Azizuddin

Vs

Board of Revenue

Civil Appeal No. 4231 of 1982

(D.P. Wadhwa, A.P. Misra JJ)

12.02.1999

JUDGMENT

A.P. Misra J

1. The first question raised for our consideration is, whether erstwhile land holders holding the land in joint Khata under the then Ruler of Bhopal would be entitled to the benefit of the Notification No. 71 dated 25th February, 1941 under which the land owners who were dispossessed from their land could claim preferential right of reallotment of their land, and whether the said Notification is only an executive order issued by the Government of Bhopal, as it is signed by the Assistant Revenue Secretary, Government of Bhopal, having no force of law or was it issued by the Ruler himself which would undisputably have the force of law and in that case, whether the appellant is entitled to be conferred the benefit under it ?

2. The second question raised is, if the appellant lost right in his holding on account of non-payment of the tractorization charges which was due under the Bhopal State Reclamation and Development of Lands (Eradication of Kans) Ordinance, 1949 (No. XXXVIII of 1949) and the Bhopal Reclamation and Development of Lands (Eradication of Kans) Act, 1954 (Act No. XIII of 1954) (hereinafter referred to as `the Ordinance' and `the 1954 Act' respectively), and since the provisions for charging the tractorization charges both under the Ordinance and the 1954 Act having been held to be *ultra vires*, consequently, notices under it also declared illegal in the case of *State of Bhopal and others v. Champalal and others, 1964(6) SCR P. 35,* then, whether the appellant would not be entitled to get back his lost disputed land ?

3. In order to appreciate the controversy and to adjudicate the point in issue, it is necessary to give some of the essential facts of this case. The appellant, Azizuddin, owned 128.41 acres of land under his individual Khata, in his own name, situated in village Khari even prior to 1363 F. He also possessed a joint Khata in the same village and village Rasulia Bazyaft measuring 376.501 acres and 201.83 acres, respectively, in his own name and in the name of four others, namely, Ahmad Khan, Mohamadi Begum, Ahmadi Begum, Alia Bee. The said persons were legal heirs of one Amir Khan. The appellant had purchased the share of the fifth son of Amir Khan, viz., Abdul Mateen. The dispute relates only in respect of land of this joint holding and not in respect of his 128.41 acres of land which he holds in his individual Khata. After the death of Amrit Khan in 1948, the appellant purchased the said 1/5th share belonging to Abdul Mateen which comes to approx. 167.68 acres in the said joint holding and thus became a co-owner with the aforesaid persons in the said joint Khata. The appellant name was duly mutated in the revenue records. On 1st June, 1949, Union of India took over the administration of Bhopal-Princely State for five years and a Chief Commissioner was appointed. Then an Ordinance No. XXXVIII of 1949, as aforesaid, was promulgated by the then

Chief Commissioner. On 18th January, 1951, a notification was issued under it declaring all the villages in the same Tehsil as Kans infested. In this the land of the appellant was also included. The authority then issued notice to Abdul Mateen and others through the REclamation Officer, Land Reclamation Board, Bhopal, in respect of the land in question to ascertain the capacity of each land holder to cultivate their lands by desiring them to produce number of pairs of bullocks required for ploughing the area on a fixed date. The ratio fixed was one pair of bullock for every 15 acres of land. To this notice Abdul Mateen informed that he had already transferred his share in the land to Azizuddin-appellant, hence notice be sent to him. On 22nd October, 1952, a loan of Rs. 15,000/- was sanctioned as taccavi for purchase of seeds under the G.M.F. Scheme to Abdul Mateen which was duly paid to the appellant recognising him to be the occupant of the land. Thereafter notices were issued on 4th/14th June, 1953, to the appellant and other joint owners with respect to the said joint Khata and to the appellant alone for his individual Khata demanding the tractorization charges at the rate of Rs. 10/- per acre to be paid by 15th June, 1953. The case of the appellant is that the said the tractorization charges were illegal and hence the same was not payable. Some of the agriculturists had already challenged the validity of the aforesaid Ordinance, including Abdul Mateen, before the Judicial Commissioner, Bhopal. However, on the other hand, on account of non-payment of the said dues both the land of his individual Khata and joint Khata were auctioned to recover the tractorization charges, land revenue and penalty under the Bhopal Land Revenue Act, 1932 (the 1932 Act). Auctions were held 22 times but it failed as no bidders came forward. Thereafter on 21st January, 1954, Tehsildar passed an order under Section 137(C) of the 1932 Act that in case the Khatedars failed to pay the said Government dues they shall be evicted. On 22nd May, 1954, Tehsildar passed an order of injunction and attachment restraining the land holders from making any sale, gift or transfer of the land in question. Thereafter, orders for eviction from land was passed and the said land was declared Taluqdeh (Unoccupied).

