subsequent to the

merger of the Raigarh State into the old Central Provinces, the petitioner's rights were governed by the Central Provinces, (Merged States) Land Tenure Order, 1949. That Land Tenure Order of 1949 was repealed by the M. P. Land Revenue Code, 1954, which came into force with effect from 1-10-1955. Thereafter that Act was repealed and was replaced by the M. P. Land Revenue Code, 1959, which came into effect from 2-10-1959. In the meantime, the proprietary rights were abolished by enactment of the M. P. Abolition of Proprietary Rights Act, 1950, and certain rights in tanks were saved in favour of the expropriators by virtue of Section 5(a), Section 5(f) and Section 5(g) of the said Act. The petitioner's contention throughout, in the Revenue Courts and in the present Writ Petition, has been that Section 251 of the M. P. Land Revenue Code, 1959, is inapplicable in the present case. Therefore, we are required to consider the question as to what the legal position was subsequent to the coming into force of the M. P. Abolition of Proprietary Rights Act, 1950.-- (1 of 1951), according to which, the date of vesting was 31st of March, 1951. It is not necessary to consider the question of the petitioner's rights prior to that date.

Even according to the petitioner people in the village were bathing in the tanks and were taking water for drinking purposes. As such, it is the petitioner's case that people of the village were using the water of both the tanks for their Nistar. The question of vesting has to be judged in this background, as this right was being exercised by the villagers under Clause 49 of the Raigarh State Wajib-ul-arz, before the Raigarh State had merged into the Central Provinces. That position obtains even now.

Section 3 of the M. P. Abolition of Proprietary Rights Act, 1950, provided for vesting of proprietary rights in the State. It may be relevant to reproduce the said Section, which is as follows:--

"Section 3. (1).--Vesting of proprietary rights in the State.--Save as otherwise provided in this Act, on and from a date to be specified by a notification by the State Government in this behalf, all proprietary rights in an estate, mahal, alienated village or alienated land, as the case may be, in the area specified in the notification, vesting in a proprietor of such estate, mahal, alienated village, alienated land, or in a person having interest in such proprietary right through the proprietor, shall pass from such proprietor or such other person to and vest in the State for the purpose of the State free of all encumbrances.

(2).--After the issue of a notification under Sub-section (1), no right shall be acquired in or over the land to which the said notification relates, except by succession or under a grant or contract in writing made or entered into by or on behalf of the State; and no fresh clearing for cultivation or for any other purpose shall be made in such land except in accordance with such rules as may be made by the State Government in this behalf.

(3).--Different dates may be specified under Sub-section (1) for different areas.

(4).--The State Government may vary the date specified under Sub-section (1)

at any time before such date."

It is pertinent to note that Sub-section (1) of the said Section provides for vesting of proprietary rights in estate, mahal etc., but saves such rights as are otherwise provided for in subsequent provisions.

Next we may refer to Section 4 of the said Act, which is as follows:--

"Section 4.--Consequences of the vesting -- (1) When the notification u/s 3 in respect of any area 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 in this Act, the consequences as hereinafter set forth shall, from the beginning of the date specified in such notification (hereinafter referred to as the date of vesting) ensue, namely:--

(a).--all rights, title and interest vesting in the proprietor or any person having interest in such proprietary right through the proprietor in such area including land (cultivable or barron), grass land, scrub iungle, forest, trees, fisheries, wells, tanks, ponds, water channels, ferries, pathways, village sites, hats, bazars and melas; and in all subsoil, including rights, if any, in mines and minerals, whether being worked or not. shall cease and be vested in the State for purposes of the State free of all encumbrances; and the mortgage debt or charge on any proprietary right shall be a charge on the amount of compensation payable for such proprietary right to the proprietor under the provisions of this Act;

(b).--all grants and confirmation of title of or to land in the property so vesting or of or to any right or privilege in respect of such property or land revenue in respect thereof shall, whether liable to resumption or not determine;"

We are not concerned with the other sub-clauses of the said sub-section.

Sub-section (2).-- Notwithstanding anything contained in Sub-section (1) the proprietor shall continue to retain the possession of his homestead, home-farm land, and in the Central Provinces also of land brought under cultivation by him after the agricultural year 1948-49 but before the date of vesting.

