
(1957) 07 MP CK 0027
In the Madhya Pradesh High Court
Case No : F.A. No. 46 of 1954

Raghubirprasad Gour and Others

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 31-07-1957

Acts Referred:

Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 — Section 13(1)

Citation : (1957) JLJ 1149 : (1958) MPLJ 43

Hon'ble Judges : T.C. Shrivastava, J;G.P. Bhutt, J

Bench : Division Bench

Advocate : R.L. Sharma, for the Appellant; M. Adhikari, for the Respondent

Final Decision : Dismissed

Judgement

The present appeal (No. 46 of 1954) and the connected Appeals Nos. 48, 50 and 141 of 1954, were filed by the Plaintiffs of four different suits which were dismissed by the lower Court. All the appeals were jointly argued as they involve common questions of law and fact. This judgment shall dispose of all the appeals.

The subject-matter of the dispute consists of lands which belonged to the Appellants before the date of vesting under the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, hereinafter called the Act. The lands in dispute in the present suit were recorded by the Compensation Officer u/s 13(1) of the Act as having vested in the State Government, and in the other suits the lands forming the subject-matter were likely to be so recorded. The Appellants, therefore, prayed for a declaration that the lands continue to belong to them and were not liable to vest in the State Government.

The relevant particulars of the lands in dispute, in brief, are as below:

F.A. No. 46 of 1954.-The Appellants were proprietors of villige Narri, and of full share of Patti No. 4 and half share of Patti No. 3 of village Somalwara, tahsil

Seoni-Malwa, district Hoshangabad. The lands mentioned in schedule A of the plaint were held by tenants at the time of the last settlement and acquired by the Plaintiffs from them. They were subsequently recorded as Chhota ghas in the village papers. Schedule B contains lands which were continuously recorded as chhota ghas since the last settlement..

F.A. No. 48 of 1954.-The Appellant was proprietor of mauza Dhuli in tahsil and district Hoshangabad. The lands in dispute are shown in schedule A of the plaint, out of which some khasra numbers were recorded as khudkasht, and Ors. formed tenancy holdings, at the time of the last settlement. Subsequently the fields held by the tenants were acquired by the Plaintiff from them. All the lands were later recorded as chhota ghas in the village papers.

F.A. 50 of 1954.-The Appellant was proprietor of village Randhal in tahsi and district Hoshangabad. The land in dispute is khasra No. 23 which was recorded as khudkasht at the time of the last settlement and was later recorded as chhota ghas in the village papers.

F.A. No. 141 of 1954.-The Appellant was proprietor of patti No. 1/I of village Palasdihi in tahsil and district Hoshangabad. All the lands have been recorded as chhota ghas in the village papers. Out of them, khasra No. 30/2 was tenancy land at the time of the last settlement and was acquired by the Appellant from the tenant by surrender. As regards khasra No. 28/3, his case was that it was under cultivation since the year 1949-50. This point, however, was not pressed before us. The Appellant's contention regarding khasra No. 15 that it was ploughed with a tractor before the date of vesting, which was denied by the State Government before the trial Court, was not challenged before us. This contention is borne out from the copy of the field-book of the Tractor Department, which shows that the field was ploughed on 26/27-3-1951. This document was filed before us and we admit it as additional evidence.

The case of the Appellants was that the lands were used for raising grass for fodder and for grazing. They should, therefore, be deemed to be under their cultivation, and as they were left fallow in accordance with agricultural practice, they constituted their khudkasht and consequently their home-farm within the meaning of the Act. In the suit out of which F.A. No. 141 of 1954 arises, it was also urged that the Act was ultra vires the Constitution in respect of Chhota ghas lands as it provides for the acquisition without payment of compensation, and that, in any case since the Act has only taken away the proprietary rights, the cultivating rights should continue to vest in the outgoing proprietors. It was also pleaded in that suit that khasra Nos. 28/3 and 15 were liable to be settled with the Plaintiff u/s 4 (2), read with Section 40, of the Act. This contention, however, was confined before us only to khasra No. 15.

The case of the State Government was that the lands in question could not be classed as khudkasht or as home-farm, and were, therefore, rightly held to vest in it. As regards khasra No. 15, it was not contested before us that if it could be

deemed to have been cultivated on 26/27-3-1951, it would be liable to be settled with the outgoing proprietor. It was also pleaded that the suits were beyond the jurisdiction of the Civil Courts.

The lower Court upheld the contention of the State Government and dismissed the suits. The Appellants have reiterated their case before us in support of their appeals.

The term "home-farm" has been defined in Section 2 (g) of the Act as meaning.-

(i) Land recorded as sir and khudkasht in the name of a proprietor in the annual papers for the year 1948-49, and

(ii) land acquired by a proprietor by surrender from tenants after the year 1948-49 till the date of vesting.

