

The State of M.P. and others

Vs

Mr. Krishnarao Shinde and others

Civil Appeal No. 1046 of 1982

(Dr. TK. Thommen, R. M. Sahal JJ)

29.01.1991

JUDGEMENT

T. K. THOMMEN, J.:-

1. This appeal by the State of Madhya Pradesh arises from the Order of the Madhya Pradesh High Court in Misc. Petition No. 84 of 1978 quashing order dated 1-10-1977 of the Additional Collector, Gwalior, whereby he initiated proceedings against the 3rd respondent, the Gwalior Dairy Limited (hereinafter called 'the Company u/S. 182(2)(i) of the M.P. Land Revenue Code, 1959 ('the Code'). Respondents Nos. 1, 2 and 4 are shareholders of the third respondent. The High Court by the impugned order held that the Company was not a Government lessee within the meaning of S. 181 (read with S. 2(h)) and was, therefore, not liable to be proceeded against in terms of S. 182.

2. The order of the Additional Collector Gwalior, which was impugned in the High Court, was made consequent on the failure of the Company to pay the rent agreed upon between the Government and the Company subsequent to the unconditional withdrawal by the Company of its Civil Appeal No. 299 of 1967 which was ending in this Court. That appeal had been brought to this Court by the Company against an earlier judgment of the High Court dated 30-6-1964 in First Appeal No. 1 of 1961 whereby the High Court, confirming the judgment of the trial court and dismissing the Company's appeal, held that the land admeasuring 495.05 acres was held by the Company in terms of the lease granted by the State and the Company was not a pakka-tenant and did not enjoy the status of a "Gair Maurusi" tenant.

3. The Company entered into a contract of lease with Gwalior State Government (Sanitary Engineering Department) for a period of one year in Samvat 1999. The lease was extended for a further period of ten years in Samvat 2000. When proceedings were initiated on 16-7-1952 to eject the Company, the Company, filed Suit No. 14 of 1960 for declaration of title and perpetual injunction. Issue No. (1) in that suit was in the following words:-

"Whether the plaintiff in accordance with paras 5 & 6 of the plaint was a 'gair maurusi tenant' and now by virtue of the Revenue Administration and Ryotwari Land Revenue and Tenancy Act of Samvat 2007 has become a 'pakka tenant'.

If so, what is its effect on the suit?"

That issue was answered in the negative. The Court held that the company did not enjoy the status of Gair Maurusi tenant and that it had not become a 'pakka' tenant under S. 54(vii) of Part 11 of Act No. 66 of 1950 in respect of the land in question. The Court held that the Company was "a

Government lessee u/ S. 181 of the M.P. Land Revenue Code, 1959 with the rights and liabilities enumerated in S. 182". It was also held that the Company was not an occupancy tenant u/S. 185 of the Code as it had not become an ordinary tenant earlier in Madhya Bharat under Act No. 66 of 1950. This judgment, as stated earlier, was affirmed by the High Court by its judgment dated 30-6-1964 in First Appeal No. 1 of 1961. The High Court observed that the land held by the Company under the lease was neither zamindari nor ryotwari land. The Zamindari Abolition Act did not apply to the land as it had become vested in the State long prior to the Act. The High Court observed :-

"..... the lands comprised in the Gwalior Sewage Farm were never notified to be a Ryotwari village. The lands which have been acquired by the Gwalior State in connection with the Gwalior Sewage Farm could not, after their acquisition for a public purpose be notified to be part of a Ryotwari village..... the lands were not Pandat lands nor were the lands included in Ryotwari village. Special leases granted by the erstwhile Gwalior state in respect of such lands as had been acquired for a public purpose, namely construction of a sewage system were governed not by any law for the time being in force but by the terms of lease in each case. I have already explained above that to these lands the provisions of the Zamindari Abolition Act did not apply, since they were already held by the state when that came into force the defendant (the State) has been successful in showing that the plaintiff (the Company) never acquired the status of a gair maurusi tenant in respect of the land in dispute at any time prior to the coming into force of the Act No. 66 of 1950 and that he could not, by virtue of the provisions of that Act become a pucca tenant thereof."

4. It was from that judgment that the Company had brought to this Court Civil Appeal No. 299 of 1967 and that appeal was, as stated earlier, unconditionally withdrawn by the Company in 1971. Subsequently, the State entered into an agreement with the Company to grant a fresh lease for a period of ten years from 9-2-1971 subject to the payment of enhanced rent as agreed upon between the parties. Since the Company failed to pay the agreed rents and thus contravened the conditions of the lease, proceedings were initiated by the Additional Collector by his Order dated 1-10-1977 for eviction of the Company from the land in question. That Order was made u/ S. 182(2)(i) of the Code. It was that Order which was quashed by the High Court by its impugned Order dated 20-9-1980. The High Court held that the lease in question was not covered by S. 181 of the Code and that the Company could not be evicted by the summary proceeding provided for under that section.

