

Ramsingh Vs. State of M.P. and ors.

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Court : Madhya Pradesh

Decided On : May-24-1994

Reported in : AIR1995MP154; 1995(0)MPLJ369

Judge : T.S. Doabia, J.

Acts : Madhya Pradesh Land Revenue Code, 1959 - Sections 237 and 248;
Zamindar Abolition Act, 1951 - Sections 2, 4(2) and 38;

Appeal No. : Second Appeal No. 47 of 1981

Appellant : Ramsingh

Respondent : State of M.P. and ors.

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : K.K. Lahoti, Adv.

Disposition : Appeal dismissed

Judgement :

T.S. Doabia, J.

1. This litigation has come for the second time to this Court. Earlier on 5th of March, 1980, this Court on the basis of consensual submissions made by the parties remanded the case to the Additional District Judge. He was to determine

whether the disputed structures were in existence prior to 15th of August, 1950 or not. It was submitted before this Court that Tahsildar had no jurisdiction to initiate proceedings with regard to encroachments made by raising construction on the disputed land (in the Madhya Bharat Region) before the 15th day of August, 1950 by resorting to Section 248(1)(ii) of the M. P. Land Revenue Code, 1959 (hereinafter referred to as 'the Code'). It was contended that all these provisions have not been properly appreciated. It was further contended that the entries in Zild Bandobast Samvat 1996 were also not given due consideration and, therefore, this question required to be remanded back. The Court observed as under:--

' The possession of the plaintiff over the suit premises is admitted by the State inasmuch as proceedings under Section 248 of the M. P. Land Revenue Code have been directed against him on the hypothesis that he is in actual possession thereof and accordingly, even assuming that the evidence led by the plaintiff may not be sufficient to sustain a decree for declaration of title in his favour, yet if in fact Chabutara Sati, Dharamshala and other structures existed prior to 15-8-1950, the Tahsildar will have no jurisdiction to proceed under Section 248(1) of the Code. Accordingly, the learned counsel made an agreed submission for remand of the case to the Court of the Third A.D.J., Morena.'

2. After remand, the Additional District Judge has again recorded a finding that the Dharmashala was not in existence on 15th of August, 1950' and it was raised after the Abolition Act and therefore, action in accordance with law was taken under Section 284(1) of the Code.

3. Before advertng to notice the submissions made now, the facts in brief may be noticed.

4. There is a piece of land measuring 8 biswas which would roughly come to about 800 sq. yards. This is located in khasra No. 351 in village Joura Khurd, Tahsil Morena. It is the case of the plaintiff that the khasra No. 351 was always uncultivated (banjar) arid has been managed by the predecessors of the plaintiff for over 100 years. The plaintiff states that on this land there exist some structures which are religious in character. It is stated that there is one temple by the name of

'Sati Ka Chabutra'. While tracing the historical background, it has been stated that about 100 years ago one lady by the name of Ursad performed ritual of Sati and a monument in her memory was erected. It is this monument which is described as 'Sati Ka Chabutra'. It is also stated that a kaccha dharmashala was in existence. This is, however, disputed by the State.

5. Other facts which are required to be noticed are that one Mst. Tofa is said to be the Zamindar with regard to this land. It is stated that patta exhibit P-8 was executed by her in favour of the plaintiff. It is further stated in the plaint that the dharmashala which was in existence was in a dilapidated condition and fell down. This necessitated the raising of a pakka construction which was accordingly raised. It is stated that in the month of Chaitra, local population collects on this piece of land and a religious festival is held. In the written statement filed by the State the fact that there existed a temple by the name of 'Sati Ka Chabutra' has not been denied. The only plea taken by the State is that the building which has been described as 'dharmashala' was erected after 15th of August, 1950 and this case falls within the prohibition stipulated in Section 248 of the Code.

6. The revenue record with regard to this piece of land may also be noticed. Exhibit P-7 is the khasra for Samvat 1994. The name of the person in possession was Mst. Tofan. In the column of kafiati it is mentioned: Chabutra Pukhta Devata Moors an Mabasiya Vald Randheer Caste Kirar Sakin Deh Peepal Kabza Devaikanandan Pujari Chabutra Pukhta Devata Moorsam Mst. Tofan Nabardar.

7. The revenue record for the Samvat 2020 shows that the land is Banjar. In the column of Kafiati Mandir Sati Peepal, was mentioned. None else is shown to be in possession of the land. This is Exhibit P-10. The patta Exhibit P-8 said to have been executed by Mst. Tofa is in plaintiffs favour. Exhibit P-12 is khasra for Samvat 2018. Again the land has been shown to be Banjar and it has been shown that there is one peepal tree and Mandir Sati Ka Chabutra.

