
(1995) 09 MP CK 0075
In the Madhya Pradesh High Court
Case No : M.P. No. 979 of 1993 (G)

Shakti Kumar Uttam and One Another	APPELLANT
Vs	
State of M. P. and One Another	RESPONDENT

Date of Decision : 20-09-1995

Acts Referred:

Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 — Section 11, 4, 5

Citation : (1996) 2 MPJR 410

Hon'ble Judges : Tejinder Singh Doabia, J

Bench : Single Bench

Advocate : R.D. Jain, for the Appellant; K.N. Gupta, G.A., for the Respondent

Judgement

T.S. Doabia, J.

This is second round of litigation. The first was initiated by father of the petitioners. He came to this Court with the contention that the respondents - authorities should have determined his choice in terms of first proviso to section 11 of the M.P. Ceiling on Agricultural Holdings Act, 1960 (hereinafter referred to as the Act). This assertion of the father of the petitioners was found to have some merit. An order was passed by this Court in Miscellaneous Petition No. 1260/88 directing the respondents - authorities to take notice of the choice of Raghupratap. This Court observed as under:

In the circumstances aforesaid, we consider it proper to suspend operation of the notice, Annexure - P, for a period of two months. We also give one week's time to the petitioner to file further application intimating his choice in respect of areas to be retained by him giving particulars of encumbered and improved pieces and any portion of the ceiling land so that determination in terms of the proviso can be made by the Competent Authority. Even if a further application is not made, the Competent Authority shall make the determination and discharge his statutory duty albeit after hearing the petitioner, within two months, finally disposing of the petitioner's applications - Annexures. P-3 and P-4.

It is not in dispute that the petitioner did express his choice. This is so indicated in Annexure R/6. It is also not in dispute that this choice was taken note of and an order was passed in this regard. The area was declared as surplus in terms of choice so indicated by Raghupratap. As noticed above, the sons of Raghupratap have come forward and have challenged the declaration of the surplus area on the ground that the choice which was indicated by Raghupratap should have been given the shape of a draft statement and thereafter an order should have been passed by the Competent Authority and the persons who were supposed to object should have been given an opportunity. The petitioners are placing reliance's on sub-section (2) to (6) of section 11 of the Act. For facility of reference, these be noticed as under :-

(2) The transfer shall, for the purpose of this Act, be deemed to be the holder of land the transfer of which -

(i) has been declared to be void under sub-section (1) of section 4; or

(ii) has been found by the competent authority, on such enquiry as may be prescribed to be in contravention of the provisions of sub-section (1) of section 5.

(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 this, 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,

(4) If while considering the objections received under sub-section-or otherwise, the competent authority finds that any question arisen regarding the title of a particular holder and such question has not already been determined by a Court of competent jurisdiction the competent authority shall proceed to enquire summarily into the merit of such question and pass such orders as it thinks fit:

Provided that if such question is already pending for decision before a competent authority shall await the decision of the Court.

(5) The order of the competent authority under sub-section (4) shall not be subject to appeal or revision, but any party may, within three months from the date of such order institute a suit in the Civil Court to have the order set aside, and the decision of such Court shall be binding on the competent authority, but subject to the result of such suit, if any, the order of the competent authority shall be final and conclusive.

(6) After all such objections, pending proceedings and the suit, if any, filed under sub-section (5) have been disposed of, the competent authority shall, subject to the provisions of the Act and the rules made thereunder make necessary alterations in the draft statement in accordance with the orders passed on objections, the decision of competent Court and the decision of the Civil Suit, as

the case may be and shall declare the surplus land held by each holder. The competent authority shall, thereafter publish a final statement specifying therein the entire land held by the holder, the land to be retained by him and the land declared to be surplus and send a copy thereof to the holder concerned. Such a statement shall be published in such manner as may be prescribed and shall be conclusive evidence of the facts stated therein.

It is not in dispute that the draft statement was not published in this regard. It is also not in dispute that the petitioners who wanted to object for one reason or the other were not given an opportunity to represent. The order of the Competent Authority has been passed without there being a draft statement and without giving an opportunity to the present petitioner.

No doubt, the petitioners are the sons of the owner but the law does require preparation of draft statement and thereafter giving opportunity to the objectors. As to whether these objections are good or bad have to be considered by the Competent Authority and order passed according to law.

As such, the petition is allowed. A direction is given to the Competent Authority to prepare a draft statement and thereafter the present petitioners would submit their objection to the same. For this purpose, the petitioners to appear before the Competent Authority under the Act on 13th of November, 1995. The Competent Authority would serve the draft statement on the petitioners on that date or on a date to be notified in this regard.

This petition is disposed of. Security, if paid, be refunded.