4. However in the other proceedings, by some other agriculturists, on 9th April, 1956, Cheif Commissioner, Bhopal, struck down some of the provisions of the said Ordinance and the 1954 Act holding it to be *ultra vires.* Thereafter, on 1st October, 1956, pursuant to the reorganisation of the States, the State of Madhya Pradesh came into existence which issued similar Ordinance Nos. 7 of 1956 and 8 of 1957 authorising recovery of the tractorization charges. Meanwhile, in view of the aforesaid judgment of the Chief Commissioner the recovery of the tractorization charges were stopped but the State Government filed an appeal before this Court under Article 133(1) of the Constitution of India. During the pendency of the appeal though the State Government is said to have stayed further recovery of the tractorization charges but still State started taking further coercive measures as against the appellant of taking delivery of possession of his land because so far appellant is concerned, the recovery of the said charges already concluded and even a declaration of his land as Taluqdeh was made earlier. Hence the appellant moved an application before the Tehsildar praying that till the question of validity of the tractorization charges are not settled by the Supreme Court no action be taken. In the alternative, he claimed right under the aforesaid Notification/proclamation No. 71 dated 25th February, 1941 issued by the Government of Bhopal, as aforesaid, for a preferential right for reallotment of his land which was declared Taluqdeh and for which he offered to pay full amount of any dues to the extent of his share in the said joint holding. The Tehsildar on 12th August, 1959, recommended for the rejection of this application of the appellant as benefit under the said proclamation No. 71 could not be given in the changed circumstances, as there now exists superseding rules relating to unoccupied land. The Deputy Collector accepted the said report, hence rejected the said application. The appellant preferred an appeal before the Commissioner who dismissed the same on the ground that he is a rank defaulter and deserves no leniency and since circumstances have also changed no further benefit could be

given. A second appeal was preferred which was allowed resulting into quashing of the aforesaid two orders and remanded the case back to examine the nature of the said proclamation, whether it has any force of law on the relevant date ? Consequently, Tehsildar examined and filed a report that it had a legal force and was in force at the relevant time. On 14th March, 1966, the S.D.O. accepted the said report and concluded the said proclamation had legal force and was in force at the relevant time thus the appellant was granted relief in respect of his individual Khata for the said area of 128.41 acres which was in his name but his claim in respect of the joint Khatas was rejected for the reason that this claim could not be considered in the absence of any such request though an application by all the joint holders which was admittedly not made. The Additional Collector upheld this order. The second appeal by the appellant before the Additional Commissioner, Bhopal was also rejected by further holding that the said proclamation No. 71 was not under any provisions of law and it stood superseded by Notification No. 41 dated 2nd January, 1951. Further, the said proclamation/notification No. 71 was only an executive order declaring the intention of the Ruler to give preference to the dispossessed holders. It was further recorded that since the appellant was never dispossessed and continued in possession without paying a single penny, hence not entitled for the relief even in terms of the said proclamation. The appellant preferred a revision before the Board which was also rejected. Review was also preferred on the ground that Notification No. 71 of 1941 was wrongly translated. According to the appellant the said notification if properly executive order of the Government of Bhopal. Thereafter, the appellant filed a writ petition before the High Court in addition also seeking relief in view of the judgment of this Court in Champalal (supra) to restore the land to the appellant. The said writ petition was rejected on the ground that rules framed under Bhopal Land Revenue Act, 1932, does not give any preference, and the aforesaid Notification No. 71 is merely an executive instruction which cannot be given effect as it was not issued by the Ruler. The High Court further recorded that this was the only point argued before the Board and this is the only point which can be considered in this petition.

