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(2011) 08 CHH CK 0036

In the Chhattisgarh High Court

Case No : Writ Petition (C) No''s. 1700, 1670, 1699, 1713 and 1923 of 2008

State of C.G. APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Land Revenue Code, 1917 — Section 47, 49
Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 — Section 3, 45, 45(1)
Madhya Pradesh Land Revenue Code, 1959 — Section 110, 158, 57(2)

Citation : (2012) 1 CGLJ 66

Hon'ble Judges : Nawal Kishore Agarwal, J

Bench : Division Bench

Advocate : G.D. Vaswani, G.A, for the Appellant; Rajeev Shrivastava, for the Respondent No. 2 to 6 in W.P. (C) No. 1700 of 2008, Respondent No. 2 in Writ Petition (C) Nos. 1670, 1699. 1713 and for Respondents No. 2 (A) to (E) in 1923 of 2008, for the Respondent

Final Decision : Allowed

Judgement

Hon''ble Shri N.K. Agarwal, J.—(sic)all govern disposal of above five Writ Petitions i.e. Writ (sic) 1699, 1713 and 1923 of 2008. State of Chhattisgarh, who is the petitioner in all above writ petitions, is challenging the order of Board of Revenue dated 18.09.2007 passed in Revenue Appeal No. A/05/R/A-6/l 45/2006 by filing Writ Petition (C) No. 1700 of 2008 and the common order of Board of Revenue dated 10.09.2007 passed in Revenue Appeal No. RN/05/R/ A-6/261/2006 by filing Writ Petition (C) Nos. 1670, 1699, 1713 and 1923 of 2008.

2. For proper appreciation of legal issues involved in the case, the facts in W.P. (C) No. 1670 of 2008 are set down hereunder:

(i) Lumbardar / Malguzar of village Kurud namely Khadag Bharti had executed registered Damami Pattas (permanent lease deed) on 03.05.1948 in favour of

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respondents Shyam Bai (53.65 acres), Shatrughan Bharti (50.19 acres), Kashi Bai (14.19 acres) and Kanti Bai (13.41 acres).

(ii) In the year 1981, the respondents had moved an application u/s 57 (2) of the M. P. / C.G. Land Revenue Code, 1959(for short ''the Code of 1959'') before the Sub-Divisional Officer (S.D.O.) Durg claiming conferral of Bhoomiswami rights in the above disputed lands recorded in the revenue record as grass lands.

(iii) The S.D.O. Durg vide its order dated 06.06.1984 (Annexure R-2/3) dismissed the above application.

(iv) The respondents have not preferred any civil suit against the order of S.D.O. dated 06.06.1984.

(v) 67.65 acres from the land, for which Damami Pattas were executed in favour of respondents No. 2 to 6 was allotted by the State of M.P. on 03.07.1984 and was transferred by the Collector, Durg, on 24.09.1984 in favour of M.P. Housing Board.

(vi) The respondents No. 2 to 6 claiming to be Bhoomiswami of the lands in dispute, have approached the High Court of Madhya Pradesh by filing Petition under Article 226 and 227 of the Constitution of India, bearing Misc. Petition No. 3034 of 1984, challenging the legality and validity of the order of respondent/ state dated 03.07.1984 praying for a writ of certiorari for quashing the said order and for a direction for restoration of their possession over the above lands.

(vii) A Division Bench of Hon''ble High Court of M.P. vide its order dated 23.09.1985 dismissed the petition holding respondents did not have any right or title over the disputed land after the coming into force of M.P. Abolition of Proprietary Rights (State, Mahals and Alienation of Land) Act 1950 (for brevity ''the Act of 1950'').

(viii) The respondents have also preferred revisions against the order of S.D.O. dated 06.06.1984 before the Board of Revenue, Gwalior. The Board of Revenue vide its order dated 16.03.1992 dismissed the above revisions holding, the order passed by the High Court of Madhya Pradesh in M.P. No. 3034/1984 dated 23.09.1985 is final and binding on it and Board of Revenue has no jurisdiction to give its opinion contrary to the opinion expressed by the High Court of Madhya Pradesh.

