(2008) 10 MP CK 0005

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2565 of 2002

Vimla Bai Choudhary (Smt.) APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 13-10-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Land Revenue Code, 1959 — Section 159, 168(2), 185(1), 188, 189

Citation : (2009) 1 MPJR 321

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Judgement

Prakash Shrivastava, J.

This writ petition has been filed against the order of the Board of Revenue dated 4.10.2001 by which the Board of Revenue allowed the revision of the respondent no. 5 and set aside the order of the Additional Commissioner dated 28.12.1999.

The facts in brief as stated in the writ petition are that the respondent no. 5 had moved the application dated 15.11.1984 before the Tahsildar u/s 190 of the M.P. Land Revenue Code (for short the Code) stating that the petitioner who was the Bhumiswami of the land in question had given the land on lease for agricultural purposes in 1977 to the respondent no. 5 on ''Munafa'' of Rs. 1,000 and he continued in possession from 1977-78 to 1984-85 as Cultivator in possession in his capacity as ''Munafedar'', therefore, Bhumiswami rights accrued to him. Petitioner filed reply to the application denying the averments made in the application and taking the stand that the respondent no. 5 is his cousin brother and since the petitioner was suffering from diabetes and was taking treatment in Mumbai from 1977 to 1980, therefore, he had given the land to the respondent no. 5 for cultivation and no ''munafa'' was received by him. The petitioner denied that any Bhumiswami right accrued to the respondent no. 5 u/s 190 of the Code.

The Additional Tahsildar passed the order dated 10.12.1986 holding that the rights of occupancy tenant had accrued to the respondent no. 5 u/s 185 (1) (1) (c) of the code. The tahsildar also found that case of the petitioner did not fall u/s 168 (2) of the code since disability alleged by the petitioner was not proved. The Tahsildar finally held that since the rights of occupancy tenant accured to the respondent no. 5 u/s 159 of the Code, therefore, on deposit of the stipulated amount Bhumiswami rights would accrue to the respondent no. 5.

The appeal filed by the petitioner against the order of the Tahsildar was dismissed by the Sub Divisional Officer by order dated 26.10.87 against which the petitioner preferred second appeal before the Additional Commissioner. The Additional Commissioner by order dated 28.12.99 allowed the second appeal filed by the petitioner holding that in the Khasra there is no lawful entry about the respondent no. 5 being the occupancy tenant nor status of the respondent no. 5 as occupancy tenant has been admitted. The Additional Commissioner relying upon one of the judgment of this court took a view that provisions of section 190 of the Code can be invoked when a person claiming Bhumiswami status is admittedly an occupancy tenant because there is no provision in the Code giving power to any revenue officer to confer status of occupancy tenant. Against this order the respondent no. 5 filed revision petition before the Board of Revenue. The Board of Revenue by the impugned order dated 4.10.2001 allowed the revision petition inter alia holding that the view of the Additional Commissioner that section 190 can be invoked only where the status of a person as occupancy tenant is admitted is incorrect.

Learned counsel appearing for the petitioner submitted that since under the M.R Land Revenue Code the revenue authorities have not been conferred with any power to determine the status as occupancy tenant, therefore, u/s 190 Bhumiswami rights can be conferred only in cases where the status of occupancy tenant is not in dispute. In support of this preposition he has relied upon some of the judgments of this court. He further submitted that it is a case covered by section 168. Since the petitioner was suffering from diabetes, therefore, he had given the land for cultivation to the respondent no. 5 without any consideration. He submitted that the doctor''s evidence, which was adduced by the petitioner in respect of the disability, has not been properly appreciated and the status of the respondent no. 5 was only that of a caretaker. There is also no receipt showing that he had made any payment to the petitioner.

Learned counsel appearing for the respondent no. 5 submitted that the order of the Board of Revenue is a well-reasoned order by which the order of the S.D.O. has been restored. He submitted that in exercise of limited jurisdiction under Article 227, no interference in the order of the Board of Revenue is called for. In support of his submission he has placed reliance upon the judgments of the Supreme Court in the matter of Surya Dev Rai Vs. Ram Chander Rai and Others, . He has also placed reliance upon the judgments of this court reported in the case of Gutti V. Mohanlal and others, 1969 MPLJ 470, and Balaji and Others Vs. Derha and Others, , in support of his claim relating to conferral of

Bhumiswami rights u/s 190.

The core question that arises for consideration is whether in a cast-where the status of the claimant as occupany tenant is disputed, the revenue authorities can examine the merits of the claim and record a finding about the status as occupancy tenant and pass an order conferring the Bhumiswami rights u/s 190 of the Code ?

