(2007) 08 MP CK 0030

In the Madhya Pradesh High Court

Shyam Sundar APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 23-08-2007

Acts Referred:

Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 — Section 11, 4, 4(3)

Citation : (2008) 5 MPHT 217 : (2008) 4 MPLJ 652

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajendra Menon, J.

Challenging the order Annexure P-1, dated 24th June, 2005 passed by Board of Revenue and order Annexure P-2, dated 22-1-04 passed by Competent Authority under the M.P. Ceiling on Agriculture Holding Act, 1960 so also challenging the order Annexure P-3, dated 14th July, 2000 passed by Additional Collector, petitioner has filed this petition under Articles 226 and 227 of the Constitution.

Facts in brief which are necessary for deciding the controversy involved in this petition are that the land in question is situated in Village Chak Jourasi, Tehsil Dabra, District Gwalior, initially the entire land consisting of 150 acres belonged to one Raghu Pratap. After the M.P. Ceiling of Agriculture Holding Act, 1960 (hereinafter referred to as ''the Act'') came into force and certain amendments were made by the Act No. 20 of 1974, ceiling proceedings were initiated with respect to the aforesaid land. The Competent Authority exercising jurisdiction under the Ceiling Act, initiated proceedings u/s 11 of the Act and after complying with the requisite formalities in accordance to the said Act, passed the order Annexure R-I, dated 15-10-75. By the aforesaid order, it was held that the land holder Raghupratap is only entitled to hold 110 acre of land and remaining 30 acres was declared as surplus land. Out of the surplus land so declared, a area measuring 4.339 acres was reserved as charnoi land and remaining land was directed to give on patta to the landless Adiwashi persons in accordance with rules. Being aggrieved by this order Annexure P-l, dated 15-10-75, legal heirs of Raghupratap namely his sons and daughters filed Writ Petition No. 979/93 before this Court. The matter come up for hearing on 25-9-95 and this Court found that before finalizing the ceiling proceedings draft statement as required u/s 11 and further requirement of Sub-sections (2) to (6) is not followed, therefore, the petition was allowed and matter was remanded back to the Competent Authority with a direction to prepare a draft statement, the petitioners be given opportunity to submit their objections to the same and thereafter the Competent Authority was directed to decide the matter in accordance with law. After the matter was remanded, draft statement was prepared, objections were called for and an order was passed by the Ceiling Authority again on 15-7-96 vide Annexure P-7. By this order, the Competent Authority found that legal heirs of original holder were entitled to retain 123 acres of land, petitioner-Shyam Sunder and respondent No. 10 Yudhishthir were entitled to retain 18.594 acres of land in pursuance to the decree passed by the Civil Court in their favour. It was further held that 4.339 acres of land be reserved for Awas and Charnoi and remaining 4.068 acres were declared as surplus land. It may be relevant to mention at this stage that in pursuance to the earlier order passed by the Competent Authority vide Annexure R-l, dated 15-10-95; patta was granted to seven Adiwashi persons and when the subsequent order was passed on 15-7-96 after remand by this Court in W.P. No. 979/93, it was held that the patta granted be declared as null and void.

As the order dated 15-7-96 declaring the patta granted to seven persons was declared as null and void. The seven pattadhari filed an appeal u/s 44 of the M.P. Land Revenue Code before the Additional Collector, Gwalior. It was their case that pattas granted to them by the Competent Authority is cancelled without notice to them without hearing them, therefore, the same is illegal. Considering these contention, the appeal was allowed by the Additional Collector and vide Annexure P-3, dated 14th July, 2000, the matter was again remanded to the Competent Authority for deciding the question of Ceiling after hearing all concerned. In the said appeal, proceedings which was held before the Additional Collector, present petitioner-Shyam Sunder was arrayed as respondent No. 7 and respondent No. 10-Yudhishthir was arrayed as respondent No. 8. After remand order was passed matter was again taken up by the Ceiling Authority and fresh order of ceiling Annexure P-2 was passed on 22-1-04. By the said order, it was found by the authorities concerned that the original holders are entitled to retain 123 acres of land, 4.339 acres of land was directed to be reserved as Abadi and Charnoi land and remaining 2.661 acres was declared as surplus land. In this order, it was further held that Shyam Sunder and Yudhishthir are not entitled to any land as decree was obtained by them from the Civil Court on the basis of compromise without impleading the State as party, it was held to be a collusive decree and on the basis of the said compromise decree, decree holder have no right. Placing reliance on certain judgment of the Supreme Court and of this Court, it was held that decree Civil Court is not binding on the Ceiling Authority. Against this order passed by the Competent Authority vide Annexure P-2, dated 22-1-04, petitioner-Shyam Sunder filed an appeal before the Board of Revenue u/s 4 (3) of the Ceiling Act claiming his rights to the property to the extent decreed in his favour vide compromise judgment and decree Annexure P-6, dated 23-3-83 passed by the Court of Additional Civil Judge, Class II, Dabra in Civil Suit No. 40-A/83.

