
(1992) 10 MP CK 0005
In the Madhya Pradesh High Court
Case No : M.P. No. 3328 of 1988

Ravindra Bahadur Singh

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 12-10-1992

Acts Referred:

General Clauses Act, 1897 — Section 21

Urban Land (Ceiling and Regulation) Act, 1976 — Section 20(1)

Citation : (1993) ILR (MP) 84 : (1993) 38 MPLJ 512 : (1993) MPLJ 512

Hon'ble Judges : R.P. Awasthy, J; Gulab C. Gupta, J

Bench : Division Bench

Advocate : J.P. Sanghi, P.R. Bhawe, for the Appellant; R.P. Verma and A.S. Jha, G.A., for the Respondent

Final Decision : Allowed

Judgement

Gulab C. Gupta, J.

The petitioner is the son of late Rani Padmavati Devi and claims interest in lands and building of Khasra No. 11, Telibandha, Raipur owned by her. He feels aggrieved by the order dated 20th September 1988 (Annexure-D) of the respondent State granting permission to the respondent No. 2 to sell the said land and challenges its legality and validity by filing this writ petition under Article 226 of the Constitution of India.

There is no dispute between the parties that the lands and building under dispute were owned by late Rani Padmawati Devi who died intestate at Bhopal on 12th April 1987 leaving behind her husband Raja Birendra Bahadur Singh, her two sons, the petitioner and the respondent No. 2 and two daughters. There is also no dispute between the parties that the lands in dispute were covered by the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Ceiling Act) and that 4738 sq. metres thereof was liable to vest in the State. It is also admitted that the respondent-State exercising powers u/s 20(1)(a) of the Ceiling Act exempted the said land from the operation of the said

Act by its order dated 18-5-1983 (Annexure-A) on the condition that the same would not be sold or otherwise alienated and will be used for residence of servants and staff members. There is also no dispute that the late Rani complied with these conditions during her life time, giving no cause of complaint to anyone.

The dispute about the properties left by the late Rani seems to have started between her two sons -- the petitioner and the respondent No. 2, after her death. The respondent No. 2 made an application dated 20th July 1987 in Delhi High Court u/s 278 of the Indian Succession Act, 1925 (hereinafter referred to as the Succession Act) claiming the letter of administration without will in respect of movable and immovable properties left by late Rani Padmawati Devi. This application admittedly included the property in dispute. The application was opposed by the petitioner by filing his reply. It however appears that the petitioner was required to file his affidavit, which he failed to file. The Court, therefore proceeded against the petitioner in his absence and by its order dated 10-5-1988 granted the letter of administration to the respondent No. 2. The respondent No. 2 thus claims legal right and capacity to deal with the property in dispute. This Court is however informed by the learned counsel for the petitioner that an application for setting aside the said order has been moved before the said High Court and the same is pending. However, the respondent No. 2 armed with the said order of Delhi High Court moved the respondent State for its permission to sell the disputed property so that income tax and wealth tax liability of Late Rani Padmawati Devi could be cleared. Though date of this application is not disclosed in the return, learned counsel for the respondent No. 2 has filed the photo-copy of application dated 17-9-1988 to indicate that such an application was really made. The respondent State seems to have come alive on receiving this application and passed the impugned order dated 20-9-1988 (Annexure-D) granting permission to the said respondent to sell the disputed lands within a period of six months to clear income tax and wealth tax liability of late Rani Padmawati Devi. There is no dispute that the respondent State passed this order in exercise of its powers under Clause (b) of Section 20(1) of the Ceiling Act. Pursuant to this order, the respondent No. 2 agreed to sell about 97000 sq. ft. of urban lands and building to the Interveners M/s. Indian Associates, for a valuable consideration of Rs. 35 lakhs and executed the sale deed. The said sale deed was presented to the Sub-Registrar at Raipur for registration. The Sub-Registrar has raised several objections to the said sale and has not registered the deed so far. The Interveners have challenged the action of the Sub-Registrar by filing their separate writ petition which is subject matter of M.P. No. 2173 of 1989. The said writ petition was heard along with this writ petition and has been dismissed by a separate order passed today.

