SUPREME COURT OF INDIA

Umrao Singh

Vs.

State of M.P.

C.A.No.3430 of 2002

(Tarun Chatterjee and Harjit Singh Bedi JJ.)

16.05.2008

JUDGMENT

Harjit Singh Bedi,J.

1. The facts of the case are as under:

2. On 31st October, 1956 the Government of the erstwhile State of Madhya Pradesh issued circular No.3609 dated 31st October 1956 providing for allotment of beed land by way of compensation to the former Zamindars and which was already in their cultivating possession, but had come to be vested in the State Government under the Madhya Bharat Zamindari Abolition Act, 1951.The appellants herein, being such zamindars and taking advantage of the aforesaid circular were allotted 4 Bighas and 15 Biswas of land in Survey No.48/1 and 14 Biswas of land in Survey No.441 making a total area of 5 Bighas and 9 Biswas vide order dated 13th August 1960. As per the case of the appellants the Collector of the District in exercise of his suo-moto powers set aside the allotment of the suit land except for one Biswas in Survey No.441 vide order dated 20th August 1974. This order was challenged by the appellants before the Commissioner of the Division and having failed, filed a civil suit in the Court of the Civil Judge, Class II impugning the order of the Collector and the Commissioner. The Civil Court after framing issues relating to the case decreed the suit vide judgment dated 7th January 1981. This judgment and decree was challenged in first appeal by the State Government before the Additional District Judge, Shajapur which too was, dismissed on 7th May 1993. A second appeal was taken by the State of M.P. before the High Court on the following substantial question of law: "Whether on the facts and in the circumstances of the case, the court below has erred in granting the relief to the plaintiffs on the basis of the executive instructions of the Government? and after hearing the contesting parties, the appeal was allowed and the judgment and decree granted by the courts below was set aside by judgment dated 31st March 2001. The land owner/allottees are before us in the present appeal.

3. The learned counsel for the appellants has raised two arguments before us in the course of the hearing; first, that the suo-moto power of revision which the Collector had exercised had

not been vested in him by any Statute and if such a power did exist it had been exercised after an unduly long period of time and as such the interference made by him was unjustified, and secondly that the question of law that had been framed had not been answered and for this additional reason the appeal must succeed. The learned counsel for the respondents has, however, pointed out that the Tehsildar had no authority to allot the land under the executive instructions and that the Collector had not exercised his suo-moto powers but had declined to grant approval to the order of the Tehsildar making the allotment and that the matter had been kept pending for this purpose. It has also been pleaded that the executive instructions dated 31st October 1956 had been withdrawn under the Government letter dated 23rd June 1975, and as the matter was pending before the Commissioner at that stage, the allotment had been rightly cancelled.

4. We have considered the arguments advanced by the learned counsel for the parties. It appears from the record that the Collector had not exercised suo-moto powers while cancelling the allotment made to the appellants but had made a decision on a matter which was already pending for his approval. We are, thus, of the opinion that the argument of the learned counsel for the appellants does not appear to be correct. We also find from a perusal of the impugned judgment that the High Court has relied upon, several other judgments of the Madhya Pradesh High Court holding that the aforesaid executive instructions of 1956 created only a concession in favour of the land owner and not a right in them and as such they could not claim entitlement as a matter of right. Be that as it may, the fact remains that in the present case the allotment had, in fact, been made by the Tehsildar way back in the year 1960 and had been set aside by the Collector though the land admittedly continued to remain in possession of the erstwhile owner. It appears that in the meanwhile and as a consequence of the aforementioned judgments, the circular of 1975 was issued withdrawing the circular of 31st October, 1956 and for closing all pending cases. It is equally true as on the date of the issuance of the aforesaid circular, the Collector had already declined to confirm the allotment made to the appellants and the matter was pending before the Commissioner. The learned counsel for the appellants has, however, argued that as the circular of 1975 had never been produced on record, it could not, therefore, be made applicable to the present proceedings. We find that the decisions rendered by three Division Bench judgments of the Madhya Pradesh High Court holding that the executive instructions of 1956 had no binding force and being contrary to the provisions of the Madhya Bharat Zamindari Abolition Act, 1951 could not be applied to justify an allotment to an erstwhile land owner, cannot be ignored. We have, therefore, no option, but to dismiss the appeal, with no order as to costs.