

Sidha Ahir Vs. DevidIn and ors.

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Court : Madhya Pradesh

Decided On : Oct-25-1972

Reported in : AIR1973MP161; 1973MPLJ429

Judge : P.K. Tare, C.J. and ;R.K. Tankha, J.

Acts : Madhya Pradesh Land Revenue Code, 1959 - Sections 162; Madhya Pradesh Land Revenue Rules - Rule 9; Madhya Pradesh General Clauses Act, 1957 - Sections 10

Appeal No. : Misc. Petn. Nos. 79 and 80 of 1970

Appellant : Sidha Ahir

Respondent : DevidIn and ors.

Advocate for Def. : B.C. Verma, Adv. (for No. 1), ;M.V. Tamaskar, Deputy Govt. Adv. (for Nos. 2, 4, 5 and 6)

Advocate for Pet/Ap. : L.P. Singh, Adv.

Disposition : Petitions dismissed

Judgement :

Tare, C.J.

1. This order shall also govern the disposal of Miscellaneous Petition No. 80 of 1970 (Deonath v. Devidin and Ors). In these Writ Petitions the two petitioners challenge the order, dated 19-7-1969, passed by the learned Member of the Board of Revenue, Gwalior, allowing the revision of the first respondent and dismissing the petitioner's application for allotment of land under Section 162 of the M. P. Land Revenue Code, 1959, which was deleted from the statute book with effect from 23-4-1964, vide Amendment Act No. 25 of 1964.

2-3. The petitioner, Sidha applied for allotment of Khasra Nos. 305, 409, 436 and 600, while the petitioner, Deonath applied for allotment of Khasra Nos. 168, 169, 174, 175 and 465 under Section 162 of the M. P. Land Revenue Code, 1959. The first respondent, Devidin, who was a former Pavaidar, claimed that land to be his on the basis that it was his Sir land and asserted that he had been in possession. An application to the Tahsildar was made on behalf of the petitioner on 5-8-1961. The Tahsildar, by order, dated 5-4-1962, negatived the contention of the first respondent and allotted the land to the respective petitioner. Against that order the first respondent filed an appeal before the Sub-Divisional Officer, who, as per the order, dated 21-8-1967 (Petitioner's Annexure A-2) rejected the appeal. A second appeal filed before the Additional Commissioner was also dismissed vide order, dated 29-3-1968 (Petitioner's Annexure A-3). However, the Board of Revenue, by order, dated 19-7-1969 (Petitioner's Annexure A-4) allowed the revisions filed by the first respondent, with the result that the allotment of land made in favour of the respective petitioner stood cancelled. The claim of the first respondent, Devidin claiming the land for himself was also rejected. As regards the question whether the case should be remanded to the Court of the Tahsildar, the Board of Revenue expressed the opinion that as Section 162 of the M. P. Land Revenue Code, 1959, had been deleted from the statute book, there was no ground for remanding the case to the Court of Tahsildar and no fresh allotment could be made in favour of a person after the repeal of the Section. At this stage it is relevant to note that the Board of Revenue recorded a specific finding that the order of allotment passed in favour of the respective petitioner was illegal inasmuch as the procedure prescribed by Rule 9 of the Rules framed under Section 162 of the M. P. Land Revenue Code, 1959, had not been followed and the conditions mentioned in that Rule did not exist. In that view of the matter, the Board of Revenue refused to

remit the case of the respective petitioner to the Tahsildar for a fresh consideration. Thus, by implication the petitioner's application for allotment of land stood dismissed. The present writ petitions are directed against the said order passed by the Board of Revenue.

4. On these facts the material question for consideration arises whether the petitioner had any interest or right by virtue of the fact that a wrong order, dated 5-4-1962 came to be passed in his favour. It is true that the order of the Tahsildar was passed when Section 162 of the M. P. Land Revenue Code, 1959, was on the statute-book. However, by the time the appellate order of the Sub-Divisional Officer came to be passed, the said section had already been repealed. We think it proper to take a note of Rule 9, framed under Section 162 of the M. P. Land Revenue Code, 1959, which is as follows; and which prescribes the following procedure:

'Rule 9. -- The following procedure shall be followed in respect of allotment of land under the rules:

(i) The patwari shall prepare a statement of unoccupied land available for disposal from the record prepared under the rules framed under Section 233 and submit the same to the Tahsildar by the 30th September each year, after getting it certified by the Patel or the Chairman of the Gram Sabha or Gram Panchayat, as the case may be. Immediately after submission of the statement to the Tahsildar the patwari shall issue a proclamation in the village in Form 'A' inviting applications within 15 days from the date of issue of the proclamation. All such applications shall be made to the Tahsildar in Form 'B'. in the case of an individual and in Form 'C' in the case of a Co-operative Society. (Such application shall not be required to be stamped with Court-fee stamps in view of Government of Madhya Pradesh Law Department Notification No. 25235-CR-95-XXI-B. Dated the 21st August, 1961).

