

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Order on : 12.12.2019

Order Passed on : 28/01/2020

W.P. (227). No. 164 of 2018

1. Gyan Singh, S/o. Hira Singh, Aged About 58 Years,
2. Kamini Singh, W/o. Gyan Singh, Aged About 55 Years,
Both R/o. Indu Chowk, Jarhabhata, Tahsil and District Bilaspur,
Chhattisgarh.

---- Petitioners

Versus

1. Smt. Gita Agrawal, W/o. Alok Agrawal, Aged About 51 Years, R/o. Pipe Line, Indu Chowk, Jarhabhata, Tahsil and District Bilaspur, Chhattisgarh.
2. Habil Masih, S/o. Suleman, R/o. Indu Chowk, Jarhabhata, Tahsil and District Bilaspur, Chhattisgarh.

---- Respondents

For Petitioners	: Mr. Upendra Bharat, Advocate
For Respondent No.1	: Mr. Sumesh Bajaj, Advocate
For Respondent No.2	: Mr. K.P.S. Gandhi, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

28/01/2020

1. This petition has been brought challenging the order dated 18.01.2018, passed by the Board of Revenue (C.G.), Bilaspur in Case No. R.N./02/R/A-70/134/2017, dismissing the revision petition of the petitioners.

2. It is submitted by the learned counsel for the petitioners that the petitioners are the owners of the suit land with constructed house bearing Nazul Plot No.4, Plot No.68/3 area 3000 sq.ft.. The respondent No.1 is making a claim that she has purchased the suit land vide registered sale deed dated 15.10.2004 and having mutation in her favour, filed an application under Section 250 of C.G. Land Revenue Code, 1959 (in short the Code, 1959) before the Tahsildar, Bilaspur on 04.07.2015 praying for restoration of possession. The essential requirement for making such claim were missing, as there was no mention regarding the date of dispossession of the respondent No.1. Further the proceeding under Section 250 of C.G. Land Revenue Code was not at all maintainable because the disputed property is property situated in urban area, therefore, the disputed property is within the urban area as defined under Section 2 (z-4) of the Code, 1959 and any matter of dispossession of such land is not governed by the provisions under Section 250 of the Code, 1959, therefore, the proceeding was not at all maintainable before the Tahsildar.
3. It is further submitted that, the order passed by the Tahsildar dated 09.05.2016 for restoration of possession to respondent No.1 of the suit property was challenged before the S.D.O., Bilaspur in appeal and the same was dismissed on 22.08.2016. The order of the S.D.O. was further challenged in appeal before the Commissioner, Bilaspur and the appeal has been dismissed vide order dated 12.04.2017, against which the revision preferred

before the Board of Revenue has also been dismissed by the impugned order. It is submitted that the orders are against the provisions of law, therefore, not-sustainable. Hence relief be granted to the petitioners.

4. Counsel for the respondent No.1 opposes the petition and the submission made in this respect. It is submitted that the petitioners and the respondent No.2 are encroacher of the disputed land. The respondent No.1 is titled holder of the property by virtue of sale deed dated 15.10.2004. An application was filed for demarcation on 09.10.2014 and when demarcation was made it was found that the petitioners and the respondent No.2 are in illegal possession of the disputed land. The application under Section 250 of the Code has been filed within two years from the knowledge of such illegal possession and the date of such knowledge is 14.10.2014. The question of maintainability was raised before the Revenue Board and same has been very clearly decided vide order dated 04.10.2015 that portion of land on which Kachha house is constructed is not within the jurisdiction of Revenue Courts, however, open land is governed by the provision of Section 250 of the Land Revenue Code and on that basis order can be passed.
5. It is further submitted that principle of *res-judicata* is applicable in the different stages of the same proceeding as it has been held by the Supreme Court in case of **Bhanu Kumar Jain Vs.**

Archana Kumar & Anr. reported in **AIR 2005 SC 626**. Relying on the judgment of M.P. High Court in **Ramgopal Kanhaiyalal Vs. Chetu Batt**, reported in **AIR 1976 M.P. 160**, it is submitted that the M.P. High Court has held that the remedy provided in Section 250 of the Code can be resorted to by Bhumiswami in case of his illegal dispossession. It is further submitted that in case of **Murlidhar & Ors. Vs. Board of Revenue & Ors.** Reported in **2013 (3) M.P.L.J. 184**, it is very clearly held that limitation as required under Section 250 (1-a) (b) starts from the date when it is found that when the possession is found to be unauthorized. Therefore, the application under Section 250 of the Code filed by respondent No.1 was within time. In case of **Vaishnav Sahayakt Trust Vs. State of Madhya Pradesh** reported in **2015(2) M.P.L.J. 561**, the Madhya Pradesh High Court has held that when the fact of dispossession come to knowledge through demarcation, that date of demarcation shall be taken into consideration for filing application under Section 250 of the Code.

