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Court : Madhya Pradesh

Decided On : Feb-26-2013

Appellant : Abdul Kaleem

Respondent : Abdul Jabbar

Judgement :

1 HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR W.P. No.1013/2012 ABDUL KALEEM VS. ABDUL JABBAR & OTHERS Present: Honble Shri Justice Rajendra Menon. Shri Ravish Agrawal, learned Senior Counsel with Shri Avinash Zargar, for the petitioner. Shri R. N. Singh, learned Senior Counsel with Shri Arpan J.Pawar for respondents No.1 and 2. Shri Samdarshi Tiwari, learned Dy. Govt. Adv. for respondent No.3. Whether approved for reporting: Yes/ No

ORDER
(26-2-2013) Challenging an order dated 27.9.2011 and 18.3.2011 passed by the Collector, Chhindwara in the matter of permitting revision of an order passed by the Tahsildar regarding partition of the area in question, petitioner has filed this writ petition.

2. Petitioner Shri Abdul Kaleem and respondent No.1 Abdul Jabbar are the real brothers. It is said that respondent No.2 Abdul Khaliq is cousin of petitioner. The property in question is situated in Tahsil Sausar, District Chhindwara. It was originally the property of one Abdul Khurshid, who had two sons, Chote @ Abdul

Malik who was 2 father of respondent No.2 Abdul Khaliq and the second son was Abdul Hameed who is father of petitioner Abdul Kaleem and respondent No.1 Abdul Jabbar. Petitioner and respondent No.1 Abdul Jabbar have three sisters also. It is said that the property in question was subjected to voluntary partition by the family members and the same was reduced to writing on 15.12.1994 vide Annexure P/1. It is said that based on the memorandum of partition Annexure P/1, a joint application Annexure P/2 dated 15.12.1994 was submitted by the parties for partition of the property and the application was submitted to the Tahsildar, Sausar for recording the partition as required under the provisions of Section 178 of M.P. Land Revenue Code. The Tahsildar opened the proceedings and vide order Annexure P/3 dated 31.12.1994, recorded the partition and decide the same. Nothing was done for a period of more than 13 years, after this, order was passed. When an appeal under Section 44(1) of the M.P. Land Revenue Code was filed by respondents No.1 and 2 and their sisters. As there was a delay in filing the appeal, an application under Section 5 of Limitation Act is also said to have been filed. Annexure P/4 is memorandum of appeal and the application for condonation of delay. it is stated that the appellate authority initiated proceedings and finally vide order Annexure P/5 dated 3.3.2008 finding the appeal to be filed beyond the period of limitation, the same was dismissed. Thereafter nothing happened for another two years, when in the year 2010 vide Annexure P/6 it is said that respondents No.1 and 2 again filed a complaint before the Tahsildar seeking review of his order dated 31.12.1994. Tahsildar forwarded this application to the 3 Sub Divisional Officer seeking permission for review. However, vide Annexure P/7 on 1.11.2010 permission for review was declined by the Sub Divisional Officer. Thereafter vide Annexure P/8 on 2.12.2010 respondents No.1 and 2 filed a revision petition under Section 50 before the Collector questioning the order dated 1.11.2010 passed by the Sub Divisional Officer. By the impugned order dated 18.3.2011 Annexure P/9 the Additional Collector, Chhindwara having allowed the revision petition under Section 50 this writ petition has been filed challenging the impugned order.

3. Shri Ravish Agrawal, learned Senior Counsel appearing for the petitioner took me through the documents as are indicated herein above and submitted that in the impugned order the Additional Collector interfered by holding that the original

order dated 31.12.1994 of partition was passed by the Tahsildar without following any due process as required under the M.P. Land Revenue Code and the Sub Divisional Officer rejected the appeal against the same on 3.3.2008 even though no appeal was filed. It is said that the Additional Collector interfered into the matter and infact has quashed the order dated 31.12.1994 and remanded the matter for fresh enquiry which is beyond the jurisdiction and power of the Additional Collector on two counts. The first ground raised is that when only permission was sought for to review the matter and permission was declined by the Sub Divisional Officer on 1.11.2010, the Additional Collector could not grant permission for review. Order dated 31.12.1994 was not questioned before the Additional Collector and therefore, the Additional Collector could not interfere with this order. Accordingly, it is said that 4 the Additional Collector has exceeded his jurisdiction and the order is unsustainable. It is further stated that permission for review can be granted only under Section 51(3) of the M.P. Land Revenue Code and the application itself was barred, the action impugned by the Additional Collector is unsustainable. It is said that as a joint application was filed there was no necessity for issuing notice before passing the order dated 31.12.1994 by the Tahsildar. It is further stated that determination of fraud ordered by the Collector is unsustainable. Accordingly, contending that action has been taken in an illegal manner and beyond the period of limitation, this writ petition has been filed.