Sub-section (3).-- Nothing contained in Sub-section (2) shall operate as a bar to the recovery by the outgoing proprietor of any sum which becomes due to him before the date of vesting by virtue of his proprietary rights and any such sum shall be recoverable by him by any process of law which but for this Act would be available to him."

Then we may come to Sub-sections (e), (f) and (g) of Section 5 of the Act, which save certain property to the ex-proprietors or other persons. The said Section is as follows:--

"Section 5-- Certain properties to continue in possession of proprietor or other person.-- Subject to the provisions in Sections 47 and 63 -- (these sections were omitted by the M. P. Land Revenue Code 1954-No. II of 1955)"

(e).-- all tanks situate on occupied land and belonging to or held by the outgoing proprietor or any other person shall continue to belong to or be held by such proprietor or other person;

(f).-- all tanks, belonging to or held by the outgoing proprietor which are situate on land other than village site or occupied land and in which no person other than such proprietor has any right of irrigation, shall belong to or be held by such proprietor;

(g).-- all tanks and embankments (bandhans) belonging to or held by the outgoing proprietor or any other person which are situate on land other than village site or occupied land and the beds of which are under cultivation of such proprietor or such other person shall belong to or be held by such proprietor or such other person and the land under such tanks and embankments shall be settled with such proprietor or such other person on such terms and conditions as the State Government may determine;"

Sub-section (e) relates to tanks situate on occupied land. We are not concerned with the said sub-section in the present case, nor are we concerned with Sub-section (g). But the present case is solely governed by Sub-section (f). The phraseology of Sub-section (f) clearly indicates that by virtue of Section 4 (1) (a) read with Section 3 of the Act, the proprietary right in all tanks vests in the State. But what was saved by the legislature in favour of the ex-proprietors was the non-proprietary or, as we may call it, the usufructuary or possessory right in respect of such tanks in which no other person except the proprietor had any right of irrigation. In that event only, the tank would belong to and be held by such proprietor or other person. As such, the expropriator having lost the proprietary rights over the tank would be allowed to exercise non-proprietary or usufructuary or possessory rights over such tanks, where they answered the requirements of Sub-section (f) of Section 5 of the Act.

The M. P. Land Revenue Code, 1954, did not alter that position in relation to rights in tanks except that certain provisions of the M. P. Abolition of Proprietary Rights Act, 1950, and certain Land Revenue and Tenancy Act were repealed by the 1954 Code. However, it was the M. P. Land Revenue Code, 1959, which made a radical departure by enacting Sections 57 and 251. It may be relevant to reproduce both the Sections. Section 57 is as follows:--

"Section 57.-- State ownership in all lands-- (1) All lands belong to the State Government and it is hereby declared that all such lands, including standing and flowing water, mines, quarries, minerals and forests reserved or not, and all rights in the sub-soil of any land are the property of the State Government;

Provided that nothing in this section shall be deemed to affect any rights of any person subsisting at the coming into force of this Code in any such property.

(2) Where a dispute arises between the State Government and any person in respect of any right under Sub-section (1) such dispute shall be decided by the

(Sub-Divisional Officer) substituted for the word Collector, by Section 4 of the M. P. Land Revenue Code (Amendment) Act 24 of 1961.

(3) Any person aggrieved by any order passed under Sub-section (2) may institute a civil suit to contest the validity of the order within a period of one year from the date of such order.

(4) Where a civil suit has been instituted under Sub-section (3) against any order, such order shall not be subject to appeal-or revision."

Therefore, Sub-section (1) saved the existing rights of any person at the commencement of this Act. But Section 251 of the Code provided for abolition of certain kind of rights in tanks which had been saved in favour of ex-proprietors or other persons u/s 5 (e). Section 5 (f) and Section 5 (g) of the M. P. Abolition of Proprietary Rights Act, 1950. It may be relevant to reproduce Section 251 of the M. P. Land Revenue Code, 1959, which is as under:--

"Section 251. Vesting of tanks in State Government.