Shri J.P. Mishra and Shri A.K. Nirankari, learned Counsel representing the petitioner submitted as under:

It was argued by them that against the order passed by the Competent Authority in the ceiling proceedings vide Annexure P-7, dated 15-7-96, no appeal could be filed before the Additional Collector. Placing reliance on Section 4 (3) of the Ceiling Act, it was argued that appeal was maintainable only before the Board of Revenue and interference made by the Additional Collector and remand order passed by him on 14th July, 2000 vide Annexure P-3 is unsustainable and, therefore, the consequential order passed by the Competent Authority vide Annexure P-2 is also unsustainable. It was stated that against the order passed by the Competent Authority under the Ceiling Act, appeal before the Additional Collector was not maintainable and Board of Revenue committed grave error in ignoring these factors and in passing the impugned order Annexure P-1. It was then contended by learned Counsel that petitioner being an original holder of the land in question on the basis of judgment and decree passed by Competent Court of civil jurisdiction, was entitled to retain the land granted to him by the aforesaid judgment and decree and in denying the said right to the petitioner it is argued that respondents have committed grave error. Accordingly, on these grounds challenge is made to the orders passed.

Refuting the aforesaid contentions, Smt. Ami Prabal, learned Deputy Advocate General for respondents/State and Shri Anil Sharma, learned Counsel for some private respondents argued that after the order Annexure P-3 was passed by the Additional Collector on 14th July, 2000 and when the order of remand was made, petitioner did not challenge this order Annexure P-3, on the contrary, he accepted the order, appeared before the Ceiling Authority and participated in the ceiling proceedings. It is only after the order passed by the Ceiling Authority vide Annexure P-2 on 22-1-04 that now petitioner raising this ground for the first time in this writ petition without raising the ground even an appeal was filed by the petitioner before the Board of Revenue. Inter alia contending that now the petitioner cannot be permitted to raise this ground, respondents resist the claim of the petitioner.

It is further submitted by the respondents that against the order Annexure P-3, dated 14th July, 2000 passed by Additional Collector, respondent No. 10-Yudhishthir, who is a decree holder along with petitioner, filed a revision petition. In this revision petition, petitioner was respondent No. 23 and this revision was also dismissed on 16-7-03 vide Annexure P-4. In this revision also neither petitioner nor respondent No. 10-Yudhishthir challenged the jurisdiction and authority of the Additional Collector for entertaining the appeal. Accordingly, respondents contended that now petitioner cannot challenge the order on this ground. On merits, it was argued by learned Deputy Advocate General that the order passed by the Civil Court on the basis of a compromise entered into between the parties in which the State is not impleaded as a party, the same is not binding on the Ceiling Authority and therefore, the Board of Revenue has not committed any error in passing the impugned order Annexure P-l as the said question is concluded by a judgment of the Supreme Court in the case of Sanjay Dinkar Asarkar Vs. State of Maharashtra and Another, and followed by this Court in the case of Jagdish v. State of M.P. and Ors. 1993 RN 55, Smt. Amit Prabal, learned Counsel for respondents/State submits that decision taken by the Board of Revenue on the basis of aforesaid two judgments does not warrant any interference now in this writ petition. Accordingly, respondents prays for dismissal of the petition.

I have heard learned Counsel for parties at length and perused the record. From the facts that have came on record, it is clear that two questions require determination now in this petition. The first question is as to whether the Additional Collector had power or jurisdiction to interfere in the matter and effect of the action of the petitioner in not challenging this orders at a proper stage ? The second question is as to whether on merits the decision rendered by the Competent Authority and the Appellate Authority, i.e., the Board of Revenue with regard to judgment and decree of the Civil Court not binding on the Ceiling Authority is proper or not ?