Legality and validity of the impugned order dated 20-9-1988 (Annexure-D) is challenged on the ground that it is illegal, arbitrary and obtained on the basis of political influence. It is claimed as illegal because powers under Clause (b) of Section 20(1) of the Ceiling Act could not be utilised for amending the order lawfully passed under Clause (a) thereof and even otherwise the power has been

exercised on irrelevant considerations. It is also claimed that the said order violates principles of natural justice and does not disclose application of mind by the State. It is submitted that the respondent No. 2 was a member of Parliament belonging to Congress Party and has used his influence to obtain the order unjustifiably. It is also submitted that payment of Income Tax and wealth tax dues cannot make out a case of undue "hardship" justifying exercise of power under Clause (b) of the provision. As regards order granting letter of administration by Delhi High Court it is submitted that the same has been obtained by practising fraud and deception on the said Court and hence the same cannot furnish any justification for grant of permission. The learned counsel for the respondent No. 2 and Interveners have, however, vehemently supported the impugned order and submitted that the same is passed on relevant considerations and in accordance with law. According to the learned counsel for respondent No. 2 the order of Delhi High Court read with Section 307 of the Succession Act grants him permission to sell the property in dispute. The sale is claimed to be bona fide and on proper consideration. Since the permission is for payment of income tax and wealth tax dues, it is claimed to be in public interest. The learned counsel however, emphasised that the sale could have been lawfully effected even without the impugned order as the Ceiling Act had ceased to apply to the property in dispute on the death of Rani Padmawati Devi.

The submission that lands in dispute ceased to be governed by the provisions of the Ceiling Act on the death of Rani Padmawati and hence the impugned order was wholly unnecessary, if accepted would justify allowing this writ petition without anything more. The respondent No. 2 is serious about the submission and the petitioner is happy with its outcome. The respondent State does not seem to have any serious views about it. But quashing of the impugned order would revive the order dated 18-5-1983 imposing conditions on late Rani Padmawati Devi regarding use of the disputed land and prohibiting its sale or transfer in any manner. The learned counsel for the respondent No. 2 was not unaware of this effect and yet submitted that since the legal validity of the said order is not challenged in this Court, this Court should not comment upon it. This suits the petitioner who submits that the submission should be accepted and the impugned order quashed. This Court has no reason to doubt the correctness of the said order. This Court also has no valid reason not to accept this request of the parties. Under the circumstances, accepting the said submission, the impugned order dated 20th September, 1988 (Annexure-D) is hereby quashed.

Even otherwise, this Court finds the impugned order wholly illegal and unjustified. As noticed earlier this order was passed under Clause (b) of Section 20(1) of the Ceiling Act and has the effect of modifying conditions imposed by order dated 18-5-1983 (Annexure-A) passed under Clause (a) of Section 20(1) of the said Act. These provisions read as under:--

Power to exempt. -- (1) notwithstanding anything contained in any of the foregoing provisions of this chapter -

(a) where any person holds vacant land in excess of the ceiling limit and the State Government is satisfied either on its own motion or otherwise that having regard to the location of such land, the purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, that Government may, by order exempt, subject to such conditions if any, as may be specified in the order, such vacant land from the provisions of this chapter;

(b) where any person holds vacant land in excess of ceiling limit and the State Government either on its own motion or otherwise is satisfied that the application of the provisions of this chapter would cause undue hardship to such person, that Government may by order exempt subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this chapter:

Provided that no order under this clause shall be made unless the reasons for doing so are recorded in writing.

A Division Bench of this Court has analysed these provisions in *Nandkishore v. State of M.P.*, 1982 MPLJ168 and clarified that two clauses of this provision deal with two different factual situations and are independent of each other. Clause (a), according to this court empowers the State Government to exempt any vacant land from the provisions of this chapter in public interest whereas Clause (b) empowers such exemption to avoid undue hardship being caused to the holder of such land. This Court while clarifying the aforesaid held as under:--

the power to exempt by its very nature in cases to which Clause (a) of Section 20(1) of the Act is applicable, appears to be exercisable in public interest; whereas so far as Clause (b) of Section 20(1) of the Act is concerned, the power is exercisable for the benefit of the holder so that undue hardship on account of the operation of the Act may be avoided, (para-5)