It was not disputed that neither of these conditions is satisfied in any of the suits. It was, however, urged on the authority of *Rahmatullah v. Mahabirsingh* 1955 N.L.J. 1 that as the lands were khudkasht and should have been so recorded in the annua papers for the year 1948-49, they must be deemed to be the home-farm of the Appellants.

For purposes of the Act, the term khudkasht has, vide Section 2(b), the same meaning as is given to it in the Central Provinces Land Revenue Act, 1917.

It, therefore, means that part of the home-farm of a Mahal which is cultivated by the proprietor as such and which is not sir land. There is an explanation namely, that land allowed to lie fallow according to agricultural practice shall be deemed to be cultivated. [See Section 2(5) of the Central Provinces Land Revenue Act.] The basic condition of khudkasht, therefore, is that there must be continuity of cultivation and it is to maintain this continuity that every break which conduces to better cultivation after the period of rest is to be deemed to be cultivation. The period during which the lands are allowed to remain fallow, therefore, must necessarily be short; otherwise it would require extraordinary investment before the lands could be made serviceable again. That would not help but hinder profitable cultivation and would not normally be the agricultural practice.

The above view seems to be reflected in the instructions contained in the Land Records Manual. On this point instruction (xvi) in Chapter V is pertinent and is reproduced below:

If a field other than sir is actually cultivated by a proprietor, it will be entered as khudkasht in this column. But if it has not been cropped during four or more successive years, it will be deemed to be out of occupation and mentioned as grass in column i.

The instruction is obviously based on the practice of agriculture in the State and indicates that generally speaking, it would not help cultivation if any land remains fallow for more than 3 years at the most. It also appears from the principles of Crop Husbandry in India by Shri Yegna Narayan Aiyar, pages 335

and 373, that interposition of fallow years is profitable in dry places, say where the rainfall is below 15 or 18 inches, and there also cultivation should be done in alternative years, or 2 crops may be taken in three years. The contention of the present Appellants that the agricultural practice is to keep the lands fallow for 20 years is, therefore, improbable and is also not supported by the evidence on record. The only witness on the point is Asaram (P.W. 3) who was examined in the suit out of which F.A. No. 141 of 1954 arises. According to him, the lands are allowed to remain fallow only for one or two years in the rotation of 5 years. His meaning is clear, namely, that the lands are not allowed to lie fallow for more than one or two years in every 5 years. This indicates that the lands in dispute in the four suits were not allowed to lie fallow in accordance with agricultural practice.

It was, however, contended that the issue framed by the lower Court on the point of agricultural practice in the present appeal (No. 46 of 1934) and F.A. No. 50 of 1954, was misleading, and prevented the Appellants from leading proper evidence. In other appeals (Nos. 48 and 141 of 1954), the agricultural practice was not pleaded. The Appellants have, therefore, filed applications for permitting them to raise proper pleadings in the suit out of which these appeals arise and to tender further evidence in other suits. The applications for amendment of the pleadings are belated and do not appear to be bona fide. We also do not think that the Appellants were misled by the issue as framed in suits out of which the present appeal (No. 46 of 1954) and F.A. No. 50 of 1954, arise. The issue was framed in these terms:

Whether the lands in suit were allowed to lie fallow for raising grass crop for agricultural cattle and also for the purpose of giving rest in accordance with agricultural practice.

The issue thus framed does not mean, and could not be understood to mean, that the agricultural practice as set up was not in dispute, when the State Government had expressly denied it. There is, therefore, no case for giving any more opportunity to the Appellants to lead further evidence. Confirming the finding of the lower Court, we hold that the lands in dispute were not allowed to remain fallow in accordance with agricultural practice.

It was, however, contended that since the term agriculture under the Central Provinces Tenancy Act, 1920, includes the reserving of land for fodder or grazing, the lands in dispute should be deemed to be under the cultivation of the Appellants and would, therefore, be their khudkasht and consequently home-farm. Reliance was placed on *Mahadeo Sitaram Thakre v. State of Madhya Pradesh* 1955 N.L.J. 616. In the cited case, the view was taken that land reserved for growing grass and fodder should be deemed to be under the personal cultivation of the superior holder within the meaning of Section 2(g)(3) of the Act. If the word "growing" intended to apply to an active process of ploughing the land and sowing grass thereon, then it would doubtless mean that the land was under cultivation. But where grass is not raised with the aid of any

human or mechanical agency and grows spontaneously, we do not, with the utmost respect, think that land would be deemed to be cultivated. In all the cases before us, there is no pleading or proof that the lands were cultivated for the purpose of growing grass, either for fodder or grazing. They could not, therefore, form the khudkasht or home-farm of the Appellants.