(ix) Respondents No. 2 to 6 moved an application before the Collector-cum-Settlement Officer, Durg, u/s 47 and 49 of the Land Revenue Code, 1917 read with Section 45 (1) of the Act of 1950 and Section 110 and 158 of the Code of 1959 for correction of records with respect to lands of which Damami Pattas were executed by the then Lumbardar/Malguzar. The Assistant Settlement Officer, Durg, vide its order dated 29.12.1988 directed for recording of respondents'' name over 59.63 acres of land in revenue record, leaving land transferred by the Collector in favour of M.P. Housing Board holding the respondents had acquired right and title over entire lands, for which Damami Pattas were executed by the

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then Malguzar in their favour.

(x) It appears, despite order of Assistant Settlement Officer Durg, dated 29.12.1988, the lands were not recorded in respondents'' name by the Revenue Officers. Hence, respondents No. 2 to 6 preferred appeal before the Additional Collector, Durg. Earlier appeals were dismissed in default of appearance. Later on, matters were remanded back to the Additional Collector for deciding the appeals on merits and the Additional Collector, Durg, vide its order dated 20.03.1997 dismissed the above appeals.

(xi) The S.D.O. Durg sought permission from Collector, Durg for suo-moto revision of the order dated 29.12.1988 passed by the Assistant Settlement Officer, Durg. The Additional Collector granted permission vide its order dated 31.05.1994 (Annexure P/4) holding, Assistant Settlement Officer has no jurisdiction to decide the question of title u/s 57 (2) of the Code of 1959.

(xii) After hearing the matter u/s 57 (2) of the Code of 1959, the S.D.O. vide order dated 26.07.1994 (Annexure P/5), directed for recording of respondents" name over 59.63 acres of land in revenue records, upholding the entire findings recorded by Assistant Settlement Officer in his order dated 29.12.1988.

(xiii) In the year 1996, a contempt petition was filed before the High Court of M.P. complaining that contempt has been committed by the Revenue Officers by entering the name of the respondents as Bhoomiswamis in revenue records notwithstanding the fact that petition (M.P. No. 3034/1984) filed by the respondents was dismissed by the High Court on 23.09.1985.

(xiv) On receipt of contempt notice, the S.D.O. sought necessary permission of the Collector, Durg for review of the order dated 26.07.1994. The Collector, Durg, granted permission vide its order dated 03.02.1997.

(xv) Vide order dated 04.03.1997 (Annexure R-2/11), the S.D.O. set aside his order dated 26.07.1994 holding, the application preferred by the respondents u/s 57 (2) of the Code of 1959 for conferral of Bhoomiswami rights over the disputed land has already been dismissed by the then S.D.O. on 06.06.1984. Revision preferred there against before the Board of Revenue was also dismissed holding, the Board of Revenue has no jurisdiction to pass any order contrary to the order passed by the High Court of M.P. in M.P. No. 3034/1984 on 23.09.1985 and the order dated 26.07.1994.

(xvi) The permission dated 3.2.1997 granted by the Collector to the S.D.O. for suo-moto review of order dated 26.07.1994 was assailed by the respondents by filing appeal before the Board of Revenue.

(xvii) The Board of Revenue vide order dated 18.09.2007 set aside the order dated 03.02.1997 i.e. permission granted by the Collector to the S.D.O. for suo-moto revision of order dated 26.07.1994. Consequently, order dated 04.03.1997 was also set aside and order dated 26.07.1994 was restored.

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(xviii) The order dated 20.03.1997 passed by the Additional Collector was challenged by the respondents by filing appeal before the Board of Revenue. The Board of Revenue vide its order dated 10.09.2007 allowed the appeal and set aside the order dated 20.03.1997 passed by the Additional Collector.

