

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.13 of 2008

1. Ishwar Gupta (Dead) Through LRs

(1) Vishnu Gupta, aged about 48 years, Private Service.

(2) Pramod Gupta, aged about 43 years,

Both S/o Iswar Gupta, R/o Sipat, Tehsil Sipat, District Bilaspur (C.G.)

2. Santosh Kumar Gupta, aged 37 years, S/o Parmeshwar Gupta.

3. Nandkishor Gupta, aged 34 years, S/o Shri Parmeshwar Gupta.

4. Ram Kishun Gupta, S/o Shri Dhansai Gupta, aged 72 years.

5. Ram Khilawan Gupta, aged 69 years, S/o Shri Dhansai Gupta.

6. Manharan Gupta, aged 64 years, S/o Shri Shivraj Gupta.

7. Suresh Kumar Gupta, aged 50 years, S/o Shri Sunderlal Gupta.

8. Smt. Premlata Gupta, aged 50 years, Wd/o Late Shri Rangnath Gupta.

9. Dilharan Gupta, aged 63 years, S/o Shri Awadhram Gupta.

10. Mathura Prasad, aged 57 years, S/o Shri Awadhram.

11. Ramesh Kumar Gupta, aged 37 years, S/o Shri Gokul Gupta.

12. Pappoo alias Sanat Kumar Gupta, aged 35 years, S/o Shri Gokul.

13. Kushwa alias Rakesh Gupta, aged 33 years, S/o Shri Gokul Gupta.

14. Neeloo @ Neelesh Gupta, aged 31 years, S/o Shri Gokul Gupta.

15. Deepak Gupta, aged 29 years, S/o Shri Gokul Prasad.

16. Basant Gupta, aged 62 years, S/o Shri Gendram Gupta.

17. Jai Kumar Gupta, aged 46 years, S/o Shri Dwarikaprasad.

18. Manharan @ Marahoo Gupta (Dead) Through LR

Laxmi Prasad Gupta @ Jhabbu Gupta, aged about 40 years,
S/o Manharan Gupta @ Marahu, Businessman, R/o Torwa,
Bilaspur, Tahsil and District Bilaspur (C.G.)

19. Nand Kumar, aged 38 years, S/o Shri Harisav Gupta.

20. Chandra Kiran, aged 36 years, S/o Shri Harisav Gupta.

21. Gopi Gupta, aged 29 years, S/o Shri Harisav Gupta.

22. Panchram @ Panchoo Gupta (Dead) Through LR

(1) Rajkumar, S/o Late Panchram Gupta, aged about 47
years,

(2) Pramod Kumar, S/o Late Panchram Gupta, aged about
42 years,

R/o Ward No. 02, Jamul, District Durg (C.G.)

23. Santram, aged 55 years, S/o Shri Ramjee Gupta.

24. Vijai Kumar, aged 51 years, S/o Shri Jhumuklal.

25. Balajee Gupta, aged 49 years, S/o Shri Jhumuklal.

26. Kartikram Gupta, aged 35 years, S/o Shri Jhumuklal.

27. Ramadhar (Dead) Through LR

Pana Bai, aged about 54 years, Wd/o Late Ramadhar Gupta,
house wife, R/o Juna Bilaspur, Near Sao Dharmasala
Bilaspur, Tahsil & Distt. Bilaspur (C.G.)

28. Bhagwat Gupta, aged 54 years, S/o Shri Lala Sav.

29. Jagdish Gupta, aged 51 years, S/o Shri Lala Sav.

All residents of Village Seepat, Tahsil Masturi, Distt. Bilaspur
(C.G.)

On behalf of all the appellants / plaintiffs, their Special Power
of Attorney Shri Ashok Kumar Gupta, S/o Shri Moolchand
Gupta, R/o Seepat, Tahsil Masturi, District Bilaspur (C.G.)

(Plaintiffs)

---- Appellants

Versus

1. State of Chhattisgarh, Through Collector, Bilaspur (C.G.)
2. Gram Panchayat Seepat, Through Sarpanch/Secretary Gram Panchayat Seepat, Tahsil Masturi, Distt. Bilaspur (C.G.)
3. Chunnilal, aged 42 years, S/o Shri Dukhiram, R/o Seepat, Tahsil Masturi, Distt. Bilaspur (C.G.)

