

(2009) 01 SC CK 0009

In the Supreme Court Of India

Case No : Civil Appeal No. 58 of 2009 (Arising out of S.L.P. (C) No. 3193 of 2004) and Civil Appeal No. 63 of 2009 (Arising out S.L.P. (C) No. 12082 of 2004)

Suraj Singh

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 09-01-2009

Acts Referred:

Madhya Pradesh Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharakon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 — Section 5, 7

Citation : (2009) 01 SC CK 0009

Hon'ble Judges : G. S. Singhvi, J;B. N. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Leave granted.

2. The appellants filed petitions u/s 5 of the Madhya Pradesh Samaj Ke Kamjor Vargon Ke Krishi Bhumi-Dharakon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambhandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976, (for short 'the Adhiniyam') and claimed relief u/s 7 of the Adhiniyam by asserting that they belong to the category of weaker section of the backward caste; that they borrowed amount from Jai Kumar Jain (husband of respondent No. 4 herein) and executed sale deed of land measuring 1.32 and 2.57 hectares respectively as security for return of the borrowed money; that they have repaid the loan within one year but instead of canceling the sale deeds, Jai Kumar Jain, in connivance with the revenue authorities, got the name of his wife, Smt. Sampat Bai, mutated in the revenue records.

3. The Sub-Divisional Officer, before whom petitions were filed issued notice to respondent No. 4, heard the parties and passed order dated 22.6.1999 whereby he declared the sale transactions as null and void u/s 7 of the Adhiniyam and

directed the concerned Patwari to delete the land which was subject matter of sale deeds from the land record of respondent No. 4 and include the same in the land record of the petitioners (appellants herein). Respondent No. 4 challenged the order of the Sub Divisional Officer by filing appeals u/s 8 of the Adhiniyam, which were allowed by the Collector on the premise that the appellants do not belong to weaker section. The Collector observed that the Sub Divisional Officer did not conduct enquiry in accordance with Section 6 of the Adhiniyam and held that he could not have nullified the sale deeds on the basis of preliminary enquiry. The writ petitions filed by the appellants against the order of the Collector were dismissed by the learned Single Judge who confirmed the finding of the Collector that the provisions of the Adhiniyam are not applicable to the cases of the appellants herein. Writ appeals preferred by the appellants were dismissed by the Division Bench. Hence, these appeals by special leave.

4. We have heard learned Counsel for the parties and perused the record. The only question which requires consideration in these appeals is whether the appellants fall within the ambit of the expression "holder of agricultural land" as defined in Section 2(c) of the Adhiniyam, which reads as under:

holder of agricultural land" in the weaker sections of the people means a holder of land used for purposes of Agriculture not exceeding eight hectares of unirrigated land or four hectares of irrigated within the State whether as a Bhumiswami or an occupancy tenant or a Government lessee either in any one or all of the capacities together within the meaning of the Code.

Explanation.- One hectare of irrigated land shall be equal to two hectares of unirrigated land and vice-versa.

5. From a bare perusal of the above reproduced definition, it becomes clear that a person holding land not exceeding eight hectares (unirrigated) or four hectares (irrigated) which is used for agricultural purposes, whether as a Bhumiswami or as a occupancy tenant or a Government lessee, is covered by the definition of the "holder of agricultural land" in the weaker sections of the people. In terms of Section 5, such person is entitled to protection and relief under the Adhiniyam, which has been enacted for protecting weaker sections of the people who are often compelled to seek loan from private money lending agency to meet their obligations and are coerced to transfer their agricultural holdings for securing repayment of loan. The revenue records produced before the Court shows that the appellants in civil appeals arising out of SLP (C) No. 3193 of 2004 and S.L.P. (C) No. 12082 of 2004 were holding 1.32 and 2.57 hectares of land respectively. The Sub Divisional Officer examined the records and concluded that they are entitled to protection u/s 5 of the Adhiniyam because the sale deeds executed by them in favour of Jai Kumar Jain fall in the category of prohibited transactions within the meaning of Section 4 of the Adhiniyam. While allowing the appeals filed by respondent No. 4, the Collector held that the provisions of the Adhiniyam are not applicable to the appellants herein but he did not assign any reason for recording that finding. The Collector also observed that the sale deeds are not

vitiated by fraud but while doing so he completely ignored Sections 3 and 4 of the Adhiniyam which give overriding effect to the provisions of the Adhiniyam and declare that all prohibited transactions of loan as defined in Section 2(f) are subject to the protection and relief under the Adhiniyam. The learned Single Judge of the High Court confirmed the order of the Collector by relying upon the statement made by the appellants herein in which they are said to have admitted that apart from doing agricultural operations, they were having a shop, floor mill, a motorcycle, buffalos and other animals. In the opinion of the learned Single Judge, the appellants do not belong to the weaker section because they were not wholly dependent on agriculture. The Division Bench simply reiterated the reasoning of the learned Single Judge and dismissed the letters patent appeals.

6. In our view, the order of the Collector is vitiated by error of law apparent on the face of the record because while allowing the appeals of respondent No. 4, he did not consider the relevant provisions of the Adhiniyam and did not assign any reason why provisions thereof are not applicable to the appellants. The observations of the Collector that the appellants herein were holding more land is ex facie contrary to the revenue records. The learned Single Judge repeated the error committed by the Collector and went a step further by observing that the appellants cannot be said to belong to weaker section because they were having a shop, floor mill, motorcycle, buffalos and other animals. Since, the definition of 'holder of agricultural land' contained in Section 2(c) does not exclude a person having a floor mill or a shop, dismissal of the writ petitions by the learned Single Judge and letters patent appeals by the Division Bench only on the ground that the appellants possessed shop, floor mill, etc. cannot be sustained.

7. Accordingly, the appeals are allowed, impugned orders passed by the Collector and confirmed by the High Court in writ petitions as well as in letters patent appeals are set aside and the orders passed by the Sub Divisional Officer are restored.