Because of their separate and independent operational fields, these clauses do not affect each other in any manner. For this reason either of them cannot be used to nullify the effect of the other either by amending or otherwise curtailing its effectiveness. There is therefore, no difficulty in holding that the State Government while exercising power under Clause (b) of this provision only considers "undue hardship" to the holder and not the "public interest". Since undue hardship of the holder may not affect public interest, an order under Clause (b) would not affect the order validly passed in public interest under Clause (a). In view of this even an order lawfully passed under Clause (b) of this provision would not be able to modify or curtail the effectiveness of an order lawfully passed under Clause (a) of the provision. Conditions imposed on the holder of such land could be, if at all, modified only in public interest and not otherwise. This would be, in the opinion of this Court, natural and reasonable inference of reading these clauses along with the provisions of Section 21 of the General Clauses Act. Under the circumstances the impugned order cannot be accepted as having lawfully modified conditions imposed by order Annexure-A. It

must therefore be held that the respondent No. 2 did not have the authority to sell the lands covered by order Annexure-A and to that extent the sale in favour of Interveners must be held to be illegal and inoperative.

The question whether an order lawfully passed under Clause (a) of Section 20(1) of the Ceiling Act could be modified subsequently is also of substance and requires consideration. The learned counsel for the respondent No. 2 has submitted that Section 20 of the Ceiling Act, read with Section 21 of the General Clauses Act confers on the State Government the necessary amending power and hence there is no lack of jurisdiction. Section 21 of the General Clauses Act as pointed out by the Supreme Court in *Gopi Chand Vs. The Delhi Administration*, embodies only a rule of construction and the nature and extent of its application must be governed by the relevant statute which confers the power to issue the order. In *The State of Bihar Vs. D.N. Ganguly and Others*, it was held that it is well settled that the rule of construction embodied in Section 21 of the General Clauses Act can apply to the provisions of a statute only where the subject matter, context or effect of such provisions are in no way inconsistent with such application. Very recently these principles have been restated by the Supreme Court in *S.C. and The Scheduled Caste and Weaker Section Welfare Association (Regd.) and another Vs. State of Karnataka and others*, In this case an earlier notification issued under Karnataka Slum Areas (Improvement and Clearance) Act, 1973 was rescinded by a subsequent notification without affording the inhabitants of the area any opportunity of hearing and the subsequent notification was claimed to be justified on the ground of Section 21 of the General Clauses Act. The Supreme Court negatived the submission and held "such action in exercise of implied power to rescind cannot then be said to have been exercised subject to like conditions within the scope of Section 21 of the General Clauses Act." In the instant case, the earlier notification or order was passed in public interest and hence any power of modification thereof could be exercised only in the like manner and subject to same conditions and not otherwise. Apparently therefore Section 21 of the General Clauses Act does not clothe the impugned order with any amount of lawfulness.

Even if it was to be accepted that Clause (b) of Section 20(1) of the Ceiling Act could be utilised for amending an order passed in exercise of powers under Clause (a), the impugned order cannot be sustained for reasons more than one. First, the impugned order does not disclose application of mind. It grants permission to the respondent No. 2 to sell land liable to vest in the State to facilitate payment of income tax and wealth tax dues and does exempt the land from the operation of the chapter which is the basic requirement of the provision. Secondly, it also does not record satisfaction of the State Government regarding "undue hardship" likely to be caused. There is therefore nothing in the impugned order to justify exercise of the statutory power. Thirdly, the order violates principles of natural justice as it was not passed after hearing the heirs of the deceased. This Court has in *Nandkishore's* case clarified that power vested in the State Government Under this provision was quasi-judicial in character and hence

compliance with principles of natural justice was necessary. In *Indore Textiles Ltd. and Another Vs. Union of India (UOI) and Another*, a Division Bench of this Court had held that exercise of quasi-judicial power carries with it the corresponding obligation of observance of principles of natural justice and hearing was an integral part thereof. These infirmities are, in the opinion of this Court, sufficient to hold that the impugned order is not legal.

