

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.885 of 2000**

Chiranjeev Lal Soni, aged about 47 years S/o Late Asha Ram Soni,
R/o Village Megha, Teh. Kurud, Distt. Dhamtari presently residing at
Shanti Nagar, Gali No.4, Rajnandgaon (M.P.) (Now C.G.)

---- Appellant

Versus

1. Chandrawati Sahu, aged about 46 years, Wd/o Panch Ram Sahu, R/o Village-Megha, Teh. Kurud, Distt. Dhamtari (MP) (Now CG)
2. Collector, Dhamtari, Distt. Dhamtari
3. Naib Tehsildar/Additional Tehsildar Sub-Tehsil, Magarlod, Distt. Dhamtari
4. Shri G.S. Uike, Additional Tehsildar, Charama, Distt. Kanker (MP) (Now CG)

---- Respondents

For Appellant	:	Mr.Abhijit Mishra, Advocate
For Respondent No.1	:	Mr.D.N.Prajapati, Advocate
For Res.No.2 and 3	:	Mr.Arun Sao, Dy.A.G.
For Respondent No.4	:	None

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment on Board****29/08/2018**

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

“Whether, the grant of lease by the Gram Panchayat in terms of Section 244 of the Land Revenue Code will prevail over the Panchayat Raj Adhiniyam, 1981, which Act & Rules framed thereunder?”

2. In view of submissions made by the parties and facts apparent on the face of record, with the consent of learned counsel for the parties, the substantial question of law is

re-framed as under:-

“Whether, for grant of lease by the Gram Panchayat in terms of Section 244 of the Madhya Pradesh/Chhattisgarh Land Revenue Code, 1959, Section 58 of the Madhya Pradesh Panchayat Raj Adhiniyam, 1981 would be applicable ?”

3. The imperative facts required for determination of above-stated substantial question of law are as under:-

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court]

(3.1) The plaintiff was granted lease by Gram Panchayat in plot Nos.18 and 19 situated at Kh.No.440/32 in village Megha, Tahsil Dhamtari on 19.10.1986 along with other villagers. It is further case of the plaintiff that defendant No.4-Chandrawati, wife of Panchram Sahu forcefully took possession of the subject plots and started raising construction and subsequently obtained lease of the said plots in her favour and thereby illegally encroached upon the plaintiff's land leading to filing of suit for declaration of title and permanent injunction.

(3.2) Defendant No.4 filed her written statement stating inter-alia that land has been granted to her on lease by order of the Naib-Tahsildar, Magarlod dated 4.3.1993 vide Ex.D/1 and thereafter she came into possession of the suit land and constructed superstructure on the said land.

4. The trial Court after appreciating oral and documentary evidence available on record came to the conclusion that the suit land was allotted to the plaintiff by Gram Panchayat under Section 244 of the Madhya Pradesh Land Revenue Code, 1959 (hereinafter called as “Code”) and rules made thereunder and thereby decreed the suit by granting declaration of title, permanent injunction and delivery of possession to the plaintiff vide judgment and decree dated 15.12.1998.

5. On appeal being preferred by defendant No.4, the First Appellate Court by the impugned judgment and decree dated 10.4.2000 allowed the appeal and dismissed the suit by holding that grant of lease in favour of the plaintiff is hit by Section 58 of the Madhya Pradesh Panchayat Raj Adhiniyam, 1981 (hereinafter called as “the Act of 1981”)

6. Assailing legality, validity and correctness of the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/plaintiff, in which substantial question of law has been framed by this Court, which has been incorporated in the opening paragraph of this judgment.

7. Mr.Abhijit Mishra, learned counsel for the appellant/plaintiff, would submit that the suit land is “abadi” land, it belongs to the State Government and Gram Panchayat has right and authority to

dispose of “abadi” land subject to the Rules made in this behalf and accordingly, it has been granted by concerned Gram Panchayat in accordance with the Rules framed under Section 244 of the Code in which provisions contained in Section 58 of the Act of 1981 would not be applicable, as such, the First Appellate Court is absolutely unjustified in reversing the judgment and decree passed by the trial Court, as such, substantial question of law be answered in favour of the plaintiff by holding that in disposal of “abadi” land by Gram Panchayat, provisions contained in Section 58 of the Act of 1981 are not applicable and appeal be allowed with cost(s).

