(2016) 04 MP CK 0015

In the Madhya Pradesh High Court

Case No : Writ Petition No. 11641/2015

Rajesh Wadhwani and Others APPELLANT

Vs

Shyamnath Sharma and Others RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 44 (1), Section 93, Section 94, Section 95

Citation : (2016) 04 MP CK 0015

Hon'ble Judges : S.K. Gangele, J.

Bench : Single Bench

Advocate : Ashish Shroti, Learned Counsel, for the Appellant; R.K. Verma, Learned Senior Counsel assisted by Saurabh Shrivastava, Learned Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Gangele, J.—1. Heard on admission.

2. Petitioners have filed this petition against the order dated 22.12.2011 (Annexure P/7) passed by the Board of Revenue. The Board of Revenue has held that the Sub-Divisional Officer was not competent to hear the appeal. Hence, the order passed by the Sub-Divisional Officer is without jurisdiction.

3. Smt. Shanti Devi (respondent No. 3) wife of Shri Chandra Bhushan Trivedi and one Vidya Bhushan Trivedi submitted an application for naksha batan of a land area 1 acre, khasra No. 103/11 and 11/11/1/1-A, situate at village Chunabhatti, Tehsil Huzur, District Bhopal. The Tehsildar registered a case and invited objections. No objections were submitted. A proposal from the Revenue Officer was also called and he submitted that the names of the applicants were recorded as owner of the land in the year 1991-92 to 1995-96. Map was also produced. Thereafter, the map of batan of one acre of land was prepared. It was also observed by the authority that the land was in the possession of the applicants. Consequently, the naksha batan was accepted by the Assistant Settlement

Officer vide order dated 07.04.1999.

4. Against the aforesaid order, one Shri Saytanarayan Yadav filed an appeal before the Sub-Divisional Officer. He pleaded that the naksha batan was not proper and there may be some irregularity. The Sub-Divisional Officer set aside the order of the Tehsildar and remanded the case back to the Tehsildar with a direction that an opportunity be granted to all the land owners and, thereafter, naksha batan be ordered. Thereafter, the Tehsildar vide order dated 13.11.2006, copy of which has been filed as Annexure P/3 alongwith the petition, accepted the naksha-batan.

5. Shri Shyamnath Sharma filed an appeal against the order of Sub-Divisional Officer dated 27.03.2006. The Additional Commissioner observed that before passing the order by the Sub-Divisional Officer, the respondent No. 5 Shri Shyamlal was died. No order could be passed against a dead person. Hence, the order of the Sub-Divisional Officer was contrary to law. Consequently, the Additional Commissioner set aside the order of Sub-Divisional Officer and directed the S.D.O. to pass an appropriate order.

6. Against the aforesaid order dated 03.02.2009 of Additional Commissioner, Bhopal, Shri Shyamnath Sharma filed a revision petition. The present petitioners also filed revision petition. The Board of Revenue heard both the revision petitions simultaneously and decided both the revision petitions by the common order dated 22.12.2011.

7. The Board of Revenue has held that the order in appeal passed by the Sub-Divisional Officer was illegal because Shri Satyanarayan Yadav filed the appeal on 06.09.2005 and the order of Assistant Settlement Officer was passed on 07.04.1999. Hence, the appeal filed before the Sub-Divisional Officer was time barred. The Board of Revenue further observed that the Assistant Settlement Officer accepted the batan of a land of Survey No. 103/11, 111/11/1/1/1/A, area admeasuring 1 acre, however, Shri Satyanarayan purchased the land of Khasra No. 12/3/1 and 103/11, 111/11/3/2. Hence, the land purchased by Shri Satyanarayan was a different land. Hence, he was not affected with the batan order, which was passed earlier. Apart from this, the Sub-Divisional Officer was not competent to hear the appeal of Assistant Settlement Officer because the Assistant Settlement Officer passed the order in exercise of powers of Deputy Collector. Consequently, the Board of Revenue set aside the orders passed by the S.D.O. and Additional Commissioner, Bhopal and upheld the order of batan dated 07.4.1999 passed by the Assistant Settlement Officer.

8. The petitioners pleaded that the land bearing khasra No. 103/11/4/2 and khasra No. 111/11 admeasuring 0.25 acre and khasra No. 103/11/4/4 and khasra No. 111/11 admeasuring 0.25, situate at village Chunabhatti, Tehsil Huzur, District Bhopal was recorded in the name of Shri Kripal Singh Bedi and Smt. Sangeeta Puri and the petitioners had purchased the land from Shri Kripal Singh Bedi and Smt. Sangeeta Puri vide registered sale deed dated 06.02.2007

and they are in possession on the land. Hence, they had a right to file the revision petition and petition before this Court.

9. The learned counsel appearing on behalf of the petitioners has contended that the Assistant Settlement Officer passed the order in exercise of notification dated 27.01.1995, by which the powers of Deputy Collectors were conferred on the Assistant Settlement Officer. The powers of Section 93, 94 and 95 of the M.P. Land Revenue Code were conferred on the Assistant Settlement Officer. Hence, the appeal was maintainable against the order of Assistant Settlement Officer before the Sub-Divisional Officer under Section 44 (1) of the M.P. Land Revenue Code. It is further submitted that the Board of Revenue has not considered the revision petition filed by the petitioners. Apart from this, the order passed by the Board of Revenue is contrary to law.

10. The Board of Revenue has specifically held that the Assistant Settlement Officer passed an order of batan on 07.04.1999. It is also clear from the order Annexure P/1, which is filed by the petitioners alongwith the petition. The order was passed by the Assistant Settlement Officer on 07.04.1999 in the Case No. 41/v-27/97-98. Against the aforesaid order, Shri Satyanarayan Yadav filed appeal in the year of 2004-05, because the number of appeal is 39/Appeal/2004-05, nearly after a period of 5 years. It is mentioned in the order that the appellant had received the information at the time of seemankan, hence, he filed the appeal. On this ground, the Court condoned the delay. The Board of Revenue clearly observed that the land purchased by Shri Satyanarayan was the part and parcel of khasra No. 103/11 and 111/11/3/2, hence, Shri Satyanaryan was not affected by the order of batan passed earlier. Hence, it was not proper for the Sub-Divisional Officer to set aside the order. The Board of Revenue further observed that the Deputy Collectors were granted power of batan in urban area and in the city of Bhopal Nazul Officer was working as Sub-Divisional Officer and Sub-Divisional Officer Rajdhani Pariyajna, T.T. Nagar, Bhopal was authorized to order batan at village Chunabhatti and vide notification dated 27.01.1995, the powers of Section 93, 94 and 95 were delegated to the Assistant Settlement Officer during settlement. Hence, during the settlement, the Assistant Settlement Officer, who was working in the urban area, has passed the order as Nazul Officer. The settlement came to an end on 09.06.2011. Hence, in such circumstances, during the settlement, the Assistant Settlement Officer who passed the order was at the level of Sub-Divisional Officer. Hence, appeal was not maintainable before S.D.O. This finding of the Board of Revenue is based on proper appreciation of facts of the case. In such circumstances, the Sub-Divisional Officer was not competent to hear the appeal and, in my opinion, the order passed by the Board of Revenue is in accordance with law. I do not find any merit in this petition. It is hereby dismissed.

11. No order as to costs.

