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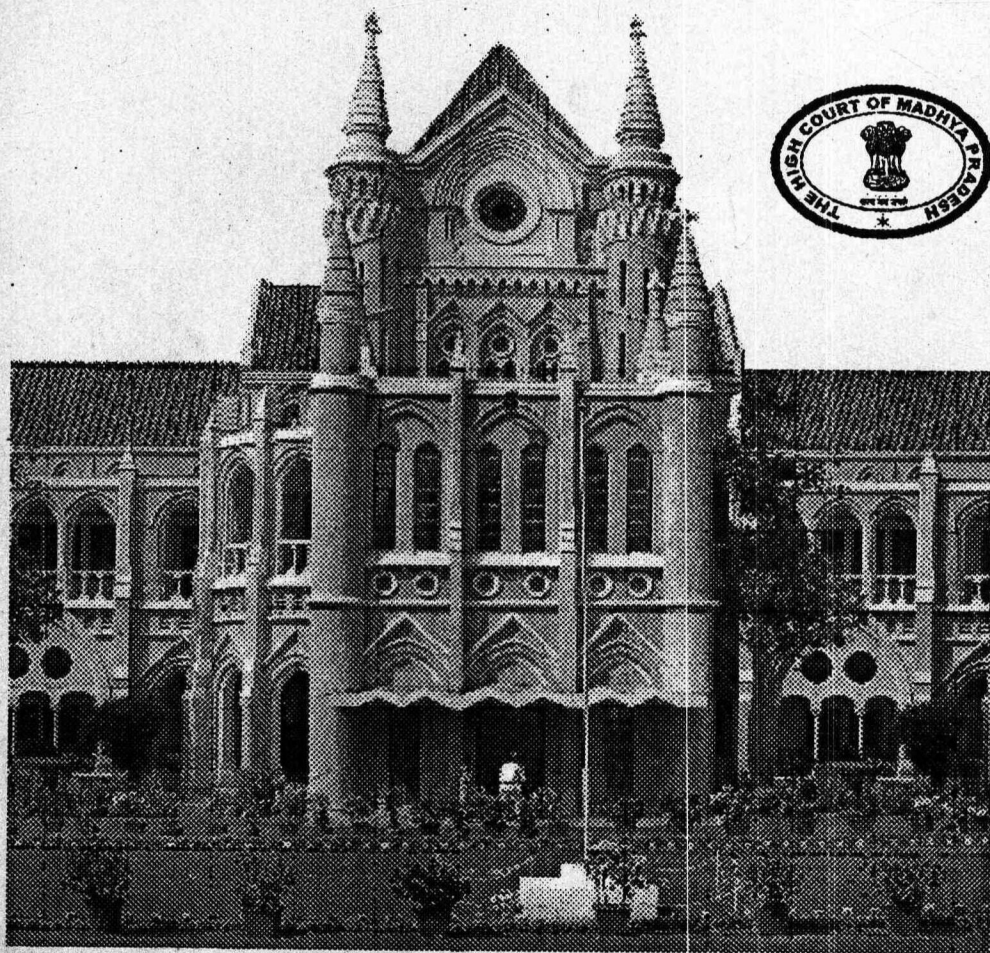
Jabalpur M. P.



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CASES DECIDED BY THE SUPREME COURT OF INDIA AND
THE HIGH COURT OF MADHYA PRADESH



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HIGH COURT OF MADHYA PRADESH : JABALPUR
YEAR-1956

(On the source of CF II-1-1 / 56)

THE HON'BLE SHRI JUSTICE M. HIDAYATULLAH,
CHIEF JUSTICE

B.A. (CANTAB)
BAR-AT-LAW

PUISNE JUDGES

Hon'ble Shri Justice V.R. Sen	M.A., B.Sc., LLB
Hon'ble Shri Justice B.K. Choudhuri	B.A., LLB
Hon'ble Shri Justice G.P. Bhutt	B.A., LLB
Hon'ble Shri Justice T.P. Naik	BAR-AT-LAW
Hon'ble Shri Justice P.V. Dixit	B.Sc.,(NAG.) B.A. (CANTAB) BAR-AT-LAW
Hon'ble Shri Justice Abdūl Hakim Khan	M.A., LLB LLM. (LONDON) BAR-AT-LAW
Hon'ble Shri Justice V. R. Newaskar	M.A., B.Sc., LLB
Hon'ble Shri Justice S. M. Samvatsar	M.A., LLB
Hon'ble Shri Justice B. K. Chaturvedi	B.A., LLB