(1) All tanks situated on unoccupied land on or before the date of coming into force of the Act, providing for the abolition of the rights of intermediaries in the areas concerned and over which members of the village community were, immediately before such date, exercising rights of irrigation or Nistar, shall, if not already vested in the State Government, vest absolutely in the State Government, with effect from the 6th April, 1959:

Provided that nothing in this section shall be deemed to affect any right of a lessee in the tank under a lease subsisting on the date of vesting of the tank which shall be exercisable to the extent and subject to the terms and conditions specified in the lease:

Provided further that no tank shall vest in the State Government, unless--

(a) after making such enquiry as he deems fit, the Collector is satisfied that the tank fulfils the conditions laid down in this sub-section; and

(b) notice has been served on the parties interested and opportunity given to them for being heard.

(2) Any person claiming in any such tank any interest other than the right of irrigation or Nistar may, within a period of four years from the date of vesting under Sub-section (1), make an application in the prescribed form to the Collector for compensation in respect of his interest.

(2) (a) The provisions of Section 239 shall apply to trees standing on the embankments of tank vested in the State Government under Sub-section (1) as they apply to trees planted in an unoccupied land.

(3) Such compensation shall be fifteen times the land revenue assessable on the land covered by the tank and for purposes of assessment such land shall be treated as irrigated land of the same quality as the adjoining land.

(4) The compensation as determined under Sub-section (3) shall be paid by the Collector to the person or persons proved to his satisfaction to be owning interest in the tank concerned.

(5) The payment of compensation under Sub-section (4) shall be a full discharge of the State Government from all liability for compensation in respect of the tank concerned, but shall not prejudice any rights in respect of such tank to which any other person may be entitled by due process of law to enforce against the person or persons to whom compensation has been paid as aforesaid.

(6) The State Government may make rules providing for the regulation of the use of water from such tanks.

(7) The vesting of any tank under Sub-section (1) shall not affect the rights of irrigation and Nistar in such tank to which any person is entitled immediately before the date of vesting.

Explanation.-- For the purposes of this section, tank includes the trees standing on the embankments of the tank but does not include buildings temples or other constructions standing on the embankments thereof."

It is pertinent to note that this section uses the phrase, namely, "all tanks situated on unoccupied land on or before the date of coming into force of the Act, etc..... shall, if not already vested in the State Government, vest absolutely in the State Government, with effect from the 6th April, 1959., We are not concerned with the other parts of the sub-section or the subsections.

It has been argued by the learned counsel for the petitioner that if the tanks had already vested in the State Government u/s 4 (1) (a) read with Section 3 of the M. P. Abolition of Proprietary Rights Act, 1950 there would be no question of the said tanks vesting in the State u/s 251 of the M. P. Land Revenue Code, 1959. Therefore, the argument of the learned counsel for the petitioner is that there being no second vesting of tanks, the rights saved in favour of the petitioner by Section 5 (f) of the M. P. Abolition of Proprietary Rights Act, 1950, would not stand abolished and as such Section 251 of the M. P. Land Revenue Code, 1959, would have no effect on those rights. We may observe that the learned counsel by adopting this line of argument, has ignored the specific wording of Section 3 and Section 4 (1) (a) of the M. P. Abolition of Proprietary Rights Act, 1950. Those sections provide for abolition of proprietary interest in the tanks and save certain non-proprietary or possessory or usufructuary interest in favour of the ex-proprietors or other persons. Therefore, when the legislature in Section 251 of the M. P. Land Revenue Code, 1959, uses the phrase Vesting of tanks", it means whatever vestige of rights has persisted in the ex-proprietors by virtue of Section 5 (e), Section 5 (f) and Section 5 (g) of the M. P. Abolition of Proprietary Rights Act, 1950, is now abolished by virtue of Section 251 of the M. P. Land Revenue Code, 1959.

