

(1958) 11 MP CK 0021

In the Madhya Pradesh High Court

Case No : C. Miscellaneous Petition No. 578 of 1956

Raghuraj Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 25-11-1958

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1959) JLJ 373

Hon'ble Judges : M. Hidayatullah, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : G.P. Singh, for the Appellant; M.P. Shrivastava, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.L. Pandey, J.—This is a petition under Articles 226 and 227 of the Constitution directed against (i) an order of the erstwhile State of Vindhya Pradesh dated 15th May 1951 by which the lands held by the petitioner were ordered to be assessed to revenue or rent, and (ii) a subsequent demand made on 29th April 1954 pursuant to the earlier order for payment of Rs. 2,220-3-9 as arrears of land revenue.

2. The petitioner is the Ruler of Garrauli a native State, which he consented to include in the United State of Vindhya Pradesh on 13th March 1948. However, he submitted a statement showing the property, including the lands formerly held by him as his sir, which he intended to retain as his private property. By a subsequent merger agreement dated 29th December 1949, the State was ceded to the Government of India as from 1st January 1950. Even so, the petitioner was allowed to retain his private property which included his sir lands.

3. On 15th May 1951, the Chief Commissioner of Vindhya Pradesh decided to assess all sir lands in possession of the Rulers of Vindhya Pradesh to revenue or rent in accordance with the Revenue and Rent Laws applying in the various parts

of that State and directed that the lands be assessed accordingly (Annexure F). Thereupon, the lands in possession of the petitioner were assessed to land revenue and he was asked to pay Rs. 2,220-3-9 as arrears of revenue upto Samvat 2008 (Annexure E).

4. The petitioner's case is that under the Covenant entered into with the Government of India on 29th December 1949, he is entitled to the full ownership, use and enjoyment of his private property including the disputed sir lands and he has in the property the same absolute right which he had before the merger. Since he did not pay any revenue or rent for the sir lands prior to the merger, he is not liable to pay land revenue or rent for the lands for any subsequent period. Any law providing for imposition of land revenue or rent on the lands must be regarded as contrary to the Covenant and therefore illegal. The petitioner also contended that there was no Revenue or Rent Law in the Garrauli State authorising assessment of land revenue on the lands. In any event, there could be no justification for giving retrospective effect to the order dated 15th May 1951.

5. It was conceded before us that the merger dated 29th December 1949 was an Act of state, that the Covenant Was not justiciable in a municipal Court and that the petitioner was disentitled to put forward in this Court the Covenant as the basis of any right accruing to him. The only question before us is whether the lands held by the petitioner as a citizen could be assessed to land revenue or rent under any existing law applying to the territory in which they are situate.

6. Clause 2 of Ordinance No. IV of 1948, which was promulgated by the Rajpramukh of the United State of Vindhya Pradesh on 9th August 1948 is as follows:?

All Acts, Codes, Ordinances and other laws, and rules and regulations made thereunder, which have been enforced in the Rewa State, and continue to be in force, are extended so as to be applicable to the whole of Vindhya Pradesh, provided that nothing in this clause shall apply to any local law, rule, regulation or custom having the force of law which relates to matters connected with land revenue or tenancy.

It is argued that the Rewa State Land Revenue and Tenancy Code, 1935, being a local law relating to land revenue and tenancy, was not extended to other areas of Vindhya Pradesh. We do not agree, though we think that the language of clause 2 is not happy. If the intention was that the Rewa Code of 1935 was not to be extended, it could have been easily so stated in a few words. In our view, the second part of clause 2 is a proviso to the first part and must, according to the normal rules of construction, limit itself to the ground covered by the earlier part. If so construed, we do not regard the Rewa Code of 1935, which was admittedly in force in the whole of the Rewa State, to be a local law With reference to all Acts, Codes and Ordinances of that State. Also, the proviso, which makes no reference to the Rewa State, covers the whole of Vindhya Pradesh to which the

laws mentioned in the first part were extended. In our view, the true construction of clause 2 is that the laws of the Rewa State were made applicable to the whole of Vindhya Pradesh, but not so as to affect the revenue and tenancy laws of other regions of that State. The practical effect of this view is that while all local laws relating to revenue and tenancy continued to remain in force in other regions of Vindhya Pradesh, the Rewa Code of 1935 was extended only to those regions of that State which did not have any local law, rule, regulation or custom having the force of law on the subject. Since it has been conceded before us that there was no law on the subject in Garrauli State, the Rewa Code of 1935 must be regarded as extended to that State as from 9th August 1948.

7. We shall still consider whether the Rewa Code of 1935 provides for assessment of lands such as those held by the petitioner. It was conceded before us that the lands could not be regarded as sir or khud kasht, Pawai, sub-Pawai or Chakri within the meaning of the Code. Even so, the following definition of tenant occurs in section 4:?

Tenant means any person who occupies or holds land whether with or without the content of the Darbar or Pawaidar or sub-Pawaidar. It includes a ground-holder and a tank-holder, but does not include a sub-Pawaidar, a holder of a Chakri giant of a mortgage of Pawai or sub-Pawai rights.

The petitioner, who is not occupying his lands with the permission of the Darbar, meaning the State, Pawaidar or sub-Pawaidar, is a tenant under this definition. Also, as provided by sub-section (1) of section 57, all tenant other than Pachpan-Paintalis tenants and Pattedar tenants are Gair-haqdar tenants. Since the petitioner does not claim to be a Pachpan-Paintalis tenant or a Pattedar tenant within the meaning of the Code, he has to be regarded as a Gair-haqdar tenant. Section 85 provides for assessment of rent on Gair-haqdar tenants as follows:?

A Gair-haqdar tenant occupying land shall pay therefor such rates of rent as may have been determined by the Settlement Officer for such class of land or such higher or lower rates of rent as the Darbar may by special order sanction for a village, a group villages or larger local area or in the event of the Settlement Officer not having determined any rate of rent, at such rate as may be determined by the Chief Revenue Authority.

Perhaps the rent assessable under this provision on the petitioner's lands was called revenue in accordance with the definition of revenue as the annual demand directly payable by any person on account of the use and occupation of land held by him. It would thus appear that there was legal basis for the assessment impugned before us.

8. It has been contended that sub-section (4) of section 150 of the Code prohibits the making of assessment of revenue or rent or jama so as to operate with retrospective effect. That provision applies to assessments made during settlement operations and does not control assessment of rent which a Gair-haqdar tenant is required to pay u/s 85 of the Code. The reason is obvious. A

Gair-haqdar tenant may have occupied without permission a parcel of land which may be subsequently assessed to rent. There is no good reason why he should not be required to pay the assessed rent from the date of his occupation.

9. Before us, it is conceded on behalf of the respondents that the assessed amount is sought to be recovered from Samvat 2001, that is, 1947-48. We consider that this is illegal. When the petitioner signed the Covenant dated 13th March 1948 and joined the United States of Vindhya Pradesh, he merely made over the administration of his principality to the new authority created by the Covenant (Article VI of the Covenant). He did not cede his State. He continued to be the ruler of his State and held the disputed lands as such ruler. Indeed, this has been admitted in paragraph 3 of the Return. In the circumstances, recovery of land revenue for any period prior to 1st January 1950, when the petitioner ceded his State to the Government of India, is without authority in law.

10. The result is that the petition succeeds in part. An appropriate writ shall issue interdicting the respondents from recovering from the petitioner the revenue assessed on his sir lands for any period prior to 1st January 1950. In the circumstances of the case, there shall be no order about costs. The outstanding amount of security deposited by the petitioner shall be refunded.