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HISTORY & CONSTITUTION OF THE HIGH COURT OF MADHYA PRADESH

The present State of Madhya Pradesh was originally created as Central Province on 2/11/1861, as Judicial Commission's territory and was placed under the administration of Judicial Commissioner. At that time, the Judicial Commissioner's Court at Nagpur was the highest Court of the territory. When the Central Province was converted into a Governor's province in the year 1921, it became entitled to a full-fledged High Court for administration of Justice. However, financial & administrative difficulties, resulted in denial of a High Court to the province, for a period of about 15 years. In the year 1933, Berar, hitherto a part of Nizam's State of Hyderabad, was transferred to the Central Province, for administration. This gave the State its new name "Central Provinces & Berar". Thereafter, by virtue of the Letters Patent dated 2nd of January 1936, issued under Section 108 of the Government of India Act, 1915, by King Emperor, George the Fifth, Nagpur High Court was established for Central Provinces & Berar. The Letters Patent, whereunder the Nagpur High Court was constituted and invested with jurisdiction, continued in force even after adoption of the constitution of India on 26th of January 1950, by virtue of articles 225 & 372 thereof.

On 1st of November 1956, the States Reorganization Act was enacted and the new State of Madhya Pradesh was constituted under section 9 thereof. Sub-section (1) of Section 49 of the States Reorganization Act ordained that from the appointed day i.e., 1st November 1956, the High Court exercising jurisdiction, in relation to the existing State of Madhya Pradesh, i.e. Nagpur High Court, shall be deemed to be the High Court for the present State of Madhya Pradesh. Thus, Nagpur High Court was not abolished but by a legal fiction it became The High Court for the new State of Madhya

Pradesh, with its Principal seat at Jabalpur. The Chief Justice, vide order dated 1st of November 1956, issued in the exercise of powers under sub-section 3 of the States Reorganization Act, constituted temporary benches of the High Court of Madhya Pradesh at Indore and Gwalior. Later, by a Presidential Notification Dt. 28th of November 1968, issued in the exercise of the powers conferred by the Sub-section, (2) of section 51 of the States Reorganization Act, 1956, permanent benches of the High Court of Madhya Pradesh at Indore and Gwalior were established.

This State of affairs continued till 1st of November 2000, when the State of Chhattisgarh was carved out of the existing State of Madhya Pradesh, by virtue of the provisions of the Madhya Pradesh Reorganization Act, 2000 and the High Court of Chhattisgarh was established for that State with its seat at Bilaspur. The High Court of Madhya Pradesh, with its Principal Seat at Jabalpur, then became High Court for the successor State, of Madhya Pradesh.

HISTORY OF JUDICIAL SYSTEM IN HOLKAR STATE INDORE

The erstwhile state of Indore was ruled by Holkar dynasty for centuries upto 19th century. Indore was the capital of erstwhile Holkar State. The Holkars were able administrators and they had an organized judicial system. Name of *Her Highness Ahilya Devi Holkar* is still revered today as much as far as judicial system is concerned. Her judicial acumen earned her a name.

During that old days of the Holkars, though there was no codified law in existence, matters were ordinarily settled through Panchayats, the provision of appeal against which was made to be presented to the Ruler. In 1860, Indian Penal Code was enforced throughout British India and its provisions too, were freely referred for guidance by the Holkars.

During the reign of Maharaja Tukojirao Holkar II who was minor, Council of Regency established a regular civil Court presided in by a 'NAZIM'. Court fee was also used to be levied. Execution of Decrees however were initially exempted from Court fee. Presiding Officer of the Criminal Court was named as "SHAHAR FOJDAR". With the increase in civil matters, another court 'DOYAM' was established upgrading the "Nazim" Court as an apex-body. This three tier system successfully steered the needs upto 1900.

