

Khuman Singh

Vs

Dhan Singh and Others

Civil Appeal No. 1181 of 1972

(G. L. Oza, M. H. Kania JJ)

08.12.1987

ORDER

1. This appeal by special leave is directed against the judgment of the Madhya Pradesh High Court, Gwalior Bench, Gwalior dated April 29, 1971.

2. By a petition under Articles 226 and 227 appellant challenged the order passed by the Board of Revenue, Madhya Pradesh dated March 20, 1969 wherein the Board set aside the orders passed by the Revenue Commissioner, Bhopal and also of the Tehsildar Basoda, District Vidisha and held that Survey No. 1230/2 was not khudkasht land of the petitioner, therefore he could not be declared as pucca krishak, as was done by the Tehsildar by his order dated December 28, 1960.

3. The High Court held that khudkasht in Section 2(c) of the Madhya Bharat Zamindari Abolition Act has been defined to be land in the personal cultivation of zamindar and was so recorded before the date of vesting. It appears that the finding of fact arrived at by the Board of Revenue was that this Survey No. 1230/2 was not recorded as khudkasht land in Samvat 2006, 2007, and 2008 which was the relevant period. It has recorded as padti jadeed and this finding of fact as it appears from the judgment of the High Court was not disputed and this entry of padti jadeed has been rightly understood by the High Court to mean land which was not under cultivation and therefore it could not be khudkasht. The High Court, therefore, dismissed the petition upholding the judgment of the Board of Revenue.

4. Having heard counsel for the appellant at some length, there appears to be no reason to interfere with the judgment of the High Court as admittedly entry of Khasra No. 1230/2 measuring 36 bighas and 5 biswas which was recorded as padti jadeed in the revenue records in the Samvat 2006, 2007 and 2008 was a fact which was not disputed before the High Court and in fact it was found by the Board of Revenue.

5. In this view of the matter the interpretation put by the High Court and the Board of Revenue could not be assailed. We, therefore, see no merit in this appeal.

6. The learned counsel for the appellant ultimately submitted that if in law the present appellant was entitled to make an application for allotment of land, he may be permitted to make such application, which may be considered by the appropriate authorities under the law in force now. It is not necessary for us to make any observation in this regard as it is clear that if in law the present appellant makes an application for allotment of land, which has vested in the State, it is for him to choose and it will be for the authorities to decide after considering such applications in accordance with law and rules which may be in force now. The same is the situation about respondent 1 who

has been contesting this litigation all through on the ground that he had made an application which is still pending for consideration.

7. The appeal is, therefore dismissed. The judgment of the Board of Revenue mentioned above is maintained and the stay order granted earlier stands vacated.

8. Respondent 1 shall be entitled as his cost in this appeal amounting to Rs. 1000 already deposited by the appellant herein as security in the appeal.

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