8. Another fact which is material may also be noticed at this stage. The plaintiff is said to have raised a pakka construction which led to initiation of proceedings under Section 248 of the Code. In these proceedings ultimately an order was passed by the Board of Revenue on 16th of June, 1964. This is Exhibit P-5. The

findings recorded by the Board of Revenue are as under:

- (i) on Khasra No. 351 having an area of 8 bighas, Ramsingh started construction of a Kotha on a portion of this land;
- (ii) it was noticed by the Naib Tahsildar, that work was being done in great hurry;
- (iv) appellant claimed ownership and possession of land in question in response to the notice served on him by the Naib Tahsildar under Section 248 of the Code;
- (v) the plaintiff/appellant took a stand that he is owner in possession.

The Board of Revenue observed:

'Assuming that the Chabutara related to a Sati belonging to appellant's family it would not give the appellant private ownership rights over the Khasra number. If he claims such rights he should have taken action to get his name recorded in the village papers. He has not done so. He did not prove that he paid land revenue concerning this land.'

It was further observed:

'An attempt has been made to show that Sati Chabutara related to an ancestor of appellant's family. No one has come forward to depose on personal knowledge because the Sati, if at all, would have been owner in ancient times. It may be that the appellant being owner of neighbouring field was looking after the Chabutara. It may even be that sometime a dangal was held on the spot at the instance of the, appellant but this will not establish his private right over the property.'

9. With regard to the existence of dharmashala, the Board of Revenue again observed:

'There is no mention in the records that dharmashala existed on the spot. The witnesses examined by him have made contradictory statements about the size of the dharmashala, 'number of rooms, doors and windows contained therein. There is no doubt that this evidence was brought up by the appellant. Even since he started digging the foundation complaints came pouring in from the patwari,

revenue inspector, panchayat and the villagers to the Tahsildar and the S.D.O. In spite of the fact that the Naib Tahsildar visited the spot in the early part of the construction appellant took no steps to stop the same and to seek clear decision about his ownership etc. On the other hand the construction was completed in great hurry. The appellant was under a belief that once the construction was completed it would not be demolished by any one. His conduct is quite incompatible with the claim of ownership or possession over the property. He did not obtain any sanction from the panchayat for construction and the report of the panchayat clearly shows that it was not private land.'

10. On a final verdict having been gone against him, the plaintiff filed the present suit. He has again contended that he has a right to continue over the land in question because he holds a patta from the former zamindar Mst. Tofa.

11. From the narration of facts given above, it becomes apparent:--

(i) Mst. Tofa is recorded as zamindar and person in possession in the Khasra Ex. P/7 for Samvat 1996;

(ii) in Ex. P/2, for Samvat 2018, the land is shown as Banjar having one peepal tree and mandir sati ka chabutra;

(iii) land is again shown as banjar in Ex. P/10 which is for samvat 2020 having sati ka chabutra and a peepal tree;

(iv) vide Ex. P/4 the Board of Revenue recorded a finding that the ownership rights were never conferred on the plaintiff;

(v) there is one patta (Ex. P/8) said to be executed by Mst. Tofa in favour of plaintiff.

12. The question is whether the story put forward by the plaintiff that a patta was created in his favour by the erstwhile zamindar can be believed or not. The further question is whether the unilateral act on the part of Zamindar has any legal sanction.

13. The revenue record as noticed above is for Samvat 1996 (Ex. P/2), Samvat 2018 (Ex. P/12) and Samvat 2020 (Ex. P/10). There is no other record. There is no record with regard to the Samvat 2007 the date on which the Zamindari Abolition Act, 2007 was enforced. The above record nowhere indicates that patta Ex. P/8 was given effect to. Revenue record is silent. Plaintiffs name is not in the revenue record. Only conclusion that can be drawn is that Annex. P/8 was never given effect to. Patta Ex. P/8 confers no title on the plaintiff.

14. The matter may be examined from another point of view. Revenue record Ex. P/12 shows that the land was banjar. It is settled proposition of law that on the abolition of the zamindaris, under the Zamindari Abolition Act, 2007, all lands came to vest in the State. The only exception made was under Section 4(2)(c) and Section 38(1)(ii) of the Act. A reading of Section 4(2) would indicate that only a person who was cultivating the land himself or through his employees or hired labourers could claim the status of a 'khudkasht'. Term 'Khudkasht' is defined in Section 2(c). The above provisions i.e., Sections 2(c), 4(2) and 38(1) read as under;--

'2(c). 'khudkasht' means land cultivated by the zamindar himself or through employees or hired labourers and includes sirland;'

'4(2). Notwithstanding anything contained in Sub-section (1), the proprietor shall continue to remain in possession of his khudkasht land, so recorded in the annual village papers before the date of vesting.'

