
(2005) 09 MP CK 0036
In the Madhya Pradesh High Court
Case No : F.A. No. 232 of 1995

Smt. Bhagwanibai

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 13-09-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Companies Act, 1956 — Section 3
Limitation Act, 1963 — Article 64, 65
Madhya Pradesh Land Revenue Code, 1959 — Section 117, 158
Madhya Pradesh Lok Parisar (Bedakhali) Adhiniyam, 1974 — Section 15, 2, 28, 4, 46

Citation : AIR 2006 MP 84 : (2006) 1 MPLJ 370

Hon'ble Judges : U.C. Maheshwari, J

Bench : Single Bench

Advocate : R.D. Hundikar, for the Appellant; A.L. Patel, Government Advocate, for the Respondent

Judgement

U.C. Maheshwari, J.

An unsuccessful plaintiff being aggrieved by the dismissal of her suit vide judgment and decree dated 12-5-1995 passed by First Additional Judge to the Court of District Judge, Bhopal in C. O. S. No. 110-A/88 has knocked the door of this Court for decreeing the suit.

Facts giving rise to this appeal are that as per pleadings of the plaint, the appellant and her late husband Vesimal had come from Pakistan on partition of country. Initially they resided at Devlali Camp then shifted to Bairagarh in 1952-53 where they have been inducted in a 2, B barrack, the old quarter situated on the land of "Smt. Aftab Jahan Begum". The aforesaid induction took place at the instance of the Officers of the rehabilitation department, the department of Central Govt. As aforesaid area was taken over by Central Government from the then erstwhile State of Bhopal for such rehabilitation. The aforesaid Bhoomiswami "Smt. Aftab Jahan Begum" the land lady was the wife of the Nawab of said old State of Bhopal. No order in writing was given to plaintiff

at the time of induction but she remained in possession of the property.

It is also pleaded that the aforesaid land is still recorded in the name of said "Smt. Aftab Jahan Begum" as Bhoomiswami in the revenue record. After her demise the Nawab Sajida Sultan has become the Bhoomiswami, as such, this land was never recorded or owned by respondent No. 2 State of Madhya Pradesh as Bhoomiswami, thus respondent No. 2 had no authority to initiate any proceedings for eviction or removal to appellant from its possession.

The appellant's possession was never obstructed by aforesaid Bhoomiswami or her legal representatives by any method either by filing the suit for possession or any other proceedings as such she remained in peaceful and uninterrupted possession as an owner of the property and perfected her title over the property by adverse possession by extinguishing the right of said recorded landlady.

After inducting to plaintiff a hospital was constructed by respondent No. 2 on the other part of the said land adjoining to disputed quarter, it was further extended by constructing the building and boundary wall, consequently, barracks had come inside of the said boundary wall. But mere on this basis without any other documentary evidence this property could not be assumed to be the property of respondent No. 2. This property was never remained as public premises. Thus the M. P. Lok Parisar (Badakhali) Adhinyam, 1974 ("the Adhinyam" in short) or its any provision are not applicable to this premises, but contrary to this the respondent No. 3 had taken cognizance in the aforesaid Adhinyam by issuing the notices u/s 4 of the said Adhinyam dated 7-1-87 and subsequently u/s 5 of the said Adhinyam dated 10-2-88 for vacating the premises on appeal, the Commissioner Bhopal has upheld the said notices vide order dated 18-11-88. The aforesaid proceedings was decided without providing sufficient opportunity of hearing to the appellant. Thus the suit for declaration and injunction was filed by appellant against the respondents and impleading the recorded Bhoomiswami.

The said recorded Bhoomiswami was remained ex parte in trial Court.

In written statement of respondents No. 2 and 3, all material pleadings as pleaded by appellant have been denied except the construction of the hospital and boundary wall by which said quarter has come inside of the said boundary wall. The initiation of the proceedings under the Adhinyam and issuing notices have been accepted. The maintainability of the suit is challenged on the strength of Section 15 of the Adhinyam.

In view of the pleadings of the parties issues were framed, after recording the evidence, on consideration it was held that the property in dispute was not remained the property of "Smt. Aftab Jahan Begum", as it was a property of erstwhile State. Appellant has not perfected any right of title by adverse possession. It was further held that possession of the appellant was permissible possession with the consent of respondent No. 2. The notices issued by the respondent No. 3 as competent authority under the aforesaid Adhinyam have been held proper and in accordance with law. The plaintiff/ appellant is not

entitled to get any benefit as rehabilitate person as per notification dated 9-7-1986 and by holding that in view of Section 15 of the Adhiniyam suit is not maintainable and dismissed the suit. Hence, the appellant has preferred this appeal. In pendency of the appeal, the name of respondent No. 1 the Bhoomiswami was deleted by the appellant on his own risk and consequences.

