
(2006) 03 MP CK 0011

In the Madhya Pradesh High Court

Case No : Writ Petition No. 507 of 2000

State of M.P. and Another

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 24-03-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Land Revenue Code, 1959 — Section 170B, 172, 2(10), 50

Citation : (2006) 2 MPLJ 580

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Umesh Gajankush, for the Appellant; Bagadiya and K. Gupta and S.G. Gokhale, for the Respondent

Judgement

Dipak Misra, J.

If ever a controversy had arisen from the ashes and risen like the mythical phoenix, the present litigation does fresco a picture, a complete one on that score, albeit on keener scrutiny of the factual matrix. Time is neither imprisoned by man nor does it a restive pause by acts of men. An application u/s 172 of the M.P. Land Revenue Code, 1959 (hereinafter referred to as the "Code") preferred by the original respondent, Radharaman, created a stir in the minds of respondent No. 3, namely, Gining Wali Jamni Bachao Sangharsha Samiti (fore brevity "the Samiti") as if a Tsunami is likely to change the course of sea. The application pertained to the grant of permission for diversion. After the permission for diversion was granted as per Annexure P-8 on 28-6-1988 by the Competent Authority, namely, Sub Divisional Officer, Kukshi, District Dhar, the respondent No. 3 sprung into action by filing a complaint that such permission at the instance of Radharaman was totally impermissible since the lease in question was granted in view of Annexure R-3/1 in the year 1925 by which a condition was incorporated by the Competent Authority of the Holkar State that the lease would remain in vogue if a ginning factory is established on the land in question.

On the receipt of the aforesaid complaint that Collector, Dhar, initiated a proceeding u/s 50 of the Act in exercise of suo motu jurisdiction for cancellation of the order passed by the SDO granting permission of diversion and after such initiation the original respondent No. 2, Radharaman, was asked to profer his explanation. Being dissatisfied with the explanation offered the Collector came to hold that Radharaman was not the Bhumiswami and he did not disclose the same while obtaining permission for diversion inasmuch as he was not the Bhumiswami who could have applied for diversion and further steps should be taken by the State Government to get the lease vested in itself inasmuch as the lease deed that was executed by the Competent Authority of the Holkar State in favour of predecessor-in-interest of Radharaman was a conditional one. In addition, the Collector also directed that the mutation effected in favour of Radharaman in the year 1961 should be lanced by exercising suo motu jurisdiction in another independent suo motu revision. Being dissatisfied with and aggrieved by the aforesaid order, the original respondent No. 2 preferred revision before the Commissioner Indore Division, Indore u/s 50 of the Act, as the order was passed by the Collector and the matter was eventually heard by the Additional Commissioner who affirmed the order passed by the Collector. As the grievance of the respondent No. 2 did not stand mitigated, he preferred a further revision as postulated u/s 50 of the Act. The Board of Revenue addressed itself with regard to three core issues, namely, whether the SDO was justified in granting the permission for diversion of the land in question u/s 172 of the Code; whether the Collector, Dhar was correct in exercising the suo motu power of revision after long lapse of time; and whether the original respondent No. 2 had acquired the Bhumiswami status by virtue of the law prevalent at the relevant time inasmuch as the law was codified afterwards in the year 1931 by an enactment called Indore Land Revenue and Tenancy Act, 1931 (Act No. 10 of 1931).

The Board of Revenue upon hearing the learned Counsel for the parties and on a studied scrutiny of the material brought on record came to hold that in the absence of any kind of contrary stipulation in the Act of 1931 and keeping in view that there are some entries which recorded that the predecessor-in-interest of the respondent No. 2 was an agriculturist in his right and nothing had been brought on record by the authorities of the State that he had acquired Bhumiswami status and further mutation was done in favour of the respondent in the year 1961. Quite apart from the above, the Board, of Revenue expressed the opinion that exercise of power by the Collector in invocation of suo motu jurisdiction after long lapse of time was not warranted.

I have heard Mr. Umesh Gajankush, learned Counsel for the petitioners, Mr. Bagadia, learned Senior Counsel along with Mr. K. Gupta for the legal representative of the original respondent No. 2 and Mr. S.G. Gokhle for the respondent No. 3 the initial initiator.