It was however strenuously urged that the impugned order serves "public interest" as it secures payment of Income Tax and wealth tax dues and for that reason deserves to be accepted. The submission is opposed by the petitioner who submits that the order in fact deprives the revenue of its lawful dues by granting facility to pay tax arrears by selling property liable to vest in the State. This court is of the opinion that the impugned order does not serve any public purpose as submitted; it on the contrary deprives the State of the property that should lawfully vest in it and is, for that reason, opposed to public interest. It deserves notice that late Rani Padmawati Devi in whose favour exemption was granted did not feel any hardship either because of the provisions of the Ceiling Act or due to order dated 18-5-1983 (Annexure-A). It is also doubtful if the late Rani would have applied for modification of the said order if she had remained alive considering the goodwill enjoyed by her and the loss of prestige that such requests involve. Then late Rani was not a person without means and has left movables worth more than 10 lakhs of rupees besides several other landed property. If her tax liability could be paid off by selling her other properties, no hardship would be caused to any one. True that in such a situation the heirs would not be able to inherit anything substantially. But the difficulty of the heirs in not obtaining anything in inheritance would not amount to "undue hardship" within the meaning of this provision. In such a situation, mere existence of tax liability would not be a ground for exercising this power. Indeed, if the last owner of the property could happily suffer inconvenience due to conditions imposed by the State, there would be no justification whatsoever for the heirs to complain of any hardship in the matter. Indebtedness will always cause some hardship but such hardships would not furnish any ground for exercise of power under Clause (b) of Section 20(1) of the Ceiling Act. In this connection a Division Bench decision of Gujarat High Court in *Thakorbhai Dajibhiki Desai Vs. The State of Gujarat*, deserves notice. In this case, the holder of vacant land in excess of ceiling limit sought exemption from the provisions of Chapter-III of the Ceiling Act on the ground of his indebtedness and submitted that operation of the Act would cause undue hardship to him. The High Court rejected the submission and observed that "merely because a person has debts, he cannot say that if provisions of Chapter III are applied and excess land in his possession is dealt with under the Act, it would cause undue hardship." The Court was of the view that something more than mere indebtedness was necessary to decide whether undue hardship was likely to be caused. The following passage from the judgment of the court being relevant for our purpose deserves mention:--

It is now time to sound a note of warning. In a way every holder of excess land

may feel some hardship if the provisions of Chapter III are made applicable and he is deprived of ownership and possession of such land. Such a hardship cannot be taken into consideration for in (hat case it would amount to annulling the statute. The hardship must be undue hardship. There must be something special, something out of the ordinary, something peculiar to the facts situation pertaining to individual concerned. It is only in such cases that the expression "undue hardship" would be attracted, (para-4)

Nothing more than mere indebtedness due to income tax and wealth tax liability exists in the present case. Though the respondent State has stated in its return that the indebtedness was to the extent of Rs. 36 lakhs it has not been stated as to why it was necessary to sell the disputed land for that reason. Late Rani Padmawati Devi had left substantial properties which were sufficient to liquidate indebtedness. Why was it not possible to liquidate her debts by selling her other properties? Her heirs could not keep their inheritance intact and sell the property liable to vest in the State under law. There was, therefore, no justification whatsoever for passing the impugned order.

Some arguments relating to legal validity of the order granting letter of administration passed by Delhi High Court were also addressed but this Court does not consider it appropriate to consider them because the matter is pending consideration of that Court. It is however considered necessary to take note of those submissions. It was submitted that since the deceased had no fixed place of abode and no property belonging to her is situate within the Union territory, the High Court had no jurisdiction to pass the said order and grant the Letter of Administration. Normal rule in this regard is contained in Section 270 of the Succession Act which empowers a Court to grant the Letter of Administration only if the deceased had, at the time of death, a fixed place of abode or any property within the jurisdiction of the Court. A perusal of the application filed in the said Court indicates that some assets of the deceased are said to be in possession of Meena Singh and Dev Gupta of New Delhi. It is true that nature of assets and relationship of these holders with the deceased is not disclosed. This may give rise to the jurisdictional question. Even if there be no jurisdictional question involved, exercise of jurisdiction u/s 271 of the Succession Act would certainly arise. This Court does not consider it necessary to deal with these questions and would leave them to be decided by the Delhi High Court.

In view of the discussion aforesaid, the petition succeeds and is allowed by quashing the impugned order dated 20th September 1988 (Annexure-D). Because of the conclusion of this Court as aforesaid, it is not considered necessary to examine whether the respondent No. 2 used his political influence to obtain the said order. Parties to bear their own costs of this petition. Outstanding amount of security deposit, if any, shall be refunded to the petitioner.