

BOMBAY HIGH COURT

Hasan Nurani Malak

Vs.

State of Bombay

Special Civil Application No. 307 of 1959

(Mr. Tambe and Patwardhan, JJ.)

02.03.1960

JUDGMENT

Tambe, J.

1. By this petition under Article 226 of the Constitution of India, the four petitioners, who claim to be the legal representatives of late Khan Bahadur M. E. R. Malak, pray for a writ of certiorari quashing the order dated July 18, 1959, made by the Additional Commissioner, Nagpur, respondent No. 2 hereto, and the order dated August 24, 1955, made by the Additional Deputy Commissioner/Nistar Officer, Umrer, respondent No. 3 hereto. They further pray that the original order made by the Compensation Officer on October 5, 1951, be maintained. Late K. B. M. E. R. Malak was the recorded proprietor of mouza Umrer in Umrer tahsil of Nagpur district. It is well-known that proprietary rights of the proprietors in the malguzari villages were abolished and those became vested in the State Government by virtue of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, Act 1 of 1951, hereinafter referred to as the Abolition of Proprietary Rights Act.

2. This Act came into force and the proprietors in Nagpur district were divested of their proprietary rights as and from March 31, 1951. Section 4 of this Act enumerates various items of properties and proprietary rights that vest in the State Government and consequences of the vesting of those rights in the Government on deprivation of the proprietors of those rights. Sub-section (2) of Section 4 and Section 5, however, save certain items of property to the proprietors as well as persons in possession. Section 6 renders certain transfers made by proprietors after March 16, 1950, void as and from the date of vesting save and except where these transfers are subsequently declared other-wise by the Deputy Commissioner. Section 7 empowers a Deputy Commissioner to take possession of the property vesting in the State. Chapter III deals with assessment and determination of compensation that is to be paid to an ex-proprietor by the Compensation Officer, and also provides for preparation of record in the prescribed form giving

certain details.

3. Now, Section 5 provides that certain items of properties are to continue in possession of the proprietor or other persons and Clause (h) thereof provides:

"all groves wherever situate and recorded in village papers in the name of the outgoing proprietor or any other person shall continue to belong to or be held by such proprietor or such other person and the land under such groves shall be settled with such proprietor or such other person by the State Government on such terms and conditions as it may determine.

4. The case relating to village Umrer was dealt with by Mr. Telang, Compensation Officer, Umrer. He passed an order on October 5, 1951, determining that Khan Bahadur M. E. R. Malak (since deceased) was the proprietor of the village and the compensation to which he was entitled was ₹ 5,286-12-9. He further passed an order directing that 167.53 acres of land in this village was under mango grove and should be settled with Khan Bahadur Malak. These 167.53 acres consisted of the following eight khasra numbers:

Khasra No.	Area in acres.	Revenue.
153	9.34	₹ 4/-
403/1	111.39	₹ 148/8/
439	1.79	₹ 4/-
452	27.1	₹ 63/4/-
467/1	3.54	₹ 24/-
467/4	6.56	₹ 15/4/-
471/1	3.8	₹ 8/12/-
471/4	4.01	₹ 9/6/-
8	167.53	₹ 277/6/-

We are in this case concerned with these lands.

5. As a result of this order of the Compensation Officer the case ultimately came up before the Additional Deputy Commissioner and Nistar Officer, Umrer, for the purpose of settling the

