

SUPREME COURT OF INDIA

Tolya

Vs.

State of M.P.

C.A.Nos.6471 of 2014

(Ranjan Gogoi and M.Y.Eqbal JJ.)

22.08.2014

JUDGMENT

M.Y. EQBAL, J.

1. This appeal is directed against the order dated 5.8.2004 passed by the High Court of Madhya Pradesh, Bench at Indore, in Second Appeal No.165- 166 of 1999, whereby the Second Appeal was allowed, the judgment and order passed by the Courts below have been set aside.

2. The facts of the case, which are common, lie in a narrow compass.

3. The land in dispute is an agricultural land, originally owned by Jagannath Singh. In a land ceiling proceedings initiated against Jagannath Singh, under M.P. Ceiling on Agricultural Land Holdings Act, 1960, land in question was declared as surplus land. Consequently, it vested in the State Government, who in turn allotted the land to the defendant-appellants some times in the year 1973, under the Bhumiswami Right, purported to be under Section 35 of the said Act.

4. The appellants sold the said land allotted to them by sale deed dated 4.7.1975 in favour of respondent No.2. It appears that sometimes in the year 1979 on a complaint, the Collector Shajapur, proceeded to revise the allotment and action was contemplated to re-allot the land according to the Rules. The respondent filed a revision against the

decision of the Collector before the Board of Revenue, where the allotment of land in favour of the appellants and subsequent transfer to respondent No.2 was upheld.

5. It further appears from the record that proceedings under Section 250 of the Land Revenue Code, 1959 was initiated for restoration of the property in favour of the appellants, who was illegally dispossessed and a notice to that effect was issued to the respondent for directing him to hand over the land to the appellants, failing which the allotment shall be cancelled. The respondent then moved the Civil Court by filing suits for declaration of ownership in respect of the said property which was dismissed by judgment dated 19.11.1998.

6. Appeal filed by the respondent against the said judgment was stood dismissed on 17.3.1999. The respondent then filed Second Appeal before the High Court which was eventually allowed in terms of judgment and order dated 5.8.2004 and the Judgment and Orders passed by the trial court and the appellate court were set aside.

7. The High Court while reversing the judgment of the trial court as also the appellate court has taken the view that the land was allotted to the appellants under Section 35 of the M.P. Ceiling on Agricultural Holdings Act, 1960 (for short Ceiling Act of 1960) and there is no provision under the Act for resumption of land in case such land is allotted to any person not entitled to such allotment. The High Court also proceeded on the basis that neither the State nor any Revenue officer has taken any proceeding for cancellation of allotment in favour of the appellants. On the contrary, the Board of Revenue has allowed the revision filed by the respondent and has upheld the allotment and directed not to proceed for resumption of land since the premium has already been paid. The High Court further held that the Ceiling Act does not provide for cancellation of patta of surplus land under Section 35 or for resumption of land of the State in case the land had been allotted to any person not entitled to such allotment. On these legal provisions, the High Court held that the judgment passed by the trial court and the appellate court are contrary to law.

8. We have heard learned counsel appearing for the parties.

9. We have perused the impugned order passed by the High Court. Prima facie we are of the view that the High Court has not correctly appreciated the law in this regard.

10. Before we consider the contention made by the counsel appearing for the parties, we would like to refer Sections 35 and 36 of the M.P. Ceiling on Agricultural Holdings Act, 1960. The said section reads as under:- Section 35 - Allotment of surplus land vesting in the State Government under this Act-

(1) Subject to the provisions of this Act and the rules framed thereunder surplus land vesting in the State under section 12 shall be allotted in Bhumiswami rights to the persons mentioned hereunder in the order of priority as indicated therein on payment of a premium equivalent to the compensation payable in respect of such land --

(i) agricultural labourers,

(a) belonging to Scheduled Castes and Scheduled tribes; and

(b) others;

(ii) joint farming society, the members of which are agricultural labourers, or landless persons whose main occupation is cultivation or manual labour on land, or a combination of such persons;

(iii) better farming society, the members of which are agricultural labourers, or landless persons whose main occupation is cultivation or manual labour on land, or a combination of such persons;

(iv) freedom fighters;

(v) displaced tenants subject to the provisions of section 202 of the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959);

(vi) holders holding contiguous land;

(vii) joint farming society of agriculturists;

(viii) better farming society of agriculturists;

(ix) any other co-operative farming society subject to the condition that land (including the land as owner or tenant individually by members) shall not exceed the area equal to the number of members multiplied by the ceiling area;

(x) an agriculturist holding land less than the ceiling area :

Provided that unless the State Government otherwise directs surplus land consisting of compact area shall be either reserved for Government farm or allotted to co-operative societies or any other public purpose.

Explanation I -- For the purpose of clause (iv), "freedom fighter" means a person who by reason of his taking part in any national movement for independence prior to the 15th August, 1947--

(i) had been awarded capital punishment; or

(ii) had to suffer imprisonment or detention for a period exceeding six months;
or

(iii) had been permanently incapacitated on account of injuries inflicted upon his person in firing or lathi charge; or

(iv) had to suffer loss of property, whether wholly or partly or loss of employment or loss of his means of livelihood, and includes his principal heir where such person --

(a) was hanged in execution of the capital punishment; or

(b) died during the course of imprisonment or detention.

Explanation II -- For the purpose of Explanation I, "principal heir" means the eldest son of the deceased or, if there is no son of the deceased or, if there is no son surviving, such other heir of the deceased, as the Collector may declare to be the principal heir. (2) The premium payable under sub-section (1) may be paid by the allottee either in a lump sum within six months of the commencement of the agricultural year next following the date of allotment or

in twenty equal instalments, the first instalment being payable on the commencement of the agricultural year next following the date of allotment. If the premium is paid in instalments the unpaid balance of such premium shall carry interest at the rate of 3 per centum per annum with effect from the date on which the first instalment falls due.

(3) Where the land allotted under Sub-section (1) is an orchard other than banana gardens and vine yards, the allottee shall maintain the orchard intact.

Section 36 “ Recovery of premium in case of transfer of allotted land:- Where land allotted under section 35 is transferred, the amount of premium remaining unpaid in respect of such land shall be a first charge thereon and shall be recoverable from the transferee in the same manner as an arrear of land revenue.

11. From a bare reading of the aforesaid provision, it is manifestly clear that Section 35 makes a provision for allotment of surplus land declared under the Ceiling Act after vesting of the surplus land in the State. According to this provision, the State shall allot the surplus land under Bhumiswami right to the persons mentioned thereunder in the order of priority. First, the surplus land shall be allotted to agricultural labourers belonging to SC & ST and, thereafter, to other persons.

12. Bhumiswami Right has not been defined in the Ceiling Act, 1960. Section 158 of the M.P. Land Revenue Code 1959 defines classes of tenure and Bhumiswami. Section 158 reads as under:-

158. Bhumiswami “ (1) Every person who at the time of coming into force of this Code, belongs to any of the following classes shall be called a Bhumiswami and shall have all the rights and be subject to all the liabilities conferred or imposed upon a Bhumiswami by or under this Code, namely “ ..

(3) Every person “ Who is holding land in Bhumiswami right by virtue of a lease granted to him by the State Government or the Collector or the Allotment Officer on or before the commencement of the Madhya Pradesh Land Revenue code (Amendment) Act, 1992 from the date of such commencement, and;

To whom land is allotted in Bhumiswami right by the State Government or the Collector or the Allotment Officer after the commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 1992 from the date of such allotment, shall be deemed to be a Bhumiswami in respect of such land and shall be subject to all the rights and liabilities conferred and imposed upon a Bhumiswami or under this Code;

Provided that no such person shall transfer such land within a period of ten years from the date of lease or allotment.

Explanation- In this Section the expression Ruler and ~Indian State shall have the same meanings as are assigned to these expressions in clauses (22) and (15) respectively by article 366 of the Constitution of India.

13. Sub-section (3) of Section 158 clearly provides that land allotted by the State to any person giving ~Bhumiswami right™ shall have all right to deal with the property. However, proviso mandates that such Bhumiswami shall not transfer land so allotted to him within a period of ten years from the date of lease or allotment.

14. Section 250 of the Code is also worth to be quoted hereunder:-

250. Reinstatement of Bhumiswami improperly dispossessed-

For the purpose of this Section and Section 250-A, Bhumiswami shall include occupancy tenant and Government lessee.

(1-a) If a Bhumiswami is dispossessed of the land otherwise than in due course of law or if any person unauthorisedly continues in possession of any land of the Bhumiswami to the use of such person has ceased to be entitled under any provision of this Code, the Bhumiswami or his successor in interest apply to the Tehsildar for restoration of the possession “ (2) (3) (4).

(5).

(6).

(7).

(8) (9)..

15. In the light of the aforesaid provisions, we find that in the instant case the land, which was declared surplus land, was allotted by the State in purported exercise of power under Section 35 of the said Act giving Bhumiswami right to the appellants. The said allotment was made in the year 1973. Within two years from the date of the said allotment, the land was purchased by the respondent by sale deed dated 4.7.1975, which, according to the appellants, was without consideration and the respondent in connivance with the other persons managed to keep the appellants out of possession. Prima facie, therefore, the sale deed alleged to have been executed by the appellants in favour of the respondent on 4.7.1975 is null and void and the same does not confer any right, title or interest in favour of the respondent-Sattar Khan.

16. The trial court and the first appellate court, therefore, correctly recorded a finding that the sale deed, said to have been executed by the appellants in favour of the respondent, is null and void and is without consideration. The High Court while reversing the judgment has not considered these provisions contained in the M.P. Revenue Code. We, therefore, allow this appeal and set aside the judgment and order passed by the High Court and restore the judgment of the trial court. Consequently, the suit filed by the respondent is dismissed. Appeal is allowed accordingly with no order as to costs.