
(1971) 01 MP CK 0004
In the Madhya Pradesh High Court
Case No : F.A. No. 103 of 1968

State of Madhya Pradesh

APPELLANT

Vs

Ikram Ahmad Abdul Ahmad Khan

RESPONDENT

Date of Decision : 25-01-1971

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 248

Citation : (1977) ILR (MP) 900

Hon'ble Judges : G.P. Singh, J;A.P. Sen, J

Bench : Division Bench

Advocate : M.V. Tamaskar, for the Appellant; Vijay Gupta, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Sen, J.—This appeal filed by the State Government is directed against a judgment of the Third Additional District Judge, Bhopal, dated 28th March 1968, decreeing the plaintiff's suit for establishment of his title, brought u/s 248 (4) of the Madhya Pradesh Land Revenue Code, 1959, whereby the learned Judge has declared that the plaintiff was the owner of a plot admeasuring 4150 sq. yds. out of khasra No. 1413 situate in Bhopal City and restraining the State Government from demolishing the superstructures of his residential house standing thereon.

2. The facts leading to the appeal may be shortly stated thus:

General Obaidullah Khan was the second son of Her Highness Nawab Sultan Jehan Begum, the then Ruler of Bhopal. The Ruler granted to him a jagir as also Muafi lands. The muafi land known as "Kali parade" was granted under Sanad No. 30 of 1916 while that known as "Bhawan Ganga" was granted under Sanad No. 69 of 1919. The jagir and the muafi grants were expressed to be for "Naslan-bad-naslan" and "Batnan-bad-batnan". The jagir-muafi was known as Shamla Deorhi. General Obaiduilah Khan died in 1924 leaving behind him his two sons, Nawabzada Saiyed-ul-Zafar Khan and Nawabzada Rasid uz-Zafar Khan. On his death, a question arose whether his land should be resumed but under the

express orders of the Bhopal Darbar his heirs were allowed to continue in possession except for 3 years during which the jagir and the muafi lands were managed by the Surfe-khas, the department managing the personal property of the Ruler. An application for the grant of a fresh Sanad was made as early as 1927 but no action was taken until 1946. In the meanwhile, Saiyed-ul-Zafar Khan died in 1945 and thereafter, Rashid-uz-Zafar Khan remained in possession. Under orders of the Ruler, a fresh Sanad was issued to him on 23rd February 1949 granting a jagir for his life-time and simultaneously he executed an agreement promising to abide by the terms and conditions of the grant. The erstwhile Bhopal State merged in India in 1949. On 10th May 1954, the Chief Commissioner, Bhopal, passed an order resuming the muafi lands. On 30th June 1956 the Government took possession of the muafi lands.

3. In 1958, Rashid-uz-Zafar Khan filed a suit against the State of Madhya Pradesh for recovery of possession of the muati lands and for mesne profits. That suit was litigated right upto the Supreme Court and failed at all stages. Their Lordships in Begum Suriya Rashid and others v. The State of Madhya Pradesh Civil Appeal No. 1166 of 1965, decided on 28-8-1968, have affirmed the view of the Courts below that the muafi lands granted to General Obaidullah Khan did not enure beyond his life-time and in the absence of a fresh Sanad his heirs had no right to the muafi lands. The view taken by all the Courts was that the expressions "Naslan-bad-naslan" and "Batnan-bad-batnan" in the grant of Jagir by the Bhopal Darbar, were never intended to convey a hereditary estate to the grantee. The muafi lands have, therefore, been held not to be hereditary or perpetual but were personal to the grantee, General Obaidullah Khan for his life only. Their Lordships of the Supreme Court have accordingly rejected the claim of Rashid-uz-Zafar Khan and held that he had no title to the jagir.

4. The plaintiff was a servant of Nawabzada Rashid-uz-Zafar Khan. In 1946, he applied to Nawabzada Rashid-uz-Zafar Khan for permission to construct a house on the suit land which formed part of Shamla Deorhi. The Nawabzada instead of himself granting permission, forwarded the application to His Highness Nawab Hamidullah Khan, the Ruler of Bhopal, which clearly showed that he recognised that the right of ownership in Shamla Deorhi vested in His Highness, the Nawab and not in him. That application was considered by His Highness the Nawab of Bhopal and the permission sought was granted. The plaintiff thereupon constructed his residential house on the suit land in or about 1950. Incidentally, while granting the desired permission, His Highness the Nawab ordered the plaintiff to pay Rs. 103 7.50 as price of the land by way of Nazrana to the Shamla Deorhi. The plaintiff before constructing the house duly complied with this condition.

