State of Madhya Pradesh & Ors

Vs

Sardar D. K. Jadav

Civil Appeals Nos. 1244 and 1245 of 1967

(J. C. Shah, V. Ramaswami – I JJ)

25.01.1968

JUDGMENT

RAMASWAMI, J. –

This appeal is brought, by special leave, from the judgment of the Madhya Pradesh High Court dated November 30, 1966 in Miscellaneous Petition No. 183 of 1965 whereby the High Court allowed the writ petition of the respondent and quashed two orders dated November 4, 1963 and June 11, 1964 of the Collector of Gwalior (Annexures VIII and XII respectively) and two orders of the Additional Commissioner, Gwalior Division dated February 19, 1964 and November 16, 1964 (Annexures X and XIV respectively) in so far as they purported to decide any question raised by the respondent under s. 5(c) of the Madhya Bharat Abolition of Jagirs Act, Samvat 2008 (Act No. 28 of 1951), hereinafter referred to as "the Abolition Act".

In Samvat 1885, the Ruler of the erstwhile Gwalior State conferred on Shri Bhavdeo Mishra - the predecessor-in-title of the respondent - the jagir of Mauza Siroli, situated in Pargana Gwalior. After the issue of the notification under s. 3 of the Abolition Act, all the property in the jagir including jagir lands, forests, trees, fisheries, wells, tanks, ponds etc. stood vested in the State under s. 4 of the Abolition Act. Under s. 5(c) of the Abolition Act, all tanks, trees, private wells and buildings in or on occupied land belonging to or held by the Jagirdar or any other person were excluded from vesting. Section 2(1)(ix) of the Abolition Act defines "occupied land" as follows :

> "(ix) 'Occupied land' means land held immediately before the commencement of this Act on any of the following tenures, namely :
>
> #(a) Ex-proprietary;(b) Pukhta Maurusi;(c) Mamuli Maurusi;(d) Gair Maurusi;##
>
> and includes land held as Khud Kasht and land comprised in a homestead;"

Section 3, 4(1)(a) and 5(c) of the Abolition Act are reproduced below :

3. Resumption of Jagir-lands by the Government -

> (1) As soon as may be after the commencement of this Act, the Government shall by notification in the Gazette, appoint a date for the resumption of all Jagir-lands in the State.
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> (2) The Government may, by notification published in the Gazette, vary the date specified under sub-section (1) at any time before such date.

(3) The date finally appointed under this section as the date for the resumption of Jagir-lands is hereinafter referred to as 'the date of resumption'.

4. Consequences of the resumption of Jagir-lands. -

"(1) As from the date of resumption notwithstanding anything contained in any contract, grant or document or in any other law, rule, regulation or order for the time being in force but save as otherwise provided in this Act -

(a) the right, title and interest of every Jagirdar and of every other person claiming through him (including a Zamindar) in his Jagir-lands, including forests, trees, fisheries, wells, tanks, ponds, water-channels, ferries, pathways, village-sites, hats, bazars and mela-grounds and mines and minerals whether being worked or not, shall stand resumed to the State free from all encumbrances;

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5. Private wells, trees, buildings, house-sites and enclosures. - Notwithstanding anything contained in the last preceding section,

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(c) all tanks, trees, private wells and buildings in or on occupied land belonging to or held by the Jagirdar or any other person shall continue to belong to or, be held by such Jagirdar or other person."

After the abolition of jagirs under the Abolition Act, proceedings were initiated for determining the compensation payable to the respondent and the same was determined at a sum of Rs. 22,293/- and odd out of which certain loans were deducted and the amount of Rs. 3,586/- and odd was paid. The Madhya Pradesh Land Revenue Code, 1959 (M.P. Act No. 20 of 1959) came into force on October 2, 1959 and s. 251 thereof reads as follows :

"Vesting of tanks in State Government. - (1) All tanks situated on unoccupied land on or before the date of coming into force of the Act, providing for the abolition of the rights of intermediaries in the areas concerned and over which members of the village community were, immediately before such date, exercising rights of irrigation or nistar, shall, if not already vested in the State Government, vest absolutely in the State Government with effect from the 6th April, 1959 :

Provided that nothing in this section shall be deemed to affect any right of a lessee in the tank under a lease subsisting on the date of vesting of the tank which shall be exercisable to the extent and subject to the terms and conditions specified in the lease :

Provided further that no tank shall vest in the State Government, unless -

(a) after making such enquiry as he deems fit, the Collector is satisfied that the tank fulfils the conditions laid down in this sub-section; and

(b) notice has been served on the parties interested and opportunity given to them for

being heard.

