

Atmaram Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Nov-10-1994

Reported in : AIR1995MP225; 1995(0)MPLJ633

Judge : U.L. Bhat, C.J. and ;Rajeev Gupta, J.

Acts : Madhya Pradesh Land Revenue Code, 1969 - Sections 165(6), 170B and 170B(2); ;[Evidence Act, 1872](#) - Sections 115

Appeal No. : Misc. Petn. No. 3742 of 1989

Appellant : Atmaram

Respondent : State of M.P.

Advocate for Def. : Sanjay Seth, Govt. Adv.

Advocate for Pet/Ap. : Rakesh Pandey, Adv.

Disposition : Petition allowed

Judgement :

U.L. Bhat, C.J.

1. Petitioners, three in number, are non-tribals. On the date of commencement of the M.P. Land Revenue Code Amendment Act, 1980, petitioners have been in possessions agricultural land which earlier belonged to members of a tribe

declared during the relevant period, to be aboriginal tribe under Section 165(6) of the M.P. Land Revenue Code (hereinafter referred to as Code for short). Sub-section (1) of Section 170-B of the Code required them to notify within two years of the commencement of the Act to the S.D.O. in such form and in such manner as may be prescribed the information as to how they had come in possession of such land. Petitioners did not notify the information to the S.D.O. who thereupon asked them about the failure to notify him and to show cause why the lands should not be reverted to the aboriginal vendors. The petitioners submitted statements stating that the lands have been purchased under valid registered sale deeds for adequate consideration and after obtaining sanction from the District Collector. The S.D.O., however, held that the lands have reverted to the aboriginal tribal vendors on, the ground of failure of the petitioners to notify, as required under Section 170-B(1) of the, Code and by virtue of the presumption arising under Sub-section, (2). These orders are challenged.

2. Petitioners have paid only one set of court fee. They are required to pay three sets of court fee. This order is subject to payment of deficit court fee during the course of the day.

3. We have already referred to sub-sec. (1) of Section 170-B of the Code which casts a duty on the petitioners to notify the S.D.O. the information as to how they have come in possession of the lands which are in their possession and of which the original owners were members of aboriginal tribe.

4. Sub-section (2) of Section 170-B of the Code reads as follows:

'If any person fails to notify the information as required by Sub-sec. (1) within the period specified therein, it shall be presumed that such person has been in possession of the agricultural land without any lawful authority and the agricultural land shall, on the expiration of the period aforesaid, revert to the person to whom it originally belonged and if that person be dead, to his legal heirs.

Failure to notify information under Sub-section (1) leads to a presumption that a person has been in possession without lawful authority. The consequence of the presumption being drawn is that the land shall, on the expiry of the period of two

years, referred to in Sub-section (1), revert to the aboriginal tribal vendor to whom it originally belonged and if he is dead, to his legal heirs.

5. Sub-section (3) reads as follows:

'(3). On receipt of the information under Sub-section (1), the Sub-Divisional Officer shall make such enquiry as may be deemed necessary about all such transactions or transfer and if he finds that the member aboriginal tribe has been defrauded of his legitimate right, he shall declare the transaction null and void.....' Though the sub-section commences with the words 'on receipt of the information under Sub-sec. (1)', it cannot be that no show cause notice and no enquiry are necessary in matters covered by Sub-section (2). This has been clarified by this Court, in (Dhirendra Nath Sharma v. State of M.P., 1985 MPLJ 786 : (AIR 1986 Madh Pra 122)). In that case, constitutional validity of Section 170-B was challenged: and the challenge was repelled. In doing so, the Court observed in para 14 of the reported judgment: as follows;- 'It is obvious that in all cases including those in which a presumption arises under Sub-section (2), a final order contemplated by Sub-section. (3) has to be made and it is only the making of such an order which results in the declaration that the transaction is null and void and the agricultural land reverts in the transferor or his legal heirs. Unless such an order is made even in cases in which the presumption under Sub-section (2) arises, there would be no order for implementation to bring about the desired result.'

6. In dealing with the contention that the effect of Sub-section (2) of Section 170-B is to usurp the judicial functions and that there is repugnancy between Central Enactments, the Court observed that the interpretation placed in the judgment on Section 170-B(2) is sufficient to repel the argument. The Court observed in para 20 as follows:

'The mere fact that an order contemplated by Sub-section (3) has to be passed even in cases falling within the ambit of Sub-section (2), as practice which is admittedly being followed, is sufficient to indicate that there is no usurpation of judicial function thereby and there is no arbitrariness in the procedure nor is there the vice of absence of enquiry.'

Dealing with the contention that there may be some hard cases in which due to unforeseen difficulties it would not be possible for the transferee to notify the requisite particulars under Sub-section (1) within the period specified, the Court observed in para 21 as follows:

'In our opinion, this apprehension also is not justified. Once it is held, as was conceded by the learned Additional Advocate General, that an order contemplated by Sub-section (3) has to be passed invariably in every such case including a case falling within the ambit of Sub-section (2), all the incidents attaching to such an order made under the Code are automatically attracted. It would be open at least to the appellate authority in suitable cases if proper cause is shown to reopen the matter to direct the Sub-Divisional Officer to give a fresh decision under Sub-section (3) on merits taking into account the cause shown by the transferee. This also ensures reasonability of the procedure in all cases including those falling within the ambit of Sub-section (2). Such an order may also be treated as an ex parte order which may be set aside by the Sub-Divisional Officer himself on sufficient cause being shown to explain in the transferee's default in notifying the particulars within the period prescribed.