5. On 8th December 1961, the Naib-Tahsildar, Tehsil Huzur, Bhopal issued a notice u/s 248 of the Madhya Pradesh Land Revenue Code, 1959, to the plaintiff stating that he was in unauthorised occupation of Government land and should produce before him his document of title, if any. The proceedings ultimately

terminated in an order of Naib-Tahsildar, dated 6th March 1962 u/s 248 (1). He observed that the land was recorded as Pathar Chhota jungle in the khasra for the years 1956 to 1961 and the plaintiff was afforded sufficient time to prove that it belonged to Shamla Deorhi and to produce the old record or the transfer deed, but he had done neither. He accordingly held that the plaintiff had unauthorisedly occupied Government land and was liable to a fine of Rs. 250/-. He further directed the plaintiff to remove the superstructure of his house by 30th March, 1962, failing which the same would stand forfeited to Government. After serving the usual notice u/s 80 of the Code of Civil Procedure, the plaintiff brought the present suit for establishment of his title.

6. The plaintiff pleaded his title upon an alternative basis. In the first place, he pleaded that Nawabzada Rashid-uz-Zafar Khan was the Jagirdar of Shamla Deorhi and he had transferred the muafi land with sanction of the Ruler for a consideration and, therefore, the plaintiff acquired his title and interest therein. Alternatively, he pleaded that since the construction of the house was with the permission and authority of the Ruler of Bhopal, the State of Madhya Pradesh was estopped from claiming the land to be Government land. The acts of the Sovereign, the then Ruler of Bhopal, was binding upon the State.

7. The defendant contested the plaintiff's claim on the ground that he being the successor in-title of the late Nawabzada in respect of the suit land, he was bound by the decree passed in the earlier suit. He was, therefore, estopped from contending that the muafi land in suit conferred a perpetual and hereditary right on the Nawabzada. As the Nawabzada had no right to sell the land in suit to the plaintiff, he never acquired any right and was, therefore, not entitled to any declaration or relief. Further, it was said that the purchase money was never paid to His Highness the Nawab or the Government of the day and hence the plaintiff's purchase was without any consideration and the alleged sale in his favour was illegal and void.

8. On these facts, the learned Additional District Judge held that though the decision in the earlier suit was *res judicata* between the parties and, therefore, the Nawabzada could not transfer any valid title to the plaintiff, nevertheless, he was entitled to succeed on the alternative basis. u/s 40 of the Bhopal State Land Revenue Act, 1932, all lands belonged to the Ruler. The order of the Ruler according sanction to the plaintiff to construct a house on payment of Nazrana by way of price, therefore, created a right in his favour under that section. The construction of the house by the plaintiff was, therefore, not unauthorised and illegal. He accordingly declared that the plaintiff was the owner of the suit land and granted an injunction restraining the State Government from demolishing the superstructure of his house. The State Government has come up in appeal against that decision.

9. Before us, Shri Vijay Gupta, learned counsel for the respondent, frankly conceded that he does not rest his case on the alleged title of Nawabzada Rashid-uz-Zafar Khan and would contend that the plaintiff was an allottee of the suit

land directly from His Highness the Ruler of Bhopal, u/s 40 of the Bhopal State Land Revenue Act and, therefore, he was protected. Alternatively, that he was granted a licence by the Ruler to construct a house and he, having constructed a work of permanent structure, the licence had become irrevocable u/s 60 (b) of the Bhopal State Easements Act. We are, therefore, relieved of the task of examining whether the decision in the earlier suit operated as *res judicata* between the parties, as title is not now claimed through Nawabzada Rashid-uz-Zafar Khan. Suffice it to say that even if that decision was not *res judicata*, the construction placed by their Lordships of the Supreme Court on the Sanads would clearly be binding on us as a precedent.

