

(2003) 03 MP CK 0044

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 682 of 2002

Sheikh Amir

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 24-03-2003

Acts Referred:

Madhya Pradesh Ke Kamjor Vargon Ke Krishi Bhumi Dharakon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 — Section 5, 6

Madhya Pradesh Ke Kamjor Vargon Ke Krishi Bhumi Dharakon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Niyam, 1978 — Rule 3

Citation : (2003) 3 MPHT 383 : (2003) 3 MPLJ 228

Hon'ble Judges : Bhawani Singh, C.J; S.S. Kemkar, J

Bench : Division Bench

Advocate : Kailash Malviya, for the Appellant;

Final Decision : Dismissed

Judgement

Shantanu Kemkar, J.

The present Letters Patent Appeal has been filed against the order dated 3-10-2002 passed in M.P. No. 2678/1983 by learned Single Judge.

The appellant challenged the order passed by Sub-Divisional Officer, Burhanpur, dated 25-8-1983 confirmed in appeal by Collector, Khandwa. By these orders, the sale deeds dated 1-5-1961 and 21-3-1973 were held void and the appellant directed to restore the possession. It was held in the said orders that the transactions of sale were prohibited transactions of loan as defined u/s 2-F "The Madhya Pradesh Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharakon Ke Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 (hereinafter "Act").

The learned Single Judge dismissed the writ petition and maintained the orders passed by the Sub-Divisional Officer and Collector, hence this appeal.

In order to decide the Letters Patent Appeal, brief facts which are necessary may be mentioned :

On 7-3-1983 respondent No. 3 (Dattatraya s/o Gannu) filed application before the Sub-Divisional Officer, Burhanpur u/s 5 of the Act challenging the sale deeds dated 1-5-1961 and 21-3-1973 on the ground that prohibited transaction of loan was entered into between his father Gannu and Raghunath, Bhagwan and Rajaram. The Sub-Divisional Officer allowed the application, after holding enquiry as contemplated u/s 6 of the Act vide order dated March 21st, 1983. The appeal filed by the appellant Sheikh Amir before the Collector was dismissed vide order dated November 15th, 1983 which the petitioner challenged through Writ Petition but the Single Judge dismissed the same vide order dated 3-10-2002.

Heard Shri Kailash Malviya, learned Counsel for the appellant and perused the record.

The first contention of the learned Counsel for the appellant is that the application filed u/s 5 of the Act before the Sub-Divisional Officer by the respondent No. 3 was barred by limitation so untenable.

We have gone through the entire scheme of the Act, in view of the object of "Act" and existence of suo motu power of enquiry u/s 6 of the Act, the last date for making the application u/s 5 cannot be said to be as per Rule 3 of M.P. Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharakon Ka Uddhar Dene Walon Ke Bhumi Hadapan Sambandhi Kuchakron Se Paritran Tatha Mukti Niyam, 1978" because they cannot control the main section about limitation wherein no period of limitation is prescribed and on the other hand Section 6 provides for power of procedure of enquiry either suo motu or by way of application u/s 5 of the Act. Thus, it cannot be said that the application for seeking relief u/s 5 could only be made within a period of 12 months from the specified date and by virtue of the said provision beyond 1985 nothing survives.

The learned Single Judge has correctly interpreted provisions of Section 5 and Section 6 of the "Act". As per Section 6 of the "Act" the Sub-Divisional Officer has power to make enquiry suo motu and when there is no limitation prescribed for taking such action u/s 6 about the transaction of loan, the application submitted u/s 5 of the Act can not be said to be barred by limitation.

Shri Malviya, then argued that the enquiry has not been conducted properly by the Sub-Divisional Officer. This submission is also not correct. We have gone through the order of Sub-Divisional Officer, in our opinion, there is no fault in the procedure of enquiry and order of Sub-Divisional Officer. The finding of fact arrived at by the Sub-Divisional Officer after recording evidence has rightly not been interfered by the Single Judge.

Thus, considering from all angles, we find no infirmity or illegality in the orders passed by the Sub-Divisional Officer confirmed in appeal by the Collector. The learned Single Judge has passed the order after correct appreciation of facts and

law and no interference is called for. Hence this appeal is dismissed in limine.