(ii) After the date fixed for the receipt of applications, the Tahsildar shall prepare a list of all the applicants stating in brief the particulars of land applied for by each and forward it to the Gram Panchayat or Gram Sabha, as the case may be with a notice in form 'D' asking, it to furnish, within 14 days of the date of receipt of the list, its report on the suitability or: otherwise of the applicants for the allotment of land.

The Gram Panchayat or Gram Sabha shall send their recommendations to the Tahsildar within such period. The Tahsildar shall visit each village, if possible, or suitable centres, after one week of the notified date of receipt of such reports and whether a report is received or not, he shall hold a meeting of the residents of the village in which the land to be allotted is situate, on the date and at the place to be announced by beat of drum atleast three days before the meeting. If the land to be allotted is situated in an uninhabited village, such meeting shall be held in any one of the neighbouring villages after giving wide publicity in respect thereof in other neighbouring villages also.

On the date and at the place announced for the meeting, the Tahsildar shall read out the list of the applicants (and particulars of land applied for) to the people assembled and explain in short the principles of allotment contained in the foregoing rules. The Tahsildar shall then, invite the opinion of the people assembled on the applications by show of hands. He shall note on the applications whether they carry the unanimous verdict of the people in favour of allotment or are recommended by the majority. If there is no unanimous verdict or recommendation of the majority the Tahsildar shall try to find out whether any agreement can be reached among the applicants themselves in the matter of allotment. Failing such agreement, he shall make his recommendations on the applications giving the consideration to the report, if any of the Gram Panchayat or the Gram Sabha. He shall decide any objections summarily.

(iii) The Tahsildar shall decide the case on spot if he is competent to do so, else he shall make his recommendation to the Sub-Divisional Officer. The latter, if he is competent to pass orders, may either accept the proposal of the Tahsildar or for reasons to be recorded in writing may make such modifications therein as he may deem fit and pass orders accordingly within one week from the date of receipt of the proposal from the Tahsildar. In other cases falling within the powers of the Collector, the Sub-Divisional Officer shall submit the cases with his recommendations to the Collector, who if he accepts the proposal for allotment of land may accord sanction with the approval of the Commissioner.'

5. It is pertinent to note that the Rule requires certain records to be prepared by the Patwari which may be certified by the Gram Sabha or the Gram Panchayat as the case may be; and the Patwari has to submit a statement to the Tahsildar after which a proclamation in form 'A' would have to be issued in the village inviting applications within 15 days from the date of issue of the proclamation. Thus, the first thing to be ascertained was that some land was available for allotment. Unless that report be made by the Patwari to the Tahsildar in consultation with the Gram Sabha or the Gram Panchayat no proclamation could be issued and there would be no question of inviting applications. Obviously no person could gate-crash into the Court of the Tahsildar demanding the land should be allotted to him unless these prerequisites were present. In this view of the matter there can be no doubt that the application filed by the respective petitioner before the Tahsildar was not tenable in law and it could not at all be considered to be an application which might be valid and which could be considered under Rule 9, coupled with Section 162 of the M. P. Land Revenue Code 1959. To that extent we certainly are in agreement with the view expressed by the Board of Revenue that the application filed by the respective petitioner was an invalid application in law and such an application, which was initially invalid and untenable, would not confer any right, whatsoever, on the petitioner to claim any land by way of allotment.

6. Cases were cited before us where some rights were created in favour of persons before the repeal of a statute, of course, if vested rights be created in favour of a person before the repeal of a statute, usually there is a provision saving that vested right, and if there be no provision, then it is Section 10 of the Madhya Pradesh General Clauses Act, 1957 which would be attracted in respect of a State Legislation. It may be pertinent to reproduce Section 10, which is as under:--

'Section 10 -- Effect of repeal --Where any Madhya Pradesh Act repeals any enactment then unless a different intention appears the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right privilege, obligation or liability, acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Madhya Pradesh Act had not been passed.'