6. It is further submitted that Section 92 of the Code, 1959 provides that the Code shall apply to the land held in urban area whether for agricultural or non-agricultural purposes. Therefore, the proceedings under Section 250 of the Code, 1959 is maintainable. Further it has been held by the High Court of Madhya Pradesh in **State of M.P. & Ors. Vs. Rajendra Kumar Goyal Ors.**, reported in **2015 (1) M.P.L.J. 719** and in case of

Rashid Khan S/o. Yasin Khan Musalman & Anr. Vs. State of M.P. & Others, reported in **2011 (3) M.P.L.J. 575** that provisions of Section 248 of the Code are applicable to the municipal area also. It is further submitted that civil litigation is also pending in which, the suit has been filed by the respondent No.2 against the respondent No.1. Therefore, no error has been committed by the Tahsildar and other revenue authorities. Hence, this petition is without any substance, which may be dismissed.

7. Counsel for the respondent No.2 makes submission in support of the petitioners.
8. In reply, it is submitted by the learned counsel for the petitioners that demarcation was never completed, therefore, that could not have been made basis to count limitation for filing application under Section 250 of the Code. The sale deed dated 15.10.2004 is sham sale deed as the possession was never transferred to the respondent No.1. Vendor of the said sale deed was never examined in the proceeding under Section 250 of the Code, 1959 therefore, the whole proceeding under Section 250, of the Code 1959 and all the orders of revenue authorities are unsustainable.
9. I have heard the learned counsel for the parties at length and perused all the documents present on record.
10. The petitioner and the respondent No.2, who are in possession of the construction on the part of the disputed property, which is the

subject matter of the sale deed dated 15.10.2004 is not disputed. The demarcation of the disputed land could not be completed because of obstruction made by the petitioners and the respondent No.1 as reported in Annexure R-1/1, the report given by the Nazul Inspector, which is a report for the purpose of showing alleged unauthorized possession of the petitioner and respondent No.2.

11. The main question raised by the petitioners is regarding the maintainability of the proceeding under Section 250 of the Code, 1959 for placing the respondent No.1 in possession over the disputed property on which the petitioners and the respondent No.2 are admittedly in possession, which has been reported vide report dated 14.10.2014 in Nazul Inspector, who has visited the spot for the purpose of inspection.
12. Relevant portion of Section 250 of the Code, 1959 reads as under :-

“250. Reinstatement of Bhumiswami improperly dispossessed. - (1) For the purpose of this section and section 250-A bhumi swami shall include occupancy tenant and Government lessee.]

[(1-a) if a bhumi swami is dispossessed of the land otherwise than in due course of law or if any person unauthorisedly continues in possession of any land of the bhoomiswami to the use of which such per son has ceased to be entitled under any provision of this Code, the bhumi swami or his successor-in-interest may apply to the Tahsildar for restoration of the possession, —

- (a) in case of bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6) of Section 165 —

(i) before the 1st July, 1978 in cases of unauthorised dispossession prior to the 1st July, 1976; and

(ii) in any other cases within five years from the date of dispossession or from the date on which the possession of such person becomes unauthorised, as the case may be;

(b) in case of a bhumiswami not covered by clause (a), within two years from the date of dispossession or from the date on which possession of such person becomes unauthorised, as the case may be.]

13. Bhumiswami has been defined in Section 158 of the Code, 1959, which reads as under :-

“158. Bhumiswami. - [(1)] Every person who at the time of coming into force of this Code, belongs to any of the following classes shall be called a *bhumiswami* and shall have all the rights and be subject to all the liabilities conferred or imposed upon a bhumiswami by or under this Code, namely

- (a) every person in respect of land held by him in the Mahakoshal region in bhumiswami or bhumidhari rights in accordance with the provisions of the Madhya Pradesh Land Revenue Code, 1954 (II of 1955);
- (b) every person in respect of land held by him in the Madhya Bharat region as a Pakka tenant or as a Muafidar, Inamdar or Concessional holder, as defined in the Madhya Bharat Land Revenue and Tenancy Act, Samvat, 2007 (66 of 1950);
- (c) every person in respect of land held by him in the Bhopal region as an occupant as defined in the Bhopal State Land Revenue Act, 1932 (IV of 1932);
- (d) (i) every person in respect of land held by him in the Vindhya Pradesh region as a pachapan paintalis tenant, pattedar tenant, a grove holder or as a holder of tank as defined in the Vindhya Pradesh Land Revenue and Tenancy Act, 1953 (III of 1955);

