
(1987) 03 MP CK 0037
In the Madhya Pradesh High Court
Case No : S.A. No. 585 of 1981

State of Madhya Pradesh

APPELLANT

Vs

Phulchand Ganpatlal and Others

RESPONDENT

Date of Decision : 03-03-1987

Acts Referred:

Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 — Section 11, 11(3), 11(4), 11(5), 4

Madhya Pradesh Land Revenue Code, 1959 — Section 257

Citation : (1990) 35 MPLJ 73 : (1990) MPLJ 73

Hon'ble Judges : S. Awasthy, J

Bench : Single Bench

Advocate : G.C. Jain, for the Appellant; Ravish Agrawal and H.L. Verma, for the Respondent

Final Decision : Allowed

Judgement

S. Awasthy, J.

In village Naogaon, Tahsil Khurai, District Sagar, defendant No. 1 Mancharasha, who died during the pendency of this appeal; and was shown as respondent No. 2 in this appeal prior to his substitution on 20-4-1983, owned about 53 acres of land jointly with his brother Hoshangji. Apart from this, Hoshangji owned 24 acres of land in his individual name exclusively. A case under the M. P. Ceiling on Agricultural Holdings Act, 1960 (No. 20 of 1960) (hereinafter referred to as "the Ceiling Act") bearing No. 95-A/90/2-B of 1974-75 was started. A statement was published u/s 11(3) of the Act on 7-1-1976 in view of the order passed on 20-12-1975 vide Ex. P. 11. The plaintiff-respondent No. 1 filed an objection on 23-3-1976 which was rejected on 21-5-1976. The plaintiff-respondent No. 1, therefore, filed a suit on 21-7-1976 u/s 11(5) of the Ceiling Act, but, during the pendency of the suit, the appellate authority set aside the order dated 20-12-1975 and remanded the case to the competent authority. The plaintiff, thereafter, amended the plaint by adding in para 8 thereof, that, in the

alternative, the suit was for declaration and injunction. During the pendency of the suit, the competent authority passed an order declaring 34.57 acres as surplus land. An appeal was preferred, but the same was dismissed by the Board of Revenue on 14-6-1978. The case of the plaintiff-respondent No. 1 that he became the Bkumiswami of the land in his possession, was negated by the Revenue Authorities.

The trial Court, by its judgment in the case dated 8-9-1979, held the plaintiff-respondent No. 1 as an occupancy tenant. The appeal by the State against that judgment and decree was dismissed on 9-5-1981. Hence, this second appeal.

This appeal has been admitted on the following substantial question of law -

"Whether on a finding that the order of the Competent Authority passed u/s 11 of the M. P. Ceiling on Agricultural Holdings Act, 1960 had become final, a declaration of title could otherwise be granted to the respondents-plaintiffs?"

During the course of arguments, the learned counsel appearing for the appellant-State, filed an application for framing additional substantial questions of law, which I framed as under:-

"(1) Whether the Civil Court had jurisdiction to declare the respondent No. 1 as an occupancy tenant under the circumstances of the present case? and

(2) If so, whether the plaintiff-respondent No. 1 could rightly be declared a Bhumiswami?"

Before considering the question No. 1, as framed earlier at the time of admission, which is reproduced above, it is necessary to refer to section 11(4) and (5) of the Ceiling Act, which reads as under: -

"11. (1)_____ (2)_____ (3)_____ (4) If while considering the objections received under sub-section (3) or otherwise, the competent authority finds that any question has arisen regarding the title of a particular holder and such question has not already been determined by a Court of competent jurisdiction the competent authority shall proceed to enquire summarily into the merits of such question and pass such orders as it thinks fit:

Provided that if such question is already pending for decision before a competent authority shall await the decision of the Court.

(5) The order of the competent authority under sub-section (4) shall not be subject to appeal or revision, but any party may, within three months from the date of such order institute a suit in the Civil Court to have the order set aside, and the decision of such Court shall be binding on the competent authority, but subject to the result of such suit if any, the order of the competent authority shall be final and conclusive."

It is clear from the aforesaid provisions that the Court of competent jurisdiction shall decide the question of title of a particular holder and the decision of such

Court shall be binding on the competent authority. The Full Bench of this Court in the case of *Vijaya Singh v. Competent Authority* 1977 MPU 614 : 1977 JU 401 has held that the Civil Court is the competent authority to determine the claim of title under the said provision. Thus, there is no manner of doubt that the question of title has to be adjudicated upon by the Civil Court which shall be binding upon the competent authority u/s 11 of the Ceiling Act.