aforesaid lands with Khan Bahadur Malak, the then ex-proprietor. He then called for the report from the Patwari as to whether the entire mango grove belonged to the ex-proprietor or whether only certain number of trees therein belonged to him and if so its extent. He also directed that notice be issued to Khan Bahadur Malak to show cause why the aforesaid lands should not vest in the State. In response to the notice appearance was put in before the Nistar Officer on behalf of Khan Bahadur Malak and a statement was filed on his behalf showing cause why the lands should not vest in the State but must be settled with him. In the statement it has been averred on behalf of Khan Bahadur Malak that the aforesaid khasra numbers constituted a grove within the meaning of Section 5(h) of the Abolition of Proprietary Rights Act, it contained sitafal and mango trees which belonged to him; sitafal trees are scattered over the entire area. It was admitted that some other persons were also allowed by him to plant mango trees in between the sitafal trees, but they were allowed to do so only as licensees and had acquired no right in the land underneath the trees; they had only the right to enjoy the usufruct of the trees, it was further averred that the entire area was in his possession. On these grounds it was urged that the order made by the Compensation Officer on October 5, 1951, was a perfectly valid order and should not be interfered with.

6. The Nistar Officer did not accept this contention of Khan Bahadur Malak. He held that though the land was recorded as amrai there were very few mango trees standing in these khasra numbers. The mango trees also did not exclusively belong to the ex-proprietor but some of them were also owned by other persons. There were no doubt a large number of sitafal trees, but in the opinion of the Nistar Officer that was only a wild growth. The sitafal trees were not planted by the proprietor. He took the view that a grove must consist of planted trees. He, therefore, on reviewing the order of the Compensation Officer, ordered that the aforesaid khasra numbers should vest in the State and that he would settle the lands under the mango trees owned by different persons when these different persons would apply to him for getting the lands under those trees settled with them. Feeling aggrieved by this order Khan Bahadur Malak preferred appeal-cum-revision before the Bombay Revenue Tribunal; the jurisdiction to deal with this case was subsequently transferred to the Court of the Commissioner and this revision was dismissed by the Additional Commissioner, Nagpur Division, who dealt with this case.

7. It is to be noted that in the meanwhile Khan Bahadur Malak had expired and the proceedings were continued by the four petitioners before us. Before the Additional Commissioner it was contended on behalf of the petitioners that the word 'grove' had not been defined in the Abolition of Proprietary Rights Act and, therefore, to that word dictionary meaning should be given and the dictionary meaning was "a cluster of small trees". It was urged that "cluster of small trees" may consist of planted trees as well as self-grown trees. On the facts found by the Nistar Officer the area did constitute a cluster of trees and, therefore, the Nistar Officer was in error in holding that it was not a grove. This contention of the petitioners was not accepted by the Additional Commissioner, who agreed with the view of the Nistar Officer that self-grown trees would not constitute a grove, a grove would consist of planted trees over which the proprietor had expended

labour and money. He also agreed with the conclusion of the Nistar Officer that there were only 25 mango trees and the petitioners had ownership rights in very few of them. There were no doubt a large number of sitafal and tamarind trees but that was a wild growth. Thus in his opinion, in view of the fact that a substantial area comprised of wildly grown trees, it could not be called a grove and the petitioners were, therefore, not entitled to get these lands settled. In this view of the matter he dismissed the application of the petitioners. The petitioners, therefore, have preferred this petition under Article 226 of the Constitution praying the aforesaid reliefs.

8. Mr. Kanhai, learned Counsel for the petitioners, in the first instance, contends that the Nistar Officer was in error in reviewing the order of the Compensation Officer dated October 5, 1951. According to him, under the provisions of the Abolition of Proprietary Rights Act the Nistar Officer had no jurisdiction to review the order of the Compensation Officer. The order thus being without jurisdiction is bad in law. It is not possible for us to accept this contention of Mr. Kanhai in view of the notification dated June 25, 1953, issued by the State of Madhya Pradesh and published in the Madhya Pradesh Gazette of date July 3, 1953. This notification was issued in exercise of the powers conferred on the State of Madhya Pradesh by Section 11 of the Abolition of Proprietary Rights Act. Under this notification, the State Government appointed Mr. A. K. Roy, as Compensation Officer for Umrer tahsil area to deal with cases falling under the aforesaid Act. It is not in dispute before us that Section 11 of the Act empowers the State Government to appoint for any specified area one or more Revenue Officers, as Compensation Officers. It is also not in dispute that Mr. A.K. Roy was a Revenue Officer. By virtue of this appointment Mr. A. K. Roy was invested with all the powers of a Compensation Officer as and from July 3, 1953.