The learned counsel for the petitioner invited attention to the observations of a

Division Bench of this Court in *Ramranjan Singh v. State of Madhya Pradesh*, M. P. No. 254 of 1960, D/- 24-4-1961 = 1961 MPLJ (Notes) 110. In that case the tank belonged to the ex-proprietor till the abolition of proprietary rights. After the abolition of proprietary rights the tank vested in the State. But possession of the same was handed over to the ex-proprietor in 1951 under an order of the Compensation Officer and it was settled in favour of the ex-proprietor on an annual rent. The Sub-Divisional Officer again gave notice to the ex-proprietor that the tank had vested in the State u/s 251 (1) of the M. P. Land Revenue Code, 1959, and, therefore, the ex-proprietor was prevented from entering into any lease or contract in respect of the tank. The Division Bench laid down that the tank having already vested in the State under the M. P. Abolition of Proprietary Rights Act, 1950, there would be no question of the same tank vesting in the State u/s 251 (1) of the M. P. Land Revenue Code, 1959, and as such the said section was inapplicable. The Division Bench further observed that this section was applicable to tanks which had not already vested in the State under the M. P. Abolition of Proprietary Rights Act, 1950. In that view the notice issued by the Sub-Divisional Officer under S. 251, (1) of the M. P. Land Revenue Code, 1959, was held to be illegal and for that reason, it was quashed.

We may observe that if a tank had already vested under the Abolition of Proprietary Rights Act, 1950, there would be no question of re-vesting of the same tank. But, if what vested on account of the Abolition of Proprietary Rights Act, 1950, was merely the proprietary right, then Section 251 (1) of the M. P. Land Revenue Code, 1959, will very much be attracted so as to abolish the non-proprietary or possessory or usufructuary right vested in the ex-proprietor.

To the same effect were the observations of another Division Bench of this Court in *Raja Ram v. The State of M. P.*, M. P. No 302 of 1961, D/- 23-1-1962 = 1962 MPLJ 86.

In *Pirma Gond v. Sub-Divisional Officer, Mandla*, M. P. No. 339 of 1963 D/- 6-3-1964 (MP). a Division Bench of this Court had to consider the question on the following facts: *Pirma Gond* was one of the proprietors and owner of the tank till the coming into force of the M. P. Abolition of Proprietary Rights Act 1950. When the said Abolition Act, 1950, came into force, he made an application and on that application the tank was settled with him in *Malik-Makbuza* rights and assessed to land revenue. The Division Bench found as a fact that the tank had already vested in the State under the M. P. Abolition of Proprietary Rights Act, 1950. Subsequently, the Collector passed an order u/s 251 (1) of the M. P. Land Revenue Code, 1959, to the effect that the tank had vested in the State absolutely as from 6-4-1959. Thereafter the Sub-Divisional Officer, Mandla, made a fresh declaration of vesting the tank in the State under that section. The *Naib-Tahsildar* purported to let out the tank for the year 1963-64. The Division Bench laid down that there could not be a second vesting of the tank in the State by virtue of Section 251(1) of the M. P. Land Revenue Code, 1959. This case was taken up before the Supreme Court and in *Divisional Officer, Mandla v. Pirma*

Gond, C. A. No. 446 of 1966. D/- 10-3-1969 = 1969 MPLJ 713 : AIR 1969 NSC 49, their Lordships dismissed the appeal filed by the Sub-Divisional Officer and as such, upheld the decision of the Division Bench. Their Lordships observed that the conclusion arrived at by the High Court was one of fact and hence there was no ground for interfering with the conclusion on facts. It was under those circumstances that their Lordships refused to interfere with the order of the Division Bench.