It is submitted by Mr. Gajankush, learned Counsel for the petitioner that the order passed by the Board of Revenue is absolutely vulnerable inasmuch as the

Competent Authority has acted in an appropriate manner which was absolutely justified in the obtaining factual matrix. It is urged by him that the Board of Revenue has not appreciated the language in which the definition of Bhumiswami has been couched, and had he been appreciative in that regard, he would have been in a position to understand precisely the status of respondent No. 2 or his predecessor-in-interest and concurred with the conclusion that he was not entitled under law to apply for diversion. Learned Counsel has criticized the finding of the Board of Revenue that with the efflux of time the suo motu revision was not tenable when predecessor-in-interest of the respondent No. 2 or for that matter the second respondent did not have any kind of ripened interest in respect of the land in question.

Mr. Bagadia, learned Senior Counsel for respondent No. 2 has laid emphasis on the order passed by the Board of Revenue and submitted that the same is absolutely impeccable inasmuch as the Board of Revenue has recorded a categorical finding that the Act of 1931 was prospective in nature and if there was any other circular by the Holkar State that should have brought on record by the State of Madhya Pradesh to deny the privilege to the respondent No. 2, and that having not been done, it would go a long way to show that he had acquired the status of a Bhumiswami. Learned Senior Counsel further submitted that whether the lease was a conditional one, as put forth by the respondent No. 3 in his complaint, or was a non-conditional lease as is evincible from Annexure R-2/12 is totally inconsequential as the status did not change by virtue of enactment of 1931. Lastly, it was submitted by him that the pivotal issue that emerges in actuality whether after lapse of almost 65 years suo motu power of revision can be invoked by the Competent Authority to nullify a settled state of affairs.

To appreciate the rivalized submissions raised at the Bar it is appropriate to reproduce Section 50 of the Code. The said provision reads as under:"--

50. Revision.-- (1) The Board or the Commissioner or the Settlement Commissioner or the Collector or the Settlement Officer may at any time on its/ his motion or on the application made by any party for the purpose of satisfying itself/himself as to legality or propriety of any order passed by or as to the regularity of the proceedings of any Revenue Officer subordinate to it/him call for and examine the record of any case pending before, or disposed of by such officer, and may pass such order in reference thereto as it/he thinks fit:

Provided that--

(i) No application for revision shall be entertained--

(a) against an order appealable under this Code;

(b) against an order of Settlement Commissioner u/s 2 (10);

(c) against an order passed in revision by the Commissioner or the Settlement Commissioner in respect of cases u/s 170-B, nor shall any such order be revised

by the Board on its own motion;

(ii) No such application shall be entertained unless presented within sixty days to the Commissioner or the Settlement Commissioner or the Collector or the Settlement Officer, as the case may be, or within ninety days to the Board of Revenue from the date of the order and in computing the period aforesaid, time requisite for obtaining a copy of the said shall be excluded;

(iii) No order shall be varied or reversed in revision unless notice has been served on the parties interested and opportunity given to them of being heard.

(2) Notwithstanding anything contained in Sub-section (1)--

(i) where proceeding in respect of any case have been commenced by the Board under Sub-section (1) no action shall be taken by the Commissioner or the Settlement Commissioner or the Collector or the Settlement Officer in respect thereof;

(ii) where proceeding in respect of any case have been commenced by the Commissioner or the Settlement Commissioner under Sub-section (1), no action shall be taken by the Collector or the Settlement Officer in respect thereof;

(iii) where proceeding in respect of any such case have been commenced by the Commissioner, Settlement Commissioner, Collector or Settlement Officer under Sub-section (1) the Board may either refrain from taking any action under this Section in respect of such case until the final disposal of such proceedings by the Commissioner or the Settlement Commissioner or the Collector or the Settlement Officer, as the case may be, or may withdraw such proceedings and pass such order as it may deem fit;

(iv) where proceeding in respect of any such case have been commenced by the Collector or the Settlement Officer under Sub-section (1), the Commissioner or the Settlement Commissioner may either refrain from taking any action under this Section in respect of such case until the final disposal of such proceedings by the Collector or the Settlement Officer, as the case may be or may withdraw proceeding and pass such order as it may deem fit.

Explanation: For the purpose of this section all Revenue Officers shall be deemed to be the subordinate to the Board.