9. Sub-section (3) of Section 15 of the Act provides that the Compensation Officer, the Deputy Commissioner or the Settlement Commissioner, may either on his own motion or on the application filed within the prescribed period by any party interested, review an order passed by himself or his predecessors in office and pass such order in reference thereto as he thinks fit. On the language of this Sub-section it is clear that Mr. A. K. Roy, who was clothed with the powers of the Compensation Officer, could review the order of his predecessor in office and make such order in reference thereto as he thought fit. This contention of Mr. Kanhai, therefore, must fail.

10. It is, therefore, next to be seen whether the order made by the Compensation Officer and affirmed by the Additional Commissioner is vitiated on account of any error of law in exercise of that power. It is clear on the language of the aforesaid Sub-section that there are no limitations on these powers and no conditions are imposed on the exercise of the powers of review. Dealing with certain other provisions conferring powers of review on similar terms a Full Bench of the Nagpur High Court observed in *Vyankatesh v. Narhar*¹,

"In case where conditions are imposed on exercise of power of review, the conditions must doubtless be established but where the legislature has not thought fit to impose any conditions it would not be permissible to read any restrictions into it by analogy and the

only condition that can be implied is that there must be an error in the decision requiring correction."

Now, as already stated, there are no conditions imposed in Sub-section (5) of Section 15 on the exercise of the power of review. There is no period of limitation prescribed for enabling the officer to review of his own accord his own order or the order of his predecessor. Mr. A. K. Roy, therefore, had unrestricted power to review the order of his predecessor provided there was any error in the decision of the Compensation Officer requiring correction.

11. It is next to be seen whether it has been established that there was any error in the order of the Compensation Officer made on October 5, 1951, wherein he held that the aforesaid area comprising of 'amrai' should be settled with the ex-proprietor Khan Bahadur Malak. This brings us to the construction of Clause (h) of Section 5 of the Abolition of Proprietary Rights Act, which we have already reproduced above, by ascertaining the true meaning of the word 'grove' used in that section. The word 'grove'

¹[1957] N.L.J. 136, F.B

has not been defined in the Act. In the Oxford English Dictionary (Vol. IV), 'grove' is defined as a small wood, a group of trees affording shade or forming avenues or walks, occurring naturally or plant-ed for a special purpose. In the book 'Words and Phrases' 'grove' is defined as a group of trees of indefinite extent but not large enough to constitute a forest. In Corpus Juris Secundum, Vol. 94, p. 688, 'grove' is defined as a cluster of trees not sufficiently extensive to be called a wood; a group of trees of indefinite extent but not large enough to constitute a forest. Normally then, according to the dictionary meaning, a grove need not necessarily consist of specially planted trees. It is the contention of the petitioners that the word 'grove' be so understood. The contrary view taken by the Revenue Officer appears to have been based on the instructions issued by the Government on October 19, 1953, to the Revenue Officers which in substance are to the effect that the meaning to be given to the word 'grove' in the Abolition of Proprietary Rights Act should be the same as that given to it in the U.P. Tenancy Act. 'Grove land' is defined in the U.P. Tenancy Act as follows:

'grove land' means any specified piece of land in a mahal or mahals having trees planted therein in such numbers that they preclude or where full grown will preclude the land or any considerable portion thereof being used primarily for any other purpose and the trees on such land constitute a grove.

(Italics are ours).