Section 190 of the Code deals with conferral of Bhumiswami right on occupancy tenant. u/s 190 Bhumiswami rights can be conferred on occupancy tenant but status of a person as occupany tenant cannot be decided. Therefore, section 190 can be attracted only when the status of a person as occupancy tenant is not in dispute. Section 190 of the Code reads as under:

190. Conferral of Bhumiswami rights on occupancy tenants - (1) Where a bhumiswami whose land is held by an occupancy tenant belonging to any of the catergories specified in sub-section (1) of section 185 except in items (a) and (b) of clause (i) thereof fails to make an application under sub-section (1) of section 189 within the period laid down therein, the rights of a Bhumiswami shall accrue to the occupancy tenant in respect of the land held by him from such Bhumiswami with effect from the commencement of the agricultural year next following the expiry of the aforesaid period.

(2) Where an application is made by a Bhumiswami in accordance with the provisions of sub-section (1) of section 189, the rights of a Bhumiswami shall accrue to the occupancy tenant in respect of the land remaining with him after resumption if any allowed to the Bhumiswami with effect from the commencement of the agricultural year next following the date on which the application is finally disposed of.

(2-A) Where the land of a Bhumiswami is held by an occupancy tenant other than an occupancy tenant referred to in sub-section (1) the rights of a Bhumiswami shall accrue to the occupancy tenant in respect of such land-

(a) in the case of occupancy tenants of the categories specified in items (a) and (b) of clause (i) of sub section (1) of section 185, with effect from the commencement of the agricultural year next following the commencement of the Principal Act;

(b) in any other case with effect from the commencement of the agricultural year next following the date on which the rights of an occupancy tenant accrue to such tenant.

(3) Where the rights of a Bhumiswami accrue to an occupancy tenant under sub-section (1), sub-section (2) or sub-section (2-A) such occupancy tenant shall be liable to pay to his Bhumiswami compensation equal to fifteen times the land revenue payable in respect of the land in five equal annual installments, payable u/s 188 for the corresponding year falls due, and if default is made in payment, it shall be recoverable as an arrear of land revenue:

Provinded that if from any cause the land revenue is suspended or remitted in whole or in part in any area in any year, the annual instalment of compensation payable by an occupancy tenant holding land in such area in respect of that year shall be suspended and shall become payable one year after the last of the remaining instalments.

(4) Any occupancy tenant may at his option pay the entire amount of compensation in a lump sum and where an occupancy tenant exercises this option, he shall be entitled to a rebate at the rate of ten percent.

(5) The amount of compensation, whether paid in lump sum or in annual instalments, shall be deposited in such manner and form as may be prescribed by the occupancy tenant with the Tahsildar, for payment to the Bhumiswami.

(6) Where the rights of a Bhumiswami in any land accrue to an occupancy tenant under this section, he shall be liable to pay the land revenue payable by the Bhumiswami in respect of such land with effect from the date of accrual of such rights.

Section 257 of the Code deals with exclusive jurisdiction of the revenue authorities and section 257 (O) provides that:

257. Exclusive jurisdiction of revenue authorities - Except as otherwise provided in this Code, or in any other enactment for the time being in force, no Civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the State Government, the Board, or any Revenue Officer is by this Code, empowered to determine, decide or dispose of, and in particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the following matters:

(O) claims by occupancy tenants for conferral of the rights of Bhumiswami u/s 190;

Under section 257(O) revenue authorities have exclusive jurisdiction to decide claim of occupany tenant for conferral of Bhumiswami right but u/s 257 (O) read with section 190 the status as occupancy tenant itself cannot be decided by revenue authorities.

This Court in the matter of Rawala vs. Dettia and others, 1978 RN 12, has held as under:

4. The lower appellate Court felt that u/s 257 (O) of the M.R Land Revenue Code the claims by an occupancy tenant for conferral of the rights of Bhumiswami fall within the exclusive jurisdiction of the Revenue Tribunal u/s 190 of the M.P. Land Revenue Code. Section 190 of the Code no doubt empoweres the Revenue Tribunal to confer the rights of a Bhumiswami; but it contemplates that these rights could only be conferred on an occupancy tenant but whether a person claiming the rights of a Bhumiswami is an occupancy tenant or not, is not within the jurisdiction of Revenue Tribunal to determine u/s 190 of the Code. That

question therefore will be for the Civil Court to decide and section 257 (O) of the Code will therefore not come into operation restricting jurisdiction of the Civil Court to entertain the suit for declaration of title.