Another Division Bench had to consider the cases which had decided that there could not be a second vesting by virtue of Section 251 (1) of the M. P. Land Revenue Code, 1959, in *Rishabh Kumar v. State of M. P.*, M. P. No. 266 of 1966, D/- 21-7-1967 (MP). That was a case precisely governed by Section 5 (f) of the M. P. Abolition of Proprietary Rights Act, 1950. The facts found by the Division Bench were that Seth Rishabh Kumar was the proprietor of the village Manpura, owning a tank. After the abolition of proprietary rights, the said tank had been treated as having vested in the State and the ex-proprietor had been excluded from its possession. The ex-proprietor claimed that the tank had been settled with him u/s 5 (f) of the M. P. Abolition of Proprietary Rights Act, 1950. Therefore, for claiming that relief, he had filed Civil Suit in the year 1958 in the Court of the Civil Judge, Damoh, for a declaration of his title, to the tank and his right to possession. The Civil Court upheld the plaintiff's claim on the ground that as provided u/s 5 of the Abolition of Proprietary Rights Act, 1950, the tank could not vest in the State and was saved for the use of the petitioner. Therefore, a decree was passed by the trial Court in favour of the plaintiff directing delivery of possession of the tank. Accordingly the ex-proprietor had taken possession of the tank on 22-2-1959. Thereafter in the year 1961, proceedings were initiated against the ex-proprietor u/s 251 (1) of the M. P. Land Revenue Code, 1959-In those proceedings the ex-proprietor contended that the tank had already vested in the State under the M. P. Abolition of Proprietary Rights Act, 1950, and it could not again vest in the State u/s 251(1) of the M. P. Land Revenue Code, 1959. The Revenue Officer negatived his claim and an appeal by the ex-proprietor also failed. Therefore, the ex-proprietor filed a Writ Petition in this Court under Arts. 226 and 227 of the Constitution of India. The Division Bench negatived that contention by holding that although in *State of Madhya Pradesh Vs. Yakinuddin, & State of Madhya Pradesh and Others Vs. Seth Balkishan Nathani and Others*, , their Lordships of the Supreme Court had observed that the effect of the notification issued under S. 3 of the Abolition Act was that all proprietary rights in an estate, vested in the State, but the observations of their Lordships clearly indicated that all the interest of the proprietor vested in the State except the home-farm land and the lands saved for him u/s 5 of the M. P. Abolition of Proprietary Rights Act, 1950. This would be clear from the provisions of Section 4, wherein it has been specifically stated that all the proprietary interest shall vest in the State save as otherwise provided. Sub-section (2) of Section 4 and Section 5 and Section 6 would be the provision to the contrary in the nature of saving certain rights. The Division Bench further observed that it would also be

an accepted principle of interpretation that interpretation of a particular expression in one statute cannot be relied on for interpreting that expression in another statute. After the abolition of proprietary rights, certain tanks had remained with the ex-proprietors over which the village community had the right of irrigation or Nistar, which created certain difficulties. It was with a view to take over such tanks from the ex-proprietors that Section 251 of the M. P. Land Revenue Code, 1959, was enacted. The Division Bench further observed that in the *Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust*, their Lordships had observed that the word "vest" had not been given a fixed connotation, meaning in all causes that the property is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. In enacting the Abolition Act, the intention of the legislature was to remove the intermediary between the tiller of the soil and the State and vest the proprietary title of the intermediary in the State. At the same time, possession of certain property was saved for the intermediary, or the ex-proprietor. In other words, though the proprietary title vested in the State, the possessory title over certain property remained in the intermediary or the ex-proprietor. It would be this possessory title that was aimed at in Section 251 of the M. P. Land Revenue Code, 1959. Therefore, adopting that reasoning, the Division Bench negated the contention of the petitioner, Seth Rishabh Kumar based on the earlier observations of the Division Benches mentioned in the cases earlier referred to. This case of *Rishabh Kumar v. State of M. P.*, M. P. No. 266 of 1966 D/- 21-7-1967 (MP) is fully reported in 1970 MPLJ 202.

In our opinion, the case of 1970 MPLJ 202 (supra) properly expresses the effect of vesting under Sec. 3 and Section 4(1) (a) of the M. P. Abolition of Proprietary Rights Act, 1950, and Section 251 of the M. P. Land Revenue Code, 1959.

