

Khom Bai and ors. Vs. First Additional District Judge and ors.

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Court : Madhya Pradesh

Decided On : Jan-13-1999

Reported in : 1999(2)MPLJ145

Judge : R.S. Garg, J.

Acts : Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 - Sections 9, 10 and 15

Appeal No. : M.P. No. 1815 of 1988

Appellant : Khom Bai and ors.

Respondent : First Additional District Judge and ors.

Advocate for Def. : G.S. Ahluwalia, Adv. for Respondent No. 3

Advocate for Pet/Ap. : P.R. Bhawe and ;A.K. Choubey, Adv.

Disposition : Petition allowed

Judgement :

ORDER

R.S. Garg, J.

1. The petitioners being aggrieved by the Orders dated 7-8- 1985 (Annexure-A) passed in Execution Case No. 91-A/71 and order dated 15-4-1988 (Annexure-B)

passed in Civil Revision No. 48/87 have filed this petition under Article 227 of the Constitution of India.

2. Facts necessary for disposal of the present petition are that certain lands belonged to the petitioners, out of the said area possessed by the petitioners some lands were transferred in favour of the respondent No. 3. Later on a suit was filed by the present petitioner (since deceased) inter alia pleading that the transfer deed was sham and bogus and the same was only for the purposes of the Ceiling Act. The matter ultimately came up to the High Court in Second Appeal No. 425/77. The said appeal was decided by this Court in favour of the petitioner on 12-10-1984. At the time of hearing, it was submitted before the Court that as in the Ceiling Proceedings drawn against the present petitioners particular land was declared surplus, therefore and as the land of which possession is sought if is given to the petitioner she would hold land in excess of the ceiling limit, therefore no decree could be passed in favour of the said appellant/present petitioner. This Court dealing with the said contention, in paragraph 24 of the Judgment observed as under :-

'During the pendency of this second appeal, learned counsel for the respondent produced an order of the Revenue Court, in the ceiling case and submitted that in view of the said order, plaintiff had no rights left in the suit property. It is not necessary to decide this question because if plaintiff-appellant can work out her rights in spite of this order, she will be entitled to do so by an appropriate application before the Revenue Court or otherwise'.

3. The appeal was accordingly allowed and a decree for possession was granted to the petitioner. The petitioner thereafter filed an application for execution of the said decree. In the said matter an objection was raised by the judgment-debtor that the decree cannot be executed. The learned Executing Court referring to the judgment of this Court in the matter of Jagan Jethya Lodhi v. Harakchand, 1975 MPLJ 481 directed the decree-holder that within a period of three months he should obtain an order from the Revenue Court as to whether he is entitled to keep the suit land or any other land in his possession or not. He however observed that the judgment-debtor has no rights in the property. Being aggrieved

by the order passed by the Executing Court, the petitioner filed Civil Revision No. 48/87 which was heard and decided by the First Additional District Judge, Raipur (Link Court at Mahasamund). The Revisional Court upheld the order and dismissed the revision, therefore the petitioner has filed this petition, under Article 227 of the Constitution of India.

4. Submission of Shri Choubey, learned counsel for the petitioners is that in the ceiling return it was clearly mentioned by the petitioner that he was not making any statements about these suit lands as these were subject matter of litigation. He submits that after acquiring possession of these lands the petitioner would be entitled to file a revised return under Section 15 of the Ceiling on Agricultural Holdings Act and taking advantage of Section 11 would be entitled to give his option to the Ceiling Authority. According to him, the judgment-debtor has no right to oppose the execution nor the Executing Court could direct the petitioner to obtain an order from the Revenue Authorities.

5. Shri Ahluwalia, learned counsel for the respondent No. 3 on the other hand submits that though the respondent No. 3 is left with no rights in the land in dispute but in view of the observations made by this Court in paragraph No. 24 of the Second Appellate Judgment and in view of the Judgment in the matter of Jagan Jethya (supra), the trial Court was absolutely justified in asking the petitioner to seek directions from the Revenue Courts.

6. A person possessing agricultural lands is required to submit the return under Section 9 of M. P. Ceiling on Agricultural Holdings Act, 1960 (Ceiling Act hereinafter). Under Section 10, the competent authority may by notice require such person, who fails to submit the return under Section 9, to furnish the return within the time specified in his notice. On the basis of the information given in the return under Section 9 or the information obtained by the competent authority under Section 10, the authority after making such enquiry as it may deem fit shall prepare a separate draft statement in respect of each person holding land in excess of the ceiling area containing certain particulars given under Section 11(1) of the Act.

7. According to Section 11(1), the draft statement is required to provide the description of the land which the holder desires to retain. Any person aggrieved by the draft statement may raise his objections and the same are required to be decided by the authority competent. After the final orders are passed under Section 11 of the Act land declared as surplus would vest in the State and as a consequence of vesting, according to Section 13 of the Act all rights, title and interest of the holder in the surplus land or of any person having interest in such land through him shall cease; and the dues revenue in respect of the land prior to the date of vesting shall continue to be recoverable from such holder. Section 15 provides that where after the appointed day the total land held by any holder and where such holder is a member of a family the total land held by such family at any time exceeds the ceiling area by reason of acquisition of land by the holder or member of his family; or change in the nature of lands, or land having ceased to be exempted land; all the provisions of Chapter 3 shall, so far as may be, apply to such holder and where such holder is a member of a family to such family. Section 15 further provides that the period of submission of return by such holder under Section 9 shall in case of acquisition of land be ninety days from the date of such acquisition and.....etc.

8. A perusal of these provisions of law would show that after acquisition of particular land where the total land held by any holder exceeds the ceiling area then provisions of Chapter 3 shall apply to his case. Chapter 3 contains Section 6 to Section 15. In accordance with the provisions such a holder is required to file his amended/additional return within ninety days from the date of acquisition. The proviso would only mean that instead of filing the return originally within the period prescribed under Section 9 such a holder who now holds land in excess of ceiling would file return within ninety days. Because of application of Chapter 3, if such a holder does not file any additional/revised return under Section 10 of the Act the Ceiling authority is entitled to issue and serve a notice upon such holder. After such additional/revised return is filed under Section 9 or after the information is collected under Section 10 of the Act, the Ceiling Authority is required to prepare statement of land held in excess of the ceiling area which shall again contain the description of the land which the holder desires to retain. In the present case when the question was raised before this Court, this Court clearly observed that the

plaintiff/appellant can work out her rights in spite of the order passed in the Ceiling matter. It cannot be argued that this Court made these observations in ignorance of Section 15 of the Act. This Court was very much alive to the legal provisions and for that only reasons it was observed that the petitioner/plaintiff/appellant can work out her rights in spite of the order of ceiling and she would be entitled to do so by an appropriate application before Revenue Court or otherwise. The observations made by this Court cannot be read de hors of the fact.

9. In the matter of Jagan Jethya (supra), this Court placing reliance upon the judgment of the Supreme Court in the matter of Haji Sk. Subban v. Madhaorao, AIR 1962 SC 1230 observed that if the person after executing the decree would possess land more than ceiling limit then such an execution would not be maintainable. With profound regards and due respect to the learned Judge who has decided the case I am unable to concede to the said position. The said judgment does not consider the effect of Section 15 of the Act. It does not take into consideration that after acquiring the possession of the land the holder who has already filed a return is entitled to file an additional/revised return. On the strength of the revised return/the facts collected by the competent authority a draft statement is to be issued under Section 11 it shall be within the right of the holder to retain particular land, his right to retain the land cannot be curtailed by person who has no authority to remain in possession. Such a dispute would be simply between the State and the holder of the land. The defendant-judgment-debtor after the judgment in the Second Appeal would simply be a trespasser who has no rights in the property. Such a person cannot be allowed to say that the land would ultimately vest in the State Government, therefore the plaintiff should not be allowed to execute his decree. If the matter is seen from other angle it would lead to an anomalous situation. On one side the plaintiff is refused the right of execution and at the same time the State would not be entitled to pass any order declaring the said land as surplus nor would the property vest in the State Government because no decision relating to the said land has ever been passed. In such a situation the trespasser/wrong doer would not enjoy the possession of the property but can always oppose the State Government by saying that as the land has not vested in the State he cannot be dispossessed.

10. In the matter of Jagan Jethya (supra) as the salient features of the Ceiling Act were not taken into consideration I am unable to observe the very general observations that the decree for possession cannot be executed if the ceiling case has already been decided against the holder plaintiff.

11. The trial Court had no jurisdiction to direct the plaintiff-decree holder to approach the Revenue Court for seeking certain directions. The Executing Court is bound by the directions issued, observations made and the decree granted by this Court. This Court has simply said that the plaintiff-appellant can work out her rights in spite of this order (Ceiling Order); she will be entitled to do so by an appropriate application before the Revenue Court or otherwise. The right is given to the plaintiff and not to the defendant. The plaintiff after obtaining possession of the property from the defendant- judgment-debtor would be required to file an additional return under Section 15 and if he does not do so the competent authority applying the provisions of Chapter 3 can collect information under Section 10 and require the holder to submit all the details.

12. The orders passed by the Courts below are patently illegal, these are contrary to law and have been passed without appreciating the legal provisions. The error is apparent on the face of the record.' The orders deserve to and are accordingly quashed. The Executing Court is directed to execute the decree without any further direction to the plaintiff-decree holder to seek clarification from the Revenue Courts.

13. The petition is allowed, but however the parties shall bear their own costs.