'38(1). Conferral of patta tenancy right on tenant and sub-tenants.-- (1) subject to the provisions of this section every tenant of a proprietor shall be deemed to be a patta tenant of the land comprised in his holding from the date of vesting.'

Thus, the land has necessarily to be fit for cultivation. Banjar land on which no cultivation takes place cannot be said to be covered by the term 'khudkasht'. This is supported by the following decisions:--

(a) In State of M. P. v. Ramratan, 1984 (33) MPWN 171, it was held that an uncultivated land which is grass land cannot be said to be a khudkasht Zamindari

and as such it would vest in the State on the coming into force of the Zamindari Abolition Act.

(b) Again in *Bahadur Singh v. State of M. P.*, 1985 (34) MPWN 374, it was held that beed land cannot be said to be a land which is covered by cultivable land. Beed land is a land on which grass grows and no cultivation is done. It was accordingly held that on such lands no rights of pakka tenant accrue in favour of the Zamindar.

(c) In *Raghunathsingh v. State of M. P.*, 1984 MPWN 384 it was held that lands which are described as *padat kadim* cannot be said to be lands which are *khudkasht*.

(d) In *State of M. P. v. Nathusingh*, 1982 MPWN 44, it was held that *sir* lands neither in actual cultivating possession of Zamindar nor recorded as *khudkasht* in the revenue papers before or at the date of vesting no right would accrue to such a person.

15. So far as Section 38 is concerned, the person holding sub-tenancy rights from a Zamindar could acquire the status of pucca tenant if his case is covered under Section 38(1)(2). In this case, as noticed above, the land is *banjar*. It came to vest in State under Section 4 of the Act. The land does not fall within Section 4(2). As such, the story put forward that the plaintiff became owner of the land cannot be believed. The land was not under plough. As such, the Zamindar was not *khudkasht* and was not in cultivating possession in 1950 that is *Samvat 2007*. As such, land came to vest in State. Even if it be presumed that, there was any *patta* that would not confer any right, title or interest in the plaintiff.

16. The matter may be still examined from another point of view. The land is meant to be used for religious purposes. The plaintiff cannot be said to be the owner of this site. He is not mentioned as *Punjari* in Ex. P-7. He could not bring about any change in the nature of the land. For appreciating this situation, relevant provisions of the M. P. Land Revenue Code which are relevant may be noticed. The definition of term '*abadi*', '*land*' and '*uncultivated land*' is relevant. These are contained in Sections 2(1), 2(k), Z-3, 237 and Section 248(1) of the M. P. Land

Revenue Code, 1959. These are under:--

'2(1)(a). 'abadi' means the area reserved from time to time in a village in non-urban area for the residence of the inhabitants thereof or for purposes ancillary thereto and any other local equivalent of this expression such as 'village site' or 'Gaosthan' shall also be construed accordingly.'

'2(k) 'land' means a portion of the earth surface whether or not under water; and, where land is referred to in this Code, it shall be deemed to include all things attached to or permanently fastened to anything attached to such land;'

'(z-3) 'unoccupied land' means the land in a village other than the Abadi or service land or the land held by a Bhumiswami, a tenant or a Government lessee;'

'237. Collector to set apart land for exercise of Nistar rights-- (1) subject to the rules made under this Code, the Collector may act apart unoccupied land for the following purposes, namely;

(a) for timber or fuel reserve;

(b) for pasture, grass bir or fodder reserve;

(c) for burial ground and cremation ground;

(d) for gaosthan;

(e) for encamping ground;

(f) for threshing floor;

(g) for bazar;

(h) for skinning ground;

(i) for manure pits;

(j) for public purposes such as schools, play grounds, parks, roads lanes, drains and the like; and

(k) for any other purposes which may be prescribed for the exercise of rights of Nistar.

(2) Lands, set apart specially for any purpose mentioned in Sub-section (i), shall not otherwise be diverted without the sanction of the Collector.'

f'248. Penalty for unauthorisedly taking possession of land-- (1) Any person who unauthorisedly takes or remains in possession of any unoccupied land, abadi, service land or any land which has been set apart for any special purpose under Section 237 or upon any land which is the property of Government may be summarily ejected by order of the Tahsildar and any crop which may be standing on the land and any building or other work which he may have constructed thereon, if not removed by him within such time as the Tahsildar may fix shall be liable to forfeiture. Any property so forfeited shall be disposed of as the Tahsildar may direct and the cost of removal of any crop, building or other work and of all works necessary to restore the land to its original condition shall be recoverable as an arrear of land revenue from him. Such person shall also be liable at the discretion of the Tahsildar to pay the rent of the land for the period of unauthorised occupation at twice the rate admissible for such land in locally and to fine which may extend to five thousand rupees and to a further fine which may extend to twenty rupees for every day on which such unauthorised occupation or possession continues after the date of first ejectment. The Tahsildar may apply the whole or any part of the fine to compensate persons, who may in his opinion, have suffered loss or injury from the encroachment;

