
(2003) 01 MP CK 0115
In the Madhya Pradesh High Court
Case No : M.P. No. 1371 of 1990

Saadat Mohammad Khan and Others	Vs	APPELLANT
State of M.P. and Others		RESPONDENT

Date of Decision : 04-01-2003

Acts Referred:

Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 — Section 11(3)

Citation : (2004) 2 MPJR 114

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : S. Shaukat Ali, for the Appellant; V. Awasthy, Govt. Advocate, for the Respondent

Judgement

Arun Mishra, J.

Petitioners prayer is to quash the order (Annexure/F) passed in Ceiling case by competent authority Addl. Commissioner and order (Annexure/G) passed by the Board of Revenue and to restore the possession of the land to the petitioners.

Competent authority in the instant case Addl. Commissioner, Bhopal under the provisions of M.P. Ceiling on Agricultural Holdings Act, 1960 directed holder Fazlur-Rehman Qureshi to file the return. Return was filed by Shri Fazlur-Rehman Qureshi in which it was mentioned that at village, Chandanpura, Tahsil-Huzur, Bhopal Shri Saadat Mohd. Khan is in possession of the land bearing Survey No.73 in area 29.98 acres in the capacity of Bataidar of the holder since 1964, Shri Hidayat Mohd. Khan is in possession of land bearing Sy- No.82 in area 46.48 acres in the capacity as a Bataidar of the holder since 1964 and Shri Aijaz Mohd. Khan is in possession of land bearing Khasra No.84 and 92 in an area 13.50 and 14.67 acres in village Chandanpura in capacity of a Bataidar since 1965. In return Annexure/A aforesaid facts find place. An affidavit Annexure/B was also filed in Support of the return. In affidavit also the fact was disclosed that land mentioned above situated at Chandanpura is in possession of Bataidars. On 5.1.1977 an order Annexure/C was passed declaring the land at Chandanpura as

surplus including the land held by the petitioners who were in possession as Bataidars. The draft statement was not served upon the petitioners; the transaction between the petitioners and the holder was not declared void u/s 4 of the Act. Final order was subsequently modified as per order (Annexure E/1) dated 28.5.1984 and with respect to certain other lands which were inherited by the holder from his mother separate proceedings were ordered to be registered and they have been taken to their logical conclusion separately and land has been declared as surplus. Petitioners are concerned with Sy. No.73, 82, 84 and 92 total area being 104.63 acres. When possession was sought to be taken, the report dated 5.9.85 indicates that the possession could not be taken from petitioners and their name was recorded in the revenue papers also though on the strength of the orders (Annexure/D) passed in ex-parte which were passed in Revenue Case Nos.8/A-46/76-77, 9/A-46/76-77 and 10/A-46/76-77 by the Tehsildar, Huzur, Bhopal in which names of Shri Hidayat Mohd., Shri Ejaj Mohd. and Shri Saadat Mohd. Khan were ordered to be recorded as Bhumiswamis on the strength of Bataidars of the holder Fazalur-Rehman Qureshi. Ultimately the possession was taken from petitioners in the year 1986 as apparent from the report letter dated 21.4.86 of Deputy Collector to Addl. Commissioner, Bhopal Division, Bhopal the competent authority in the instant case. As possession was taken from the petitioners, petitioners filed an application u/s 32A read with section 94 to restore the possession as they were not heard. Application was dismissed by the competent authority as per order (Annexure/F) dated 24.8.87; petitioner preferred an appeal before the Board of Revenue; same has been dismissed as per order (Annexure/G) dated 10.8.89. Hence, the present writ petition has been filed before this Court.

In the return filed by respondent no.1 State of M.P. it is contended that there was no need to issue the notice to the petitioners; being Bataidars they were not entitled for service of any notice u/s 4(1) of the Act. The lands were used for growing grass and was not under plough and cultivation. Said lands were not covered by section 6 (iii) of the Ceiling Act; petitioner had no right over it; Bhumiswamis rights do not accrue on Bir land; petitioners were otherwise aware of the proceedings, name has been got mutated in an illegal manner so as to defeat the provisions of Ceiling Act, petitioners did not prefer any appeal or revision against the orders passed by the competent Ceiling Authority. Hence the writ petition is liable to be dismissed.

Shri S. Shaukat Ali, learned counsel appearing for the petitioners has strenuously urged that over the Bir land held by the Bataidar/sub-tenants, right of occupancy tenant and consequently that of Bhumiswamis accrues. It is not the land held by Jamindar; only the Bir land held by ex-Jamindar vested in the State and that too on the date of Abolition of Proprietary Rights. The petitioners were entitled to issue of notice and service of draft statement u/s 11 (3) of the Ceiling Act, thus, taking away of the possession from them is bad in law and is without complying the provisions of section 11(3) of the Act.