The case of M. P. No. 254 of 1960. D/- 24-4-1961 (MP) (supra) was a case where the facts were that the tank Khasra No. 304, belonged to the petitioner and after the abolition of the proprietary rights, the tank vested in the State, but the possession of the same was handed over to him in 1951 under an order passed by the Compensation Officer and it was settled in his favour on an annual rent of Rs. 20/2/-. The Division Bench held that the tank having already vested in the State under Sections 3 and 4(1) (a) of the M. P. Abolition of Proprietary Rights Act, 1950, could not vest in the State a second time u/s 251 of the M. P. Land Revenue Code, 1959. In that view, the notice issued by the Sub-Divisional Officer about the tank vesting in the State u/s 251 of the M. P. Land Revenue Code, 1959, was quashed by the Division Bench. We may observe with due respect to the learned Judges constituting the Division Bench that the specific wording of Sections 3 and 4 (1) (a) of the M. P. Abolition of Proprietary Rights Act, 1950, and especially the non-obstante clause appearing in those two Sections, was not given effect to. The very opening words of Section 3 (1) of the Act provided that "save as otherwise provided in this Act". The- consequences ensued after the

Notification was issued by the State Government fixing the date of vesting. Therefore, the vesting took place in respect of everything and that too regarding all proprietary rights except what was otherwise provided in the Act. The same phraseology is to be found in Section 4(1) of the said Act. Further it is to be noted that Section 5, Sub-sections (e), (f) and (g) use the phrase "belonging to and held by the outgoing proprietor". The further phrase is "shall continue to belong to or be held by such proprietor or other person". Therefore, Section 4(2), Section 5 and Section 6(1) would be provisions to the contrary. As to what rights the outgoing proprietor or the other person got have been detailed in the subsequent subsections. This would clearly indicate that possessory title in the properties mentioned in those sections was intended to be continued with the ex-proprietor or the other person, even assuming that proprietary title might have vested in the State. Therefore, under the M. P. Abolition of Proprietary Rights Act, 1950, some interest remained with the ex-proprietor or the other person and not that the entire interest including possessory title had been wiped out. What Section 251 of the M. P. Land Revenue Code, 1959, purported to enact was that tanks on occupied lands were not at all affected, but only tanks situated on unoccupied lands over which the villagers had right of irrigation or Nistar were to vest, if not already vested in the State Government under the M. P. Abolition of Proprietary Rights Act, 1950. This phraseology has to be noted with reference to the different phraseology used in Sub-sections (e), (f) and (g) of Section 5 of the M. P. Abolition of Proprietary Rights Act, 1950. Sub-section (e) envisaged the tanks situated on occupied land. The phrase "occupied land" had also been defined by Sub-section 2(k) of the Abolition of Proprietary Rights Act, 1950, which in relation to merged territories meant the land held by a Raiyyat tenant or a village servant or land comprised in homefarm. Sub-section (f) contemplated the tanks situated on land other than village site or occupied land and in which no person other than the proprietor had the right of irrigation. It is pertinent to note that tanks in which the villagers had right of Nistar were not at all affected by Sub-sections (f). Sub-section (g) contemplated tanks and embankments situated on lands other than the village site, occupied land and the beds of which were under cultivation. In that event the lands under such tanks and embankments were liable to be settled with the ex-proprietor or the other person. As such, the M. P. Abolition of Proprietary Rights Act, 1950, did not abolish all rights in respect of all tanks, but abolished certain rights in respect of some categories of tanks and something was left with the ex-proprietor or the other person.

What Section 251 of the M. P. Land Revenue Code, 1959, aimed at abolishing was rights in tanks situated on unoccupied lands in which villagers had either the right of irrigation or the right of Nistar. The right of Nistar of villagers was not at all relevant under Sub-sections (e), (f) and (g) of Section 5 of the Abolition Act, and moreover. Section 251 of the 1959 Code does not affect the tanks situated on occupied lands, but it pertains to tanks situated on unoccupied lands only. That is the distinction. Thus, the argument of a second vesting would not at all

be tenable as the scope of Sections 3 4 and 5 of the Abolition Act and Section 251 of the M. P. Land Revenue Code, 1959, is altogether different and their operation is limited to the, specific categories mentioned in those Sections.

In M. P. No. 254 of 1960, D/- 24-4-1961 (M. P.) (supra), the right of fishery was involved and the tank had been released in favour of the ex-proprietor u/s 5 (g) of the M. P. Abolition of Proprietary Rights Act, 1950, and the same had been re-settled with him. As presently we shall show, a case under Sub-sections (g) would stand on a different footing.

The case of M. P. No. 302 of 1961, D/- 23-1-1962 (MP) (supra) was a case governed by Section 5(e) and Section 5(g) of the M. P. Abolition of Proprietary Rights Act, 1950. These tanks were settled with the petitioner Rajaram, who had been granted Bhumiswami rights and who was in possession. He contended that the State could not deal with the tanks or lease out to any other person as Section 251 (1) of the M. P. Land Revenue Code, 1959, was inapplicable. The Division Bench upholding that contention, quashed the notice issued by the Revenue Officer. We may again observe that the scope of the two Sections mentioned by us above was ignored by the learned Judges constituting the Division Bench. We are in agreement with the view of the said Division Benches that if it be assumed that there was once vesting under the Abolition Act, it is to be noted that there could be no second vesting under the M. P. Land Revenue Code, 1959. But as already observed by us earlier that the Land Revenue Code merely purports to abolish certain rights in respect of tanks on unoccupied lands which had not vested under the Abolition Act. As such, there is no duplication of vesting and if the interpretation suggested by the learned counsel for the petitioner were to be accepted, Section 251 of the M. P. Land Revenue Code, 1959, would be rendered otiose. Evidently, such an interpretation cannot be accepted by a Court.

The case of M. P. No. 339 of 1963 D/- 6-3-1964 (MP) (supra) was a case governed by Section 5(g) of the M. P. Abolition of Proprietary Rights Act. 1950. The tank had been settled with the ex-proprietor in Malik-makbuza right. Thereafter the Collector, Mandla passed an order stating that the tank vested in the State u/s 251(1) of the M. P. Land Revenue Code, 1959. In that case the annual papers indicated that the tank had vested in the State upon commencement of the Abolition Act and the same was being dealt with accordingly. The tank was ordered to be settled with the ex-proprietor, who had been cultivating Singharas. The Division Bench, following the view in M. P. No. 254 of 1960 D/-24-4-1961 (MP) (supra) quashed the notice issued by the Revenue Officer. This case went to the Supreme Court in Civil Appeal No. 446 of 1966 (reported in AIR 1969 NSC 49) and their Lordships affirmed the view of the High Court by judgment, D/- 10-3-1969. We may observe that a case u/s 5(g) of the M. P. Abolition of Proprietary Rights Act, 1950, would stand on a different footing. Section 251 of the M. P. Land Revenue Code, 1959, does not at all affect the tanks in which right to grow Singharas may have been in existence. The said

Section only affects the tanks situated on unoccupied land in which the villagers have right of irrigation or right of Nistar. Evidently, the right of Nistar will not include the right to cultivate the bed of the tank or to grow Singharas. The right of Nistar would mean the right to take water for drinking or for other use as also right of cattle to use water for that purpose. In this view, the case of 1969 MPLJ 713 : AIR 1969 NSC 49) (supra), decided by the Supreme Court, is clearly distinguishable. But, we have no hesitation in expressing our opinion that the cases of 1961 MPLJ (Notes) 110 (supra) and 1962 MPLJ (Notes) 86 (supra) were decided on a misapprehension of the scope of Sections 3, 4 and 5 of the M. P. Abolition of Proprietary Rights Act, 1950, and Section 251 of the M. P. Land Revenue Code, 1959, and as such, they did not lay down the law correctly. For this reason we would overrule those cases and we would adopt the reasoning of the subsequent Division Bench in 1970 MPLJ 202 (supra) and we would approve of the same. We need not pronounce any opinion about the case of AIR 1969 NSC 49 (supra) as the case is distinguishable.

In this view of the matter, we have no doubt that the tanks recorded as Khasra Nos. 461 and 542, in which the villagers had right of Nistar, namely, bathing and taking water for use, were rightly settled in favour of the petitioner u/s 5(f) of the M. P. Abolition of Proprietary Rights Act, 1950. As such, these tanks were saved to him under the Abolition Act. But, they were rightly held to have vested in the State u/s 251 of the M. P. Land Revenue Code, 1959.

As a result of the discussion aforesaid, this petition is liable to be dismissed. Accordingly, we dismiss it with costs. Counsel's fee in this Court shall be Rs. 200/-, if certified. The balance of the security deposit, if any be refunded to the petitioner.