3. Shri G.D. Vaswani, learned Government Advocate appearing for the petitioner/ State assailed the order passed by the Board of Revenue inter alia on the grounds, vide order dated 03.02.1997, the Additional Collector, Durg, has rightly granted permission to the S.D.O. to review his own order dated 26.07.1994 inasmuch as the same was obtained by suppressing the earlier order of S.D.O. dated 06.06.1984 and also the order passed by the Division Bench of Hon''ble High Court of M.P. in M.P. No. 3034/1984; vide order dated 04.03.1997, the S.D.O. has rightly reviewed his own order and rightly set aside the order dated 26.07.1994 passed by him; the S.D.O''s order dated 04.03.1997 was an appellate order, since no appeal has been preferred against that order, the above order had attained finality; the Board of Revenue has exceeded its jurisdiction in allowing the respondents'' appeal tiled against the order dated 03.02.1997 passed by the Additional Collector and also in setting aside the order dated 04.03.1997 passed by the S.D.O.

4. On the other hand, Shri Rajeev Shrivastava, learned counsel appearing for respondents No. 2 to 6 would submit: the power under Article 227 of the Constitution of India cannot be exercised like a bull in the China shop to correct all the errors of judgment of a Court or Tribunal acting within the limits of its jurisdiction; u/s 3 of the Act of 1950, the lands for which registered Damami Pattas (perpetual lease deed) were executed by the then Lumbardar in respondents'' favour cannot vest in the State; the lands in question and cause of action which lead to filing of M.P. No. 3034/1984 was altogether different. Section 45 of the Act of 1950 was omitted vide notification dated 12.12.1955, therefore, the decision of the Division Bench of the Hon''ble High Court of M.P. dated 23.09.1985 passed in M.P. No. 3034/1984 based on consideration of applicability of Section 45 of the Act of 1950 is perineurium: the respondents have acquired status of Bhoomiswami by operation of law; and the judgment of High Court of M.P. dated 23.09.1985 would not create a bar against the respondents as it is the matter which operates as res judicata and not reasons.

5. I have heard learned counsel for the parties, perused the record and orders impugned.

6. Indisputably, vide order dated 06.06.1984, the S.D.O. has rejected the respondents'' application filed u/s 57 (2) of the Code of 1959.

7. Admittedly, no civil suit was filed assailing the above order of S.D.O. by the respondents and the above order had attained finality.

8. The order of Division Bench of Hon''ble High Court of M.P. dated 23.09.1985 also remains unchallenged.

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9. The order of S.D.O. dated 06.06.1984 and the above High Court''s order were not brought to the notice of S.D.O. at the time of passing of the order dated 26.07.1994.

10. Vide order dated 06.06.1984, the S.D.O. Durg, has rejected respondents'' application for recording their name over the entire lands for which Damami Pattas were executed in their favour by the then Lumbardar. A bare perusal of Misc. Petition No. 3034/1984 (Annexure R-2/5) would reveal, they have assailed the order of S.D.O. dated 06.06.1984 in the above petition claiming their rights over the entire lands for which Damami Pattas were executed. although they have challenged the order of State Government and the order of Collector.

11. The Division Bench of Hon''ble High Court of M.P. while dismissing Misc. Petition No. 3034/1984 has held: under the circumstances, it is apparent that nothing whatsoever has been placed on record by the petitioner to show that they were in actual possession of the disputed land on the date of vesting, so as to continue their occupancy tenancy even thereafter. In view of this finding, it must be held that they did not have any right or title over the disputed land after the coming into force of the Act of 1950.

12. The above order of Division Bench of Hon''ble High Court of M.P. was not challenged by the respondents. The order of Hon''ble High Court of M.P. goes to the root of the matter inasmuch as the Hon''ble High Court of M.P. has not recognized the right of respondents claimed pursuant to execution of Damami Pattas in their favour by the then Lumbardar.

13. In the light of above, it is not correct to say that the lands in question and the cause of action which led to filing of Misc. Petition No. 3034/1984 were altogether different.

14. The question, therefore, arises for decision making is whether or not the order of High Court of Madhya Pradesh passed in Misc. Petition No. 3034/ 1984 operates as res judicata and create a bar against the respondents to file a proceedings for conferral of Bhoomiswami rights over the disputed lands.