Shri R.D. Hundikar, learned Counsel for the appellant has submitted that it is not in dispute that property was remained in possession of appellant since last many years. The hospital and boundary wall have been constructed by respondent No. 2 after inducting to the appellant in the said house. As per evidence available on record the appellant/plaintiff and her husband were inducted in premises in the year 1952-53 as they came from the Pakistan on partition of the country. The aforesaid quarter and its adjoining land was never remained as property of respondent No. 2, the State of Madhya Pradesh. It has been recorded in the name of Aftab Jahan Begum as per Ex. P. 1 the revenue record and till today the name of respondent No. 2, State has not been replaced. Thus this property being private property is not covered by the definition of public premises as defined u/s 2(e) of the Adhiniyam consequently the Adhiniyam could not have been invoked by the respondent No. 3 even for issuing the notices under Sections 4 and 5 of the said Adhiniyam therefore entire proceedings under the Adhiniyam is ab-initio void.

He also submitted that whenever the judicial or quasi judicial authority like respondent No. 3 has passed the order in the lack of jurisdiction over the property then civil Court had jurisdiction to entertain the suit for examining the validity of order and jurisdiction of authority.

He further submitted that long before from the initiation of the proceedings under the Adhiniyam, an inquiry was made by the Nazul department through its Naib Tahsildar in Revenue Case No. 9A/20(1) 94-95, in which the spot inspection was also carried out by the Revenue Officer as evident from Ex. P. 7 and on consideration vide order dated 30-1-1995, Naib Tahsildar, Nazul has held that aforesaid land is still recorded in the name of Smt. Aftab Jahan Begum as Bhoomiswami in the Revenue Record it is not the land of Government and the case was disposed of. Such order of the Naib Tahsildar was never challenged by respondent No. 2 or its officer or any authority either in appeal or by way of any suit. Thus, such order is still in existence and binding against respondent No. 2. The aforesaid order has not been controverted by respondent No. 2 and 3 by proving their ownership by cogent and reliable evidence. This aspect was not considered by the trial Court and the suit has been dismissed in wrong premises. He prayed for setting aside the impugned judgment and decree by decreeing his suit.

While on the other hand Shri A.L. Patel, learned Government Advocate has submitted that firstly in view of Section 15 of the aforesaid Adhiniyam the suit of appellant was not maintainable, in continuation of it the appeal is also not maintainable thus this appeal may be dismissed only on this ground. On merits

of the case he submitted that the appellant and her husband were inducted by the Officer of the Government as per case of appellant. If accommodation was provided by Government officials then certainly it comes under the purview of public premises as defined in the Adhiniyam. His further submission was that no evidence has been led by the appellant in order to prove the adverse possession and whatever evidence has been adduced by her do not warrant to draw the inference against the State or the real owner of the property in respect of extinguishing of title. Thus in the absence of such evidence no inference could be drawn in favour of the appellant. He further submitted that the appellant was inducted by the State Government, therefore appellant had no authority to challenge the right of the State Government by falsifying the dismissal of the suit and prayed for dismissal of this appeal also.

Having heard the learned Counsels for the parties, for considering their submissions, I have gone through the impugned judgment and record of the trial Court. Firstly, this Court has to consider whether impugned suit was maintainable in the Civil Court as per provisions of Section 15 of the Adhiniyam or not. Section 15 of the said Adhiniyam read as under:

Bar of jurisdiction:

No Court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises or the recovery of the arrears of rent payable under Sub-section (1) of Section 7 or the damages payable under Sub-section (2) of that section of the costs awarded to the State Government or the corporate authority under Sub-section (5) of Section 9 or any portion of such rent, damages or costs.

In view of aforesaid provisions, it is certain if property or premises is covered under the definition of "Public Premises" as defined u/s 2(e) under the said Adhiniyam then the jurisdiction of Civil Court is barred. Section 2(e) of Adhiniyam reads as under:

"Public premises" means any premises belonging to or taken on lease or requisitioned by or on behalf of the State Government, and includes any premises belonging to, or taken on lease by, or on behalf of--

(i) any company as defined in Section 3 of the Companies Act 1956 (No. 1 of 1956), in which not less than fifty one per cent of the paid up share capital is held by the State Government; and

(ii) any Corporation not being a company as defined in section of Companies Act, 1956 (No. 1 of 1956), established by or under a Central or State Act and owned or controlled by the State Government or a local authority.

In view of the aforesaid provisions on perusing the evidence of the case at hand it appears from the statement of appellant Bhagwani Bai that the land in dispute on which the house is situated was belonging to Aftab Jahan Begum, as Bhoomiswami which is evident from Ex. P. 1, the Khasra Panchsala of the year

1992-93. Although, police station and hospital have also been mentioned in some column but in view of Section 158 of Madhya Pradesh Land Revenue Code the Bhoomiswami of this land was remained only Smt. Aftab Jahan Begum and not the respondent No. 2, State of Madhya Pradesh. Such Khasra could not be disbelieved as there is a presumption in favour of its genuineness as per Section 117 of M. P. Land Revenue Code till it is not rebutted. It is undisputed position on record that respondent No. 2 and 3 have neither examined themselves nor produced any other evidence in support of their pleaded defence.