Provided that the Tahsildar shall not exercise the powers conferred by this Sub-section in regard to encroachment made by buildings or works constructed--

(i) in the Mahakoshal Region--

(a) in areas other than the Merged States, before the first day of September, 1917;

(b) in the Merged States, before the third day of April, 1950;

(ii) In the Madhya Bharat Region, before the fifteenth day of August, 1950;

- (iii) in the Vindhya Pradesh Region, before the first day of April, 1955;
- (iv) in the Bhopal Region, before the eighth day of November, 1933; and
- (v) in the Sironj region, before the first day of July, 1958.

Explanation-- For the purposes of this sub-section 'Merged States' shall have the meaning assigned to it in the Madhya Pradesh Merged States Laws (States) Act, 1950 (XII of 1950).'

17. A reading of the aforementioned provisions makes it apparent that any person who unauthorisedly takes or remains in possession of any unoccupied land or abadi land or land set apart for any special purpose under Section 237, can be proceeded against by the revenue authorities mentioned in Section 248(1). This aspect of the matter was considered by the Supreme Court in the case of Beed Mst. Kanchaniya v. Shiv Ram, AIR 1992 SC 1249. Their Lordships of the Supreme Court came to a firm conclusion that a piece of land on which there exists a religious place would fall within the term 'land set apart for special purposes' and would be covered by Section 237(1)(j) of the Code. The observations made by the Supreme Court in this regard are relevant and may be noticed:--

'The only question which remains to be considered is whether the application filed by respondent No. 1 under Section 248(1) of the Code was maintainable. In 1967, when the application was moved by respondent No. 1, Section 248(1) empowered the Tahsildar to summarily eject any person who unauthorisedly takes or remains in possession of any occupied land, abadi, service land or any land which has been set apart for any special purpose under Section 237. The expression 'unoccupied land' is defined in Section 2(z3) of the Code as under:

'unoccupied land means the land in a village other than the Abadi or service land or the land held by a Bhumiswami, a tenant or a Government lessee.'

The land in dispute does not fall in any of the excepted categories mentioned in Section 2(z3). It must, therefore, be held to be unoccupied land. Since it was set apart for a public purpose, viz., for the upkeep of temple, it can be said to be land set apart for a special purpose under Clause (j) of Sub-section (1) of Section 237

of the Code.'

As per the above discussion, land which is set apart for religious purpose would be deemed to be covered by Section 237(1)(j) of the M.P. Land Revenue Code. In this case, the finding recorded is that the plaintiff in an unauthorised manner raised construction after 1950. His name is shown as Punjari in Exp. 7. This finding was recorded by Revenue authorities and stands re-enforced by finding recorded by the judgment under appeal. This Court remanded the case for getting the matter re-determined. Even after remand, the finding recorded is that the construction was raised in 1950. The counsel for the appellant was unable to assail it. I find no reason to differ with it.

18. Again in *Pancham Singh v. M. Ramakrishnadas*, 1971 Jab LJ 588 : (AIR 1972 Madh Pra 14), it was held that where the land is given to a pujari, under a parwana and the land is described as 'Malkiyat Sircar' land is to be treated-as unoccupied land as defined in Section 2(1) (z3). This land would again fell under the category of 'land set apart for a special purpose'. A person in unauthorised possession of such a land can be evicted under Section 248 of the Code. In this case, nothing has been brought on record that in Samvat 2007, the property came to vest in Zamindar or in the plaintiff. Therefore, in view of the provisions of Zamindari Abolition Act and Section 57 of the M.P Land Revenue Code, 1959, this land would Come to vest in the State Government and the status of the appellant would be of unauthorised occupant.

19. Thus, the plaintiff must fail because:--

(i) Patta Ex. P/8 remained a paper transaction because it was never reflected in revenue record.

(ii) Land being banjar was not fit for cultivation and came to vest in the State on the coming into force of Zamindari Abolition Act;

(iii) There exists a religious structure on this,land and would be covered by Section 237(1)(j) this enabling revenue authorities totake action under Section 248;

(iv) In any case, building was raised after 15th of August, 1948. This finding was recorded by revenue authorities and by Courts below. As stated above, I find no reason to differ.

20. This appeal is without merit and is dismissed with no order as to costs.

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