(ii) every person in respect of land (other than land which is a grover or tank or which has been acquired or which is required for Government or public purposes) held by him in the Vindhya Pradesh region as a gair haqdar tenant and in respect of which he is entitled to a

patta in accordance with the provisions of sub-section (4) of Section 57 of the Rewa State Land Revenue and Tenancy Code, 1935;

(iii) every person in respect of land held by him as a tenant in the Vindhya Pradesh region and in respect of which he is entitled to a patta in accordance with the provisions of sub-sections (2) and (3) of Section 151 of the Vindhya Pradesh Land Revenue and Tenancy Act, 1953 (III of 1955), but has omitted to obtain such patta before the coming into force of this Code,

(e) every person in respect of land held by him in Sironj region as a khatedar tenant or as a grove holder as defined in the Rajasthan Tenancy Act, 1955 (3 of 1955).

[(2) A Ruler of an Indian State forming part of the State of Madhya Pradesh who, at the time of coming into force of this Code, was holding land or was entitled to hold land as such Ruler by virtue of the covenant or agreement entered into by him before the commencement of the Constitution, shall, as from the date of coming into force of this Code, be a bhumiswami of such land under the Code and shall be subject to all the rights and liabilities conferred and imposed upon a bhumiswami by or under this Code.

[(3) Every person –

- (i) who is holding land in bhumiswami right by virtue of a lease granted to him by the State Government or the Collector or the Allotment Officer on or before the commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 1992 from the date of such commencement, and
- (ii) to whom land is allotted in bhumiswami right by the State Government or the Collector or the Allotment Officer after the commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 1992 from the date of such allotment,

shall be deemed to be a bhumiswami in respect of such land and shall be subject to all the rights and liabilities conferred and imposed upon a bhumiswami by or under this Code :

[Provided that no such person shall transfer such land within a period of ten years from the date of lease or allotment

Explanation. – In this section, the expression "Ruler" and "Indian State" shall have the same meanings as are assigned to these expressions in clauses (22) and (15) respectively by Article 366 of the Constitution of India.]

14. In case of ***Ramgopal Kanhaiyalal Vs. Chetu Batt (supra)***, Madhya Pradesh High Court has held in paragraph -9, which reads as under :-

“9. In the Madhya Pradesh Land Revenue Code, the provisions are not analogous to those of the Delhi Act. The remedy provided in Section 250 of this Code can be resorted to by a Bhumiswami by an application to the Tahsildar. He has to show either (a) that he was dispossessed by the non-applicant otherwise than in due course of law, or (b) that he was dispossessed within two years from the date on which the possession of such person became unauthorised (although initially the possession of that person may be authorised). Thus, clearly enough, this section provides for a remedy at the hands of the Tahsildar for restoration of possession, when a Bhumiswami is improperly dispossessed, that is without due process of law. Clause (x) of Section 257 excludes the jurisdiction of the Civil Court to challenge "any decision regarding reinstatement of a Bhumiswami, improperly dispossessed under Section 250." In both these provisions, the subject-matter of enquiry is possession not title. (See Abdul Waheed Khan v. Bhawani, 1966 Jab LJ 1022 = (AIR 1966 SC 1718) under the Delhi Act if the question of title is raised, it is referred to the Civil Court for decision. There is no analogous provision in the Madhya Pradesh Code.

15. It has been held by the High Court of M.P. in ***State of M.P. Ors. Vs. Rajendra Kumar Goyal & Ors. (supra)*** in paragraph -5,

which is quoted as under :-

“5. It has been brought to our notice by the counsel for appellant/State that in a judgment passed by this Court in case of Rashid Khan and another v. State of M.P. and others reported in MANU/MP/0478/2011 : 2011(3) MPLJ 575 : 2011 RN 406 where it has been categorically held that Section 248 of M.P. Land Revenue Code is applicable even in municipal area, which is based upon the judgment of Hon'ble Apex Court where a Division Bench judgment of this Court was reversed. Para-10 of the judgment is reproduced herein:

“So far as the contention of learned counsel for the appellants that since the land is in the Municipal area, the provisions of Section 248 of the Code are not applicable is concerned, the entire argument is based on the pivot of dictum laid down by the Division Bench of this Court in case of Sind Mahajan (supra) which has been reversed by the Supreme Court in case of State of M.P. & another Vs. Sind Mahajan Exchange Ltd. reported in 1999 RN 328. Hence this contention can not be accepted that in the Municipal area the provisions of Section 248 of the Code are not attracted.”