10. The question for consideration, therefore, is whether the plaintiff was an allottee of the suit land from His Highness the Ruler of Bhopal, u/s 40 of the Bhopal State Land Revenue Act, 1932. Section 40 (1) is as follows : --

All land is the property of His Highness the Ruler, and all rights therein, which have not been conferred by His Highness the Ruler or by this Act on private persons or are otherwise recognized by the Government to be the property of private persons, are the property of His Highness the Ruler.

The right to make an allotment of land was a prerogative right of the Ruler. Under the section, all land belonged to the Ruler. He had the absolute discretion to confer a grant on any one. As an absolute Ruler, he could take away any land from a Jagirdar and grant the same to any other person.

11. Ordinarily, a transfer of land without restrictions carries with it every incident of ownership and passes to the transferee all interests which the transferor is then able to pass in the property and in the legal incidents thereof. For ascertaining the nature of the grant, it is permissible to look at the previous recommendations and orders in order to see the object of the grant. The plaintiff had applied for grant of a plot of land in lieu of his faithful service. The application clearly stated that he needed a plot of land for construction of a house thereon and was prepared to pay a Nazrana and stated that the Nawabzada had orally promised to give him a plot of land. It further stated that he had submitted a plan of the proposed building along with a site plan which had been approved of by the P. W. D. He first wanted a free grant of a plot measuring 250" x 150", failing which he was prepared to pay Nazrana at the rate at which ordinarily land in the municipal area was sold. That application was forwarded by Nawabzada to His Highness the Nawab for necessary orders. The Sadar Kanungo's report to the Chief Engineer and Secretary, P.W.D., Ex. P-7 states that His Highness had graciously accorded sanction for the construction of a house as proposed.

12. It is true that the original order of His Highness the Nawab is not on record. There is, however, no controversy between the parties as regards this. The plaintiff alleged in paras. 4 and 5 of the plaint that His Highness the Ruler of Bhopal granted the desired permission for the construction of the proposed

house and that at the command of His Highness the Ruler of Bhopal, the plaintiff paid Rs. 1,037.50 as price of the land by way of Nazrana to Shamla Deorhi. These facts have not been disputed in the written statement. The defendant, in para 4 of the written statement, while asserting that the right of ownership vested in His Highness the Nawab, stated that the permission was, in fact, sought from and given by His Highness the Nawab of Bhopal. The fact of payment of Nazrana was admitted in para 5 thereof.

13. According to the plain tenor of the grant, there is no manner of doubt that His Highness the Ruler made an allotment of the suit land to the plaintiff in consideration for a price. There was no free grant of the land, but the land was purchased by the plaintiff. That being so, the plaintiff acquired a valid title as an allottee of the land from the Ruler. In cases where the grant is for valuable consideration, it is construed in favour of the grantee, for the honour of the Sovereign; and where two constructions are possible, one valid and the other void, that which is valid ought to be preferred, for the honour of the Sovereign ought to be more regarded than the Sovereign's profit (See, Halsbury Laws of England, Simonds Ed. Vol. 7, para 670, at p. 315).

14. The letter of the Sadar Kanungo conveying the sanction of His Highness the Nawab operated as a grant from Government and was exempt from registration under the provisions of section 88 (d) of the "Kanoon Registry Riasat, Bhopal, 1337 Mohammadi". In *Hassan Ali v. Chutterput Singh Durgati* ILR 19 Cal. 742 where the agent to the Governor-General conveyed to the Nawab Bahadur of Murshidabad the intention of the Government with reference to his future that he was to have possession of the State lands and jewels, *Comer Petheram, C.J.* and *Banerjee, J.* held that the letter in question was a "grant or assignment by Government of land or of any interest in land" within the meaning of section 90 (d) of the Registration Act, 1877, and was, therefore, exempt from registration. The plaintiff therefore, acquired an indefeasible title to the suit land. If the State Government felt inclined to repudiate the grant made by the Ruler, it should have done so immediately after the merger. But the State Government stood by and allowed the plaintiff to raise a substantial structure of a permanent nature (See, map Ex. P-4). The plaintiff has constructed his residential house on the land at a cost of Rs. 18,000. Under the circumstances, the State Government is estopped from repudiating the title of the plaintiff. On that view, there is no need for us to go into the other ground.

15. The result, therefore, is that the appeal fails and is dismissed with costs. Counsel's fee as per schedule or certificate, whichever is less.