(1957) 02 MP CK 0044

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No''s. 518 of 1955 and 162 of 1956

Sm. Gulabbai APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 05-02-1957

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 — Section 3(2), 84, 91(1)

Citation : (1957) 02 MP CK 0044

Hon'ble Judges : M. Hidayatullah, C.J;B.K. Chaturvedi, J

Bench : Division Bench

Advocate : S.C. Dube, for the Appellant;

Judgement

1. This opinion will also govern Miscellaneous Petition No. 162 of 1955.

2. These cases come before us on a reference by Choudhuri J. The learned Single Judge has not framed the question, but in the course of his order he has clearly indicated what that question is. To quote the learned Single Judge:

"The important question for consideration is whether the rules framed u/s 91(1) of the M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, and published under notification No. 777-XXVIII, dated 27-10-1951, by the State Government, have the force of law or do they amount to executive instructions and the orders passed thereunder are not justiciable."

3. This question has a history of its own, The rules were framed by the State Government, presumably u/s 91(1) of the Madhya Pra-desh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950. It is conceded by the learned counsel for the petitioner that he has not found any power apart from the first Sub-section of Section 91.

The rules do not indicate the power under which they have been framed; but it is settled law that when rules are" framed they may be referred to any power in the

Act which validates them.

4. We are therefore required to see only whether the rules could be framed under the Act at all. The first Sub-section of Section 91 reads as follows;

"The State Government may make rules to carry out all or any of the purposes of this Act." The short question, therefore, is whether the rules carry out any purpose under the Act.

5. u/s 3, Sub-section (1) all the proprietors stood divested from the date of vesting of all the rights mentioned in Section 4 of the Act. Sub-section (2) of Section 3, however, provides as follows:

"After the issue of a notification under Sub-section (1), no right shall be acquired in or over the land to which the said notification relates, except by succession or under a grant or contract in writing made or entered into by or on behalf of the State ...."

There is no doubt that in the property which vests in the State u/s 3(1) and Section 4 of the Act, a right can only be acquired either by succession or under a grant or contract in writing made or entered into by or on behalf of the State. The question is whether the creation of occupancy rights in the Central Provinces in ex-malguzari land in favour of the proprietors under the impugned rules can be said to be a grant by the State or not. If it is a grant, then apparently rules can be made to regulate the conditions under which the grant is to come into operation.

6. Now, the rules in question, if they are read to the end, clearly show that after the inquiry which is to be made, a patta is to be granted in favour of the ex-proprietor. The rules show how the proprietors have to go before the Deputy Commissioner and other revenue officers seeking reservation of a portion not exceeding ten per cent. of the grass lands for the exclusive use of their own cattle. They also show that inquiries have to be made; and then the reservation of the rights in favour of the ex-proprietors has to be certified by a patta in Form C appended to the rules.

Now, we take it that after the inquiry is made and the right in the grass lands is reserved with a patta granted to that effect, there is a grant by the Government or, at any rate, on behalf of the Government by the Deputy Commissioner to the ex-proprietors. This obviously is a purpose within Sub-section (2) of Section 3 of the Act, and making of rules is justified u/s 91(1) in view of the geneality of the provision there.

7. Our attention was called to the decision of the Board reported in -- ''Gulab Bai v. State'' 1955 Nag LJ 624 (A). In our opinion--and we say it with all due respect--the learned member of the Board proceeded to examine the policy underlying the definition rather than the clear provisions of Section 3(2) of the Act. This pertinent argument was regarded by them ss far-fetched.

In our opinion, if the rules had been read in their entirety, the members of the Board would have easily seen that at the end of all the inquiry a patta is to be granted, and that would amount to a grant by the State within Sub-section (2) of Section 3. Rules for carrying out the purposes of the Act dealing with the grant of pattas which include rights can conceivably come within the first subsection of Section 91.

We do not therefore, think it right to treat these rules as executive instructions. They are statutory rules under the authority of Sub-section (2) of Section 3 of the Act.

8. It follows that the revenue officers in implementing the rules have to act on judicial principles and their action is capable of being examined by way of appeal u/s 84 of the Act.

9. We answer the first limb of the question in the affirmative and the second in the negative. Let the papers be returned to the learned Single Judge.