(1987) 11 MP CK 0050

In the Madhya Pradesh High Court

Case No : M.P. No. 544 1987

Vijay Kumar Tripathi APPELLANT

Vs

State of Madhya Pradesh and another RESPONDENT

Date of Decision : 06-11-1987

Acts Referred:
Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 — Section 4(1)

Citation : (1989) MPLJ 462

Hon'ble Judges : T.N. Singh, J;Ram Murti Rustogi, J

Bench : Division Bench

Advocate : R.K. Dixit, for the Appellant;

Judgement

Shri R.K. Dixit, counsel for the petitioner.

Heard counsel on the question of admission.

Annexure P-4 is the order of the Board of Revenue which is impugned in this Court on several grounds. However, we are satisfied that the preliminary objection of the petitioner against the order passed in appeal holding the appeal to be not maintainable has much merit and accordingly it is not necessary for us to deal with other contentions raised in this case.

The Board of Revenue has taken the view that the order impugned in appeal was not an order passed by the Competent Authority u/s 4(1) of the M.P. Ceiling on Agricultural Holdings Act. 1960, for short the Act. In our view jurisdictional facts have not been correctly appreciated by the Board and in rendering the decision the Board has also misconceived the ambit and scope of the provision. Accordingly, we quote Section 4(1):

4(1) Not withstanding anything contained in any law for the time being in force, where after, (the 1st January, 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 holding 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 suck transfer or partition and after such enquiry as it thinks fit to make, declare the transferor 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.

(Emphasis added)

Whether any kind of transfer, even when made by a "decree of any Court", between 1st January 1971 and the appointed day, namely 7th March 1974, is made "to defeat the provisions of the Act" has to be enquired into by the Competent Authority in accordance with the provisions of Section 4(1) of the Act. That is the crux of the matter.

The Competent Authority can hold that the transfer was not void but it may also hold that the transfer was void if necessary facts were proved to his satisfaction to take such a kind of decision. Any decision which the Competent authority has to, and has rendered u/s 4(1) is appealable. No matter, whether such a decision is based on positive or negative findings. Indeed, the question has to he considered and decision rendered on facts presented before the Competent Authority in an "enquiry" in which parties are noticed and heard. There can be no dispute that any decision which is rendered affecting civil rights of parties can be challenged in appeal, when rendered without noticing and hearing any one of them. Indeed, it would be a valid ground to challenge a decision rendered in violation of the prescribed provision.

What happened in this case is that the petitioner had got some interest in the disputed land declared in his favour in virtue of a consent decree and on this fact the Competent Authority rendered order against him that the decree was collusive. It is challenged that there was no inquiry but the fact is that the Competent Authority passed an order against the petitioner holding that in virtue of the decree no interest passed in the disputed land to the petitioner. This he could do only when acting u/s 4(1) of the Act. That the decision was not validly rendered in accordance with the provisions of Section 4(1) was the subject matter of the appeal. That question has to be decided by the Board of Revenue. But in the instant case this has not been done and the Board has taken the view that the appeal was incompetent, though it has also said, surprisingly, something on merits without addressing itself to the main question.

We accordingly quash the order of the Board of Revenue and direct that the appeal shall be taken back on file and reheard and disposed of in accordance with law without being obsessed by any observation it had made earlier on the merits of the case.