If the competent authority has not decided the question of title under sub-section (4) of the Ceiling Act, then the Civil Court has jurisdiction to entertain a suit regarding the title of a particular holder independently of the provisions contained in section 11 thereof. Similarly, if there are no proceedings before a competent authority, then the Civil Court will have jurisdiction to entertain a suit pertaining to the question of title. But if there are proceedings before the competent authority and an order is passed under sub-section (4) of section 11 deciding the question of title summarily, then the Civil Court will have jurisdiction only in a suit as contemplated under sub-section (5) of section 11 of the Ceiling Act. Please see *Ramgopal v. Chetu* 1976 MPLJ 325 : 1 976 JLJ 278.

The learned counsel appearing for the State referred to section 4 of the Ceiling Act, which reads as under: -

"4. Transfers or partitions made after the publication of the Bill but before the commencement of this Act:- (1) Notwithstanding anything contained in any law for the time being in force, whereafter (the 1st January, 1971) but before the appointed day, any holder has transferred any land held by him by way of sale, gift, exchange or otherwise or has effected a partition of his holding or part thereof or the holding held by a holder has been transferred in execution of a decree of any Court, the competent authority may, after notice to the holder and other persons affected by such transfer or partition and after such enquiry as it thinks fit to make, declare the transfer or partition to be void if it finds that the transfer or the partition, as the case may be, was made in anticipation of or to defeat the provisions of this Act.

(2) ____ (3) ____ (4) ____ (5) ____"

His contention is that in spite of the fact that the Civil Court has jurisdiction to adjudicate title of a holder, the competent authority has jurisdiction to declare any transfer of land held by him as void, if it finds that the transfer was made in anticipation of or to defeat the provisions of this Act. It is, therefore, submitted that the jurisdiction of the competent authority has not been taken away by the provisions of section 11(4), (5) and (6) of the Ceiling Act. It is further submitted that the alleged lease, which is the basis of conferral of right on the respondent No. 1 Phulchand, could be declared void by the competent authority and that power of the competent authority has not been taken away by the provisions u/s 11 of the Ceiling Act. In that context, it is submitted that if the transaction has been declared void by the competent authority the Civil Court will have no jurisdiction to adjudicate the title.

In this context, the learned counsel for the appellant referred to the provisions u/s 11(2) of the Ceiling Act, which read as under: -

"11. Preparation of statement of land held in excess of the ceiling area -

(1) _____ (2) The transferor shall, for the purpose of this Act, be deemed to be the holder of land the transfer of which -

(i) has been declared to be void under sub-section (1) of section 4; or

(ii) has been found by the competent authority on such enquiry as may be prescribed to be in contravention of the provisions of sub-section (1) of section 5."

He also referred to the case decided by the Full Bench of this Court reported in *Narbada Prasad v. State of M. P.* 1981 MPLJ 260. In this context, para 13 of that judgment was cited with emphasis. The following observations from that para are quoted hereunder for ready reference:-

"13. _____ The entire Ceiling Act including section 4 has to be construed to effectuate the object of the Legislature in making available surplus land to the Government for distribution to the needy. In dealing with a similar provision, which was even more stringent, in *Authorised Officer, Thanjavur and Another Vs. S. Naganatha Ayyar and Others*, the Supreme Court laid down that in construing a provision relating to social legislation, the Courts must be animated by a goal oriented approach so that the Courts are not converted into rescue shelter for those who seek to defeat agrarian justice by cute transactions of many manifestations. It is in this spirit that we must proceed to interpret section 4 which is a part of social welfare legislation designed to implement the great objective of securing social justice enshrined in the Preamble and the Directive Principles of State Policy. The rule of construction relating to legislation which is construed in case of doubt in favour of the subject have no application here_____ "

X X X "_____ The intention to make sub-section (4) very wide in application is further shown from the fact that the burden laid on the transferor is to prove "that the transfer was not benami" or "was not made in any other manner to defeat the provisions of the Act". The words "in any other manner" are wide words and read in the context of the expression "every transfer" which occur in the beginning of sub-section (4)_____ "

X X X "----- The words "in anticipation of and the words "to

defeat the provisions of" the Act in the context of section 4 have the same meaning. A transfer is in anticipation of an Act when it is made with a view to defeat the provisions of an Act which is likely to be passed in future. As section 4 only covers transfers made before the commencement of the Amendment Act No. 13 of 1974, all transfers to defeat its provisions will be in anticipation of the Act. Thus, in the context of section 4 all transfers made in anticipation of will be

with a view to defeat the provisions of the Act and vice versa.

X X X "_____ In our opinion, the special burden of proof laid by sub-section (4) will apply to all transfers and partitions covered by sub-section (1) of section 4."

The learned counsel for the appellant also referred to para 14 of the aforesaid judgment. His contention is that the competent authority had the jurisdiction to declare the said transfer as void prior to publishing the draft statement u/s 11 of the Ceiling Act. He further submitted that a suit for declaration of Bhumiswami right by a person claiming to be an occupancy tenant, is barred u/s 257(o) of the M. P. Land Revenue Code (20 of 1959). In this context, the learned counsel for the appellant drew my attention to the order dated 8-2-1978 in Revenue Case No. 95-A/90-(2-B)-76-77 of village Naogaon passed by the Sub-Divisional Officer, Khurai. A passage from the said order is reproduced hereunder: -

"The Khasra entries reveal that column 4 says that Phoolchand cultivates the above land on Theka. The concerned Patwari was examined by me in this respect. The entries in column 4 are written in ink different than other columns. This raises a strong suspicion that the entries are forged and have been recorded later to escape ceiling laws. The Patwari has confessed that the ink is different. Moreover, the col. 4 entry is to be filled up only after the order of the competent Court, for occupancy tenant. The competent Court is the Court of Tahsildar. The Patwari has violated the provisions of Patwari Manual. This goes to show that the entry is forged. The status of occupancy tenant has not yet been conferred upon Phoolchand by any competent authority. Moreover, the Patwari has confessed that the B.1 of 1971-72 of later years show that there is not a single occupancy tenant in village - Naogaon."

There is a clear finding given by the competent authority that the holder had not given the land on occupancy right. "Since the holder has lands in excess of ceiling area, plea of occupancy tenancy has been taken to evade Ceiling Law." The Board of Revenue, in Appeal No. 99/One/78, decided on 14-6-1978, has rejected the alleged transfer (lease) and held it to be void for more reasons than what the learned competent authority had given for negating the claim of the respondent No. 1.

One more circumstance has been brought out by reading the statement of Mancharasha examined on commission. He had stated that he had purchased a tractor in the year 1970-71 for self cultivation and further that he cultivated 40 to 50 acres of land. It is argued that if he had a tractor with which he himself was cultivating this land, then the story regarding leasing out the land is mere fabrication with a view to avoid provisions of the Ceiling Law.

The learned counsel for the appellant relied on Hatti Vs. Sunder Singh, and submitted that it is the Revenue Court only which has jurisdiction to decide the question regarding conferral of Bhumiswami rights on an occupancy tenant and also regarding the validity of a transfer made in anticipation of the applicability of the Ceiling Law. His submission is that the Civil Court will have no jurisdiction to

declare conferral of Bhumiswami rights on the respondent No. 1. It is also urged that unless the findings recorded by the competent Revenue Court are declared without jurisdiction, the Civil Court does not get any jurisdiction to decide the said issue. He also relied on S.A. section 46 of Ceiling Act and also the S.A. the cases of Narayanrao v. Shivram 1975 MPLJ 388 and State of M.P. v. Shyam Kishore Agrawal 1975 MPLJ 87.

The learned counsel for the respondent No. 1 argued that once such suit was filed, the competent Court under the Ceiling Act should have stayed its hand and should not have given any finding regarding the creation of occupancy tenancy in favour of the respondent No. 1. The findings recorded by the competent authorities under the Ceiling Act, according to him, are, thus, void and should be ignored.

I do not agree with the submissions made by the learned counsel for the respondent No. 1. I hold that the competent authorities under the Ceiling Act had the jurisdiction to adjudicate the matter u/s 4 of the Ceiling Act. The suit would also be barred u/s S. A. 46 of the Ceiling Act and also u/s S. A. 257(o) of the M. P. Land Revenue Code (No. 20 of 1959).

The appeal filed by the State succeeds and the suit filed by the respondent No. 1 is dismissed with costs throughout. Counsel's fee as per schedule, if certified.