(2) Any person claiming in any such tank any interest other than the right of irrigation or nistar, may, within a period of four years from the date of vesting under sub-section (1), make an application in the prescribed form to the Collector for compensation in respect of his interest.

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(3) Such compensation shall be 15 times the land revenue assessable on the land covered by the tank and for purposes of assessment such land shall be treated as irrigated land on the same quality as the adjoining land.

(4) The compensation as determined under sub-section (3) shall be paid by the Collector to the person or person proved to his satisfaction to be owning interest in the tank concerned.

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On April 5, 1961, the respondent made an application to the Collector, Gwalior under s. 251 of the M.P. Land Revenue Code, 1959, claiming compensation for the tanks which, according to the respondent, were built by the respondent and his predecessor-in-title over an area of 1,679 bighas and 18 biswas of land. By his order dated April 24, 1963, the Sub-Divisional Officer determined the amount of compensation at Rs. 11,512/- and odd but by his subsequent order dated May 28, 1963, the Sub-Divisional Officer suo motu cancelled his previous order dated April 24, 1963. The respondent preferred an appeal before the Collector of Gwalior who, by his order dated November 4, 1963 dismissed the appeal of the respondent holding that the property claimed as tanks was really not of that description as all that was done was to cause temporary obstruction to the flow of waters by creating bunds and the case did not fall within the purview of s. 251(1) of the M.P. Land Revenue Code, 1959 and no compensation was payable. The respondent preferred a second appeal before the Commissioner, Gwalior Division who dismissed the appeal, holding that under s. 251 compensation could not be claimed with regard to the so-called tanks which were situated on 'occupied land'. On July 4, 1963, the respondent made an application to the Collector of Gwalior stating that he was entitled to payment of compensation if the tanks had vested in the State Government. The application was dismissed by the Collector on June 11, 1964. Thereupon the respondent moved the High Court of Madhya Pradesh for grant of a writ under Art. 226 of the Constitution to quash the two orders dated November 4, 1963 and June 11, 1964 of the Collector of Gwalior (Annexures VIII and XII) and the two orders dated February 19, 1964 and November 16, 1964 of the Additional Commissioner, Gwalior Division (Annexures X and XIV). The writ petition was opposed by the appellants on the ground that the tanks claimed by the respondent were really no tanks at all and, in any case, were not on 'occupied land' within the meaning of s. 5(c) of the Abolition Act and the tanks and wells had vested in the State under s. 4(1)(a) of the Abolition Act. By its judgment dated November 30, 1966, the High Court allowed the writ petition and quashed the four orders aforesaid on the ground that the question raised by the respondent under s. 5(c) of the Abolition Act should be decided by the Jagir Commissioner in the manner required by s. 17 of the Abolition Act.

It is necessary at this stage to reproduces. ss. 8, 15, 17 and 18 of the Abolition Act which are to the following effect :

"8. Duty to pay compensation. - (1) Subject to other provisions of this Act the Government shall be liable to pay to every Jagirdar whose Jagir-land has been resumed under Sec. 3, such compensation as shall be determined in accordance with the principles laid down in Schedule I.

(2) Compensation payable under this section shall be due as from the date of resumption and shall carry simple interest at the rate of 2 1/2 per cent per annum from that date up to the date of payment :

Provided that no interest shall be payable on any amount of compensation which remains unpaid for any default of the Jagirdar, his Agent or his representative-in-interest."