The result, therefore, was that the lands in suit vested in the State Government u/s 4(1), read with Section 3, of the Act. In this connection, we are of the opinion that in cases where proprietary rights and cultivating rights are not treated separately by statute, unlike the case with sir land, they cannot, in the absence of any disposition to the contrary, be dissociated, since the right of cultivation is only incidental to proprietary right or interest. The contention that although the proprietary rights in the lands in dispute have vested in the State Government, the outgoing proprietors continue to enjoy the right to cultivate them, has accordingly no force.

As the lands in dispute were rightly liable to vest in the State Government, the question of the entertainability of the suits in the Civil Courts for a declaration to the contrary does not arise. We, therefore, do not propose to consider it. The question of jurisdiction, however, arises in F.A. No. 141 of 1954 in respect of khasra No. 15, if the matter is held to fall u/s 4 (2) of the Act. That land was ploughed after the years 1948-49 and before the date of vesting. Therefore, if by ploughing the land, it would be deemed to be brought under cultivation, the requirements of Section 4 (2) would be satisfied and the land would be liable to be settled with the outgoing proprietor u/s 40. In *Balkisan Nathani v. The State* 1956 N.L.J. 370 : ILR 1956 Nag. 674 : AIR 1956 Nag. 219, decided by a Full Bench of this Court, to which one of us (Bhutt, J.), was a party, it was held that a matter arising u/s 4 (2) is not governed by Section 15 (3), and is consequently not open to review by the authorities mentioned therein. Cases which are covered by Section 15 are those in which there is a challenge to the decision given or the record made u/s 13. In a case arising u/s 4 (2), there is no such challenge and all that is claimed is the concession which the Act has conferred on the outgoing proprietor. There is, therefore, no bar to the trial of the suit with respect to khasra No. 15.

As the Act is an expropriary legislation, it must be strictly construed, and the doubt, if any, resolved in favour of the subject. Keeping this principle in view, it does not appear to us that Section 4 (2) would not be attracted unless the entire process of cultivation upto and including harvesting the crop is over. The case would doubtless be different where only a show of cultivation is made just to take advantage of the enactment with an ulterior purpose. This, however, cannot be said to hold good in the present case. Since a considerable amount was spent over reclaiming the land by tractor ploughing, there can be no doubt that the Appellant had the intention to complete the agricultural operations. This he could not do because in the meantime the land vested in the State Government. This was a supervening cause over which he had no control. Accordingly, nothing

should operate against him to entitle himself to the benefit of Section 4 (2). In this view, khasra No. 15 is liable to be settled with him u/s 40.

In the present appeal (No. 46 of 1954), the Appellants claimed before us similar benefit in respect of khasra Nos. 63, 69/2, 51, 58, 70, 13/1, 13/2, 13/4, 13/7, 15/1, 15/2, 61 and 66/3, which were held by the lower Court to be their khudkasht on the ground that they were brought under cultivation in the year 1949-50. The same contention was raised in respect of khasra Nos. 72/1, 72/2 and 86, which were said to be wrongly excluded by the Court below. Concerning khasra Nos. 51 and 63, it was also urged that they were liable to be treated as home-farm in view of the fact that in the panchsala khasra from the year 1949-50, Ex. P-6, there is an entry that these fields were khudkasht of the proprietor from the last many years. It should suffice to repel these contentions that they are not based on any pleadings, and in the absence of specific pleas on the point, the evidence on record cannot be considered. See AIR 1930 57 (Privy Council)

This brings us to the question of the vires of the Act respecting the vesting of chhota ghas lands in the State Government. The contention was that the Rules made under the Act do not provide for payment of compensation in respect of these lands when they vest in the State Government. This is said to contravene the provisions of Article 31 of the Constitution. It is not necessary to consider whether the matter falls under Article 31 in view of the fact that Article 31-B expressly saves the Act from being held to be void on the ground that it is inconsistent which takes away or abridges any of the fundamental rights conferred by any provisions of Part III within which Article 31 falls. The vires of the Act cannot, therefore, be urged in respect of the vesting of chhota ghas lands in the State Government.

The result is that the Appeals Nos. 46, 48 and 50 of 1954 fail and are dismissed with costs.

In Appeal No. 141 of 1954, the decree is modified by granting a declaration that the Appellant is entitled to retain possession of khasra No. 15, area 18.64 acres of mauza Palasdoh, tahsil and district Hoshangabad, vide Section 4(2) of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, on the terms and conditions which are prescribed by the rules made u/s 40 *ibid*. The rest of the decree is maintained. In view of the partial success of the Appellant we direct that he shall pay half the costs of the State Government in both the Courts. The rest of the costs shall be borne as incurred.

Appeal No. 141/1954 partly allowed; other appeals dismissed.