
(1987) 12 MP CK 0003
In the Madhya Pradesh High Court
Case No : S.A. No. 405 of 1982 (J)

Sheelawanti

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 16-12-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Madhya Pradesh Land Revenue Code, 1959 — Section 57(2)

Citation : (1994) 1 MPJR 25

Hon'ble Judges : Gulab C. Gupta, J

Bench : Single Bench

Advocate : M. Jaiswal, for the Appellant; G.C. Jain, for the Respondent

Judgement

Gulab C. Gupta, J.

This is plaintiffs appeal u/s 100, C.P.C. and is directed against the judgment and decree dated 3.8.1982, passed by II Addl. Judge to the Court of District Judge, Sagar in Civil Appeal No. 30-A of 76, reversing the judgment and decree, dated 2.7. 1976, passed by I Civil Judge, Class II, Sagar in Civil Suit No. 3-A of 72 and dismissing the appellant's suit for declaration of title over the suit lands and permanent injunction restraining the respondent from disturbing his possession.

The suit land is a plot measuring 13854 Sq. feet shown as "ABCD" in the plaint map situated at Tilak Gunj, Sagar. Case of the appellant is that the suit plot was the personal property of Hardas Dubey, the then Malguzar of the village. The said Hardas Dubey sold the plot to Bhagwati Prasad on 30th March, 1951 vide a registered sale-deed. Ex. P. 2. The said Bhagwati Prasad's son Shri Gopi Krishna inherited the plot after the death of Bhagwati Prasad as Karta of the family and sold the same to the appellant for a sum of Rs. 3,000/- by a registered sale-deed, dated 30th November, 1970, Ex. P-I. The appellant claims to be in possession of the suit plot since then. It was this specific case that on coming into force of the Abolition of Proprietary Rights Act, 1960 (hereinafter referred to as "the Act") a dispute between Bhagwati Prasad and the State Government had

arisen about the ownership of the disputed plot. At that time the respondent State claimed that the suit plot was not the personal property of Hardas Dubey and had vested in the State Government u/s 3 of the Act. The dispute was referred by Bhagwati Prasad for decision of the Sub-Divisional Officer, Sagar u/s 57(2) of the M.P. Land Revenue Code (hereinafter referred to as "the code"). The Sub-Divisional Officer, by his order dated 15th July, 1960, Ex. P-8 held that the sale of the suit plot in favour of Bhagwati Prasad was valid and therefore, the land did not vest in the State Government. The learned S.D.O., therefore, directed that Bhagwati Prasad's name be recorded in Bhumiswami rights in all revenue records. It appears that inspite of the aforesaid order, the plot was not recorded in the name of Bhagwati Prasad and continued to be treated as "Nazul" in unauthorised occupation of the appellant. On 27.9.1971 the Tahsildar ordered eviction of the appellant from the suit plot exercising his powers u/s 248 (I) of the Code, (Ex. D-4). It was thereafter that the appellant served notice u/s 80, C.P.C. and filed the present suit. The defence of the respondents was that the suit plot had vested in the State Government u/s 6 of the Act and therefore it became the property of the respondents. According to them, the order of the Sub-Divisional Officer, Ex. P-8, was void and could not give any benefit to the appellants. The learned trial Judge, on consideration of material on record held that the appellant had acquired legal and valid title over the suit land because of sale-deed in their favour. Relying on the order of the Sub-Divisional Officer, Ex.P-8, the learned Judge also held that the suit land did not vest in the Government. The suit was accordingly decreed. The learned lower appellate Court was, however, of the opinion that the order of the Suh-Divisional Officer, Ex. P-8 was without jurisdiction and therefore, there was no basis of title of the appellant over the suit land. That is how the judgment and decree of the trial Court was set-aside.

This Court while admitting the appeal for final hearing on 11-1-1982 framed the following substantial question of law for its decision:-

"Whether the order (Ex. P-8) passed by the Sub-Divisional Officer in proceedings u/s 57 of the M.P. Land Revenue Code, 1959, bars the subsequent challenge to the appellant's title by the State ?

Submission of the learned counsel for the appellant is that the order of the Sub-Divisional Officer being the order of Competent Authority had become final in the absence of any challenge to it in a Civil Court of competent jurisdiction and was, therefore, determinative of the rights of the parties. Learned counsel, therefore, submits that the right of Bhagwati Prasad over the suit plot could not be challenged. Learned counsel for the respondent, however, submits that a question like the present one could not have been decided by the Sub-Divisional Officer u/s 57 of the Code and therefore the order is without jurisdiction. Relying on section 6 of the Act learned counsel submits that the transfer being made after 16th March, 1960 was void.

Admittedly, the Act came into force from 31.3.1951 in the area in question.

Section 3 of the Act provides that save as otherwise provided in this Act, on and from 31.3.1951, all the proprietary rights in the estate, mahal, alienated village or alienated land, vesting in a proprietor of any person through him shall vest in the state free from all incumbrances. Section 5 of the Act, however, provides exception to the aforesaid general rule and permits all lands used for agricultural or domestic purposes, all open house sites etc. as specified in clause (a) of this section, to continue in possession of the proprietor or any other person claiming through him. Section 6 declares transfer of any right in the property which is liable to vest in the State, made by the proprietor any time after 16th March, 1950 void unless declared otherwise by the Collector under sub-section (2) of this section. Admittedly, the sale-deed in favour of Bhagwati Prasad was executed on 30th March, 1951 and therefore, would be affected by section 6(1) of the Act in case it related to the land which was liable to vest in the State Government u/s 3. In such a situation the question whether the suit plot was liable to vest in the State under this Act or was to remain in possession of the proprietor Hardas Dubey would be an important question for decision. Who will decide this question? In *Her Highness Mehar Taj Sultana vs. State of M.P.* 1977 J.L.J., 336 a Division Bench of this Court considering the authority of the Collector u/s 6(2) of the Act, hold that he is not entitled to decide the dispute about the ownership or title over the land which must be decided by the Sub-Divisional Officer u/s 57(2) of the Code. It would, therefore, appear that the dispute whether the suit plot vested in the State Government which became its owner or remained the property of the proprietor could be decided only u/s 57(2) of the Code and not u/s 6 of the Act. Indeed, there is no order of the Collector passed under any of the provisions of the Act treating the suit plot to have vested in the State Government. Nothing whatsoever has been brought to the notice of this Court to justify an inference that the suit plot had vested in the State Government and compensation in respect thereof paid to the proprietor or Bhagwati Prasad. Indeed, section 14 of the Act would show that the Competent Authority would have decided the question of title if the suit land had been treated as vested in the Government and compensation for the same determined. The order of the Sub-Divisional Officer (Ex. P-8), however, shows that the dispute was referred to him u/s 57(2) of the Code and has been decided in favour of Bhagwati Prasad. It is not in dispute that this order was not challenged by instituting a Civil Suit as required under Sub-section (3) of section 57 of the Code and has, therefore, become final. It is not a case where either the Collector or Competent Authority acting under the Act has decided that the suit land vested in the Government. If there was an order against the appellant under the Act then the Court would have been required to choose between the said order and the order passed by the Sub-Divisional Officer u/s 57(2) of the Code. Since the order of the Sub-Divisional Officer under the code is the only order, such an exercise is not required to be done. Even if it was to be treated as wrong or illegal, it could not be ignored by the respondent State as it would be bound by the order not only u/s 57 of the Code but otherwise on principle of resjudicata and estoppel. Learned lower appellate Court has not considered this aspect of

the matter and has therefore, illegally held that the order of the Sub-Divisional Officer cannot be given any consideration. Learned Judge did not notice the decision of this Court in Nawab Sultana's case (supra) and therefore committed an illegality vitiating the impugned Judgment.

There is yet another method of looking at the problem. Can a question of title be re-opened after such a long lapse of time and decide in a collateral proceeding? Question of title has to be decided directly and not collaterally. The distinction between void and voidable order is really fast disappearing. In spite of it, the law is that even a void order has to be avoided in appropriate proceedings. A Division Bench of this Court in *Union of India vs. Central Industrial Tribunal* 1979 M.P.L.J. 808. considered the law on void and voidable orders and whether they could be ignored. The Court, in this case, held that even an order in violation of statutory requirement of reasonable opportunity of being heard could not be disregarded as void and ignored. The Court further observed that illegality of such an order could not be decided as a collateral issue. This is also the view of the Supreme Court in *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, and *Gokaraju Rangaraju Vs. State of Andhra Pradesh*, . Under the circumstances, if the respondents wanted to challenge the ownership of Bhagwati Prasad, they should have done so by resorting to appropriate legal proceedings and not by ignoring the order, Ex. P-8.

In view of the discussion aforesaid, it is not possible to sustain the impugned judgment and decree. The appeal succeeds and is allowed. The Judgment and decree, passed by the learned Lower Appellate Court is set-aside and the one passed by the trial Court is restored. In view of the peculiar facts and circumstances of the case, the parties will bear their own costs of this appeal.