Around 1866, Amins were appointed to discharge both the civil & criminal matters in addition to their revenue work. Their summary disposals invited the resentment of Sir Henry Dolly, Agent to Governor General who apprised the British Govt. about ram-shackle state of dispensation of justice in Holkar state in which cases of only grave nature were attended by the Amins or Collectors and several civil matters were forcibly destined to meet with indefinite fate.

1872 was the year of great reforms when Sir T. Madhavrao was appointed as Minister who focused all his attention first to re-organize judicial system. In 1875-76, JURY-SYSTEM was also introduced but it could not serve

the purpose and therefore discontinued very soon. After a gap of few years regular courts were established in the Holkar state on the lines of rest of the British India.

These courts were christened and graded according to the powers conferred viz, one "SADAR COURT" and three "District level Courts" stationed respectively at Indore, Maheshwar, & Rampura. Sadar - Court was vested with powers of Superintendence over the Subordinate Courts. Sadar Court which initially comprised of two judges, was later upgraded as High Court by H.E. Maharaja Holkar in 1916. Upto 1938, the administrative control over judicial deptt. was vested in the Prime Minister and thereafter, it was made over to the Minister for justice. Hon. Shri Justice S.K. Patkar was the first Chief Justice of High Court and after his retirement in 1938, Shri Justice Raibahadur Rangilal took over.

The High Court at the time, enjoyed original jurisdiction to hear suits valuing upto Rs. 20,000/- subject to the power of varying it by the order of Maharaja Under Section 110 of C.P.C.

Depthness of organised judiciary during Holkar regime can be assessed by a simple reference to the data that, besides High Court, there were established civil courts, five DJ. Courts, two summary cases-courts, 29 Munsiff Courts and several village Panchayat Courts; monitoring process too was well developed under which the Chief Justice used to do annual inspection of courts in May- June and appropriate directions were issued to further stream-line the functioning.

Passing through gradual phase of progress in the next two decades, the High Court rejuvenated further under the guidance of Chief Justice Shri P.K. Kaul who crusaded after enforcement of the Constitution of India on 26.1.1950, for establishing a bench of High Court in Indore and as a result of his efforts, the State of Madhya Bharat acquired land from H.H. Yeshwant Rao Holkar. Thus, the foundation stone of the present structure of the High Court was laid at Indore by Dr. Rajendra Prasad, President of India, on 8.3.1955. Later,

in an important development, the State of M.P. was constituted under Section 9 of the States Re-organization Act 1956 w.e.f. 1.11.1956, comprising many erstwhile States of Bhopal, Vindhya Pradesh, Madhya Bharat and certain other sub-divisions.

Prior to enforcement of States Re-organization Act 1956, the powers of the High Court were being exercised by four courts, viz. :- (i) High Court of Judicature at Nagpur (ii) High Court of Judicature of Madhya Bharat at Indore and Gwalior (iii) Judicial Commissioners Court, Vindhya Pradesh and (iv) Judicial Commissioners Court at Bhopal. But, after coming into force, Section 49 of the States Re-organization Act specifically provided that, the High Court exercising jurisdiction immediately before the appointed day in the existing state of M.P. will be deemed to be High Court w.e.f. 01.11.1956 for the new State of M.P. and all other Courts were abolished under the Act.

The present High Court building at Indore was inaugurated by Chief Justice of India Hon. Bhuvaneshwar Sinha on 18.3.1960.

After coming into existence, the State of M.P. the Chief Justice, exercising his powers under Section 51(3) of the States Re-organization Act 1956, issued Notification and directed that temporary benches of High Court, will sit at Indore & Gwalior. These temporary benches continued till 1968 when, the President of India ordered to make the Indore Bench as permanent bench w.e.f. 28.11.68.

In a subsequent Amendment in the Order dated 28.11.1968, the President of India, directed that Judges of High Court of M.P. not less than 4 in number will sit at Indore bench and will exercise jurisdiction in respect of cases in the revenue districts of Indore, Ujjain, Dewas, Dhar, Jhabua, Ratlam, Mandsaur, West Nimar (Khargone), Shajapur & Rajgarh. Subsequently Neemuch has also been added as the eleventh district falling under jurisdiction of Indore Bench.

JUDICIARY IN GWALIOR STATE

The High Court of Gwalior commenced functioning from 1894. The High Court Manual of Gwalior State was enacted in Samvat 1968 and thereafter it was repealed by High Court Manual Samvat 1980. The Manual defines the departmental powers of the Judges of the High Court, provides for the exercise of civil and criminal jurisdiction by one or more of the Judges of the High Court and prescribes the conditions and limitations for filing appeals and revisions to the Darbar against the decisions or orders of that Court.

The independence of Judiciary in erstwhile Gwalior State was noteworthy. The following extracts from "DARBAR POLICY RELATING JUDICIAL DEPARTMENT (1924 Edition) gives an idea of such independence:

"The position of the Judicial Officer is not only peculiar but unique. Although like the rest of the officers he is a servant of the Darbar, yet while he presides in court his position is an independent one. I say independent, because a Judicial Officer must recognize that in the discharge of his duties he is beholden to nobody except the Almighty and that his duty is to dispense unadulterated justice. He must also realize that he is in the court to do nothing but justice and that the trust reposed in him is so sacred that he is constantly required to hold on to his sense of honesty and to stand foresquare to all corrupting influences.

If, a Judicial Officer departs from the above standard even by a hair's breadth he is the means of bringing a great slur upon the Darbar. For the responsibility in this matter is that of the Darbar. The latter, considering such an officer to be a fit person for the work have appointed him to the post and the public inspired by faith in the Darbar's action come to him for justice.

"The Judicial Officer should understand that he

is expected to take into account neither the Darbar's wishes nor those of his relations and friends. He must realize that he is constantly in the Divine presence and is bound to dispense strict justice. It is no easy matter to rise to this attitude of impersonality but unless this is done Darbar Courts cannot be expected to acquire reputation for impartiality. If a Judicial Officer falls short of this standard or in deciding cases he allows himself to be swayed by recommendatory letters from influential persons with the object of winning the latter's favour, take it from me that such an officer will be overtaken by Divine Vengeance.

Judicial Officers should clearly understand that the moment they sit on the Gaddi in the Court Room, they are at once divested of their private individuality, that is, they cease to be Mr. so and so and at once assume the sole of the Darbar. This being so, they are called upon to administer justice without fear or favour, or always conscious of the magnitude of their responsibility and honour attaching to their tradition. Every Officer appointed to administer justice is in duty bound ever to remind himself that his position is a sacred one and that he should never stop short of discharging his duties faithfully. To enable officers of courts to administer strict justice, neither the Ruler nor the officers of superior courts should express their own opinions in respect of any pending case. For in the event of the latter doing so, it is very likely that the court concerned, either influenced by such expressions of opinion or with the object of pleasing the Ruler or the superior officer, may be led to give its judgment in accordance with that opinion."

The following passages of speeches delivered during functions held on 25th February, 1901 and 17th May, 1911 give a broad picture about expectations and duties of Judicial Officers of erstwhile Gwalior State:-

हस्त जैल सिफात सब ऑफिसरों में होना चाहिये :-

(1) इन्साफ ठीक करना.

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- (2) अपने मातहत व रिआया को राजी रखना.
- (3) खर्च का इन्तजाम कैसे होता है इसकी भी वकफियत होनी चाहिये.
- (4) इन्तजाम इस खूबी के साथ करना कि वह ठीक उसूल पर चले जिससे रियासत की तरक्की हो और रिआया खुश हो.
- (5) साजिश (intrigue) की रोक करना.
- (6) लोगों में एका (इत्तफाक) करना.
- (7) जरायम का इन्सद्दाद करना और मुजरिमों को सजा देना.
- (8) धर्म की रक्षा, अपने धर्म को मानना, किसी के धर्म को बुरा नहीं कहना.
- (9) सबकों यकसां समझना, किसी को अपना और किसी को दूसरा नहीं समझना.
- (10) परमेश्वर की सेवा ऐसी करना जिससे इस लोक और परलोक में भला हो.