This court while examining the same issue in the matter of Sanwal and others V. Laxmibai and others, 1991 RN 114, has held as under :

27. In the instant case the real dispute between the parties centers round the question whether the defendants No.1 and 3 had acquired the status of occupancy tenants in respect of the suit lands. There is no provision in the Code which empowers any Revenue Officer to determine the status of occupancy tenant. Section 190 which deals with conferral of Bhumiswami rights on occupancy tenants can operate only when the person who claims to have acquired Bhumiswami rights u/s 190 of the Code is admittedly an occupancy tenant. But that is not the situation in the present case. 33. In the instant case defendants no.1 and 3 claimed to have acquired status of occupancy tenants and consequently the status of Bhumiswami in respect of the suit-lands u/s 190 of the Code. The jurisdiction for deciding such a claim is vested in the civil court and not in the Revenue Authority and the decision in the case of Rawala (supra) is on all fours applicable to the facts of the instant case. As such, it is held that the civil suit filed by the plaintiff challenging the defendants claims of status as occupancy tenant in respect of the suit-land, is maintainable.

In the case of Reshma Bai (Smt.) and other v. Kanchansingh singh others, 1996 RN 144, the Division Bench of this Court again reiterated the view that an occupany tenant may approach the revenue authority u/s 190 when there is no dispute of status as occupancy tenant.

The full Bench of this Court in State of M.P. and others Vs. Balveer Singh and others, , has held that :

66. (3) The determination of question of bhumiswami rights lies within the province of the Civil Court excepting the cases falling within the ambit of those specified u/s 257 of the code.

In Halimanbai & others v. Narain & others, 1997 RN 100, this Court has held that conferral of Bhumiswami rights u/s 190 is automatic and right is acquired by operation of law.

Judgments in the matter of Gutti (supra) and Balaji (supra) do not help the respondents as they do not lay down anything contrary to what has been held in the matters of Rawala (supra) and Sanwal (supra).

Thus, it can be safely held that determination of question of Bhumiswami rights lies within the province of the Civil Court except in cases falling u/s 257 of the Code. Section 257 (O) gives limited jurisdiction to revenue authorities to decide the claims of occupancy tenant for conferral of Bhumiswami rights, therefore, in cases where status of claimant as occupancy tenant is in dispute, section 190 of the Code cannot be invoked.

In the present case an application u/s 190 of the Code was filed by the respondent no. 5 claiming the status of occupancy tenant on the basis of cultivation and possession as ''Munafedar'' from 1977-78 to 1984-85. The petitioners had filed reply dated 18.2.85/26.3.85 to this application denying the facts stated in the application and denying that the respondent no. 5 remained in possession upto 1985 as ''Manafedar''. Before the Additional Tahsildar the matter was contested by the petitioner and the issue no.3 was framed about attaining the status of occupancy tenant by the respondent no.5 u/s 185 of the Code. This issue was contested by the petitioner and the Tahsildar held that the respondent no. 5 obtained the status of occupancy tenant u/s 185 of the Code. The Tahsildar then examined the question of conferral Bhumiswami rights on the respondent no. 5 u/s 190 of the Code and held the respondent no. 5 is entitled for such right on the basis of the findings about the respondents status as occupancy tenant.

A perusal of the order of the Tahsildar indicates that the status of the respondent no. 5 as occupancy tenant was in dispute. The Tahsildar had no jurisdiction to go into the question and record a finding about the status of occupancy tenant u/s 185. Proper remedy in such a case was to relegate the parties to avail the remedy of civil suit. The Additional Commissioner had rightly placed relianced upon the judgments of this court reported in Sanwal (supra) while taking a view that in the facts of the case the revenue court had no jurisdiction to confer the status of occupancy tenant to the respondent no.5. Clear error of law was committed by the Board of Revenue in reversing the order of the Additional Commissioner while exercising the revisional jurisdiction. The Board of Revenue has not noted the judgments of this court which were relied upon by the Additional Commissioner. The order of the Board of Revenue cannot be sustained since view taken by the Board of Revenue on this issue is contrary to the judgments of this court.

Next question that arises for consideration is whether such an order of the Board of Revenue is open to interference in exercise of jurisdiction under Article 227. Counsel for respondent no.5 has placed reliance upon the judgment of the Supreme Court in the matter of Suryadev Rai (Supra), which lays down as under:

38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as here under:

(1) Amendment by Act No. 46 of 1999 with effect from 1-7-2002 in section 115 of the CPC cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by the CPC Amendment Act no. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross

errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction- by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice his occasioned thereby.

(6) A patent error is an error, which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in suppression or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

It has been held in the aforesaid judgment that in a case where the subordinate court assumed jurisdiction, which it does not have, the High Court can step in and exercise its supervisory jurisdiction. Present is also a case where the revenue courts had no power to confer the status of occupancy tenant to a person in disputed cases but the Board of Revenue by restoring the order of the Tahsildar has conferred status of occupancy tenant to respondent no.5

In view of the aforesaid the writ petition is allowed. The order dated 4.10.2001 passed by the Board of Revenue is set aside and the order of the Additional Commissioner dated 28.12.1999 is restored. No orders as to costs.

