

State of Madhya Pradesh

Vs

Babu Lal and Others

Civil Appeal No. 1417(N) of 1975

(CJI A.N. Ray, M.H. Beg, P.S. Kailasam JJ)

21.01.1977

JUDGMENT

RAY, C.J. –

1. This appeal is by special leave from the judgment and order dated July 12, 1974 of the High Court of Judicature of Madhya Pradesh at Indore in Misc. Petition 132 of 1974.
2. The State filed an application under Article 226 and 227 for a declaration that the suit filed by the respondent Babu Lal was not warranted in Law and in violation of the statutory provisions of the Madhya Pradesh Land Revenue Code, 1959. Respondent 2, Baddiya is Bheel by caste. This is a Scheduled Tribe as declared by the State vide Notification No. 8000-1905-VII-N-I dated November 25, 1960. Respondent 1 Babulal does not belong to Scheduled Tribe.
3. Respondent Babulal filed a suit in the Court of Civil Judge, Class II, Jhabua, Tehsil Jhabua, District Jhabua, for a declaration that his name be recorded in the revenue record as a Bhumiswami for the lands bearing Khata No. 4, Survey Nos. 12, 224 and 354 in village Amlia Parha, Tehsil Jhabua. Respondent 2, Baddiya did not contest the suit. They filed a deed of compromise before the Court of Civil Judge, Jhabua. By the said Compromise Deed respondent 2, Baddiya transferred his Bhumiswami rights in favour of respondent 1, Babulal. The State contended that the entire proceedings were in contravention of sub-section 6 of Section 165 of the Madhya Pradesh Land Revenue Code, 1959. The provision of that section are as follows :

165. Rights of Transfer. -

(6) Notwithstanding anything in sub-section (1), the right of a Bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe by the State Government by notification in that behalf for the whole or a part of the area to which this Code applied shall not be transferred to a person not belonging to such tribe without the permission of a Revenue Officer not below the rank of a Collector, given for reason to be recorded in writing.

4. The State contended before the High Court that a writ of certiorari should be issued to quash the judgment which was illegal and in clear violation of law. The High Court said that the State could file a suit for declaration that the decree is null and void.
5. One of the principles on which certiorari is issued is where the Court acts illegally and there is error on the face of record. If the Court usurps the jurisdiction, the record is corrected by certiorari.

This case is a glaring instance of such violation of law. The High Court was in error in not issuing writ of certiorari.

6. The judgment of the High Court is set aside. A writ of certiorari is issued to quash the judgment and decree dated August 8, 1973 passed by the respondent Civil Judge, Class II Tehsil Jhabua, District Jhabua in Civil Suit No. 70-J of 1973.

7. There will be no order as to costs.

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