(स्पीच हुजूर मोअल्ला दामइकयालह बतारीख 17 मई सन् 1911 बाद जल्से खाना).

जुडीशियल ऑफिसरान का पोजीशन एक खास किस्म का है और इसकी एक अजब हालत है, बावजूद दरबार के नौकर होने के उनका दर्जा, जबकि वह कोर्ट में अपनी जगह बैठते हैं तो, ऐसा है जैसा कि एक इन्डिपेन्डेन्ट ऑफिसर का है, लफ्ज 'इन्डिपेन्डेन्ट' से मुराद यह है कि ऐसे ऑफिसर को यह समझना चाहिये कि सिवाय उस परबरदिगार के वह किसी का नौकर नहीं है, और उसका फर्ज साफ साफ इन्साफ करने का है. जुडीशियल ऑफिसर को समझना चाहिये कि मैं इस जगह इन्साफ करने को बैठा हूँ और इस बात को समझें कि यह जगह ऐसी पाक और साफ है कि जहाँ पर ईमान को कायम रखना है और किसी के तअल्लुक का खयाल नहीं करना है.

साहबान ! अगर इसमें जरा भी यानी बालभर भी फर्क होगा तो दरबार पर बड़ा भारी धब्बा आने वाला है; क्योंकि दरबार ने जब उसको इस लायक समझा तब ही जुडीशियल ऑफिसर मुकरर किया और इसी खयाल से रिआया उसके रुबरु इन्साफ की ख्वास्तगार हुई.

जुडीशियल ऑफिसर को खयाल न दरबार का करना चाहिये, न भाई का और न दोस्त का; बल्कि उसको यह तसब्बुर करना चाहिये कि मैं खुदा के घर बैठा हूँ और इन्साफ करता हूँ. अगर्चे यह बात दुशवार है ताहम, जब तक ऐसा न होगा तब तक इन्साफ की शौहरत न होगी. अगर ऐसा ऑफिसर जरा भी पहलूतिहि करेगा या सिफारिशी चिट्ठियों पर दूसरे के पास खातिर से फैसला करेगा तो मेरे खयाल में खुदा के यहाँ से उसको बदला मिलेगा.

पैसा वह चीज है कि जो कुछ चाहे करे; लेकिन इन्साफ और सच्चाई भी वह सिफात है कि पैसा ख्वाह कितना ही जोर करे अगर शरूस् में डिटरमिनेशन है तो

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पैसें कुछ नहीं कर सकता. उम्मेद है कि इन खयालात से आप साहिबान् इत्तफाक करेंगे. अगर यह मेरे खयालात वाकई ठीक न हों तो मैं माफी चाहता हूँ, जुडीशियल ऑफिसर को समझना चाहिये कि उसके पोजीशन को दरबार ने पूरे तौर से जाहिर कर दिया कि क्या है. मैंने जो तशरीह की है उसमें मॉरल फिलासफी का भी तअल्लुक है और राजनीति का भी थोड़ा हिस्सा है.

(स्पीच हुजूर मोअल्ला दामइकबालइ बाद खाना, बतारीख 17 मई सन् 1911).

जुडीशियल ऑफिसर मेरे डायरेक्ट रिप्रेजेन्टेटिव इन्साफ देने के लिये जगह व जगह रियासत में हैं. उमूमन सायलान अपनी अर्जियों को 'गरीब परवर सलामत' लिखकर शुरू करते हैं. इन अलफाजों को अगर गौर से देखा जावे तो यह असल में हुक्मरां के लिये है. जुडीशियल ऑफिसरान के मुतअल्लकि जब वह फिकरा इस्तेमाल किया जाता है तो इसलिये कि वह हुक्मरां के रिप्रेजेन्टेटिव है और लोग उनकी तरफ से इन्साफ मिलने की उसी तरह उम्मेद रखते हैं जैसी हुक्मरां से, यानी बिला रु व रिआयत, चुनांचे जुडीशियल ऑफिसरान को, जो कि यह पोजीशन दरबार के रिप्रेजेन्टेटिव होने का हासिल है, उनको बखूबी यह बात याद रखना चाहिये कि कितनी बड़ी इज्जत उनको है और किस फ़रद महत्व का काम करने के वह जिम्मेवार हैं, और उसके मुआफिक कारबन्द होना चाहिये. मैंने जो रिमाक्स जुडीशियल ऑफिसरान के पोजीशन व उनकी निस्वत किये हैं वह बहुत कुछ दूसरे महक्मेजात के ऑफिसरान से भी मुतअल्लकि है.