5. Challenging this order, the contention of learned senior Counsel Mrs. Shobha Dixit for the appellant is that the High Court failed to take into consideration the case of Champa Lal (supra) and also the amendment in 1933 in the General Clauses Act, 1931 by Bhopal Legislature by which Section 2(12) was amended, as the appellant did specifically took all these grounds in the writ petition.

6. We proceed now to scrutinise out of the two questions raised, the second question first, whether the appellant would be entitled or not, to get back his land when the tractorization charges were declared to be illegal by this Court, for the recovery of which he lost his land. The tractorization charges were levied under Section 4 read with Section 7 of the 1954 Act. The Preamble of the Act spells out :

> "to provide for the reclamation and development of lands by eradication of kans weed in certain areas of the State of Bhopal."
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> Kans is a kind of noxious weed. Under Section 4 Government was empowered, if it is the opinion, that any area is infested with kans, to declare such area by notification to be a kans area. After said declaration, a Reclamation Officer may enter upon any such land and take possession for such period as may be necessary for the purpose of eradication of kans from such area. Section 6 gives power to survey and carry on eradicating operation. Under sub-section (1) after issuance of notification under Section 4, the Reclamation Officer notwithstanding the provisions of the Bhopal Land Revenue Act, 1932, under sub-clause (b) take possession of the whole or any

part of the kans area and carry on eradicating and other anciallary and subsidiary operations therein. Section 7 casts a liability on the owner of such land to pay the cost of such eradicating operations, namely, removal of such kans from his land. Charges recoverable for this is known as the tractorization charges. The recovery for this is made as land revenue under Section 8. Section 4 was declared in the Champa Lal (supra) to be violative of Article 19(1)(f) of the Constitution. It held :

"The Act contains no provision for the person interested having an opportunity to establish that the particular land in which he was interested was not kans infested and therefore did not stand in need of any eradication operation. Section 4(1) read in conjunction with the power contained in section 4(4) coupled with the absence of any provision for entertaining objections would, in the circumstances of there being admittedly patches of land in the same tehsil which had been cleared at least in 1941 must be characterised as arbitrary and imposing an unreasonable restriction on the right to hold and enjoy property within Art. 19(1)(f) of the Constitution."

The Court further held that since the possession taken by the Reclamation Officer being exclusive, it may be for a short period, but it would amount to taking possession within the meaning of Article 31(2) hence Section 4(1) read with Section 6(1)(h) is unconstitutional being violative of Article 31(2). Section 7 places liability on the owner of such land for payment of the expenditure incurred by the Government on such eradication of Kans. The cost is to be equitably apportioned by the Reclamation Board between the several holders of, or persons having interest in the lands comprised in the kans area. The said Champa Lal (supra) held :

"..... It is common ground that the Reclamation Board never met and consequently neither computed the total expenditure incurred or to be incurred for the eradication operations, nor did it make the allocation among the holders of the lands on which eradication operations were conducted.... The learned Judicial Commissioner held that the terms of Section 7 were mandatory and that unless the mind of the Reclamation Board was brought to bear on the question, and the Board computed the total expenditure as well as the proper allocation of this sum among the several land-owners no lawful demand could be made under section 8, nor could the same be recovered from the respondents. We find ourselves in entire agreement with the learned Judicial Commissioner in holding (1) that the procedure prescribed by Section 7 is mandatory and (2) that as admittedly there was no compliance with it no lawful demand could be made for the contribution payable by any landholder by the Central Government or by the State Government at the instance of the Central Government without recourse to the machinery provided by Section 7. The notices of demand were, therefore, properly quashed as illegal."

So not only the aforesaid sections were held to be *ultra vires* but even notice of demand was also held to be illegal. It is not in dispute that the appellant was not party in this writ petition.