8. Mr.D.N.Prajapati, learned counsel for the respondent No.1/defendant, would support the impugned judgment and decree and submit that provisions contained in Section 58 of the Act of 1981 would squarely apply as the subject land is the property of Gram Panchayat, therefore, provisions contained in Section 58 of the Act of 1981 would apply with full force and therefore, the First Appellate Court is absolutely justified in setting aside the judgment and decree passed by the trial Court. He would rely upon the judgments of the Supreme Court in the matter of **Gwalior District Co-operative Central Bank Ltd. v. Ramesh Chandra Mangal**¹ and the High Court of Madhya Pradesh Court in the matters of **Ramchandra Gupta v. Board of Revenue, Gwalior & others**² and **Ghasiram v. Jamna**³.

1 1984 RN 402

2 1985 RN 130

3 1981 LJ-SN 59

9. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

10. Admittedly, subject land is “abadi” land in village Megha, Tahsil Dhamtari being the part of Kh.No.440/32 bearing plot Nos.18 and 19, in which the plaintiff was granted lease by Gram Panchayat on 19.10.1986 vide Ex.P/9. The trial Court also held that lease was granted to the plaintiff in accordance with the Rules framed under Section 244 of the Code.

11. “Abadi” land has been defined under Section 2 (1) (a) of the Code which states as under:-

“2. Definitions.”-(1) In this Code, unless there is anything repugnant to the subject or context,-

(a) “abadi” means the area reserved from time to time in a village in a non-urban area for the residence of the inhabitants thereof or for purposes ancillary thereto, and any other local equivalent of this expression such as “village site” or “gaonsthan” shall also be construed accordingly.”

12. Section 244 of the Code states as under:-

“244. Disposal of abadi sites.”-Subject to rules made in this behalf the Gram Panchayat or where a Gram Panchayat has not been constituted, the Tahsildar shall dispose of sites in the abadi area.”

13. Nature of abadi land has been considered by Full Bench decision of the Madhya Pradesh High Court in the matter of **Gram Panchayat Gorakhpur v. Khushali Dindaval Sahu**⁴ and it has

⁴ AIR 1973 Madhya Pradesh 19

been held that “abadi” land belongs to the State Government and it cannot be construed as an asset belonging to the Gram Panchayat. It was observed as under:-

“6..... Now, abadi area belongs to the State Government. It is not the property of the Gram Panchayat. Thus, special power is conferred under Section 244 upon the Gram Panchayat to dispose of sites in the abadi area. Under the Land Revenue Code, the Gram Panchayat has no such power ordinarily. It will be too much to think that the Legislature intended to confer on the Gram Panchayat arbitrary, naked and unregulated power to dispose of sites in the abadi area according to its own whim and sweet will, unless rules were made in that behalf. We have not the slightest doubt that in the particular context, the expression “subject to rules made in this behalf” must be read as “subject to rules to be made in this behalf”. The expression is complementary; unless and until the rules are framed, the power conferred on the Gram Panchayat under Section 244 was incomplete and could not be exercised merely *proprio vigore*.”

14. From the principle of law laid down by the Madhya Pradesh High Court in Gram Panchayat Gorakhpur (supra), it is quite clear that “abadi” land belongs to the State Government and Gram Panchayat is empowered to dispose of sites in the abadi area subject to rules made under Section 244 of the Code.

15. In the matter of Harprasad Bahorelal v. Board of Revenue, M.P., Gwalior and others⁵ the Division Bench of the Madhya Pradesh High Court has held that “abadi” sites are to be allotted in accordance with the Rules enacted under Section 244 of

⁵ 1965 MPLJ 370

the Code.

16. Likewise, in the matter of Ithoba v. Collector, Chhindwara⁶, the Division Bench of Madhya Pradesh has held that the State Government is competent to make rules to regulate the power exercisable under Section 244 of the Code.

17. It is pertinent to mention here that the Rules have been framed by the State Government for disposal of “abadi” sites. Rule 14 of the Rules regarding disposal of abadi sites framed under Section 244 of the Code states as under:-

“14. Every application for grant of site in villages having a Gram Panchayat shall be submitted to the Gram Panchayat. In villages having no Gram Panchayat every application for grant of site shall be submitted to the patel who shall forward the same with his report to the Tahsildar. The Gram Panchayat or the Tahsildar, as the case may be, shall there upon issue a proclamation in Form 'A' which shall be fixed at a conspicuous place in the villages. On the expiry of the period mentioned in proclamation, the Gram Panchayat or the Tahsildar shall proceed as laid down hereafter.”

18. In accordance with the Rules framed under Section 244 of the Code, the plaintiff was allotted abadi sites in the subject land which is “abadi” land. The First Appellate Court has reversed the finding of the trial Court based on Section 244 of the Code in the light of the provisions contained in Section 58 of the Act of 1981, which is pari-materia to Section 65 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as “the Act of 1993”) which

⁶ 1963 J LJ SN 42 (DB)

states as under:-

“58. Transfer of immovable property.”-(1) No immovable property vested in or belonging to a Panchayat shall be transferred by sale, gift, mortgage or exchange or by lease for a period exceeding three years, or otherwise except with the sanction of the State Government or any officer authorised by it in this behalf.

(2) The procedure of transfer of immovable property shall be such as may be prescribed.”

This provision clearly restrains the Gram Panchayat to transfer the property vested in or belonging to a Panchayat by sale, gift, mortgage or exchange or by lease for a period of exceeding five years, or otherwise except with the sanction of the State Government or any other officer authorised by it in this behalf. Provisions contained in Section 58 of the Act of 1981, which is pari-materia provision to Section 65 of the Act of 1993, would not be applicable so far as “abadi” land is concerned as abadi land is held by the State Government and it is not the property of Gram Panchayat.

19. In the matter of Gram Panchayat Gorakhpur (supra), the High Court of Madhya Pradesh has authoritatively held that “abadi” area belongs to the State Government and it is not the property of Gram Panchayat. It appears that special power is conferred under Section 244 of the Code upon the Gram Panchayat to dispose of sites in the abadi area as per Rules framed under Section 244 of the Code. Since abadi land is not the property of Gram Panchayat,

Gram Panchayat can dispose of the abadi land and no permission of the State Government is required under Section 65 of the Act of 1981, therefore, provisions contained in Section 65 of the Act of 1993 would not be applicable for disposal of “abadi” land, which has to be disposed of only by Gram Panchayat in accordance with the Rules framed under Section 244 of the Code, as such, “abadi” land is not covered by mandate contained in Section 58 of the Act of 1981.

20. Reverting to the facts of the present case, the only finding recorded by the First Appellate Court is that grant of lease in favour of the plaintiff by Gram Panchayat is hit by Section 58 of the Act of 1981, which is clearly not in accordance with law in view of discussion made hereinabove.

21. In view of legal analysis made in the preceding paragraphs, it is held that for grant of lease of abadi area by Gram Panchayat under the Rules framed under Section 244 of the Code, provisions contained in Section 58 of the Act of 1981 would not be applicable.

22. The judgments cited by Mr.D.N.Prajapati are clearly distinguishable and not applicable to the facts of the present case in view of the finding recorded hereinabove.

23. As a fallout and consequence of the above-stated discussion, the judgment and decree passed by the First Appellate Court are hereby set aside and that of the trial Court are hereby restored. The

second appeal is allowed to the extent indicated herein-above. A decree be drawn up accordingly. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No.885 of 2000****Appellant**

Chiranjeev Lal Soni

Versus**Respondents**

Chandrawati Sahu and others

(Head-note)

(English)

Gram Panchayat is entitled to dispose of abadi land in accordance with the Rules framed under Section 244 of the Chhattisgarh Land Revenue Code, 1959 and permission of the State Government under the Chhattisgarh Panchayat Raj Adhiniyam, 1993 is not necessary.

(हिन्दी)

ग्राम पंचायत छत्तीसगढ़ भू-राजस्व संहिता की धारा 244 के अन्तर्गत निर्मित नियमों के अनुरूप आबादी भूमि का निपटारा करने हेतु हकदार है तथा छत्तीसगढ़ पंचायत राज अधिनियम, 1993 के अन्तर्गत राज्य सरकार की अनुमति आवश्यक नहीं है।