
(2014) 03 MP CK 0067
In the Madhya Pradesh High Court
Case No : Writ Petition No. 387 of 2006

Sudhakar

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 21-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226 244(1)
Madhya Pradesh Land Revenue Code, 1959 — Section 165 165(6-a) 168

Citation : AIR 2014 MP 69 : (2014) 3 MPJR 62 : (2015) 1 MPLJ 372

Hon'ble Judges : A.M. Khanwilkar, C.J.;K.K. Trivedi, J

Bench : Division Bench

Advocate : Avinash Zargar, for the Appellant; Samdarshi Tiwari, Government Advocate for Respondents/State, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, C.J.—By this writ petition, under Article 226 of the Constitution of India, the petitioner has essentially challenged the public notification issued by the Governor to amend the M.P. Land Revenue Code, 1959 (hereinafter referred to as "the Code of 1959"), introducing Sub-section (6-a) in Section 165 of the Code of 1959, in particular. The petitioner is a coloniser and develops lands into housing societies/residential plots. The petitioner after developing the land transfers it to third parties. Admittedly, the lands purchased by the petitioner are situated in scheduled area. The petitioner, therefore, applied to the Collector for permission to transfer the developed lands to third parties. The petitioner is admittedly a Non-tribal and intends to transfer the developed land to Non-tribals. According to the petitioner, Section 165(6-a) of the Code of 1959 can have no application to such transactions. The said provision ought to apply only to transactions between Tribal to Non-tribal. The petitioner further asserts that, assuming that the interpretation of Section 165(6-a) would mean that it can apply also to transactions in respect of lands situated in scheduled area between Non-tribal to Non-tribal, in that case, the provision will have to be held as ultra vires the Constitution of India. Inasmuch as, as per Article 244(1), which is in

Part X of the Constitution, the provisions of Fifth Schedule would apply to the Administration and Control of the Scheduled Areas and Scheduled Tribes in the specified States. Fifth Schedule has been made with reference to Article 244(1) of the Constitution of India. Paragraph 5 of the Fifth Schedule, according to the petitioner can be invoked by the Governor only in respect of land transactions between Tribal and Non-tribal in the Scheduled Areas and not to transactions between Non-tribal and Non-tribal.

2. To examine this argument, we may usefully refer to paragraph 5 of the Fifth Schedule of the Constitution, which reads, thus:-

5. Law applicable to Scheduled Areas. -

(1) Notwithstanding anything in this Constitution, the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

(2) The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power, such regulations may-

(a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;

(b) regulate the allotment of land to members of the Scheduled Tribes in such area;

(c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

(3) In making any such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council.

(emphasis supplied)

On a conjoint reading of the above provision, it is obvious that the Governor is

authorised to repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the Scheduled Area so as to make it inapplicable to Scheduled Area with specified exceptions and modifications, by issuing public notification in that regard. Clause (1) of paragraph 5 has very wide import. The power invested in the Governor is to make any law inapplicable to the Scheduled Area. It is not limited to law regarding land owned or possessed by the Scheduled Tribes in the Scheduled Area. The Governor was thus competent to issue the subject notification and more so, in respect of any transaction or transfer of land in the Scheduled Area—be it between Tribals and Non-tribals or Non-tribals and Non-tribals. Further, the sweep of Sub-clause (a) read with sub-clause (b) of Clause (2) of paragraph 5 of the Fifth Schedule, leaves no manner of doubt that restriction for transfer of land situated in Scheduled Area between Tribal and Non-tribal and also between Non-tribal and Non-tribal can legitimately be imposed. Notably, sub-clause (b) envisages providing of mechanism to regulate the allotment of land to members of the Scheduled Tribes in Scheduled Areas. The avowed object of these provisions is furtherance of interests of Scheduled Tribes, and to usher in peace and good governance in such area. In that view of the matter, the challenge to the competence of the Governor to enact provision such as Subsection (6-a) of Section 165 of the Code of 1959 cannot be countenanced.

3. The question is: whether the said provision applies to land transactions between Non-tribal and Non-tribal in the Scheduled Area?

4. We deem it apposite to reproduce relevant extract of Section 165 of the Code. The same reads, thus:

165. Rights of transfer.—(1) Subject to the other provisions of this section and the provision of Section 168 a Bhumiswami may transfer any interest in his land.

(2)...

(3)...

(4)...

(5)...

(6)...

(6-a) Notwithstanding anything contained in sub-section (1), [the right of a Bhumiswami other than a Bhoomiswami belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6), in the land excluding the agricultural land] shall not be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to aboriginal tribe without the permission of the Collector given for reasons to be recorded in writing:

Provided that every such transfer effected [after the 9th day of June, 1980 but before the 20th April, 1981] which is not in accordance with the provisions herein

contained shall, unless such transfer is ratified by the Collector in accordance with the provisions hereinafter contained, be void and shall be of no effect whatsoever, notwithstanding anything contained in this Code or any other law for the time being in force.

(6-b)...

(6-c)...

(6-d)...

(6-e)...

(6-ee)...

(6-f)...

(7)...

(8)...

(9)...

(10)...

(11)...

Sub-section (6-a) of Section 165 of the Code of 1959, indisputably, has been introduced after issuance of public notification by the Governor on 15th April, 1981.

5. The sweep of Section 165(6-a) of the Code of 1959, on a bare reading of the provision, it is amply clear that the restriction is in respect of transfer of "any interest in the land" situated in Scheduled Area to person not belonging to aboriginal tribe. Thus, the transfer of interest in any land not belonging to aboriginal tribe can be effectuated only with the prior permission of the Collector, who is obliged to give reasons in writing for permitting such transfer. This provision is regulation for preservation of proprietary rights of the members of the Scheduled Tribes in the land in Scheduled Area; and for equitable distribution of land to the members of the Scheduled Tribes in the Scheduled Areas. That is the avowed objective of paragraph 5 for enacting such a law. In our opinion, therefore, the argument under consideration is devoid of merits.

6. We place on record submission made by learned counsel for the State that the validity of the provision cannot be put in issue by the present petitioner, in whose favour the Collector has already granted permission. Notwithstanding this objection, we thought it appropriate to examine the question raised in this petition on the insistence of the petitioner. According to the petitioner, he is engaged in developing colonies and has to enter into transactions in respect of lands situated in the Scheduled Areas and, therefore, the question raised was a recurring one. Since no other contention has been raised and as we find no

merits in this petition, the same is dismissed. Ordered accordingly.