

(1980) 09 MP CK 0036

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 44 of 1979

Tularam

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 30-09-1980

Acts Referred:

Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 — Section 4(1), 4(3)

Citation : AIR 1981 MP 23 : (1980) JLJ 870 : (1981) 26 MPLJ 152 : (1981) MPLJ 152

Hon'ble Judges : K.K. Dube, J;H.G. Mishra, J

Bench : Division Bench

Advocate : V.K. Sapre, for the Appellant; M.A. Shah, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

H.G. Mishra, J.

Tularam, the petitioner, is holder of some lands in village Hingati in Tehsil Khurai, District Sagar. Out of that land, he transferred 15 acres to one Babulal s/o Pannalal and 25 acres to Karansingh s/o Pannalal under separate registered sale deed dated 19-4-1972.

The proceedings u/s 4 (1) of the M. P. Ceiling on Agricultural Holdings Act, 1960 (for short "the Act") were started against the petitioner by the Competent Authority. The petitioner inter alia defended the transfers on the ground that his natural son Abhaysingh, having been given in adoption to Mst. Gayabai widow of Pratapsingh, cannot be regarded to be a member of his family. The adoption took place some 10 years back. A deed of adoption dated 5-3-1973 purporting to record adoption so made was also produced in order to substantiate the plea.

After enquiry, the Competent Authority by order dated 16-1-1976 (Annexure I) held that the adoption as well as the transfers by way of sale were made with a view to defeat the provisions of the Act. An appeal was preferred against this

order by the petitioner which was partly allowed by order dated 15-7-1976 (Annexure II) by the Board of Revenue and the case was remanded for proper inquiry. However, the finding regarding invalidity of adoption was upheld.

In pursuance of the remand order, after holding fresh inquiry, the Competent Authority again declared the transfers in question to be void. As regards the adoption, it was held that that question cannot be gone into again in face of the finding regarding invalidity of adoption given by the Board of Revenue in the remand order. The petitioner again preferred an appeal against this order before the Board of Revenue and contended that the Authority acting u/s 4 (1) of the Act, and the Board of Revenue hearing appeals u/s 4 (3) of the Act have no jurisdiction to pronounce upon the validity of adoption and that Abhaysingh having been given in adoption could not be treated as member of the petitioner's family for purposes of calculation of land held by the "family" to which the petitioner belongs. This appeal has been rejected. Hence, this petition.

The petitioner contends that (i) the order passed by the Competent Authority (Annexure I) and the order passed by the Tribunal (Annexure II) regarding invalidity of adoption (sic) conferred on them u/s 4 (1) of the Act; (ii) that the aforesaid orders did not preclude the petitioner from reagitating the question; (ii) that on being given in adoption (evinced by a registered deed dated 5-3-73) Abhaysingh ceased to be a member of the petitioners family; and, (iv) that in the matter of calculation of and for purposes of implementation of the provisions of the Act, Abhaysingh cannot be taken to be a member of the petitioner's family. Shri M. A. Shah, Learned Dy. Govt. Advocate, appearing for the State Government argued in support of the impugned order and contended that the words "or otherwise" occurring in Section 4 (1) of the Act arc wide enough to cover adoption and that under the said provision, it can be held that adoption was a device to defeat the provisions of the Act.

Having heard the learned counsel for the parties, we have come to the conclusion that the petition deserves to be allowed.

Section 4 (1) of the Act runs 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, where after the first Jan. 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 holdings or part thereof or the holding held by the 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)etc.

The jurisdiction conferred on the Competent Authority by the Sub-section (1) of Section 4 is limited to hold inquiry and pronounce upon the validity of transfers or partitions, as case may be.

Now the question posed here is whether the Authority acting u/s 4 (1) of the Act, and the Tribunal while deciding appeal u/s 4 (3), can pronounce upon the validity of "adoption" and held that the adoption is void having been made to defeat the provisions of the Act. No doubt, adoption has the effect of transferring of the adopted boy from his natural family into the adoptive family; but it cannot be regarded to be any transfer within the contemplation of Section 4 (1) of the Act. The transfer envisaged by Section 4 (1) is to be of "any land". It may be by way of sale, gift, exchange or otherwise. An adoption affects the status of the adoptee and does not affect transfer of any land.

In the expression "has transferred any land held by him by way of sale, gift, exchange or otherwise" in Section 4 (1) the words or otherwise" appear to have been used to cover also those transfers which have not been specified earlier. They are indicative of the legislative intendment to make the provision exhaustive, so that the transfer of land otherwise than by way of sale, gift, or exchange may also be within the pale of Section 4 (1).

Section 4 (1) confers only limited jurisdiction on the Competent Authority, viz., power to find out whether the transfer or the partition in question has been made in anticipation of or to defeat the provisions of the Act. The Competent Authority cannot travel beyond limits of its jurisdiction carved out by the law creating it. Appeal u/s 4 (3) is continuation of the proceedings u/s 4 (1) of the Act. Accordingly, it was beyond competence of the Competent Authority as well as the Board of Revenue to pronounce upon the validity of the adoption while dealing with the question of validity of the transfers under the Sub-section (1) of Section 4.

The Tribunal acted illegally in refusing to go into the question of inherent lack of jurisdiction to pronounce upon the validity of adoption in proceedings under the Section 4 (1). It is a fundamental principle that a decree passed by a Court without jurisdiction is a nullity and its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and in collateral proceedings. A void order is in legal effect no order at all. It is non est. By it no rights are divested. From it no rights can be obtained. It neither binds nor bars anyone. Therefore, the petitioners were entitled to reagitate the question.

Section 4 (1) is placed in Chapt. II dealing with exemptions and restrictions of transfers of land. At the stage of proceedings under the Act when the Competent Authority and/or Tribunal is dealing with the question of validity of transfer or partition, as the case may be, u/s 4 (1) of the Act the questions relating to fixation of ceiling area, determination of surplus land and acquisition thereof are not germane. It is only when the Competent Authority functions under Sections

placed in Chapt. III that the question as to who are the members of the holder's family can be gone into. At the stage of passing an order under Sub-section (1) of Section 4 the Competent Authority and/or Tribunal had no jurisdiction to examine the question whether Abhay Singh was member of the family of the holder or had been transplanted in the adoptive family. For this reason also the finding regarding invalidity of adoption recorded in orders of the Competent Authority in Annexures I and III and that of the Tribunal in Annexures II and IV are without jurisdiction.

So far as the transfers by way of sale are concerned, they have been held to be valid by the Tribunal. After holding that the transfers by way of sale in favour of Babulal and Karansingh are valid, the Tribunal has concluded with the finding that the land held by Abhay Singh has to be treated as land held by the holder. In view of the fact that the question of validity of adoption could not be gone into at the present stage of the proceedings, the aforesaid finding also cannot be allowed to stand.

The question of validity of adoption of Abhay Singh may be gone into in proceedings under the provisions placed in Chapter III of the Act. It may be mentioned here that Mr. Sapre wanted this Court to examine the question of validity of adoption on merits specially with reference to the provisions of Section 16 of the Hindu Adoptions and Maintenance Act, 1956, which attaches presumption of validity to adoption evinced by the registered deed of adoption. In the view of the matter taken by us above, the question is left open for being gone into at the appropriate stage.

Accordingly, the petition succeeds and is hereby allowed. The orders contained in Annexures I, II, III, and IV, are set aside. Now the case will go back to the Competent Authority concerned who will hold further inquiry in accordance with law and the observations made hereinabove for purposes of the provision placed in Chap. III of the Act. No order as to costs. The outstanding amount of security, if any, shall be refunded to the petitioner.