5. As stated earlier, the High Court had, in the earlier proceeding, held that the Company was not a 'pakka' tenant. That judgment of the High Court became final by the unconditional withdrawal of the appeal filed in this Court against it. The Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 (Act No. 66 of 1950), which was the law in force until repealed by the M.P. Land Revenue Code, 1959, defined "pakka -tenant" as follows:-

"S. 54(vii). Pakka tenant means a tenant who has been or whose predecessor in interest had been lawfully recorded in respect of his holding as a 'Ryot Pattedar', 'Mamuli Maurusi' 'Gair Maurusi', and 'Pukhta Maurusi' when this Act comes into force or who may in future be duly recognised as such by a competent authority.

Explanation - The term 'Pukhta Maurusi' includes Istmurardar tenants, Malikana Haqholder tenants, Hakkiyat Mutafarrikat Sharah Muayyana and Sakitul Milkkiyat tenants".

6. An 'ordinary tenant' is defined by Act No. 66 of 1950 as "a tenant other than a pakka tenant and shall not include a sub-tenant". The position, therefore, was that in terms of Act No. 66 of 1950, the Company was not a pakka tenant, as found by the High Court in the earlier judgment, and, therefore, it was, according to the said Act, an ordinary tenant.

7. The High Court had found in the earlier proceeding that the land in question was held by the Company under lease from the Government after it had been acquired by the Government for a public purpose of the State. The question, therefore, is whether the Company was, as found by the Additional Collector, a Government lessee within the meaning of the Code. It is to be noticed that subsequent to the withdrawal of the appeal from this Court, fresh terms were agreed upon between the Company and the Government to enable the Company to remain in possession of the land as a lessee. The Company is thus a person holding the land from the State Government. This is so whether or not the Company is deemed to be holding over under the old lease or holding, upon termination of that lease, under and in terms of the fresh conditions agreed upon between the parties to enable the Company to remain in possession of the land as a lessee. In either event, the Company has been holding the land from the State. It is not and cannot be disputed that the original lease was obtained from the predecessor State and the Company continued to @page-SC492 remain in possession of the land under the newly stipulated terms agreed upon between the company and the successor State, namely, the Madhya Pradesh State.

8. A 'Government Lessee' is defined under the M. P. Land Revenue Code, 1959 as a person holding land from the State Government u/ S. 181". S. 181 of the Code reads:-

"181. Government Lessees.- (1) Every person who holds land from the State Government or to whom a right to occupy land is granted by the State Government or the Collector and who is not entitled to hold land as a Bhumiswami shall be called a Government lessee in respect of such land.

(2) Every person who at the coming into force of this "Code -

(a) holds any land in the Madhya Bharat region as an ordinary tenant as defined in the Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 (66 of 1950); or

(b) to (c).....

shall be deemed to be a Government lessee in respect of such land".

9. These provisions show that whether or not the Company has been holding the land in terms of the original lease or under the newly stipulated terms of the lease, the Company has been holding the land from the State Government and it has never been an ordinary tenant as defined in the Madhya Bharat Act No. 66 of 1950. Accordingly, whether considered in terms of sub-sec. (1) or sub-sec. (2) of S. 181, the Company has been at all material times a Government lessee in respect of the land in question. Accordingly, S. 182 of the Code is attracted. That section reads:-

"182. Rights and liabilities of Government lessee (1) A Government lessee shall, subject to any express provisions in this Code, hold his land in accordance with the terms and conditions of the grant, which shall be deemed to be a grant within the meaning of the Government Grants Act 1895 (XV of 1895).

(2) A Government lessee may be ejected from his land by order of a Revenue Officer

on one or more of the following grounds, namely:-

(i) that he has failed to pay the rent for a period of three months from, the date on which it became due; or

(ii) that he has used such land for purposes other than for which it was granted; or

(iii) that the term of his lease has expired; or

(iv) that he has contravened any of the terms and conditions of the grant:

Provided that no order for ejection of a Government lessee under this sub-section shall be passed without giving him an opportunity of being heard in his defence."

10. It was in terms of sub-sec. 2(i) of S. 182 that the Additional Collector made his Order for eviction of the Company. The finding of the Additional Collector is-a finding of fact based on evidence and is not liable to be questioned in these proceedings. His finding shows that large amounts are due and payable by the Company as rent and that the rents have remained unpaid for a period far in excess of three months from the dates on which they became due. In the circumstances, the Additional Collector was well justified in having recourse to the proceeding prescribed u/ S. 182 of the Code. The finding of the High Court to the contrary was, in our view, totally, unjustified and opposed to law.

11. In the circumstances, the impugned order of the High Court dated 20-9-1980 in Misc. Petition No. 84 of 1978 is set aside. The Order of the Additional Collector dated 1-10-1977 in Case No. 1-75-76A-39 : 182 shall stand restored. The appeal by the State is allowed with costs throughout.

Appeal allowed.

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