In addition to it as per A. Ex. P. 7. Panchnama of spot inspection prepared by Revenue Officer, in connection of Revenue Case No. 9-A/20(1)/94-95 also speaks that aforesaid quarter and its adjoining land is the non-Government private land of Smt. Aftab Jahan Begum. On relying this Panchnama in the Revenue case the Naib Tahsildar of Nazul, Beragarh, Bhopal has held by order dated 30-1-1995 that suit house being a non-Government property is a part of the property of Aftab Jahan Begum. The order of Revenue Court has not been challenged by either parties till today. Thus, the order of Revenue Court is still in existence having binding effect against State. Thus it is held that disputed house is not the property of State of Madhya Pradesh and also does not come under the purview of Public Premises as defined in the Adhiniyam. Therefore the Adhiniyam was not applicable to the property in dispute thus respondent No. 3 has wrongly issued notices under Sections 4 and 5 (Ex. P. 3 and P. 4), and on appeal against such notices the same was wrongly decided by the appellate authority.

Now the question comes when the Adhiniyam was not applicable and competent authority has taken the cognizance against appellant/plaintiff to evict him from the premises then civil Court had jurisdiction to examine such question and Section 15 of the Adhiniyam could not come in the way. This question was also answered by this Court in the matter of Ramsharan Vs. Mahipatrao, in which held as under:

The Act deals with an evacuee's property. Therefore, the bar of Section 28 would not be operative in case of a person who, admittedly, was not an evacuee. Indeed, the Custodian being invested with jurisdiction to declare any property only to be "evacuee property" which Section 2(f) itself defines as "property of an evacuee" and the term "evacuee" being also defined in Section 2(d), any person not covered thereunder would be able to maintain a civil action to enforce his civil rights in respect of any property owned by him, without in any manner being bound by Custodian's decision as the same, evidently, could not be determinative of his persona] status. It is only in such cases where the property in question is owned by a person who, admittedly is an "evacuee" within the meaning of Section 2(d) of the Act that the Custodian's decision shall attract the bar of Section 28. Section 28 is read conjointly with Section 46, which indeed must be done to mollify the apparent rigour of Section 28. Custodian of Evacuee Property Punjab and Others Vs. Jafran Begum, followed.

The finality clause in a statute would not exclude civil Courts' jurisdiction to

grant relief in cases where the statutory Tribunal had not acted in conformity with the fundamental principles of judicial procedure or where the provisions of the statute itself had not been complied with. The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, , Rohtas Industries Vs. S.D. Agarwal and Others, . Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, relied on.

In view of the aforesaid decided case of this Court I am of the considered opinion that the competent authority of Adhiniyam has not examined the property as per definition of public premises and issued notices under Sections 4 and 5 of Adhiniyam as the competent authority has not acted in conformity with the fundamental principles of judicial procedure as prescribed under the law. Therefore, in such circumstances Section 9 of CPC is readily available to entertain civil suit; by the Civil Court. The suit filed by the plaintiff was maintainable and trial Court has committed grave error in deciding it contrary to these provisions.

In view of aforesaid discussion, the suit filed by the plaintiff is held maintainable. The property in dispute was never remained of respondent No. 2, the State of Madhya Pradesh as held in former paras of this judgment. Thus the entire proceedings drawn up by respondent No. 3, the competent authority of the Adhiniyam is ab initio void. Thus, Ex. P. 3, P-4 and its appellate Ex. P/5 order passed by the Commissioner, Bhopal in Case No. 23/Appeal/87-88 dated 18-11-1988 are hereby declared ab initio void and quashed.

So far perfection of the right of the appellant by adverse possession is concerned, in view of Articles 64 and 65 of Limitation Act on perusing the record I have not found any evidence or document on record which shows that the appellant had declared herself as owner of the property in dispute at any point of time and from that date after 12 years she had perfected title by adverse possession. In the matter of adverse possession the basic requirements are that firstly a person in possession had to declare his ownership of the property in the knowledge of true owner and with this hostility she should have remained in possession for 12 years and for 30 years in the case of State, peacefully without any interference or obstructions then the right of adverse possession could be perfected, that is not the situation in the case at hand. Thus, I hold that the appellant has not perfected any right over the property by adverse possession. Even otherwise after deleting the name of respondent No. 1 from the array of this appeal appellant does not deserve for any consideration on this ground in the absence of respondent No. 1.

Resultantly, the appeal is allowed in part. Ex. P. 3, P. 4 and P. 5 the notices of the competent authority of the Adhiniyam and order of the Commissioner in appeal are hereby declared as ab initio void and quashed and respondent Nos. 1, 2 and 3 are restrained to interfere in any manner in possession of appellant over the disputed house till she is not evicted legally by following the prescribed procedure of law by the true owner of the Bhoomiswami or the person who is

claiming the right under them. Accordingly judgment and decree of the trial Court is hereby set aside and suit of the appellant is decreed in part as intended above. There shall be no order as to cost.

Decree be drawn up accordingly.