मुआम्लात जुडीशियल में रु व रिआयत का पास न रखकर फैसले लिखाये जावें और किसी के सही व सिफारिश सिखाने को मद्देनजर न रखा जावे और फरीकैन को एक आंख से देखा जावे; वरना कोई मुकदमा रास्त न होगा.

(स्पीच हुजूर मोअल्ला दामइकबालइ बतारीख 25 फरवरी सन् 1901 बमौके स्पेशल दरबार व कायमी कौंसिल ऑफ अपील).

NOTIFICATIONS

(I) In exercise of the powers conferred by sub-section (1) of section 51 of the States Reorganization Act, 1956, the President of India issued order dated 27th October, 1956*, appointing Jabalpur to be the Principal Seat of the High Court of Madhya Pradesh.

*MINISTRY OF HOME AFFAIRS NOTIFICATION

New Delhi-2, the 27th October, 1956

S.R.O. 2514.—In exercise of the powers conferred by sub-section 51 of the States Reorganization Act, 1956 (37 of 1956) the President hereby directs that the principal seat of the High Courts for the New States mentioned below shall be at the place mentioned against each State.

New State	Principal Seat of the High Court
Bombay	Bombay
Madhya Pradesh	Jabalpur
Punjab	Chandigarh
Kerala	Ernakulum
Mysore	Bangalore
Rajasthan	Jodhpur

Date :- 11/08/2018

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(II) Establishment of the Temporary Benches- In exercise of the powers conferred by sub-section (3) of section 51 of the States Reorganization Act, 1956, and with approval of the Governor of Madhya Pradesh, the Chief Justice issued order dated 1st of November, 1956** establishing temporary Benches of the High Court at Indore and Gwalior.

****HIGH COURT OF MADHYA PRADESH
NOTIFICATION**

Jabalpur, the 1st November, 1956

No. 1/56—In exercise of the powers conferred by sub-section (3) of section 51 of the States Reorganization Act, 1956, (No. 37 of 1956) and with the approval of the Governor of Madhya Pradesh, the Honourable the Chief Justice of the Madhya Pradesh High Court is pleased to direct that temporary Benches of the High Court of Madhya Pradesh will also sit temporarily at Indore and Gwalior, until further orders.

R. G. Trivedi
Registrar
High Court of Madhya Pradesh

TABLE OF CASES REPORTED

Hiralal v. Agarchand	...1
Kanta Bai (Mst.) v. The State	...4
Mamraj v. Board of Revenue, M.P.	...3
S.S. Dharamchand v. E.A.C., Jabalpur	...6
Seth Motilalsa v. Rupchand	...8

INDEX

Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, M.P. 1950 (1 of 1951), Section 54, Land Revenue Code, 1954, Section 238, Central Provinces & Berar General Clauses Act, Section 5(c)(e) - Continuation of Raiyati Rights Proceeding after repeal of Section 54 of the Act, 1950 - Permissibility - Held - The proceeding under Section 54 of M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, started prior to the repeal of the section could continue under Section 5(c)(e) of the Central Provinces & Berar General Clauses Act, read with Section 239 of M.P. Land Revenue Code. [Mamraj v. Board of Revenue, M.P.] ...3

Central Province & Berar Letting of Houses & Rent Control Order, 1949 - Dismissal for default for non-appearance - Restoration - Permissibility - Held - There is nothing in the Act to prevent the officer from suo moto restoring a case, dismissed in default. [S.S. Dharamchand v. E.A.C., Jabalpur] ...6