7. It is thus clear that even where a vendee in possession has not notified the particulars as required under Sub-section (1) of Section 170-B, he has a further opportunity to explain the reasons for his failure to notify the particulars and if the reasons are acceptable, Sub-section (2) cannot be revoked and the presumption cannot be drawn. In this connection, it is necessary to refer to an aspect which was not urged before the Court in *Dhirendra Nath Sharma's case* (AIR 1986 Madh Pra 122). Failure to notify the information as required under Sub-section (1) of Section 170-B of the Code within the period specified leads to a presumption. That is because of the words 'it shall be presumed' occurring in Sub-section (2). But the nature and extent of presumption is that the person in possession has been in possession without any lawful authority. Subsection (2) does not expressly or by necessary implication, indicate that the presumption is either irrebuttable presumption or that it is a presumption amounting to conclusive proof.

8. Section 4 of the Indian [Evidence Act, 1872](#) deals with three kinds of presumptions; The first deals with a case where the court may presume a fact as proved it may regard such fact as proved unless and until it is disproved or may call for proof of it. This is the meaning of the words 'may presume'. The second deals with the words 'shall presume, i.e., where the Evidence Act has directed that the Court shall presume a fact unless and until it is disproved. The third variety is what is referred to as 'conclusive proof'. When one fact is declared to be conclusive proof of another, the Court shall, on proof of one fact, regard the other as proved and shall not allow evidence to be given for the purpose of disproving it. Sub-section (2) of Section 170-B of the Code merely uses the words 'shall be presumed' and does not indicate that it shall amount to conclusive proof and does not bar any evidence being adduced for the purpose of disproving it. The presumption under Sub-section. (2) must, therefore, be regarded as a rebuttable presumption.

9. As explained in Dhirendra Nath Sharma's case (AIR 1986 Madh Pra 122) even in a case governed by Sub-section (2) of Section 170-B of the Code, there must be show cause notice and enquiry. In reply to show cause notice, it is open to the vendee in possession to aver that his possession is by lawful authority. It must be open to him to adduce evidence in support of his contention that his possession is by lawful authority. If the S.D.O. is satisfied on the materials before him either produced by the vendee or received from other sources that the vendee's possession is based on lawful authority, the presumption is rebutted. That is the end of the operation of Sub-section (2). It is important to know that the presumption has nothing to do with the aspect whether the document is obtained by fraud or other unfair means or whether the document is substantially unfair and constitutes fraudulent transaction affecting legitimate rights of the tribals. The presumption is confined only to one aspect in a narrow compass namely. Whether the possession is without lawful authority.

10. Petitioners herein filed statements before the S.D.O. referring to the sale deeds under which the tribal vendors parted with their rights and possession in favour of the vendees and also mentioned that the sale deeds were registered after obtaining permission from the District Collector as contemplated under

Section 165(6) of the Code. Of the two sale deeds produced before us, we find that one refers to permission granted by the District Collector. In the circumstances, the S.D.O. could have required the petitioners to prove their contention that their possession is traceable to the registered sale deeds contained after securing permission from the District Collector, as required by law. That was not done. The S.D.O. did not do so. He did not even advert to the question whether the presumption under Sub-section (2) is rebutted by the petitioners. He proceeded on the basis that once it is seen that the petitioners did not notify the information to him as required under Sub-section (1) within the period prescribed possession of the petitioners not must be regarded as without any lawful authority and he did not consider the contentions raised by the petitioners. It is necessary that the S.D.O. considers the contentions and records finding in that behalf before deciding whether possession of the land should revert to the person to whom it originally belonged.

11. If on proper consideration on the matters involved, and materials the S.D.O. comes to the conclusion that possession is without lawful authority, then the land must necessarily revert subject of course to payment that may be required to be made under Sub-section (3), If the finding on the other hand is that the possession is under lawful authority, operation of Sub-section (2) ceases and the requirements of Sub-section (3) arises for consideration, namely, whether the vendor is a member of the aboriginal tribe and whether he has been defrauded of his legitimate right. If the finding is in the affirmative, the S.D.O. shall declare the transaction as null and void and also follow the requirements to the extent applicable of clauses (a) and (b). If the finding is, on the other hand, that the member of aboriginal tribe has not been deprived of his legitimate right, that is the end of the matter and the transaction cannot be interfered with.

12. The impugned order has been passed in violation of the requirements of the provisions of law as we have indicated above and, therefore, deserves to be and is hereby quashed. The S.D.O. will take back the cases on his file and procedure with the enquiry and pass orders afresh in accordance with law and the observations contained in this order. The petitioners shall appear before the S.D.O. on 2-1-1995 with all evidence which they desire to place before the S.D.O.

13. The writ petition is accordingly allowed, but without costs.

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