

Mahadeo and ors. Vs. the State of Madhya Pradesh and ors.

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Court : Madhya Pradesh

Decided On : Sep-30-1980

Reported in : AIR1981MP231

Judge : K.K. Dube and ;H.G. Mishra, JJ.

Acts : Madhya Pradesh Ceiling and Agricultural Holdings Act, 1960 - Sections 4(1), 11(2) and 11(3); [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11; Madhya Pradesh Ceiling and Agricultural Holdings (Amendment) Act, 1974 - Sections 4(2) and 5

Appeal No. : Misc. Petn. No. 52 of 1979

Appellant : Mahadeo and ors.

Respondent : The State of Madhya Pradesh and ors.

Advocate for Def. : M.A. Shah, Dy. Govt. Adv.

Advocate for Pet/Ap. : R.S. Bajpai, Adv.

Disposition : Petition allowed

Judgement :

Mishra, J.

1. This is a petition under Article 226 read with Article 227 of the Constitution of India for quashing the order dated 9-6-1978 (Annexure II) passed on an appeal by the Board of Revenue. Madhya Pradesh, confirming the order passed by the Competent Authority (Additional Commissioner. Raipur), dated 12-8-1977 (Annexure-I), declaring void transfers evidenced by sale deeds (Annexures III to VII).

2. The case of the petitioners is that Ram Prasad was father of Ganesh Prasad. Ganesh Prasad died during lifetime of his father leaving behind him a son Mahadeo alias Mahadeo Prasad and a daughter Kalindi. Mahadeo has a son Mahendrasingh alias Dongarsingh. Ram Prasad died on 18-6-1971. On 1-1-1971. Ram Prasad Mahadeo Prasad and his son Mahendra were members of joint family. Smt. Kalindi has also acquired rights in the property devolving on her on death of Ram Prasad.

3. In proceedings under the M. P. Ceiling on Agricultural Holdings Act, 1960 (for short 'the Act'), the Competent Authority had published a draft statement showing the entire holding consisting of 315.10 acres of land as belonging to Mahadeo Prasad, petitioner No. 1 alone. Mahadeo prasad, who happened to be the Karta of the family, filed objections, whereby it was brought to the notice of the Competent Authority that the following transfers by way of sale had been made by him in favour of petitioners Nos. 4 to 8 :

(1) By Saraswati Bai to Baboolal, 15 acres on 7-4-1972 for Rs. 7500/- (vide Annexure III):

(2) By Saraswati Bai to Surya Pra-kash 39.74 acres on 10-2-1972 for Rs. 10,000/- (vide Annexure IV):

(3) By Saraswati Bai to Gajrabai etc., 38.86 acres on 10-2-1972 for Rs. 15,000/- (vide Annexure V):

(4) By Mahadeo to Kalabai. 39.94 acres on 10-2-1972 for Rs. 20,000/- (vide Annexure VI)

(5) By Mahadeo to Nilkumar, 53.58 acres on 10-2-1972 for Rs. 25,000/-(vide Annexure VII).

In spite of this, without making enquiry, as contemplated by Section 4 (1) of the Act, the Competent Authority passed an order on 27-5-1976, declaring that 170.16 acres of land had vested in the State. This order was presumably under Section 11 (6) of the Act. Aggrieved by the same, the petitioners preferred appeals before the Board of Revenue, which were allowed by Order dated 30-10-1976 and the Competent Authority was directed to hold enquiry into validity of the transfers in question after issuing notices under Section 4 (1) of the Act. In the remand order it was also observed that publication of fresh draft statement after passing an order under Section 4 (1) of the Act, will not be necessary.

4. After remand, the Competent Authority held an enquiry under Section 4 (1) of the Act and by order dated 12-8-1977 (Annexure I) held that the transfers in question are void and that the lands to the extent of 170.16 acres have vested in the State as surplus lands as ordered vide order dated 27-5-1976. This order has been passed without issuing a fresh draft statement.

5. Aggrieved by this order Mahadeo Prasad. petitioner No. 1, preferred an appeal No. 238/V/77 and other petitioners preferred appeal No. 239/V/77 to the Board of Revenue, which have been rejected by order dated 9-6-1978 (Annexure II). Hence this petition.

6. In this petition, the petitioners contended that (i) according to the scheme of the Act, draft statement is to follow decision regarding validity of transfers by way of sale passed after enquiry under Section 4 (1) of the Act; and a draft statement issued prior to the passing of such an order cannot be treated to be compliance of mandatory provisions enacted by Section 11 (2) of the Act; (ii) that the observations made in the remand order to the effect that no fresh draft statement need be issued after passing of order under Section 4(1) of the Act, cannot operate as res judicata so as to preclude the petitioners from agitating the question regarding fresh issuance of draft statement: (iii) that this has resulted in illegal deprivation of petitioners valuable right to file objections conferred by Section 11 (31) of the Act; and (iv) that the right of transferor to hold land has not

been decided on correct legal basis inasmuch as instead of deciding their right to hold land on the basis of Section 4(2), as it stood prior to the amendment brought about by Section 5 (b) of the M. P. Ceiling on Agricultural Holdings (Amendment) Act. 1974 (No. 20 of 1974), decision has been given on the basis of Section 4 (2) as substituted by the aforesaid Amendment Act. This has resulted in failure of justice.

7. Mr. M. A. Shah, learned Deputy Government Advocate for the State, contended that the impugned orders are in accordance with law; that the order of remand passed by the Board of Revenue operates as *res judicata* on the point; and that Section 4 (2) of the principal Act, as substituted by Section 5 (b) of the Amendment Act No. 20 of 1974 is retrospective in effect; and the orders in question have rightly been passed on the basis of Section 4 (2) as amended by the aforesaid Amendment Act.

8. In order to appreciate the controversy between the parties with regard to contention No. (i) above, an analysis of the provisions of the Act relevant to the situation, appears to be necessary. The relevant provisions are Section 4 and Section 11. Now Sub-sections (1), (2) and (3) of Section 11 of the Act read as under :

'11. Preparation of statement of land held in excess of the ceiling area :--(1) On the basis of information given in the return under Section 9 or the information obtained by the competent authority under Section 10, the said authority shall after making such enquiry as it may deem fit, prepare a separate draft statement in respect of each person holding land in excess of the ceiling area, containing the following particulars :--

(i) the name and address of the holder :

(i-a) if the holder is a member of a family, names, address and age of members of the family;

(i-b) if the holder, who is member of a family has major sons, names ages and addresses of his major sons and land held by each of them as On 1st January,

1971.

(ii) full particulars of land held by him and other members of his family within the State and total area of such land:

(iii) the total area of land the holder is entitled to hold in accordance with the provisions of this Act:

(iv) the description of land which he desires to retain;

(v) the description of the land which the competent authority proposes to declare surplus; and

(vi) such other particulars as may be prescribed :

Provided that if the holder fails to specify the portion of land which he wishes to retain, the Competent authority shall, to the extent possible include the encumbered and improved land in the land to be retained by the holder:

Provided further that a joint statement may be prepared in respect of holders who are members of a joint Hindu family or who hold land jointly or as tenants-in-common.

(2) The transferor shall, for the purpose of this Act, be deemed to be the holder of land the transfer of which -

(i) has been declared to be void under Sub-section (1) of Section 4; or

(ii) has been found by the competent authority on such enquiry as may be prescribed to be in contravention of the provisions of Sub-section (1) of Sec. 5.

(3) The draft statement shall be published at such places and in such manner as may be prescribed and a copy thereof shall be served on the holder or holders concerned, the creditors and all other persons interested in the land to which it relates. Any objections to the draft statement received within thirty days of the publication thereof shall be duly considered by the competent authority who after giving the objector an opportunity of being heard shall pass such order as it deems

fit.'

9. At the outset it may be stated that Section 11 starts with a mandate to the Competent Authority to publish draft statement, yet by the very nature of the function, the Competent Authority cannot publish a draft statement without making an enquiry into the validity of the transfer or the partition, as the case may be, under Section 4 (1) or 5 (1) of the Act. Clauses (iii). (iv) and (v) of Sub-section (1) of Section 11 of the Act require that the draft statement should contain the following particulars :

(a) total area of land which the holder is entitled to hold in accordance with the provisions of the Act :

(b) the description of the land, which the holder desires to retain; and

(c) the description of the land which the competent authority proposes to declare surplus.

The competent authority cannot be in a position to mention the aforesaid facts in the draft statement unless and until, it has adjudicated upon the question of validity of the transfer or the partition, if any. The Competent Authority can examine the validity of transfers by way of sale gift, exchange or otherwise or partition under Section 4 (1) or Section 5 (1) of the Act whichever may be applicable to the situation. An enquiry and order under Section 4 (1) or Section 5 (1) of the Act is, accordingly, to precede publication of draft-statement.

10. The provisions of Section 11 (2) of the Act also lead to the aforesaid conclusion. Section 11 (2) provides that a transferor shall be deemed to be the holder of the land, transfer of which has been declared to be void under Sub-section (1) of Section 4 or has been found to have been made in contravention of Section 5 (1) of the Act. It is only after such declaration that the holder can be in a position to give the choice of the land he wants to retain. Till the transfer is not declared void, the holder will have to give choice on the assumption that the transfer in question is valid. If the transfer is ultimately declared void, then also the holder will have an occasion to exercise his choice in the matter, in view of the

changed-circumstances. His choice in the matter is absolute and his right in that behalf is unfettered. He cannot be tied down to his choice even if exercised during pendency of proceedings under Section 4 (1) or Section 5 (1) of the Act or even during pendency of an appeal against the order passed under any of those provisions. On filing of an appeal, the matter becomes sub judice and finality of the order is destroyed. As such it is desirable that validity of transfers must be decided finally before draft statement is issued.

11. In view of the scheme of the Act the Competent Authority cannot be regarded to have reached the stage of publication of draft statement, and cannot be regarded to have acquired jurisdiction to publish the draft statement, either without there being first an order under Section 4 (1) or Section 5 (1) of the Act, which has attained finality on appeal or otherwise. The order under Section 4 (1) or 5 (1) of the Act has, thus, to precede and not to follow publication of the draft-statement. Provisions of Section 11 (2) of the Act are mandatory on the point. The legal obligation cast thereby on the Competent Authority cannot be taken to be dispensed with by pointing out to issuance of a draft publication after passing of an order under Section 4 (1) or Section 5 (1) of the Act which has been superseded on appeal.

11-A. In this case, admittedly, the Competent Authority did not publish draft statement after passing of an order under Section 4 (1) of the Act after enquiry held in pursuance of the remand order.

12. In this case, the Board of Revenue remanded the case, as no enquiry envisaged by Section 4 (1) of the Act was held. However, while passing the order of remand, the Board of Revenue also held that there is no necessity of issuing fresh draft statement. Without holding of an enquiry under Section 4 (1) of the Act, the Competent Authority does not acquire jurisdiction to proceed with fixation of ceiling area and determination of surplus land in accordance with the provisions placed in Chapter III of the Act. Accordingly, the observations made by the Board of Revenue that fresh draft statement will not be required to be published, after passing of an order after enquiry under Section 4 (1) of the Act, cannot be regarded to be really adjudication on the point. At the best, it can be regarded to

be a mere expression of opinion. Decision on the point was not necessary for remand of the case. Moreover, if there is a decision of a Court which sanctions something illegal, then by resorting to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order, for a rule of procedure cannot supersede the law of the land. This is what, in essence, has been held in *M. P. S. Jaiswal v. D. N. B. Jeejeebhoy*, (1970) 1 S C C 613 : (AIR 1971 SC 2355) (at page 619 of SCO : (at p. 2359 of AIR).

13. This brings us to the third contention. In this case, the Competent Authority as well as the Tribunal appears to have decided the case on the hypothesis that Section 4 (2) as amended by Amendment Act No. 20 of 1974 is applicable to the transfers made prior to 7-3-1974 -- both for purposes of finding out right of the holder to hold land and for purposes of working out the exemptions. Section 5 (b) of the Amendment Act No. 20 of 1974, runs as under :

'5. Amendment of Section 4:-- In Section 4 of the Principal Act. -

(a)

(b) for Sub-section (2), the following sub-section shall be and shall always be deemed to have been substituted with effect from the 7th March. 1974, namely :--

'(2) Nothing in this section shall apply to a transfer made by a holder -

(a) who does not hold land in excess of the ceiling area; or

(b) who is a member of a family and where all the members of the family together do not hold land in excess of the ceiling area as specified in Sub-section (1) of Section 7 as substituted by Section 8 of the Madhya Pradesh Ceiling on Agricultural Holdings (Amendment) Act, 1974 on the date of the transfer.

(c) In Sub-section (4), the words 'in regard to every transfer made under this section' the words 'in regard to every transfer to which this section applies' shall be substituted; and

(d) in Sub-section (5), for the words, figures and letters 'on or after the 24th January. 1971' occurring twice, the words, figures and letters 'on or before the

1st January, 1971' shall be substituted.'