4. Shri R. N. Singh, learned Senior Counsel refuted the aforesaid and submitted that when the statutory provision as contemplated under the M.P. Land Revenue Code i.e. Section 178 thereof and the statutory rules framed for affecting partition as is contained in the Rules of partition notified vide Notification dated 6th January 1960 contemplates a detailed procedure for affecting partition and as the order of partition dated 31.12.1994 Annexure P/3 is passed by the Naib Tahsildar in a totally illegal manner contrary to requirement of Section 178 read with the Rules framed, question of limitation will not come in the way of doing complete justice between the parties. It is submitted that when an illegal order, in violation of law is passed, the authority can very well review the order and in doing so no error is committed. He took me through the order passed by the Collector impugned in this writ petition, report submitted by the Tahsildar as is available in Annexure P/7 and submitted that as various irregularities were found in 5 the order passed on

31.12.1994 for effecting partition and therefore, finding large scale illegality in the matter, revision of the order directed to be made, no error has been committed warranting interference into the matter. It was submitted by Shri R. N. Singh, learned Senior Counsel that on scrutiny of records, the Additional Collector found that the order of partition under Section 178 was on 31.12.1994 in case 54/A-27/94-95 and on going through the record, the finding recorded is that even notice to the parties concerned is not issued, without hearing any effected persons like the sisters, the order has been passed in an illegal manner. it is also found that the joint application for partition was presented on 2.1.95 but even before that on 31.12.1994 the order has been passed. It is found that order dated 31.12.1994 has been passed in total violation to the procedure contemplated under Section 178 and therefore, the action is taken. Accordingly, Shri R. N. Singh submits that if large scale irregularity is writ large from the material available on record, it is a fit case where the impugned action should be upheld and interference not made. Accordingly he submits that in interfering into the matter, the Additional Collector has not committed any error and merely on the ground of delay, interference by this Court is not called for. In support of his contention, Shri R. N. Singh, learned Senior Counsel invites my attention to a unreported judgment of this Court in W.P. No.6296/2010 - Aslam Gani Patrawal Vs. Jasbeer Singh and others decided on 23.4.2012 to say that if something is done contrary to requirement of law, the same would be unsustainable and technicalities of limitation should not come in the way of 6 perpetuated and illegality and Jeevan Lal Vs. State of M.P. and others - 2008(2) MPLJ 4 on the same preposition.

5. I have heard learned counsel for the parties and perused the record. It is true as contended by the Senior Counsel appearing for the petitioner Shri Ravish Agrawal, that the order in question has the effect of remanding the matter for fresh enquiry and this has been done exercising the powers of revision available to the Collector under Section 50 of the M.P. Land Revenue Code and reconsideration is being made with regard to an order passed on 31.12.1994. Even though Shri Ravish Agrawal, learned Senior Counsel tried to emphasize that the appeal filed was already dismissed on 3.3.2008 on the ground of delay as appeal itself was filed after a period of more than 13 years and when the power for review was declined by the Sub Divisional Officer also in the ground of delay, after the order dated

31.12.1994 has attained finality, interference made by the Additional Collector after such a long period of time was not permissible. Under normal circumstances it would not have been very much difficult for this Court to accept this preposition if it was a case as simple as it is being made out. The reasons that waived with the Additional Collector for passing the impugned order and justification for the same has an important bearing for considering the ground canvassed by learned Senior Counsel. Because, if the law contemplates doing of a thing in a particular manner and if statutory provisions are laid down for doing certain things, anything done in contravention to the statutory rules is an illegal and void action. It is in nullity and therefore an illegality should not be perpetuated by giving a stamp of approval of a superior 7 Court only on the technical ground of delay. Reason for the delay and grounds which compelled a statutory authority to interfere inspite of delay has to be taken note of, appreciated and then a decision taken. That being so, it would be appropriate for this Court to take note of the justification and reason given by the Additional Collector in the impugned order Annexure P/9 dated 18.3.2011 which compelled him to pass the impugned order.