7. The learned counsel for the petitioner invited attention to the wording of Sub-section (e) of the said Section, which states that the repeal shall not affect any investigation, legal proceeding or remedy in respect of any such right, privilege obligation, liability, penalty forfeiture or punishment. We may observe that the words used are 'remedy in respect of any such right'. In order that the said sub-section may be attracted, some right should have been created in favour of a party. For instance, we may advert to the case of *Onkarlal v. Sardar Khan*, 1971 MPLJ 998 = (AIR 1972 Madh Pra 52) wherein a valid order of allotment under Section 162 of the M. P. Land Revenue Code, 1959, was passed by a Tahsildar and it was thereafter wrongly set aside, The Division Bench, presided over by Bishambhar Dayal, C. J. and Raina, J. held that the fact that Section 162 of the M. P. Land Revenue Code, 1959, had subsequently been repealed would not affect the vested right that had been created in favour of a party by virtue of a valid and legal order of allotment passed prior to the repeal of Section 162 of the M. P. Land Revenue Code, 1959. Thus, in that case there was actually a valid order of allotment passed prior to the repeal of the Section and if an appellate Court had wrongly reversed that order, the repeal did not affect that vested right, which had already been created in favour of a party. The Division Bench relied on the English case of *Director of Public Works v. Ho Po Sang*, (1961) 2 All ER 721 at p. 731.

Incidentally the said Division Bench also referred to an earlier Division Bench case of this Court in *Dolumal v. State of M. P.* 1970 MPLJ 188 = (AIR 1971 Madh Pra 127).

8. Adverting to the case of *Dolumal v. State of M. P.* (AIR 1971 Madh Pra 127) (supra), the said case, in our opinion, is precisely on the point in question and we fully agree with the observations made by the Division Bench, presided over by Dixit, C. J. and Bhawe, J. in the said case. We may usefully reproduce the observations of the said Division Bench, which have our respectful concurrence :--

'Shri Padhye however urged that even if it is held that the proper formality was not observed by the Additional Collector, the case can be remanded to him for taking appropriate steps on the application filed by the petitioner. This prayer cannot be granted in view of the fact that by Act No. 25 of 1964 the M. P. Land Revenue Code, 1959, has been amended with the result that Section 162 has been omitted. There is no power left now with the Collector to allot any land and no useful purpose can be served by remitting the case to the Additional Collector. This Court in *Jatan v. The Collector Durg* Misc. Petn. No. 7 of 1966, D/- 10-10-1966 (M. P.) held :-- 'The effect of the amendment is that the authority of the Collector to allot the land has been withdrawn. The Ordinance came into force on 23-4-1964, while the impugned order was passed on 31-7-1964. On that date it is obvious, the Additional Collector had no authority and jurisdiction to sanction the exchange. The order is without jurisdiction and is liable to be quashed.'

The same is the position here. The Collector has no jurisdiction now to pass any orders under Section 162. The fact that the application for allotment was filed before the amendment of the M. P. Land Revenue Code, 1959 is of no consequence. The Amending Act No. 25 of 1964 has not preserved the applications previously filed. Shri Padhye, however, urged that by operation of Section 10 of the M. P. General Clauses Act (equivalent to Section 6 of the Central Act) the rights accrued are saved even when a statute is repealed. The petitioner, according to Shri Padhye, is thus entitled to pursue his application. This contention is not correct. Except as to transactions past and closed a statute after its repeal is as completely obliterated as if it had never been enacted. The result is that all the

proceedings pending at the time of the repeal must be rendered ineffective unless the repealing statute provides otherwise. Section 10 of the M. P. General Clauses Act, however, provides an exception that even when the repealing statute is silent, all the rights acquired and all the liabilities incurred can be worked out as if the statute was not repealed. But it must be noted that what is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere 'hope or expectation of' or liberty to apply for, acquiring a right (1961) 2 All ER 721 at P. 731. A distinction is drawn between a legal proceeding for enforcing a right acquired or accrued and a legal proceeding for acquisition of a right; the former is saved whereas the latter is not. The dictum of the Privy Council in *Abbot v. Minister for Lands*, (1895) AC 425 at p. 431 (PC) to the effect that mere right to take advantage of an enactment without any act done by an individual towards availing himself of that right cannot properly be deemed a right accrued' was approved by their Lordships of the Supreme Court in *Sakharam v. Manikchand*, AIR 1963 SC 354, though that dictum was not applied in the circumstances of that case. We are therefore, of the view that the mere right existing at the date of a repealing statute to take advantage of provisions of the statute is not a right accrued and that the Collector lost all rights of granting applications pending before him on the date of the repeal of Section 162 of the M. P. Land Revenue Code.'

9. In this view of the matter, the position is quite clear that the Board of Revenue was justified in dismissing the application of the respective petitioner by implication and by refusing to remand the case to the Tahsildar for consideration of the question of allotment afresh. Evidently, what remains now after the repeal of the Section is the mere application of the respective petitioner, which is not a valid application and which is not tenable in law. From this point of view, We have no doubt that remanding the case to the Court of the Tahsildar could have served no useful purpose and it would have been absolutely futile.

10. As a result of the discussion aforesaid, these Writ Petitions fail and are accordingly dismissed with costs. Counsel's fee in each case shall be Rs. 100/-. The balance of the security amount after deduction of costs be refunded to the respective petitioner.

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