It is evincible that in the said provision hierarchal system has been created to rectify the errors. Submission of learned Counsel for the State is that when the error was noticed by the Collector, he was obliged under law to make good the same and when the steps have been taken by making recommendations, such an act cannot be regarded as unsound or impermissible. Similar submission has also been canvassed by Mr. Gokhale. Per contra, Mr. Bagadia would submit that though power exercisable under suo motu revision is not fettered by limitation but such power has to be exercised within a reasonable period of time. In essence, submission of Mr. Bagadia is that when an application for diversion was

filed by the original respondent No. 2, the Collector could not have taken steps recommending cancellation of the lease and cancellation of the mutation order passed way back in the year 1925 and 1961, respectively. In my considered view the delineation of this issue would put the controversy to rest inasmuch as it is not necessitous to dwell upon the right that had accrued in favour of respondent No. 2 and whether the said right is controlled by 1931 Act or Madhya Bharat Land Revenue & Tenancy Act or M.P. Land Revenue Code, 1959. The centripodal issue that does emerge for consideration is whether the conditional lease that was granted in the year of 1925 by the Competent Authority of the Holkar State could be put at naught in the year 1990 by taking recourse to Section 50 on the foundation that the condition enshrined in the lease deed was not satisfied. Be it placed on record that I am not inclined to enter into the debate whether Annexure R-3/1 is correct or Annexure R-2/13 is genuine one. The sanguinity and genuineness of these documents cannot be gone into in a writ petition preferred under Article 226 of the Constitution of India. Assuming that there was an incorporation in the lease deed the question in eventuate that would crop up is whether time factor would annihilate such enforcement of such incorporation. Mr. Bagadia has commended me to the decision rendered in the case of Pratap Singh and Anr. v. State of M.P. 1997 RN 219 (HC), wherein the learned Single Judge while dealing with the exercise of suo motu power observed that suo motu power of revision cannot be exercised after seven years Without explanation of delay. It is perceptible that the learned Single Judge had come to the aforesaid conclusion after placing reliance on the decisions rendered in the case of State of Gujrat v. Patel Raghav Nath and Ors. AIR 1967 SC 1297. This Court in the case of Sitaram Vs. State of M.P. and Others, placing reliance on the cases of Usha Devi v. State 1990 MPLJ 353 and Ram Chand and Others Vs. Union of India (UOI) and Others, , observed that power u/s 50 of the Code has to be exercised within a reasonable period of time. In this context Mr. Bagadia has placed reliance on the Division Bench decision of this Hon"ble Court reported in State of Madhya Pradesh and Others Vs. Harcharan Singh, , wherein it has been held as under:

The Collector taking suo motu action purporting exercise the jurisdiction envisaged u/s 50 of the M.P. Land Revenue Code had registered a revision against the Order dated 4-5-1971, passed by Tehsildar, Gwalior, in the mutation proceedings, after 28 years. Although no period of limitation has been prescribed for taking suo motu action yet the action ought not be taken beyond unreasonably long period. Suo motu power was exercised by the Collector after 28 years. This period could not by any stretch of imagination be taken to be a reasonable period. The suo motu action could not therefore, be taken to have been exercised within a reasonable time....

Learned Senior Counsel also placed reliance on the decision of a two Judge Bench of the Apex Court rendered in the case of Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, , wherein Their Lordships have expressed the view that suo motu power u/s 84C of Bombay Tenancy and Agricultural Lands Act, 1976 is

required to be exercised within a reasonable time though no time limit is prescribed for exercising of such power under the Statute. Similar view has been expressed in the case of *Sita Sahu and Ors. v. State of Jharkhand and Ors.* AIR 2004 SC 4918.

From the aforesaid pronouncements of law it is clear as the roaring wave of the sea on a sunny day that the suo motu power of revision has to be exercised within a reasonable period of time. In the present case the predecessor-in-interest of original respondent No. 2, was granted the lease. The lease might be a conditional one or might not be. Indubitably, there cannot be cancellation of the same after lapse of 65 years. I am obliged to think that such a period can never be conceived to be a reasonable period of time. The words "reasonable period" are to be understood with reasonableness and connectivity with the thinking of a prudent man. If an order is cancelled after 65 years irrefragably a chaos is bound to usher in. Same also holds good for cancellation of mutation after 29 years.

In view of the aforesaid I am disposed to think that the order passed by the Collector u/s 50 of the Code in exercise of suo motu power of revision for cancellation of the lease as well as the mutation has to pave the path of vitiation. Accordingly, the order passed by him is to be lanced. The affirmation thereof by the Additional Commissioner cannot withstand scrutiny and the same is quashed. As far as the order passed by the Board of Revenue is concerned the same is quashed partially to the extent it has granted permission for diversion as I am inclined to think that the matter should be readdressed by the Board of Revenue as per law. It is reiterated at the cost of repetition that the Board of Revenue shall dwell upon the said limited facet with regard to the factum of diversion and not revert to any other compartment as the same would amount to transgression of this order.

The writ petition is accordingly disposed of on above terms. There shall be no order as to costs.