

(1984) 03 MP CK 0015

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition Case No. 260 of 1982

Smt. Chudawat Bai

APPELLANT

Vs

Collector, Distt. Ujjain and Others

RESPONDENT

Date of Decision : 01-03-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Madhya Bharat Abolition of Jagirs Act, 1951 — Section 21
Madhya Bharat Land Revenue and Tenancy Act, 1950 — Section 54

Citation : AIR 1984 MP 117 : (1984) JLJ 468

Hon'ble Judges : U.N. Bhachawat, J; Chandrapal Singh, J

Bench : Division Bench

Advocate : K.L. Sethi, for the Appellant; A.H. Khan, Government Advocate, P. Shastri and T.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

U.N. Bhachawat, J.—This is a petition under Article 226 of the Constitution, whereby the petitioner seeks a writ of certiorari for quashing the orders (Annexures X and XI) dt 16-1-1982 and 7-4-1982, respectively, of the Collector, District Ujjain.

2. The short facts essential for the decision of this petition are these:--

2.01. The petitioner is an erstwhile Jagirdar of village Baloda Karan, Tahsil Barnagar, District Ujjain. One Bhola and Shankar (since dead), who was husband of respondent No. 3 and father of respondent No. 4, jointly filed an application on 11-8-1956 u/s 21 of the Madhya Bharat Abolition of Jagirs Act, Samvat 2008 (Act 28 of 1951) (for short, hereinafter referred to as "the Act") before the Tahsildar, Barnagar, for their being recognised as Pakka tenants of the land in question, contending that they were in occupation of the land since before the coming into force of the Act as sub-tenants of the petitioner, and depositing the amount of money in accordance with Section 22 of the Act. This application was opposed by the petitioner. The Tahsildar, Barnagar allowed the application. Being aggrieved

by that order of the Tahsildar, the petitioner filed an appeal before the Collector, Ujjain, respondent No. 1 herein, who partially allowing the appeal of the petitioner remanded the case to the Tahsildar for an enquiry on the limited point which shall be indicated hereinafter at an appropriate stage if necessary. The Tahsildar, after remand, dismissed the application. Being aggrieved by that order of the Tahsildar, respondents Nos. 3, 4 and 5, who are the legal representatives of late Shankar, filed an appeal before the Collector. The Collector allowed this appeal vide his order (Annex. XI) dt. 7th April 1982.

2.02. On the point of exactness and to avoid confusion, it would be useful to mention here that before the second round of appeal before the Collector, the original applicants Bhola and Shankar had died. The legal representatives of late Shankar who are respondents Nos. 3, 4 and 5 herein, were brought on record and they had filed the appeal before the Collector, the decision wherein is the subject-matter of dispute in this petition. In this appeal before the Collector, the legal representatives of Bhola, the original appellant, since dead, were not joined as parties.

3. The learned counsel for the petitioner has raised various contentions which are capsulised as under:

(i) The application presented u/s 21 of the Act (Annexure I) being not in the prescribed form was not maintainable. The khasra numbers of the land in question were also not mentioned in the application;

(ii) Along with the aforesaid application, an amount of compensation in respect of the well situated on the land in question in conformity with Section 22 (d) of the Act was not deposited;

(iii) The last appeal, referred to herein-above, before the Collector "had abated" and, therefore, the impugned order (Annexure XI) rendered by the Collector was without jurisdiction, and

(iv) The finding of the Collector in exercise of his appellate jurisdiction that the petitioner was not a disabled person u/s 74 of the Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 (Act No. 66 of 1950) (for short, hereinafter referred to as "the Tenancy Act") being illegal, is liable to be quashed.

4. We propose to deal hereinafter with the aforesaid contentions ad seriatim, except contentions Nos. (i) and (ii), which, we shall deal with as a package to avoid repetition.

4.01. Contentions Nos. (i) and (ii). With regard to the defect in the application, it is pointed out by the learned counsel for the petitioner that the name of the village, where the land in question is situated, along with the Patwari Circle is not mentioned, and it being an admitted position that there is a well situated on the land in question, an amount of compensation in respect of that well should have been deposited along with this application, and this was also no-done.

4.02. A bare look at the application (Annexure I) makes it clear that the applicants while giving their names and description, had mentioned the name of the village, where the land in question is situated, tahsil and district. This apart in the reply (Annexure II) filed by the petitioner opposing this application, no objection was raised as to the alleged defective form of the application. Obviously the purpose in writing the name of the village and the Patwari Circle is to let the other side and the authority deciding the application know about the identity of the land in question and the purpose has been served. In this view of the matter on the basis of hyper-technicality, when there is no failure of justice, the extra-ordinary jurisdiction of this Court cannot be exercised. In this respect, we shall quote with advantage the following observation of their Lordships of the Supreme Court in A.M. Allison Vs. B.L. Sen, :

"Proceedings by way of certiorari are not of course. (Vide Halsbury's Laws of England, Hailsham Edition Vol. 9, paras 1480 and 1481, pp. 877-878). The High Court of Assam had the power to refuse the writs if it was satisfied that there was no failure of justice, and in these appeals which are directed against the orders of the High Court in applications under Article 226 we could refuse to interfere unless we are satisfied that the justice of the case requires it. But we are not so satisfied."

