

(1995) 04 MP CK 0004

In the Madhya Pradesh High Court

Case No : Writ Petition No. 661 of 1989

Ramjilal Munshilal Gaur

APPELLANT

Vs

Ganesha Mulu and Others

RESPONDENT

Date of Decision : 20-04-1995

Acts Referred:

Madhya Pradesh Samaj Ke Kamjor Vargo Ke Krishi Bhumi Dharkon Ka Udhar Dene Walon Ke Bhumi Hadapne Sambandhi Kuchakron Se Paritran Tatha Mukti (Amendment) Adhiniyam, 1988 — Section 15(2), 15(3)
Madhya Pradesh Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharakon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 — Section 5, 6

Citation : (1995) 40 MPLJ 672 : (1995) MPLJ 672

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : R.D. Jain, for the Appellant; Arun Mishra, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Doabia, J.

The respondents No. 1 and No. 2 Ganesha and Ramsingh sought the benefit of Madhya Pradesh Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharakon Ka Udhar Dene Walon Se Paritran Tatha Mukti Adhiniyam, 1976. According to them, they were made to part with a piece of agricultural land in survey No. 47 in village Semai, tahsil Datia for a petty amount of Rs. 2,000/-. An application preferred under the above Act was entertained and allowed by the competent authority. The copy of the order which came to be passed has been placed on record as annexure P/2. An appeal was preferred against the same. This appeal was dismissed. The copy of this order is annexure P/l. The purchaser felt aggrieved against the above orders. This is how the present petition under Articles 226 and 227 came to be filed by them in this Court.

In support of the Petition the learned counsel for the petitioner has submitted :-

- (i) that, the petition filed by respondents Nos. 1 and 2 was barred by limitation;
- (ii) that, no preliminary enquiry was held; and
- (iii) that, there was no sufficient ground made out for interference in favour of respondents Nos. 1 and 2.

So far as the merits of the case are concerned, a finding has been recorded that the transaction in question was a prohibited transaction. The fact that the sale deed in question which should have been in the possession of the petitioner was not produced was taken note of. An inference was drawn in favour of the respondents Nos. 1 and 2. This inference was in favour of the plea of respondents Nos. 1 and 2 to the effect that they had repurchased the land and an endorsement was made on the back of the sale deed to this effect. The failure to produce the sale deed as noticed above was taken note of to sustain the plea of repurchase.

The argument that the application filed by the respondents Nos. 1 and 2 was barred by limitation be examined.

It be seen that this objection was raised before the appellate authority. The appellate authority observed that nothing prevented the concerned authority to take suo motu cognizance in this case.

After giving this reasoning, it was held that the petition could not be thrown out on the ground of limitation.

The learned counsel for the respondents has placed reliance on a Division Bench decision of this Court reported as *Jahar Singh and Another etc. Vs. Collector, Shivpuri District and Others*, . Para 12 is relevant and may be noticed :

"Although an application u/s 5 may be made in "such form and within the time and manner as may be prescribed" to avail protection and relief under the Adhiniyam, the power of the Sub-Divisional Officer to act suo motu u/s 6 is not affected thereby. True, there is some doubt about the time within which such application may be made as Rule 3 of 1978 Niyam is not clear. But on that account, due to defect in Rule 3, jurisdiction to initiate, continue or conclude proceedings by the Sub-Divisional Officer under the Adhiniyam cannot be denied to him, when a defective application is made, not conforming to the requirement of Rule 3 law is well-settled. Rules cannot control or defeat any provision of the parent Act. According to us, it would be competent for the S.D.O. to act "on his own motion" when any "prohibited transaction of loan" is brought to his notice informally, in other words, in a manner which does not conform to the strict requirement of Section 5 of the Adhiniyam or Rule 3 of 1978 Niyam."

Apart from this power to initiate suo motu action was specifically conferred on the Revenue Officers. Reference in this regard may be made to Amendment Act No. 29 of 1988. Section 15(3) reads as under :

"(3) The Sub-Divisional Officer may, on his own motion or on receipt of the

application under sub-section (2) proceed to deal with the matter as if it were an action taken on his own motion u/s 6 or an application u/s 5 as the case may be and the provision of the Act shall so far as may be apply thereto as they apply to an action taken on his own motion u/s 6 or to an application u/s 5."

Apart from this, the Sub-Divisional Officer had the power to exercise suo motu power. This is apparent from Section 6(2) of the Act. This reads as under:

(2) The Sub-Divisional Officer shall by a notice served on the prohibited transaction of loan call upon them to place all relevant facts and documents before him at such place, on such date and at such time as may be specified in the notice.

The Sub-Divisional Officer as also the appellate authority has expressly adverted to this aspect of the matter and has categorically stated that they are exercising suo motu power. Thus the plea that proceedings were not initiated within limitation is not sustainable.

There is another aspect of the matter. The Respondents Nos. 1 and 2 preferred an application before the Tahsildar on 1-9-1983. This application was rejected as not maintainable. The counsel for Respondents Nos. 1 and 2 submit that the application should have been forwarded to appropriate forum. In any case no fault can be found with the exercise of power by the competent authority, which was in nature of suo motu exercise. On merits the finding recorded by the authorities, cannot be faulted. The sale consideration was meagre. The plea of repurchase had been set up. This was rightly believed.

This petition is without merit and the same is dismissed.