Having regard to the subject of the enactment and the context in which it is used the meaning of the word "grove" used in the said clause will have to be ascertained. The dominant object of the enactment is to acquire the rights of the proprietors in estates, mahals, alienated villages and alienated lands in former Madhya Pradesh. The word 'grove' occurs in Clause (h) of Section 5, which enumerates the properties which, even after acquisition of proprietary rights, are to

continue in possession of the ex-proprietor or other persons and are to be settled with them by the State Government. Section 4 enumerates certain rights and items of properties that vest in the Government. The list of various items of properties that vest in the Government contained in this section includes grassland and scrub jungle and forest. It indicates that the intention of the Legislature is to divest the ex-proprietors of their proprietary rights in, as well as their possession over, areas covered by natural or wild growth and forest. Now, the various items of properties enumerated in Clauses (a) to (g) of Section 5 are such on which the ex-proprietor or some other person must have expended some money and/or labor. Having regard to this context, in our opinion, it would be reasonable to hold that the word 'grove' occurring in Clause (h) of Section 5 of the Act means an area covered by a cluster of trees specially planted by human agency, and not large enough to constitute a forest. We do not, therefore, consider that the view taken by the authorities as regards the meaning of the word 'grove' is erroneous. This, however, is not sufficient to sustain the order made by respondents Nos. 2 and 3.

12. As already stated, the Compensation Officer had held these lands to be groves and had directed that the lands should be settled with the proprietor. It raises a presumption that the Compensation Officer was satisfied that the trees therein were planted by the then proprietor. The records show that the lands have been described as a grove (amrai). It is true that the primary meaning of the word 'amrai' is a mango grove, but that term is also loosely used to describe an area substantially covered by fruit yielding trees. The order of the Compensation Officer stands reviewed by the Nistar Officer clothed with the powers of a Compensation Officer. As already stated, the prior order of the Compensation Officer could be reviewed by him only when it had been established that there was an error in that order requiring correction. The reasons which have weighed with the Nistar Officer appear to be (1) the S. Nos. are recorded as 'amrai' but only very few mango trees, about twenty-five, stand thereon. The ex-proprietor owns very few of them, (2) there are a large number of sitafal trees but that is a natural or wild growth. As stated above, the term 'amrai' is loosely used to describe an area covered with fruit yielding trees. It cannot be disputed that sitafal trees yield fruit, which is a marketable commodity. It is not possible to accept the ipse dixit of the revenue officers and hold that a cluster of sitafal trees is invariably a natural or wild growth. It is the case of the petitioners that these trees had been planted. We asked Mr. Mudholkar, who appears for the respondents, to show us any evidence on record to sustain the finding of the Nistar Officer that sitafal trees in this area are naturally or wildly grown trees. He has been unable to do so. On the other hand, he frankly concedes that there is not an iota of evidence on record to that effect. That being the position, in our opinion, the Nistar Officer has committed an error of law in interfering with the order of his predecessor without bringing on record requisite material to hold that the prior order of the Compensation Officer required correction. This error is apparent on the face of the record. For the same reason, the Additional Commissioner also was in error in affirming the order of the Nistar Officer.

13. In the result, the orders both of respondents Nos. 2 and 3 are set aside and the case is sent back to the Nistar Officer for a fresh decision in accordance with law after due inquiry and after

giving the petitioners an opportunity to lead evidence on the relevant issues if they so desire.

14. Before parting with the case, we may state that Mr. Kanhai urged before us that petitioner No. 1 alone was the exclusive owner of this area in question inasmuch as this area was gifted to him by late Khan Bahadur Malak on March 7, 1950, by a registered gift-deed. We do not propose to express ourselves on this contention. This contention was not raised by petitioner No. 1 before any of the revenue authorities at any stage prior to this. The record shows that Khan Bahadur Malak expired during the pendency of proceedings before the Additional Commissioner. Petitioner No. 1 had applied that his name along with the names of other petitioners be substituted in place of late Khan Bahadur Malak. If really petitioner No. 1 wanted to lay an exclusive claim to this property he had an opportunity of doing so before the Additional Commissioner. He not having chosen to do so, in our opinion, he should not be allowed to raise this question for the first time before us at this stage.

15. Costs of this petition shall abide the result.

Order accordingly.