As far as the first question is concerned, the learned Counsel has emphasised that against an order passed by Competent Authority in a ceiling proceedings, appeal will lie only to the Board of Revenue u/s 4 (3) and no appeal was maintainable before the Additional Collector. Chapter (2) of the Ceiling Act contemplates various provisions pertaining to exemption and restriction of transfer of land. Section 4 of this Chapter deals with transfers or partitions made after the publication of the Bill but before commencement of the Act. According to the provisions of this Section notwithstanding anything contained in any law for the time being in force but before the appointed day, if any holder has transferred any land held by him by way of sale, gift, exchange or otherwise or has effected a partition of his holding or part thereof or has transferred the holding in execution of decree of any Court, the Competent Authority may, after issue notice to the holder and other persons affected by such transfer or partition and after such enquiry at it deemed fit has right to declare the transfer or partition to be void. Thereafter, Sub-section (3) of this Section contemplates that any person aggrieved by an order of the Competent Authority may prefer an appeal to the Board of Revenue. A complete reading of this section clearly indicates that this section pertains to declaration of a transfer as null or void or illegal by the Competent Authority, if, transfer or partition is made after publication of the Bill but before commencement of the Act. The question is as to whether the said section is at all applicable in the present proceedings ?

At this juncture, it would be relevant to consider the provisions of Chapter 3 of the Ceiling Act wherein the provisions is made for fixation of ceiling area, determination of surplus land and acquisition thereof. Section 9 of this Chapter provides that submissions of return by person holding land in excess of ceiling. Section 10 of this Chapter provides collection of information and Section 11 pertains to preparation of statement of land held in excess of the ceiling area. u/s 11, a detailed procedure is contemplated for preparation of statement or declaration of land as surplus land after considering the objections. Sub-section (v) of Section 11 provides that the order passed by the Competent Authority is subject to appeal or revision.

If the facts and circumstances of the present case are evaluated, it would be seen that in the present case proceedings were not initiated by the Competent Authority by issuance notice and for taking action as contemplated u/s 4 of the Ceiling Act for cancelling of any transfer or partition. On the contrary, the present proceedings were initiated after return was filed by the original holder namely Raghupratap s/o Motiram in the year 1975 well before the judgment and decree on compromise was passed vide Annexure P-6, dated 23-3-83. Record indicates that no proceedings were held u/s 4 of the Ceiling Act for declaring the transfer or partition made by the judgment and decree dated 23-3-83 Annexure P-6 as void. On the contrary, the entire proceedings which culminated in passing of the impugned order Annexure P-2 was first initiated some time in the year 1974 in accordance to Chapter 3 of the Ceiling Act and the order Annexure R-l, dated 15-10-75, i.e., the first order passed by the Competent Authority indicates that proceedings were held u/s 11 and Rule 6 (3) thereof. It is, therefore, clear that in the present case no proceedings were held u/s 4 of the Act on the contrary proceedings were held u/s 11 under Chapter 3 and in particular u/s 11 of the said Chapter. As also indicated hereinabove and order passed after preparation of draft statement u/s 11 of the Ceiling Act by the Competent Authority is subject to decision in an appeal or revision. Under Chapter III of the Ceiling Act no provision for filing an appeal is made. Chapter IV deals with payment of compensation and Chapter V deals with encumbrances on surplus land. Any order passed under Chapter V is subject to appeal u/s 33 before the District Judge or High Court as case may be. Thereafter Chapter VI deals with disposal of surplus land. Chapter VI-A deals with penalty and Chapter VII contains various miscellaneous provisions. Section 41 of Chapter VII provides as under:

Appeals.- Except where the provisions of this Act provide otherwise, against every order of a Revenue Officer or Competent Authority under this Act or the Rules made thereunder, an appeal shall lie,:

(i) if such order is passed by a Revenue Officer either as Competent Authority or otherwise to the authority competent to hear appeals under Sub-section (1) of Section 44 of the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959) from an order passed by a Revenue Officer of the same rank under the said Code;

(ii) if such order is passed by the Competent Authority where such authority is an officer other than a Revenue Officer appointed under Sub-clause (iii) of Clause (a) of Section 2 to the Board of Revenue as if such officer were an Additional Settlement Commissioner appointed u/s 65 of the said Code:

Provided that the surplus land vested in the State Government shall not revert to the holder thereof as a consequence of remand of the case.