Shri V. Awasthy, learned Govt. Advocate appearing on behalf of respondents 1 to 3 has supported the orders and has contended that petitioners were not entitled to any notice as the name was not recorded as Bhumiswami till the date when the land was declared surplus, mutation has been obtained subsequently; orders passed are proper and enquiry has been conducted in the year 1996 in which it has been found that land was barren, hence on the unconfirmed material as to claim of Bataidars, no interference is required to be made in the writ petition. If the petitioners were serious, they ought to have challenged the order passed in 1977. The writ petition suffers with laches and is liable to be dismissed on the ground of delay.

Later submission be taken first about the delay. The possession was not taken pursuant to declaring the land as surplus though the land was declared as surplus in the year 1977, however, proceedings were taken to take the possession in 1986. When possession was taken from the petitioners, petitioners objected that their names were recorded as Bhumiswamis on the basis of arrangement entered with holder as Bataidar and petitioners have acquired the rights of Bhumiswami by virtue of section 169 of MPLRC read with section 168 of the Code. Thus, when the possession was taken and orders were passed declaring land as surplus it is clear that opportunity of hearing was not afforded, it cannot be said that petitioners filed the application for restoration of possession belatedly. Thus, writ petition cannot be dismissed on the ground of delay. The orders passed by the competent authority and the Board in 1987 and 1989 are assailed in the writ petition. Writ petition has been filed after decision by the Board of Revenue in the year 1990, it cannot be said that petitioner is guilty of laches.

Coming to the question whether right of Bhumiswami accrues to a Bataidar. In case Bataidar is ploughing the land, section 169 of MPLRC comes into play and right can accrue to a Bataidar of occupancy Bhumiswami in case he is allowed to retain the land for a period exceeding one year in three consecutive years as provided in section 169 it is not the case that holder was suffering from any disability, in case of disability position is different. Thus, when the fact was stated in the return supported by an affidavit of the holder, in my opinion, petitioners were entitled to issue of notice u/s 11(3) of the Ceiling Act. Section 11(3) of the Act is quoted below :-

11 (3) The draft statement shall be published at such places and in such manner as may be prescribed and a copy thereof shall be served on the holder or holders concerned, the creditors and all other persons interested in the land to which it relates. Any objections to the draft statement received within thirty days of the publication thereof shall be duly considered by the Competent Authority who after giving the objector an opportunity of being heard shall pass such order as it deems fit.

The petitioners were clearly "persons interested" being in possession of the land as stated in the return, Khasras have also been placed on record recording the

possession when the proceedings were pending. Revenue paper entries have been placed on record with effect from 1970 till 1985-86. Thus, notice ought to have been issued to the petitioners of the proceedings before taking the possession from them they being the persons interested as contemplated u/s 11(3) of the Act.

This Court in Jagat Singh Barelal v. State of M.P. through Collector, Vidisha 1982 MPLJ 575 has held that where no notice has been issued u/s 11 (3), land held by such a person cannot be affected and the proceedings under the Ceiling Act did not bind him, hence the limitation provided for filing suit u/s 11 (5) is not applicable. The crux is that the person is entitled to a notice in case notice is not received, the orders did not bind the petitioners.

In Smt. Gulab Rani v. State of M.P., 1973 MPLJ 23 it is held that where a person is entitled to a notice u/s 11(3) and no notice is served, such a person is not required to file a suit u/s 11 (5). Limitation applies only to a person who is a party to the order. Section 11(3) was also interpreted to mean that draft statement shall be published in such place and in such manner as may be prescribed and a copy thereof shall be served on holder or holders concerned.

Thus, in my opinion, competent authority is required to issue the notice to the petitioners at the stage of section 11(3) decide their objections and to pass the order after hearing them and investigating into their objections. Let the competent authority undertake the exercise now within three months from today and pass fresh orders in accordance with law.

Parties to appear before the competent authority on February 10th, 2003. Taking away of the possession from petitioners, so far as with respect to the lands survey numbers mentioned above in area 104.63 acres is quashed. Petitioners are entitled to restoration of possession till the same is taken away in accordance with law on an order adverse to their interest is passed. Petitioners are directed not to alienate or otherwise part with the land, till the decision by the competent authority, on restoration of possession. Costs on parties.