6. It is seen from the record that the Additional Collector before passing the impugned order did not take action without conducting any enquiry. He called for the record , sought report from the Tahsildar and the Sub Divisional Officer and it is only after all these actions were taken that he has passed the order. Based on the reports submitted to him by the Tahsildar and the Sub Divisional Officer which are available on record, the Collector found that for conducting a proceeding under Section 178 of M.P. Land Revenue Code and for directing partition of the holding not only requirement of provisions under Section 178 but a detailed statutory provision as notified by the State Government in its notification No.199-6477 dated 6th January 1960 has to be followed. Certain formalities of issuing notice, conducting enquiry and hearing as contemplated under the statutory Rules is to be followed. In the present case, it was found that the order of partition has been passed vide Annexure P/1 dated 15.12.1994 and the joint application for partition is submitted by the parties vide Annexure P/1. If Annexure P/1 the partition deed and Annexure P/2 joint application are taken note of, it would be seen that the partition 8 is said to have been effected on 22nd June, 1993 and the application for joint partition Annexure P/2 is dated 2.1.1995. In page 2 of this application

which is at page 14 of the paper book in the left hand side corner the date of the applicant is mentioned as 2.1.1995 and on the right side certain signatures are available. The application itself is shown to be dated 2.1.95 but the order of partition Annexure P/3 is passed on 15.12.1994 i.e. even before the application for partition is submitted and the signatures in the order Annexure P/3 is affixed after recording the order sheets dated 31.12.1994. This serious discrepancy is noted by the Additional Collector and thereafter it is found that no notice, advertisement or objection is called for and the order is passed without following the requirement of statutory rules. Under the statutory rules as notified on 6.1.60 when applicant under sub section (1) of Section 178 is filed it has to be submitted along with the details as required under sub rule (1) (a), (b) and (c) of Rule 1 and under sub rule 2 it has to be accompanied by the copies of entries made in the records of write. Thereafter notices have to be issued in form A and 30 days time has to be granted for calling objection. Co-tenure holders has to be heard and then only action has to be taken. In the present case, no such procedure has been followed but the entire action is taken on a single day, that also with the discrepancy in the dates of presentation of the application and the order being passed as indicated herein above. That apart, another serious infirmity found by the Sub Divisional Officer was that when an appeal was said to be filed after 12 years under Section 44(1) vide Annexure P/4 on 28.6.2007 on enquiry it was revealed that this 9 appeal was a fabricated and false appeal, it was never presented by respondents No.1 and 2 or their sisters. The finding recorded is that the order is affirmed and the appeal is dismissed on the basis of false and fabricated appeal said to have been presented by an unknown person. Taking note of the discrepancies the Additional Collector has ordered revision of the matter and in doing so, I am of the considered view that no error has been committed. If fraud and misrepresentation in the matter of partition is apparent from the face of the record the matter has to be reconsidered and mere delay in initiating the proceedings cannot be a ground to perpetuate an illegality and permit an illegal order to continue to exist. It is these factors which waived with the Additional Collector and he directed for review. In doing so, he has not committed any error and I see no reason to interfere into the matter exercising extra ordinary jurisdiction available to this Court under Article 226 and 227 of the Constitution. It was also tried to be emphasized by Shri Ravish Agrawal, learned

Senior Counsel that the notice issued to the petitioner was with regard to revision for interfering with the order dated 1.11.2010 Annexure P/7 passed by the Sub Divisional Officer refusing permission to review but while doing so, entire original order dated 31.12.1994 has been quashed. This contention of Shri Ravish Agrawal, learned Senior Counsel is not correct. If the order passed by the Additional Collector is seen, it is seen that the Additional Collector has quashed the order after finding large scale illegality in the matter and in doing so, the Additional Collector has exercised his suo motu powers of revision. Except for contending that power has been exercised 10 beyond the period of limitation, nothing is brought to the notice of this Court to show that the finding recorded by the Additional Collector in the matter of passing the order and in the matter of finding the procedure to be totally arbitrary and illegal is not correct. It is not indicated to this Court as to how and in what manner the order passed on 31.12.1994 granting partition can be said to be a proper order in the light of the large scale irregularity which is found established by the Additional Collector. That being so, merely on the ground of delay in the facts and circumstances of the case, I see no reason to interfere into the matter. As already indicated herein above, the order passed by the Additional Collector does show that on 31.12.1994 the partition ordered by the Tahsildar was not after following the due process of law or after conducting procedure in accordance to the statutory provisions and rules and therefore, if the Additional Collector has interfered with such a illegal order, in the absence of any material being adduced to show that the finding recorded by the Additional Collector is illegal, perverse or unsustainable, on the technical grounds of delay in initiating the proceedings no case for interference is made out.

7. Accordingly, in the light of facts and circumstances as have been stated herein above, I find no ground to interfere.

8. Petition is therefore, dismissed. (RAJENDRA MENON) JUDGE Mrs.mishra

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