"15. Payment of compensation money. - (1) After the amount of compensation payable to a Jagirdar under Sec. 8 is determined under clause (a) of Sec. 13 and the amount deducted from it under Sec. 14, the balance shall be payable in maximum ten annual instalments.

(2) The amounts determined under clauses (c), (d) and (e) of Sec. 13 shall be deducted and paid annually to the persons entitled thereto, out of the annual instalments referred to in sub-section (1) and the remaining amount of the instalment shall be payable by the Government to the Jagirdar.

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"17. Questions of title. - If, during the course of an inquiry by the Jagir Commissioner, any question is raised, in respect of a Jagirdari title to, or right in, Jagir-lands resumed under Sec. 3, and such question has not already been determined by the Government, the Jagir Commissioner shall proceed to enquire into the merits of such question and refer the matter for decision to the Government whose orders shall be final."

"18. To whom compensation shall be payable after the death of a Jagirdar. If any Jagirdar to whom compensation money is payable under this Act dies before the full payment of such compensation money to him, such compensation money as may remain payable to him under this Act, shall be payable to such of his heirs or successors as may be declared by a competent Court entitled to receive the same, according to the personal law by which the Jagirdar is governed."

On behalf of the appellants learned Counsel put forward the argument that the High Court was in error in holding that s. 17 of the Abolition Act was applicable to the present case and that it was the function of the Jagir Commissioner alone to inquire whether the claim of the respondent under s. 5(c) was well-founded on merits and refer the matter for the final decision of the Government under s. 17 of the Abolition Act. In our opinion the argument put forward on behalf of the appellants is well-founded and must be accepted as correct. It is manifest that under s. 17 of the Abolition act only those disputes which pertain to the Jagirdari title or right in jagir lands already resumed under s. 3 of the Abolition Act, can be raised. The section also contemplates that the disputes must be raised during the course of an inquiry for assessment of compensation by the Jagir Commissioner. It should be noticed that s. 17 is included in Ch. III which deals with compensation which the

Government is liable to pay to every jagirdar whose jagir land has been resumed under s. 3. It follows therefore that the inquiry made by the Jagir Commissioner under s. 17 on the question of title is only for the purpose of enabling him to pay compensation to the person who in his opinion is entitled to receive it. In our opinion, the scope of the inquiry under s. 17 only relates to disputes with regard to rival claimants to jagirdari title or right in jagirdari lands already resumed under s. 3 of the Abolition Act. In other words, the inquiry by the Jagir Commissioner or the decision of the State Government under s. 17 does not embrace within its scope any dispute as to whether any particular property falls within s. 4(1)(a) read with s. 5 of the Abolition Act and whether it has or has not in consequence vested in the State Government by the notification issued under s. 3 of the Abolition Act. It is also necessary to add that the inquiry contemplated under s. 17 by the Jagir Commissioner relates to compensation to be paid to the jagirdar whose jagir is vested in the State Government and once the compensation is determined and paid, no further inquiry under s. 17 is contemplated. We are accordingly of the opinion that the High Court was in error in holding that s. 17 of the Abolition Act is applicable to the case and that the dispute raised by the respondent should have been determined in accordance with the procedure envisaged in s. 17 of the Abolition Act.

But this does not necessarily mean that the respondent is left without any remedy for the redress of his grievance. If the respondent is right in his contention that the tanks and wells were constructed on 'occupied land' belonging to the jagirdar within the meaning of s. 5(c) of the Act it is manifest that the appellants have no authority to take possession of those tanks and wells because the title therein does not vest in the State Government in view of s. 5(c) which has an over-riding effect on s. 4 of the Abolition Act. It was therefore the duty of the High Court in the present case to decide the jurisdictional fact as to whether the tanks and wells claimed by the respondent belonged to the Jagirdar within the meaning of s. 5(c) of the Abolition Act and if the High Court reached the conclusion that the claim of the respondent was substantiated it would be open to the High Court to grant a writ under Art. 226 of the Constitution directing the appellants to hand over possession of the aforesaid tanks and wells to the respondents.