15. A four judge Bench of the Hon''ble Supreme Court in case of Vithal Yeshwant Jathar Vs. Shikandarkhan Makhtumkhan Sardesai AIR 1963 SC 386, in paragraph 10 its judgment has held:

(10) It is well settled that if the final decision in any matter at issue between the parties is based by a Court on its decisions on more than one point - each of which by itself would be sufficient for the ultimate decision - the decision on each of these points operates as res judicata between the parties.

16. A Constitution Bench of the Hon''ble Supreme Court in case of Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat), has held in paras 60 & 61:

60. As a result of the above discussion, we are of opinion that the provisions of s. 11 C.P.C. are not exhaustive with respect to an earlier decision operating as res

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judicata between the same parties on the same matter in controversy in a subsequent regular suit and that on the general principle of res judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide it, will operate as res judicata in a subsequent regular suit. It is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject matter. The nature of the former proceeding is immaterial.

61. We do not see any good reason to preclude such decisions on matters in controversy in writ proceedings under arts. 226 or 32 of the Constitution from operating as res judicata in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of the finality of decisions after full contest. We therefore hold that on the general principle of res judicata, the decision of the High Court on a writ petition under art. 226 on the merits on a matter after contest will operate as res judicata in a subsequent regular suit between the same parties with respect to the same matter."

17. Another Constitution Bench of Hon''ble Apex Court in the case of Daryao and others Vs. State of U.P. and others AIR 1961 SC 1457, the Supreme Court has held:

If a writ petition filed by a party under Art. 226 is considered on the merits as a contested matter and is dismissed the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution. It would not be open to a party to ignore the said judgment and move the Supreme Court under Art. 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs.

18. Hon''ble Supreme Court in case of Thakore Sobhag Singh Vs. Thakur Jai Singh and Others, while dealing with the order of Board of Revenue held:

The Board of Revenue had to decide the dispute in accordance with the law declared by the High Court. All questions which had been expressly decided by the High Court on contest between the parties and other questions which must be deemed by necessary implication to have been decided were res judicata and could not be re-opened before the Board of Revenue. It is not open to the appellant to contend that the decision of the High Court on the questions decided in the writ petition was erroneous. Unless the decision of the High Court on those questions was set aside by appropriate proceeding in this Court, the judgment must be held binding between the parties.

19. In Union of India (UOI) Vs. Nanak Singh, the Supreme Court has held:

It is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent

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suit have the same subject-matter. There is no good reason to preclude such decisions on matters in controversy in writ proceedings under Art. 226 or Art. 32 of the Constitution from operating as res judicata in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of the finality of decision after full contest.

20. Therefore, it is not open to the respondents to contend that the decision of the High Court of M.P. on the questions decided in Misc. Petition was erroneous. Unless the decision of High Court on those questions was set aside in the appropriate proceedings, the judgment must be held binding between the parties and the same operates as res judicata.

21. Indisputably, the S.D.O. has passed an order dated 26.07.1994 ignoring the above order of High Court of M.P. Therefore, the Additional Collector has not committed any illegality in permitting the S.D.O. to review his own order dated 26.07.1994 and the S.D.O. has also not committed any error in setting aside his own order dated 26.07.1994 vide order dated 04.03.1997.

22. In view of above, the order of S.D.O. dated 26.07.1994 passed u/s 57 (2) of the Code of 1959 in ignorance of its earlier order dated 06.06.1984 and the order passed by the High Court of M.P. was per se illegal.

23. For the reasons mentioned hereinabove, there is no iota of doubt in my mind that the Board of Revenue has exceeded its jurisdiction in setting aside the above order of Additional Collector dated 03.02.1997 as well as the order of S.D.O. dated 04.03.1997.

24. For the foregoing reasons, the grounds for interference of this Court under Article 227 of the Constitution of India are made out.

25. Therefore, the petitions are allowed. The orders impugned passed by the Board of Revenue are hereby set aside. No order as to costs.

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