4.03. With regard to the question of deposit of an amount by way of compensation in respect of the well, a look at Section 22 (d) of the Act is necessary. It reads, so far as relevant, as under:

"22. The amount to be deposited with the application u/s 21 shall be as follows, namely:--

(d) In the case of a sub-tenant or tenant of a sub-tenant of either description mentioned in (a), (b) and (c) if the well situated on his holding is a private one of the Jagirdar, the Zamindar, the tenant or the sub-tenant, as the case may be, and no land of the Jagirdar or the Zamindar, or the tenant or the sub-tenant, other than the land of that holding is watered from that well. By way of compensation of the well such amount as the Collector may assess after considering the matters mentioned in Schedule III.

The governing expression with regard to the well is "a private one of the Jagirdar." In the reply (Annexure II) it is nowhere averred that the well in question was the private well of the petitioner; therefore, no grievance with regard to the non-deposit of the amount of compensation regarding this well can be raised at this stage. It would also be of significant relevance to point out here that the impugned order of the Collector (Annexure XI) indicates that this question was not agitated before him. For this also, no grievance can be raised in this petition railing for an interference in exercise of the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution.

4.04. Sections 20 and 21 of the Act make it clear that a sub-tenant is entitled to be recognised as a pakka tenant. The object behind enacting these sections is

that the land must belong to the tiller of the land, a social legislation. It is with this object in view that the application u/s 21 should be considered and, when, in substance, the desired information was given, no surprise or prejudice was caused to the other side. The end of law is justice. We shall quote with advantage a passage from the book "Prophets with Honor" by Alam Earth at p. 194:

"It is not the words of the law, but the internal sense of it that makes the law; the letter of the law is the body of the law; the sense and reason of the law is the soul" (Plowden (reporter), Commentaries on Reports, Vol. II, Eyston v. Studd (1974) p 465).

4.05. The learned counsel for the petitioner had, while arguing the point that the application u/s 21 of the Act was defective and not in the proper form, referred to the following decisions of this Court;

(1) Firm Janta Hardware Stores and Others Vs. B.S. Parihar, Asstt. Sales Tax Officer, .

(2) Lachman Singh v. State of M. P. 1967 MPLJ 10.

The aforesaid decisions are with reference to Rules 33 and 13 of the M. P. General Sales Tax Rules, 1959. The context in which those decisions were rendered is quite different from the one at hand. The object of that legislation as compared to the present Act is also obviously different. Here it would be pertinent to extract hereinbelow the observation with regard to interpretation of social legislation, of Chagla, C. J. in Jayantilal v. R.P.F. Commissioner (1957) 1 MPLJ 448 (Bom):

"It is a well settled canon of taxation law that a subject is entitled to avoid paying tax if legally he can do so. Even that canon is looked at rather ask once in the context of times that we are living in, but the Act that we are dealing with is not a taxation law. It is a social legislation and the canon of construing a social legislation is very much different from the canon of construing a taxation law. The Court must not countenance anything which would defeat the provisions of a social legislation and the Court must even, if necessary, strain the language of the Act in order to achieve the purpose which the legislature had in placing the legislation on the statute book. Therefore, not only the Court must disapprove all subterfuges to defeat a social legislation but must actively try to prevent such subterfuges succeeding in their object."

In the matter of following precedent, we shall quote with advantage what Lord Denning has in "The Discipline of Law" said at p. 314 :

"You must follow it certainly so as to reach your end. But you must not let the path become too overgrown. You must cut out the dead wood and trim off the side branches, else you will find yourself lost in thickets and brambles. My plea is to keep the path to justice clear of obstructions which would impede it."

5. Contention No. (iii):-- It is strange that an objection regarding the abatement of the appeal before the Collection on account of the death of Bhola is raised challenging the order of the Collector (Annexure X) whereby the Collector did not uphold this objection. Bhola had died before the appeal under reference was presented to the Collector. At best, the objection could be, apart from its merits, that there was a defect of non-joinder of necessary party and, admittedly, that objection was not raised. On this short ground it is not possible to hold that there was no valid appeal before the Collector and that he had no jurisdiction to decide that appeal vide order (Annexure XI).

6. Contention No. (iv) :-- Section 54, Clause (xvii) of the Tenancy Act defines the expression "To cultivate personally" as under :

"To cultivate personally means to cultivate on one's own account;

(i) By one's own labour; or

(ii) By the labour of any member of one's family; or

(iii) By servants on wages payable in cash or kind but not in cropshare or by hired labour under one's personal supervision or the personal supervision of any member of one's family."

In reply (Annexure II), the only fact mentioned to indicate that the petitioner was not able to cultivate personally at the time of creation of the sub-tenancy is that the petitioner was and has been suffering from, stomach disease and is anaemic. The purpose in stating this is that there is no other member in the family of the petitioner to look after the cultivation, or that even through servants under her personal supervision or the supervision of any member of her family, cultivation cannot be carried out. That apart, this ground urged has been negated by the Collector vide the impugned order. This is a finding of fact, which has been arrived at by the Collector after evaluating the material on record. Hence there can be no interference under Article 226 of the Constitution.

7. In the result, the petition does not merit to be allowed and is, accordingly, dismissed. No order as to costs. The outstanding amount of security deposit shall be refunded to the petitioner.