It is well-established that where the jurisdiction of an administrative authority depends upon a preliminary finding of fact the High Court is entitled, in a proceeding for a writ, to determine upon its own independent judgment whether or not that finding is correct. The matter has been very put by Farwell, L.J. in Rex v. Shoreditch Assessment Committee [[1910] 2 K.B. 859, 879] as follows :

> "The existence of the provisional list is a condition precedent to their jurisdiction to hear and determine, and as the claimant is entitled to require them to hear and determine, they cannot refuse to take the steps necessary to give rise to such jurisdiction; if they do, their refusal may be called in question in the High Court. No tribunal of inferior jurisdiction can by its own decision finally decide on the question of the existence or extent of such jurisdiction : such question is always subject to review by the High Court, which does not permit the inferior tribunal either to usurp a jurisdiction which it does not possess, whether at all or to the extent claimed, or to refuse to exercise a jurisdiction which it has and ought to exercise. Subjection in this respect to the High Court is a necessary and inseparable incident to all tribunals of limited jurisdiction; for the existence of the limit necessitates an authority to determine and enforce it : it is a contradiction in terms to create a tribunal with limited jurisdiction and unlimited power to determine such limit at its own will and pleasure - such a tribunal would be autocratic, not limited - and it is immaterial whether the decision of the inferior tribunal on the question of the existence or non-existence of its own jurisdiction is founded on law or fact; a Court with jurisdiction

> confined to the city of London cannot extend such jurisdiction by finding as a fact that Piccadilly Circus is in the ward of Chepe."

The same principle was enunciated by the Court of Appeal in White & Collins v. Minister of Health [[1939] 2 K.B. 838]. The question debated in that case was whether the High Court had jurisdiction to review the finding of the administrative authority on a question of fact. IT appears that Part V of the Housing Act, 1936, enabled the local authority to acquire land compulsorily for the provision of houses for the working classes, but s. 75 of the Act provided that nothing in the Act was to authorise the compulsory acquisition of land "which at the date of the compulsory purchase forms part of any part, garden or pleasure ground or is otherwise required for the amenity or convenience of any house". In accordance with the provision of this part of the Act, the Ripon Borough Council made an order for the compulsory purchase of 23 acres of land, it being part of an estate in Yorkshire called Highfield, consisting of a large house and 35 acres of land surrounding it. The owners served notice of objection to the order as being contrary to s. 75 and the ground of objection was that the land was part of a park and was required for the amenity or convenience of the house. The Minister of Health directed a public inquiry, and after holding the inquiry and taking evidence, the Chairman duly made his report to the Minister, who thereupon confirmed the order. It was held by the Court of Appeal that the High Court had jurisdiction to review the Minister's finding and since the land in question was part of the park of Highfield, the order of compulsory purchase was quashed. At page 855 Luxmoore L.J. stated :

> "The first and the most important matter to bear in mind is that the jurisdiction to make the order is dependent on a finding of fact; for, unless the land can be held not to be part of a park or not to be required for amenity or convenience, there is no jurisdiction in the borough council to make, or in the Minister to confirm, the order. In such a case it seems almost self-evident that the Court which has to consider whether there is jurisdiction to make or confirm the order must be entitled to review the vital finding on which the existence of the jurisdiction relied upon depends. If this were not so, the right to apply to the Court would be illusory."

For these reasons we allow this appeal, set aside the judgment of the Madhya Pradesh High Court dated November 30, 1966 in Miscellaneous Petition No. 183 of 1965 and the case is remanded to the High Court for deciding it afresh in accordance with the directions given. It will be open to the High Court to take such further evidence - oral and documentary - as the parties may decide to give on the points at issue. The parties will bear their own costs upto this stage.

Civil Appeal No. 1244 of 1967

The material facts of this case are almost similar to those in Civil Appeal No. 1245 of 1967 and for the reasons given in that judgment, we hold that this appeal should be allowed and the case should be remanded to the High Court for being decided afresh in accordance with the directions given in that judgment. The parties will bear their own costs upto this stage.

> #G.C. Appeals allowed and cases remanded.##

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