And thereafter Section 42 contemplates a provision of revision to the Board of Revenue or the Commissioner as the case may be. On a perusal of Section 41 of Chapter VII, it is clear that if an order is passed by Revenue Officer or by Competent Authority under the Ceiling Act or rules made thereunder an appeal lies to the Competent Appellate Authority and provided to hear appeal u/s 44 of the M.P. Land Revenue Code. It is, therefore, clear from this section that when the Sub- Divisional Officer is the Competent Authority under the Ceiling Act, who has passed the order Annexure P-7, dated 15-7-96 then by virtue of Section 41 of the Ceiling Act, an appeal was lie to the Additional Collector as he is the authority to hear appeal u/s 44 of the M.P. Land Revenue Code against the order of the Sub-Divisional Officer. It is for this reason that an appeal was filed before the Additional Collector and Additional Collector entertained and decided the appeal, where no objection with regard to jurisdiction of Additional Collector to hear the appeal was raised. Considering the scheme of Ceiling Act as indicated hereinabove, it is clear that the Additional Collector was empowered to hear the appeal against the order dated 15-7-96 passed by Competent Authority and there is no substance in the contentions advanced by the learned Counsel for petitioner in this regard.

The first question raised by the petitioner can be considered in a different perspective also. If the contention of the petitioner is that proceedings were held as per Section 4 of the Ceiling Act is accepted then this proceedings could be initiated only after issuance of notice as contemplated u/s 4 for setting aside the compromise decree Annexure P-6 passed on 23-3-83. There is no material available on record to indicate that the Competent Authority ever initiated any proceedings u/s 4 of the Ceiling Act with regard declaring as invalid the transfer or partition made vide judgment and decree Annexure P-6, dated 23-3-83. In the absence of any proceedings being held u/s 4, the question of filing an appeal under Sub-section (3) and Section 4 does not arise. Accordingly, finding that first ground raised by Shri J.P. Mishra, learned Counsel for petitioner to be wholly misconceived the same cannot be accepted. Apart from the aforesaid, it is also to be taken note of that in the order passed by the Additional Collector on 14th July, 2000 vide Annexure P-3 even though respondent No. 10-Yudhishthir challenged it by filing a revision before the Additional Collector u/s 50 of the M.P. Land Revenue Code, 1959, petitioner just kept quiet and now is challenged this order. On the contrary, he submitted to the jurisdiction of the Sub-Divisional Officer and permitted the proceedings to be decided on merits. The present objection is now raised as an after thought and is not legally sustainable as indicated hereinabove. Accordingly, I see no reason to interfere in the orders passed on the basis of the grounds in this regard raised by the petitioner.

As far as the second ground of attack is concerned, petitioner has only stated that he is entitled to the benefit accruing to him from the judgment and decree Annexure P-6 passed on 23-3-83. A perusal of this judgment and decree indicates that the suit was filed by Shyam Sunder himself against the original holder of the land Raghupratap in the year 1983 when the ceiling proceedings were pending and the initial order of the Competent Authority was already passed on 15-10-75. It has been found by the authority that the proceedings of the civil suit were filed only to frustrate the ceiling proceedings which was a collusive suit filed and compromise was entered into only to get away from the ceiling proceedings. In this suit, the State Government is not impleaded as party, therefore, it has been held by the Competent Authority that this judgment and decree is not binding on the Ceiling Authority. This question is considered by the Supreme Court in the case of Sanjay Dinkar Asarkar (supra) and orders of the Competent Authority under the Maharashtra Agricultural Lands (Ceiling and Holdings) Act, 1961; refusing to recognize the Civil Court decree which was obtained by collusion and compromise was refused to be adopted in the ceiling proceedings. It has been held by the Supreme Court so also by this Court in the case of Jagdish (supra), that a decree obtained in the civil suit in which the State is not a party and when the suit is not contested in the whole that such a decree is not binding upon the Competent Ceiling Authority. In the light of the aforesaid judgment and principles laid down therein, I see no reason to interfere in the orders passed by the Competent Authority and Board of Revenue. Both these authorities have found that judgment and decree has been obtained in collusion and after relying on the aforesaid judgment it has been held that same is not binding on the Ceiling Authority.

The view taken by the Competent Authority and affirmed by the Board of Revenue is proper and I see no error in the same warranting interference now in these proceedings.

Accordingly, in the facts and circumstances of the case, finding both grounds raised by the petitioner to be wholly unsustainable, petition stands dismissed without any order so as to costs.