7. It is very unfortunate that in spite of such declaration, no relief could be granted to the appellant. Admittedly the appellant's land was proceeded for recovery and was declared as Taluqdeh before coming into force of the 1954 Act. The recovery was made in pursuance of the aforesaid Ordnance and its recovery concluded through proceeding under the Bhopal Land Revenue Act, 1932. It is

significant that Section 17 of the 1954 Act was not held to be *ultra vires* or invalid, which read as :

> "all acts done, any notification issued, appointment, authorisation or enquiry made, duty assigned, notice served, or any action taken, with respect to or on account of cradication of kans, during the period commencing on the 20th October, 1949, and ending with the date of commencement of this Act, by the Government or by any Officer of the Government, or by any other authority under the Bhopal State Reclamation and Development of Lands (Eradication of Kans), Ordinance, 1949..... are hereby declared lawful and confirmed, and shall be as valid and operative as if they had been done, issued, made, assigned, serve, or taken in accordance with law. No suit or other legal proceedings shall be maintained or continued against the Government or any person, whatsoever on the ground that any such acts or proceedings were not done or taken in accordance with law."

8. It is admitted between the parties that this recovery for the tractorization charges including the penalty etc. under the aforesaid 1949 Ordinance, including the declaration of the disputed land to be Taluqdeh, concluded before coming into force of the 1954 Act. Thus, by virtue of Section 17 all actions taken or act done on account of eradication of kans stood declared as lawful and confirmed and is deemed valid as if they have been done in accordance with law. Hence, apart from the reason recorded by the High Court, so far this issue is concerned, the appellant cannot succeed.

9. Returning to the first question, the bone of contention for the appellant is that the High Court committed an error holding with reference to the Proclamation/Notification No. 71 dated 24th February, 1941, that it is an executive order issued by the Government and not an order by the Ruler, hence it has no force of law, and at the relevant time there existed Section 51 under the Bhopal State Land Revenue Act, 1932 which specifically dealt with the disposal of unoccupied land.

10. It is not necessary for us, for the reasons we are recording hereunder, to go into the question, whether it was issued by the Ruler himself ? We find there was amendment in the year 1933 in the General Clauses Act, 1931 by the Bhopal Legislature whereby Section 2(12) was amended. By virtue of this amendment the said Proclamation/Notification even if issued by the Government is declared to have the force of law. It seems this fact was not brought to the notice of the High Court. Thus, Notification No. 71 dated 24th February, 1941, would have the force of law. This takes us to the next question if this has a force of law, whether still the appellant would be entitled for any relief under it ? Learned counsel for the appellant while challenging the High Court finding that since there existed Section 51 in the aforesaid 1932 ACt dealing with the unoccupied land, hence the appellant case would only be governed under it and not under the Notification No. 71, he further submitted this to be erroneous and illegal as the said land was never unoccupied in spite of the declaration it to be Taluqdeh, as the appellant continued in possession over the said land and was never dispossessed. Thus Section 51 of the 1932 ACt would not apply.

11. We feel in either case the appellant cannot succeed. In case, after the declaration of the said land as Taluqdeh (meaning declared as unoccupied by eviction) if the appellant continued in possession and the land was never unoccupied then it may be true that Section 51 of the 1932 Act would not apply but then for the same reason the appellant cannot take advantage of the Proclamation/Notification No. 71 also. Benefit under it was only given to such holders of land who were dispossessed from their land holding. If the appellant was never dispossessed and continued to enjoy the land, the essential ingredient of that Notification that such holder must have been

dispossessed, would be lacking. Thus, unless the appellant was dispossessed from his holding question of preferential right for reallotment would never arise. When the appellant's case even before us is that he was never dispossessed from his holding and continued in possession, in our considered opinion, he would not qualify for such preferential right even in terms of the said notification.

12. Normally, when the High Court has not gone into other points, though raised to which we satisfied ourself, we would have remanded the case back for the consideration of those other points. As the life of this case has already taken long number of years, we felt it appropriate in the interest of the parties, to which parties agreed, to dispose of these other points by this Court itself as all relevant findings and the records are before this Court which we have considered. Lastly, we further find, from the perusal of the various orders passed by the Tehsildar, Sub-Divisional Officer, Additional Collector, Board of Revenue, etc. that these authorities further did not grant this relief to the appellant for another reason to which we find merit as the dispute pertain to the joint khata in which the appellant had only 1/5th share and as none of the other share holders applied for such preferential right which is also not in dispute. That is why so far as the individual holding of the appellant for which he applied, he has succeeded for which there is no dispute.

13. Hence we do not find any merit in any of the grounds raised by the appellant for the reasons recorded above. Accordingly, the claim of the appellant fails though on different grounds than what was held by the High Court. The appeal is dismissed. Costs on the parties.