(Defendants)
---- Respondents

For Appellants:	Mr. Ram Kumar Tiwari, Advocate.
For State/Respondent No.1:	Mr. Satish Gupta, Govt. Advocate.
For Respondent No.2:	None present though served.
For Respondent No.3:	Mr. Sourabh Sharma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

03/08/2016

1. The substantial questions of law involved, formulated and to be answered in this plaintiffs' second appeal are as under: -

“1. Whether the finding of both the Courts below are perverse since the provisions of Section 251 of the Land Revenue Code was not applicable as the pond already stood vested to the family of the appellants?

2. Whether the Sub-Divisional Officer was empowered under Section 251 of the Land Revenue Code to pass the order of vesting of pond?”

[Parties will be referred in this appeal as per their status shown in the plaint before the trial Court.]

2. The above-mentioned substantial questions of law are required to be answered in following facts:—

2.1) The appellants herein/plaintiffs filed a suit for declaration of title and permanent injunction stating *inter alia*

that the suit tank situated at Khasra No.705, area 1.40 acres, and Khasra No.706, area 2.7.0 acres, is held by the plaintiffs and they are in title and possession holders of the said tank, and since 1928-29, the lands are recorded in the names of their ancestors' Pyarelal and others and in Wajib-ul-urz it is recorded in the names of Moharsay and others, they are maintaining the suit tank since long and they are irrigating their lands from the water of the suit tank and they are in possession of the said tank since last 100 years. It was further pleaded that on 10-1-2005, defendant No.3 / respondent No.3 herein started some work for filling up the tank holding it to be leased out to him by defendant No.2 Gram Panchayat and then enquired in the matter on which they came to know that in the revenue records, the name of the Government of Chhattisgarh is recorded in the suit tank. It was also pleaded that the suit tank has already been settled in favour of ancestors of the plaintiffs under the provisions of Section 5 (f) of the Madhya Pradesh Abolition of Proprietary Rights Act, 1950 (for short 'the Act of 1950') and therefore since a cloud has been cast on their title holding to be vested in the name of the Government, they decided to file suit for declaration of title and thereafter, they served notice under Section 80(1) of the Code of Civil Procedure, 1908 and filed suit for declaration of title and permanent injunction.

2.2) Defendant No.1 / respondent No.1 herein – the State of Chhattisgarh, filed its written statement stating *inter alia* that the suit tank has already been vested in the State Government under the provisions of Section 251 of the Chhattisgarh Land Revenue Code, 1959 (for short 'the Code of 1959') after due process of law by the competent authority and the ancestors of the plaintiffs were duly noticed and after following the due procedure of law, it has been vested in the Government and, therefore, that order has become final and thus, the plaint deserves to be dismissed.

2.3) The Gram Panchayat has also filed written statement in similar lines. No written statement was filed on behalf of the respondent No.3 herein.

3. The trial Court framed six issues in order to decide the suit. The trial Court upon appreciation of oral and documentary evidence on record by its judgment and decree dated 30-6-2007 dismissed the suit finding *inter alia* that (1) the plaintiffs are not title holders and possession holders of the suit land; (2) the suit tank was settled in favour of the ancestors of the plaintiffs under Section 5(f) of the Act of 1950; (3) the suit tank had already been vested with the Government in accordance with law and the suit filed is beyond the period of limitation; and (4) the suit has not properly been valued and the court fees has not been paid properly.

4. Feeling aggrieved against the judgment and decree passed by the trial Court dismissing the civil suit, the plaintiffs / appellants herein filed first appeal and the first appellate Court by the impugned judgment and decree affirmed the judgment and decree passed by the trial Court and dismissed the first appeal. Questioning the said judgment and decree passed by the first appellate Court, this second appeal under Section 100 of the CPC was preferred in which substantial questions have been formulated in the opening paragraph of this judgment, for hearing of this appeal.
5. Mr. Ram Kumar Tiwari, learned counsel appearing for the appellants / plaintiffs, would submit that the finding recorded by both the Courts below holding that the plaintiffs are not title holders and possession holders of the suit tank, is perverse and liable to be set aside. He would further submit that under Section 251 of the Code of 1959, Collector is the competent authority to pass the order of vesting whereas, in the instant case, the order of vesting has been passed by the Sub-Divisional Officer vide Ex.D-3 dated 27-10-1965 and therefore it was passed by an incompetent authority and thus the same is without jurisdiction and without authority of law. He would also submit that since the suit tank was already settled in favour of the ancestors of the plaintiffs under Section 5(f) of the Act of 1950, it cannot be vested in favour of the State again by the order of the Sub-Divisional Officer

Ex.D-3. He would place reliance upon the decision of the Supreme Court in the matter of **Sub-Divisional Officer, Mandla v. Pirma Gond**¹. He would finally submit that therefore, the substantial questions of law be answered in favour of the plaintiffs / appellants herein and against the defendants / respondents herein and the appeal be allowed and the suit be decreed with costs.

6. On the other hand, Mr. Satish Gupta, learned Government Advocate appearing on behalf of the State/respondent No.1, and Mr. Sourabh Sharma, learned counsel appearing for respondent No.3, would submit that the suit tank was already vested in favour of the Government by order dated 27-10-1965 and compensation has already been awarded and thereafter, the suit tank has been duly mutated in the name of the Government by the order issued by the Sub-Divisional Officer on 11-11-1965 and therefore, the suit has rightly been dismissed by the trial Court and has rightly been upheld by the first appellate Court, as such, the second appeal deserves to be dismissed by answering the substantial questions of law in favour of the defendants.
7. I have heard learned counsel for the parties and also considered their rival submissions made therein and gone through the records of the two Courts below thoroughly and extensively.

1 1969 MPLJ 713

8. For the sake of convenience, I will answer the substantial question of law No.2 first, as the said question goes to the root of the matter.
9. The second substantial question is whether the Sub-Divisional Officer was empowered under Section 251 of the Code of 1959 to pass the order of vesting in favour of the Government. In order to answer this substantial question of law, it would be advantageous to notice sub-section (1) of Section 251 of the Code of 1959 which states as under: -

“251. Vesting of tanks in State Government.—

(1) All tanks situated on unoccupied land on or before the date of coming into force of the Act, providing for the abolition of the rights of intermediaries in the area concerned and over which members of the village community were, immediately before such date, exercising rights of irrigation or nistar, shall, if not already vested in the State Government, vest absolutely in the State Government with effect from the 6th April, 1959:

Provided that nothing in this section shall be deemed to affect any right of a lessee in the tank under a lease subsisting on the date of vesting of the tank which shall be exercisable to the extent and subject to the terms and conditions specified in the lease:

Provided further that no tank shall vest in the State Government, unless—

- (i) after making such enquiry as he deems fit, the Collector is satisfied that the tank fulfills the conditions laid down in this sub-section; and
- (ii) notice has been served on the parties interested and opportunity given to them for being heard.”

- 10.A careful perusal of Section 251(1) of the Code of 1959

would show that power of vesting has been conferred to the Collector of the District and he is the authority competent to pass the order of vesting of tank in the State Government.

11. By a notification dated 30th January, 1962, published in the M.P. Rajpatra dated 2-3-1962, the State Government has directed that all Sub-Divisional Officers shall exercise the powers of a Collector under Section 251 of the Code of 1959, within their respective jurisdiction. Thus, the State Government by notification has delegated the power of the Collector to the Sub-Divisional Officer under Section 22(2) of the Code, 1959 to exercise the power conferred to the Collector under Section 251 of the said Code.
12. Similar issue questioning the power of the Sub-Divisional Officer to exercise the power of vesting in favour of the Government was raised before the M.P. High Court in the matter of **Chandrika Prasad Tiwari and others v. State of M.P. and others**² in which the M.P. High Court relying upon the aforesaid notification has rejected the prayer by holding as under: -

“..... It is relevant here to state that section 22 of the Code *inter alia* provides that the Sub-Divisional Officer shall exercise such powers of the Collector, as the State Government by notification direct. State Government had issued such notification and directed that all Sub-Divisional Officers shall exercise the powers of the Collector under section 251 of the Code within their respective jurisdiction. Section 22(2)

of the Code contemplates conferring on the Sub-Divisional Officer the powers of Collector and that having been done by the State Government, the submission of Shri Awasthy has necessarily to fail. Accordingly I reject this submission of Shri Awasthy.”

13. In view of the notification dated 30-1-1962 issued by the State Government in exercise of power conferred under Section 22(2) of the Code of 1959 and following the decision of the M.P. High Court in **Chandrika Prasad Tiwari** (supra), I do not have any slightest hesitation in holding that the Sub-Divisional Officer is empowered to pass the order of vesting in favour of the State Government exercising the jurisdiction under Section 251 of the Code of 1959.

14. This determination would bring me to the next substantial question of law as to whether the finding of the two Courts below is perverse and the provisions of Section 251 of the Code of 1959, are not applicable to the suit tank.

15. It is the case of the State Government that the vesting proceeding was initiated before the Sub-Divisional Officer in a duly instituted revenue proceeding. The suit tank was earlier recorded in the name of Hari Prasad, S/o Moharsay vide Ex.D-3. The proceedings were initiated in which Shri Hariram Gupta – ancestor of the plaintiffs appeared before the Sub-Divisional Officer on 27-9-1965 and his statement was recorded vide Ex.D-5 in which he had stated that maintenance was made by him during the malgujari period,

the villagers had nistari rights, he has not incurred any expenses in maintenance of the tank and he has given no objection in vesting of the land in favour of the Government. Thereafter, the Sub-Divisional Officer considered the matter on 27-10-1965 vide Ex.D-3 and also perused the report of the Naib Tahsildar Ex.D-6 and passed the order of vesting holding that the villagers have nistari rights and right of irrigation over the suit tank and also determined compensation as Rs.66.60 ps., under Section 251(3) of the Code of 1959, and issued notice and directed that the copy of the order be sent to the Tahsildar for mutation in the name of the Government which was sent vide Ex.D-7, and since then, the name of the Government is recorded in the revenue record.

16. Mr. Ram Kumar Tiwari, learned counsel for the appellants / plaintiffs, would submit that since the tank was settled in the name of the ancestors of the plaintiffs and no notice was issued while vesting the land in favour of the Government, the order of vesting is null and void and as such, the vesting is bad.

17. Document Ex.D-3 is a copy of complete order sheet recorded by the Sub-Divisional Officer in the vesting proceeding and in which the ancestors of the plaintiffs Hariram appeared before the Sub-Divisional Officer and had given statement that he has no objection in vesting the tank in favour of the

Government, rather he has made no objection of vesting of the tank in the Government pursuant to which the order dated 27-10-1965 came to be passed by the Sub-Divisional Officer which is still unchallenged and has become final thereby vesting the land in favour of the Government.

18. The first objection that the plaintiffs' ancestors were not noticed is found to be devoid of merit as they were duly noticed before vesting the tank and they have made no objection in vesting the tank in favour of the Government. Therefore, the belated objection by filing the suit on 11-2-2005 after lapse of 40 years cannot be entertained and it has rightly been not entertained by the trial Court.
19. The next limb of submission of learned counsel for the appellants is that the suit tank has already been settled in favour of the ex-malgujar / plaintiffs' ancestors and therefore it cannot be vested again under the Chhattisgarh Land Revenue Code, 1959 relying upon the decision of the Supreme Court in **Sub-Divisional Officer, Mandla** (supra).
20. In **Sub-Divisional Officer, Mandla** (supra), Their Lordships of the Supreme Court have clearly held that the tank having once vested in the State, there was no question of another vesting taking place under Section 251 of the Code of 1959.
21. In the matter of **Seth Rishabhkumar v. State of Madhya Pradesh and others**³, the Division Bench of Madhya

3 1970 M.P.L.J. 202

Pradesh High Court negating the argument of ex-proprietor that tank could not vest in the State under Section 251 of the Code of 1959, while explaining the earlier decision held as under:-

“4..... After the abolition of proprietary rights, certain tanks remained with the ex-proprietors over which the village community had rights of irrigation or Nistar which created certain difficulties. It was with a view to take over such tanks from the ex-proprietors that Section 251 of the M.P. Land Revenue Code was enacted

..... we are of the view that the petitioner is not correct in saying that the tank in question had vested in the State and that it could not come within the purview of Section 251 of the M.P. Land Revenue Code. Once the petitioner admits that the tank was saved for him under Section 5(f) of the Abolition Act, he cannot avoid the vesting of the tank in the State under the provisions of Section 251 of the M.P. Land Revenue Code.”

22.The correctness of the decision rendered in **Seth Rishabh Kumar** (supra) was doubted by the Division Bench of the Madhya Pradesh High Court in light of two earlier decisions reported in 1969 MPLJ Note No.110 and 1962 MPLJ Note No.86 and ultimately, the Full Bench of Madhya Pradesh High Court in the matter of **Raghubar Singh Padumlal v. State of M.P. and others**⁴, considered and approved the reasoning adopted by the Division Bench of the Madhya Pradesh High Court in **Seth Rishabh Kumar** (supra) and held in paragraph 19 as under:-

“19. In our opinion, the case of *Seth Rishabh*

4 1971 M.P.L.J. 594

Kumar v. State of M.P.(supra) properly expresses the effect of vesting under Section 3 and Section 4(1)(a) of the M.P. Abolition of Proprietary Rights Act, 1950, and Section 251 of the M.P. Land Revenue Code, 1959 .”

23. The Full Bench also considered the effect of decision rendered by the Supreme Court in the matter of **Sub-Divisional Officer, Mandla v. Pirma Gond** (supra) and distinguished the same by observing as under:-

“24. The case of *Prima Gond v. Sub-Divisional Officer, Mandla*⁵ was a case governed by Section 5(g) of the M.P. Abolition of Proprietary Rights Act, 1950. The tank had been settled with the ex-proprietor in Malik-Makbuza right. Thereafter the Collector, Mandla passed an order stating that the tank vested in the State under Section 251(1) of the M.P. Land Revenue Code, 1959. In that case the annual papers indicated that the tank had vested in the State upon commencement of the Abolition Act and the same was being dealt with accordingly. The tank was ordered to be settled with the ex-proprietor, who had been cultivating Singharas. The Division Bench, following the view in *Thakur Ramranjan Singh v. State of M. P.*⁶ quashed the notice issued by the Revenue Officer. This case went to the Supreme Court in Civil Appeal No.446 of 1966 and their Lordships affirmed the view of the High Court by judgment, dated 10.03.1969. We may observe that a case under Section 5(g) of the M. P. Abolition of Proprietary Rights Act, 1950, would stand on a different footing Section 251 of the M.P. Land Revenue Code, 1959, does not at all affect the tanks in which right to grow Singharas may have been in existence. The said section only affects the tanks situated on unoccupied land in which the villagers have right of irrigation or right of Nistar. Evidently, the right of Nistar will not include the right to cultivate the bed of the tank or to grow Singharas. The right of Nistar would mean the right to take water for drinking or for other use as also right of cattle to use water

⁵ M.P.No.339 of 1963 decided on the 6th March, 1964.

⁶ 1961 M.P.L.J. Note No.110

for that purpose. In this view, the case of *Sub-Divisional officer, Mandla v. Prima Gond* (supra), decided by the Supreme Court, is clearly distinguishable. But, we have no hesitation in expressing our opinion that the cases of *Thakur Ramranjan Singh v. State of M.P.* (supra) and *Rajaram v. State of M. P.*⁷ were decided on a misapprehension of the scope of Sections 3, 4 and 5 of the M. P. Abolition of Proprietary Rights Act, 1950, and Section 251 of the M. P. Land Revenue Code, 1959, and as such, they did not lay down the law correctly. For this reason, we would overrule those cases and we would adopt the reasoning of the subsequent Division Bench in *Seth Rishabh Kumar v. State of M. P.* (supra) and we would approve of the same. We need not pronounce any opinion about the case of *Sub-Divisional Officer, Mandla v. Prima Gond* (supra) as the case is distinguishable.”

24. Ultimately the Full Bench held as under:-

“5. In this view of the matter, we have no doubt that the tanks recorded ad Khasra Nos. 461 and 542, in which the villagers had right of Nistar, namely, bathing and taking water for use, the tanks were rightly settled in favour of the petitioner under Section 5(f) of the M.P. Abolition of Proprietary Rights Act, 1950. As such, these tanks were saved to him under the Abolition Act. But, they were rightly held to have vested in the State under Section 251 of the M.P. Land Revenue Code, 1959.”

25. Thus, in light of law laid down by the Full Bench of the Madhya Pradesh High Court to the facts of the case it is *quite vivid* that the suit tank was though settled in favour of ex-proprietor/plaintiffs under Section 5(f) of the Abolition of Proprietary Rights Act, 1950, the said tank was rightly vested in State under Section 251 of the M.P. Land Revenue Code, 1959.

7 1962 M.P.L.J. Note No. 86

26. In view of the above-stated legal position, both the substantial questions of law are answered against the plaintiffs and in favour of the defendants. Thus, as a result of the aforesaid discussion, the second appeal as framed and filed is dismissed. No order as to costs. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma