
(1982) 12 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 571 of 1981

Swaraj Kumari Lumba

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 14-12-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Hindu Succession Act, 1956 — Section 6(2)

Citation : (1984) MPLJ 621

Hon'ble Judges : G.P. Singh, C.J.; Faizanuddin, J

Bench : Division Bench

Advocate : M.M. Sapre, for the Appellant; M.V. Tamaskar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

G.P. Singh, C.J.

By this petition under Article 226 of the Constitution the petitioners seek quashing of the order of the Competent Authority dated 18th September 1979 and the order of the Commissioner, Jabalpur, dated 29th December 1980 passed in appeal under Urban Land (Ceiling and Regulation) Act, 1976.

Petitioner No. 1 Smt. Swaraj Kumari Lumba is the mother of petitioners 2 and 3, namely, Smt. Rubi Chabra and Smt. Ritu Nanda. The return under the Urban Ceiling Act was filed only by petitioner No. 1. In that return, she disclosed that 59,533 sq. ft. of land in Garha, Jabalpur, and 5,132 sq. ft. of land in Wright Town belonged to her. In the draft statement prepared by the Competent Authority, it was proposed that the surplus land in possession of the petitioner was 42,242 sq. ft. To this draft statement, petitioner No. 1 filed an objection on 25th June 1979 in which it was stated that the land measuring 59,533 sq. ft. belonged to her husband Manmohan Lumba, who died on 22nd July 1963, and that the said land was inherited by petitioner No. 1 and her two daughters, petitioners 2 and 3, in equal shares. It was also stated that the shares of the two daughters, i.e.

petitioners 2 and 3, could not, be clubbed with the share of petitioner No. 1 in the land. There is no dispute in respect of the other plot of land measuring 5,132 sq. ft. as the same admittedly exclusively belongs to petitioner No. 1. The objection filed by petitioner No. 1 was rejected by the Competent Authority by its final order dated 18th September 1979. The Competent Authority has observed in its order that petitioner No. 1 in her earlier reply dated 23rd January 1978 had written that the entire land measuring 59,533 sq. ft. belonged to her and that there was no division between her and her two daughters, i.e. petitioners 2 and 3. As petitioner No. 1 did not earlier state that the daughters had any share in the land measuring 59,533 sq. ft., the Competent Authority held that the entire land belonged to her. It is on this basis that 48,242 sq. ft. of land was declared to be surplus. In appeal the same view was taken by the Appellate authority.

Having heard Learned Counsel for the petitioners and the learned Government Advocate, we are of opinion that the Competent Authority and the Appellate Authority in refusing to enquire into the objection of petitioner No. 1 filed on 25th June 1979, that the plot of land measuring 59,533 sq. ft. originally belonged to her husband and on his death was inherited in equal shares by petitioner No. 1 and her two daughters, acted contrary to law. The legal effect of the Hindu Succession Act that the daughters are also heirs is very often forgotten. It may be that for this reason the petitioner No. 1 did not state in the return filed by her or in her reply dated 23rd January 1978 that the daughters had any share in this land. But simply because of that the matter cannot be shut out from enquiry, when before the final order was passed by the Competent Authority petitioner No. 1 came out with her objection clearly stating the factual and legal position that the daughters were also co-sharers in the said plot of land. The daughters have no doubt not filed any return, but they can be directed to file a return u/s 6(2) of the Act. If after enquiry the Competent Authority comes to the conclusion that the plot of land measuring 59,533 sq. ft. is held, by petitioner No. 1 and her daughters as co-sharers, it will re-determine the surplus land. Failure of the daughters to file return does not entitle the Competent Authority to club their shares with the share of petitioner No. 1.

The petition is allowed. The order of the Competent Authority dated 18th September 1979 and the order of the Commissioner dated 20th December 1980 are quashed. The case is remanded to the Competent Authority for re-deciding it in accordance with law-in the light of the observations made above. There will be no order as to costs. The security amount be refunded to the petitioner.