

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.152 of 1997

Ram Singh, S/o Mukundi Singh, aged about 58 years, R/o Village Bijabhatha, Tahsil Mungeli, District Bilaspur (M.P.) (now C.G.)

(Plaintiff)
---- Appellant

Versus

State of Madhya Pradesh (now State of Chhattisgarh), through Collector, Bilaspur (M.P.) (now C.G.)

(Defendant)
---- Respondent

For Appellant: Mr. Aman Kesharwani, Advocate.
For State/Respondent: Mr. Arun Sao, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

28/08/2018

1. In this plaintiff's second appeal, the substantial question of law involved, formulated and to be answered is as under: -

“Whether in view of the admission of the respondent that the disputed tank, which is subject matter of the suit, vested in the State and thereafter it was settled with Mukund Singh under Section 5(e) of the M.P. Abolition of Proprietary Rights Act, the provisions of Section 251(1) of the M.P. Land Revenue Code could not be applied for claiming that this tank had vested in the State Government again?”

2. The plaintiff filed a suit for declaration that the order of the Sub-Divisional Officer, Mungeli dated 20-3-1966 passed in Revenue Case No.288-A-71 year 1962-63 vesting the land in favour of the Government under Section 251(1) of the Chhattisgarh Land Revenue Code, 1959 (for short, 'the Code') vide Ex.P-9 is void and ineffective.

3. The defendant State filed written statement stating inter alia that the suit tank and area connected with it and *paithu* were settled in favour of Mukund Singh, father of the appellant, under Section 5(f) of the Chhattisgarh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (for short, 'the Act of 1950') and lands were recorded in his name in the revenue records and ultimately, under Section 251(1) of the Code, it was vested in the State by order dated 6th April, 1959.
4. The trial Court after appreciating oral and documentary evidence on record, came to the conclusion that the order of vesting dated 20-3-1966 is in accordance with law, as it was passed after giving opportunity of hearing and after noticing the appellant, as such, the order is valid, effective and final between the parties. The first appeal preferred by the appellant was dismissed upholding the judgment & decree of the trial Court. In second appeal preferred by the appellant / plaintiff, question of law has been formulated which has been set-out in the opening paragraph of this judgment.
5. Mr. Aman Kesharwani, learned counsel appearing for the appellant / plaintiff, submits that concurrent finding recorded by the two Courts below is perverse and contrary to the record and both the Courts below have failed to consider Section 5(f) of the Act of 1950, therefore, Section 251(1) of the Code was not applicable and the suit tank could not be vested under Section 251 of the Code. The suit land has already been settled in favour of ex-malgujar / plaintiff's father and therefore it cannot be vested again under the provisions of Section 251 of the Code relying upon the decision of

the Supreme Court in the matter of Sub-Divisional Officer, Mandla v. Pirma Gond¹.

6. Mr. Arun Sao, learned State counsel, would support the impugned judgment & decree of both the Courts below.
7. The question is, whether after vesting of the disputed tank in favour of the State and settling the same in the name of the appellant's father – Mukund Singh, the suit land can be re-vested with the State under Section 251 of the Code.
8. 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.
9. In the matter of Seth Rishabhkumar v. State of Madhya Pradesh and others², the Division Bench of Madhya 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.”

1 1969 MPLJ 713

2 1970 MPLJ 202

10. 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 others³, 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 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.”

11. 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*⁴ 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.*⁵ 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

3 1971 M.P.L.J. 594

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

5 1961 M.P.L.J. Note No.110

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 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.*⁶ 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.”

12. 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.”

13. 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.

14. In view of the above-stated legal position, the substantial question of law is answered against the plaintiff and in favour of the defendant / State. Thus, as a result of the aforesaid discussion, the second appeal as framed and filed is dismissed affirming the decree of the first appellate Court. No order as to cost(s).

15. A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

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