16. Further it has been held in case of ***Rashid Khan S/o. Yasin Khan Musalman Khan Vs. State of M.P. & Ors. (supra)*** in para -10 which reads as under :-

“10. So far as the contention of learned counsel for the appellants that since the land is in the Municipal area, the provisions of Section 248 of the Code are not applicable is concerned, the entire argument is based on the pivot of dictum laid down by the Division Bench of this Court in case of Sind Mahajan (supra) which has been reversed by the Supreme Court in case of State of M.P. & another Vs. Sind Mahajan Exchange Ltd. Reported in 1999 RN 328. Hence this contention can not be accepted that in the Municipal area the provisions of Section 248 of the Code are not attracted.”

17. Therefore, when the provision of Section 248 of Code, 1959 have been held to be applicable to the Municipal area, which empowers the Tahsildar to eject the person in an unauthorized possession in summary proceeding and Section 250 of the Code only provides for procedure by which such person in unauthorized possession shall be dispossessed by the Tahsildar and both these provisions are part of the same Chapter -18 of the Code, 1959, therefore, the proceeding initiated by he respondent No.1 under Section 250 of the Code is held to be maintainable in view of the judgments mentioned hereinabove and also for the reason that it has been settled by the Supreme Court that the provision under Section 248 of the Code is applicable to the Municipal area also. Therefore, the averments made by the petitioners' side that Section 250 of the Code has no applicability on the urban area is without any substance.

18. The second point raised by the petitioner is regarding limitation. According to Section 250 (1-a) (b), bhumiswami can bring application within two years from the date of dispossession or from the date on which possession of such person becomes unauthorised, as the case may be. In ***Murlidhar & Ors. Vs. Board of Revenue & Ors. (Supra)***, M.P. High Court has held that starting period of limitation for initiating a proceeding under Section 250 of the Code shall be either from the date of actual dispossession or two years from the date when it is discovered that the persons has unauthorizedly occupied the land in dispute. Similarly, it has been held in ***Vaishnav Sahayak Trust Vs. State of M.P. (supra)*** by the High Court of M.P.
19. On the basis of the material that are present in the record of this petition, there is nothing to suggest otherwise that the respondent No.1 had previous knowledge that the petitioners and the respondent No.2 are in the possession of the disputed property, which has been regarded unauthorized by the officer making demarcation and also no authority has been shown by the petitioners and the respondent No.2 for claiming any title over the disputed property. Hence finding that there is nothing to suggest that respondent No.1 had previous knowledge regarding the occupation on the land in question by the petitioners and the respondent No.2, it can be assumed that she came to know of the unauthorized possession of the petitioners and the respondent No.2 on 14.10.2014. Petitioners have claimed that

demarcation was never completed, therefore, the respondent No.1 can not take benefit on that report. The petitioners and the respondent No.2 have never made any different statement before any authority and on the contrary on the basis of the statement made by them, it appears that they are in possession of the same property on which the respondent No.1 is holding title on the basis of the sale deed dated 15.10.2004. Hence, it can be said that the petitioners and the respondent No.2 have not taken any different stand to dispute the identity of the property described in the sale deed dated 15.10.2004. Therefore, it can be safely concluded that the respondent No.1 acquired knowledge on 14.10.2014 regarding unauthorized possession of the petitioners and respondent No.2, therefore, this is the date on which possession of the petitioners and the respondent No.2 can be regarded as having become unauthorized, which fulfills the requirement of Section 250 (1-a) (b) of the Code. Accordingly, the proceeding initiated by the respondent No.1 under Section 250 of the Code was well within limitation filed on 14.07.2015.

20. After considering on all the submissions made by the learned counsels from both the sides and all the material present in the record of the petition, I am of this view that no error has been committed by the Board of Revenue in passing the impugned order and similarly there is no error or illegality found in the order passed by the Tahsildar on 09.05.2016, by the S.D.O. dated 22.08.2016 and by the Commissioner on 12.04.2017.

21. In a result, this petition is without any substance, which is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram