

(1959) 03 MP CK 0016

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No"s. 137 and 140 of 1957

Sheo Kumar Bhairo Prasad Sao

APPELLANT

Vs

N.P. Tripathi and Others

RESPONDENT

Date of Decision : 13-03-1959

Acts Referred:

Central Provinces Land Revenue Act, 1881 — Section 47(1)

Constitution of India, 1950 — Article 226

Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 — Section 6

Citation : AIR 1960 MP 109 : (1959) ILR (MP) 191 : (1959) 4 MPLJ 1179

Hon'ble Judges : G.P. Bhutt, C.J.;P.K. Tare, J

Bench : Division Bench

Advocate : R.K. Verma, for the Appellant; S.B. Sen, Government Advocate (for Nos. 1 and 3) and C.B. Shukla, (for No. 4), for the Respondent

Final Decision : Allowed

Judgement

Bhutt, C.J.

This order shall also dispose of the connected Miscellaneous Petition No. 140 of 1957.

The case of the present petitioner Sheo Kumar v. that he purchased by a registered sale deed, dated 15-1-1948, 23.10 acres of land situate in patti No. 3, mauza Gudihari, tahsil and district Raipur, from the lambardar, Chandi Prasad, respondent No. 4. This area wrongly comprised 8.49 acres of land sold previously to others and 0.62 acre of land which the petitioner had purchased from one Dukhbhajanlal by a registered sale deed, dated 4-1-1947. The land in dispute is thus 18.99 acres after exclusion of the area which was the subject of previous dispositions. That land was recorded partly as grass and partly as abadi and also comprised certain khudkasht and occupancy land, on the eve of the transfer.

After the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals,

Alienated Lands) Act. 1950 (No. I of 1951) came into force, the petitioner made an application to the Deputy Commissioner, Land Reforms. Raipur, for correction of the entries in the annual papers to bring them in accord with the sale deed, dated 15-1-1948. The Deputy Commissioner, Land Reforms, referred the petitioner to the regular revenue authorities for necessary correction on the ground that the transfer was effected prior to 16-3-1950 which is the relevant date u/s 6 of Act I of 1951.

Thereafter, the petitioner moved the Deputy Commissioner by an application, dated 14-3-1952, for making the necessary correction in the annual papers. The application was sent to Shri N.P. Tripathi. Additional Deputy Commissioner-cum-Sub-Divisional Officer, Raipur, respondent No. 1. After enquiry, an order was passed by Shri N.P. Tripathi on 9-11-1955 in his capacity as Additional Deputy Commissioner-cum-Nistar Officer, by which he dismissed the application. It is contended that this order was beyond his authority and is liable to be Quashed.

One Ramkumar Dani has intervened in the present petition and supports the order of Shri N. P. Tripathi. The petition is opposed by respondents Nos. 1 to 3. viz., Shri N.P. Tripathi, the Deputy Commissioner, Raipur, and the State of Madhya Pradesh. The fourth respondent, Chandi Prasad, has supported the petition,

In the connected case (M. P. 140 of 1957) the petitioners are the sons of one Ramswarooplal Sao, since deceased. Their case was that their father was created an occupancy tenant of 62.40 acres of grass land of mauza Gaurbhat, tahsil and district Raipur, by Saumitralal, the sole proprietor and lambardar of the village, by a registered lease deed, dated 13-9-1948, on an annual rent of Rs. 31/-. On 30-4-1952 Saumitralal made an application to the Naib-Tahsil-dar for correction of the annual papers to bring the entries in accord with the lease. Petitioner No. 1 also made a similar application on 15-1-1954 before Shri N.P. Tripathi. Additional Deputy Commissioner-cum-Nistar Officer, respondent No. 1, when the proceedings were pending before him consequent on the application of Saumitralal. Both the applications were disposed of by a common order, dated 19-10-1954, by which they were dismissed. The petitioners seek to quash this order in their petition.

In paragraph 19 of his petition the present petitioner has given reasons why he did not move this Court earlier. That paragraph is reproduced below:

"19. That the petitioner could obtain a certified copy of Mr. Tripathi's order only by 17-7-1956, with a view to file an appeal but received legal advice that no appeal or revision lay to the Board of Revenue. But since the order did not appear to constitute an immediate threat to his rights, the petitioner thought it better to wait on events before invoking the jurisdiction of this Court.

It has now come to the Petitioner's knowledge that the State Government acting through its agents and subordinates viz. the Deputy Commissioner Raipur and the Officer on Special Duty Land Diversion Department Raipur (working under

the Deputy Commissioner) has granted after Mr. Tripathi's order dated 9-11-55 and is taking steps to grant lease hold and other subordinate rights in the vacant lands of which the Petitioner became plot proprietor by virtue of the sale deed in question, to different persons and have otherwise started arrogating to itself the rights of ownership and dominion. He is filing a list of some leases granted as above".

The contents of this paragraph were expressly admitted by the contesting respondents Nos. 1 to 3, viz., Shri N.P. Tripathi, Deputy Commissioner, Raipur and the State of Madhya Pradesh.

In the other case, the reasons for the delay were given by the petitioner in paragraph 6 of their petition which is reproduced below:

"(6) Rut of late there has been considerable talk in the village Gaurbhat among those inimically inclined to them and aware of the order of Shri Tripathi dated 19-10-1954 of moving the Revenue Authorities to take over the leased land for Nistar purposes on the strength of Shri Tripathi's order. Disturbed by this the petitioners again took legal advice and were told that though Shri Tripathi's said order was without jurisdiction it was an order which would have operative force until set aside and might prejudicially affect their rights in the land. Hence this petition under Article 226 of the Constitution".

The contents of this paragraph were denied by the respondents, viz., Shri N.P. Tripathi and the State of Madhya Pradesh.

It would, therefore, appear that while there was sufficient cause for the delay in the present petition, that question in the other case is in controversy. However, both the petitions contain the same grounds and if relief is to be given to the present petitioner, it should not equitably be denied to the petitioners in the other case. The question of delay in such matters was considered by a Full Bench of this Court to Krishna Rajeshwar v. Chief Secretary to M. P. Government, Police Department Nagpur 1954 Nag LJ 218 : (AIR 1954 Nag 151) where It has been held that mere delay in certain circumstances may not be sufficient to defeat the petition for a writ of certiorari. We shall, therefore, consider both the cases on merits.

There is no doubt that if this was a mere case of correction of annual papers as contemplated in Mangloo v. Board of Revenue 1954 Nag LJ 131 the matter would not be justiciable. However, the basis of the decision of Shri N.P. Tripathi is the finding that the transfers in question were "bogus" and "mala fide" and the petitioners therefore acquired no right thereunder. This finding was given by him on a mis-understanding of the nature of the applications of the petitioners which he considered to be applications for review of the order vesting the fields in the State under Act I of 1951.

It was not contested before us that no proceedings were taken in respect of the fields in question u/s 13 of Act I of 1951, and accordingly Shri N.P. Tripathi was

in error in treating the applications as falling u/s 15 *ibid*. On this misunderstanding, he proceeded to adjudicate on the rights of the petitioners. The question is whether such a determination of their rights was within his authority.

It will be observed that both the transfers in question were prior to the date 16-3-1950, which is the relevant date u/s 6 of Act I of 1951. The question whether such transfers could be challenged under any provision of that Act was considered by a Full Bench of this Court in *Balkishan v. State of M. P.* 1956 Nag LJ 370: (AIR 1956 Nag 219) which answered the question in the negative. The view held in that case has also been followed by the Board of Revenue in its decisions: See *Sushila Devi v. State of M. P.* 1957 MPLJ 642.

The authorities acting under Act I of 1951 accordingly were not competent to enquire into the nature of the transactions in question. Therefore, although the order was merely one of refusal to correct the entries in the annual papers--which would not have been open to challenge under Article 226 of the Constitution--it has become justiciable because it has, without jurisdiction, proceeded to adjudicate upon the rights of the petitioners.

It was, however, urged that the petitioners should be directed to seek their ordinary remedy in the Civil Courts to establish their title. On this point, it may be noted that the authorities acting under a statute can only decide matters falling under its provisions. Therefore, if parties who are affected by their unauthorised decisions were to be directed to seek their remedy in Civil Courts, that would be giving effect to the decisions which are without jurisdiction. We have, however, no manner of doubt that if once the orders passed by Shri N.P. Tripathi are quashed for want of jurisdiction, the State of Madhya Pradesh will not proceed to dispose of the fields without recourse to the due process of law.

The petitions are accordingly allowed and the order dated 9-11-1955 (M. P. 137 of 1957) and the order dated 19-10-1954 (M. P. 140 of 1957) passed by Shri N.P. Tripathi, Additional Deputy Commissioner-cum-Nistar Officer, Raipur, respondent No. 1, are quashed. In the circumstances, however, there shall be no order as to costs. The outstanding amounts of the security deposit shall be refunded to the petitioners.