The Amendment Act No. 20 of 1974 received assent of the President on 23rd April, 1974, which was first, published in the Madhya Pradesh Gazette (Extraordinary) dated the 24th April, 1974. Section 4 (2) of the Act, as it stood before the aforesaid substitution read as under :

'(2) Nothing in this section shall apply to_

(a) a transfer made by a holder who does not hold land in excess of the ceiling area on the date of the transfer;

(b) a transfer by way of sale to any person specified in categories (i) to (iv) of Sub-section (1) of Section 35 or to a holder holding land less than five standard acres on the date of the transfer.

(c) a transfer by way of donation to a Bhoodan Yagna Board constituted under the law relating to Bhoodan Yagna for the time being in force,'

14. Now, relying on the expression 'shall always be deemed to have been substituted'. Mr. Shah contended that the aforesaid amendment being by substitution (should) be regarded to have been written with pen and ink in the principal Act from its inception. Acceptance of this contention will involve giving of a greater retrospective effect than is intended to be given by the Legislature to the provisions of Section 4 (2) as substituted by the aforesaid Amendment Act. The legislative intendment appears to be to give effect to the substituted sub-section 'with effect from the 7th March, 1974'. Courts cannot give greater retroactive action to a provision of law than that is expressly given by the Legislature. Had the Legislature intended to give retrospective effect to Section 4 (2), so substituted from the very inception of the Act, then the expression, 'shall always be deemed to have been substituted' would have sufficed: but the framers of law have not stopped there and have further proceeded to use the expression 'with effect from the 7th March, 1974'. Accordingly Section 4 (2) as amended can have retrospective effect only from the 7th March, 1974, and not from any time prior to it. The Courts cannot, by any process of interpretation, treat the expression 'with

effect from the 7th March, 1974' as redundant or superfluous. On this point, the Board of Revenue in an attempt to give harmonious construction to provisions of Section 4 (1) and Section 4 (2) of the Act appears to have virtually reduced the expression 'with effect from the 7th March, 1974' an useless lumber or dead-letter. This virtually amounts to destroy it. To harmonise is not to ignore. The Courts cannot proceed on the assumption that the legislature has wasted words. There being no inconsistency between any part of Sub-section (1) and Sub-section (2) of Section 4, rule of harmonious construction cannot be applied for construing them either.

15. So far as question of entitlement of a holder to hold land is concerned, the ceiling limit prescribed by the Principal Act was initially individual-wise. Now, the right to hold land has been changed and concept of family has also been introduced by Amendment Acts No. 12 of 1974, 13 of 1974 and 20 of 1974. Accordingly, right of the holder to hold land will be governed by the Act as amended by the aforesaid Amendment Acts. The jurisdiction of the Competent Authority to decide the right to hold on the basis of the provisions of the Act, as they stood prior to coming into force of the aforesaid Amendment Act has been taken away and its power and authority is regulated by the law as amended by the aforesaid Amendment Acts. It has to be clearly borne in mind that the 'entitlement to hold land' and 'claim for exemption' are two different phenomena. The former is intended to be regulated by the Legislative policy as reflected by the law as it stands amended, whereas the latter, being a matter within the realm of vested rights, has to be governed by the law as it stood at the time when the transfer in question was made. A title, which had been validly acquired prior to amendment cannot be adjudged as invalid on the exemptions substituted by amendment. In this case, however, the petitioners have not claimed any exemptions under unamended Section 4 (2).

16. Thus, the impugned orders (Annexures I and III inasmuch as they pertain to dispense with the requirement of publishing fresh draft statement cannot be allowed to stand, as they have been passed in flagrant violation of the law. They also have the effect of depriving the petitioners and persons concerned of their right to prefer objections conferred on them by Section 11 (3) of the Act.

17. As a sequel to the aforesaid discussion, the petition succeeds and is hereby allowed. The impugned orders (i. e. order dated 9-6-1978 passed on appeal by the Board of Revenue. (Annexure III and the order dated 12-8-1977 passed by the Competent Authority (Additional Commissioner. Raipur) (Annexure I)) so far as they pertain to issuance of draft-statement, are hereby quashed. Now the case will go to the Competent Authority with a direction to publish draft statement afresh in accordance with law. No order as to costs. The outstanding amount of security, if any, be refunded to the petitioners.

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