

(2014) 08 MP CK 0109
In the Madhya Pradesh High Court
Case No : Writ Petition No. 7481/2013

Ravi Shankar Sarathe

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 20-08-2014

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 235, 236, 237
Madhya Pradesh Vas-sthan Dakhalkar (Bhumiswami Adhikaron Ka Pradan Kiya Jana) Adhiniyam, 1980 — Section 2(a), 2(c), 2(f), 3, 4

Citation : (2014) 08 MP CK 0109

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Parag Chaturvedi, Learned Counsel, Advocate for the Appellant;
Sudesh Verma, Learned Government Advocate, Advocate for the Respondent

Judgement

Sanjay Yadav, J.—Heard on admission.

2. Petition is directed against the order-dated 26.2.2013; whereby, Collector Hoshangabad has dismissed the appeal preferred under Section 6 of the M.P. Vas-Sthan Dakhalkar (Bhumiswami Adhikaron Ka Pradan Kiya Jana) Adhiniyam, 1980 (referred as "Adhiniyam, 1980").

3. Claiming to be an occupant of 0.32 Hectare of Khasra No. 130/1 in Village Bankhedi, recorded as Chhota-Ghas in the revenue record, petitioner moved the Sub-Divisional Officer, Pipariya for grant of patta. That, on a report which was sought for from Tahsildar Bankhedi, the land in question was found to be Charnoi and the area of Charnoi land in Bankhedi being less than 2% led the Sub-Divisional Officer to reject the application.

4. An appeal under Section 6 of the Adhiniyam, 1980 was also dismissed upholding the finding. The Appellate Court also held that in consonance to the direction by the Supreme Court in Civil Appeal No. 3511/2004 decided on 5.2.2009, the State Government through its Revenue Department, has issued the Circular dated 4.12.2009 that in any village, the percentage of charnoi land

shall not be less than 2%.

5. Whether the Authorities are justified in the conclusion arrived at by them is the question.

6. Adhiniyam, 1980 was brought in with an object to provide for the conferring Bhumiswami rights on landless persons in respect of dwelling house and sites on or appurtenant to agricultural land in non urban areas in the State of Madhya Pradesh.

7. "Agricultural land" as per Section 2(a) means any land in non-urban area used for the purpose of agriculture.

8. "Dwelling house" includes hut as per Section 2(c) and the expression "Homestead" is defined under Section 2(f) as a dwelling house situated on or appurtenant to an agricultural land which is complete in itself and is not shared in common with any other person other than a person belonging to the same family and includes any court yard, compound, garden, place of worship, family grave-yard, tank, well, privy, latrine, drain and boundary wall annexed to or appertaining to such dwelling house and in actual physical possession of the landless person on the 14th April, 2003.

9. Section 3 of Adhiniyam, 1980 excludes certain homestead from the Adhiniyam. Sub-section (1) of Section 4 stipulates that in any non-urban area, homestead occupied by a landless person in or appurtenant to an agricultural land on the 14th April, 2003 shall on the said date be deemed to have vested in him in Bhumiswami rights provided he had been in possession thereof for one or more years prior to that date. Sub-section (2) envisages that on such vesting of the homestead in the landless person, the original tenure holder shall cease to be a Bhumiswami of the area comprised in the homestead.

10. Thus, there is no provision in the Adhiniyam 1980 which confers powers in the Revenue Authorities to grant patta to an occupier of a charnoi land. Section 236 of the Madhya Pradesh Land Revenue Code, 1959 stipulates that in preparing the Nistar Patrak as provided in Section 235, the Collector shall, as far as possible, make provision for free grazing of the cattle used for agriculture. That, sub-section (1)(b) of Section 237 envisages that subject to the rules made under the Code, the Collector may set apart unoccupied land for pasture, grass bir or fodder reserve. Sub-section (3) of Section 237 stipulates that -

"Subject to the rules made under this Code, the Collector after securing the land mentioned in clause (b) of sub-section (1) to minimum two percent of the total agriculture land of that village, may divert such unoccupied land as mentioned in sub-section (1) into abadi or for construction of roads, state highways, national highways, canals, tanks, hospitals, schools, colleges, Goshalas and any other public utility projects as may be determined by the State Government :

Provided that the land set apart for the purposes mentioned in sub-section (1) shall not be diverted and allotted to any person for agriculture purpose."

11. In the case at hand, as evident from the revenue record (Annexure P/2), the land in question over which a house admeasuring 62x42=2604 Sq.Ft. is constructed, is a grass land so reserved under the Code and none of the Authorities have the power to divert the same. The conclusion arrived at by the Revenue Authorities cannot be faulted with. Rather, as rightly pointed out by learned Government Advocate, the petitioner is an encroacher of grass land.

12. During course of hearing, the petitioner has given an example of one Ravishankar Malviya in whose favour Bhumiswami rights are created.

13. This Court is of the considered opinion that a wrong committed by the Authorities concerned will not create any legal right in other, because such wrongs are always amenable for correction. Therefore, in that case, the respondents are at liberty to re-examine the case of Ravishankar Malviya in accordance with law, because no adverse order, in the present case, can be passed as Ravishankar Malviya is not a party.

14. With these observations, petition fails and is dismissed. No costs.