Central Province & Berar Letting of Houses & Rent Control Order, 1949, Clause 22(1)(b) & 24 - Allotment of the house - Ex parte decision - Permissibility - Petitioner did not inform within seven days that house had fallen vacant - The authority was empowered to allot house under clause 24 without intimating the landlord as he failed to intimate within seven days that house had fallen vacant. [Seth Motilalsa v. Rupchand] ...8

Constitution of India, Article 19, Land Acquisition Act, 1894, Sections 4 & 6 - Whether acquisition of commercial land would violate Freedom of Trade - Held - If the action involves the acquisition of interest in an existing private commercial

INDEX

undertaking, the State can compensate under clause 2 of Article 31 - Petition dismissed. [Kanta Bai (Mst.) v. The State] ...4

— Contract Act (9 of 1872) - Payment of rent to co-owner - Rent paid to one of co-owner - Tenant cannot be asked to pay over again to other co-owner as it is neither just nor equitable - Co-owner may bring suit for recovery of his share - It is unjust to saddle the tenants to pay over the entire amount again to other co-owner - Suit for recovery of rent by co-owner against tenants dismissed - Appeal allowed. [Hiralal v. Agarchand] ...1

Interpretation of Statute - When words of a statute are precise and unambiguous, no more is necessary than to expound them in their natural and ordinary sense. [Hiralal v. Agarchand] ...1

I.L.R.[1956]M.P.,]

Hiralal vs. Agarchand

I.L.R. [1956] M. P., 1

APPELLATE CIVIL

Before Mr. Justice Abdul Hakim Khan

14 December, 1956

HIRALAL & anr.

... Appellants *

Vs.

AGARCHAND & anr.

... Respondents

(A) Interpretation of Statute - When words of a statute are precise and unambiguous, no more is necessary than to expound them in their natural and ordinary sense. . (Para 3)

(B) Contract Act (9 of 1872) - Payment of rent to co-owner - Rent paid to one of co-owner - Tenant cannot be asked to pay over again to other co-owner as it is neither just nor equitable - Co-owner may bring suit for recovery of his share - It is unjust to saddle the tenants to pay over the entire amount again to other co-owner - Suit for recovery of rent by co-owner against tenants dismissed - Appeal allowed. (Para 4)

Cases Referred :

AIR 1916 Madras 208, Barrel V. Fordee (1932) A.C. 676.

Shiv Dayal Shrivastava, for the appellants.

M/s Abdul Hamid Siddique & Bhagwati Prasad Singal, for the Respondents.

Cur. adv. vult.

J U D G M E N T

A. H. KHAN, J. :-The facts giving rise to this second appeal shortly stated are that the plaintiff Agarchand and his son Kasturchand both rented a house to Hiralal and Shriram, the main defendants in this case. The plaintiff Agarchand filed this suit against Hiralal and Shriram for the recovery of rent due. The defence was that the rent had been paid to Kasturchand, one of the co-owner of the house. Kasturchand the co-owner was also impleaded as a defendant in this case and he admits that he received the rent. The trial Court decreed the suit of the plaintiff and this decision was affirmed in appeal by the Additional District Judge, Bhind. Now this is defendant's second appeal.

*S.A. No. 81/1956 (Gwalior)

2. The short question for determination in this appeal is whether the payment of rent by the tenants to one of the two co-owners absolves them from the further responsibility of paying rent to the plaintiff. The trial Court appears to have been confused by the number of rulings that were cited in this case. Section 38 of the Contract Act makes it abundantly clear that an offer to one of the several joint promisees has the same legal consequence as an offer to all of them. Thus money tendered to and accepted by Kasturchand is money paid to the plaintiff. The plaintiff of course can claim his share from Kasturchand.

3. My attention has been invited to a decision of the Madras High Court A. I. R. 1916 Madras page 208 (*Chochalingam Chetty v. Periya Karuppan Chetty & others*) in which it is said that where a tenant pays the entire rent due from him to one of the co-sharers, he can escape the liability to the other, if he shows that his payment of the rent to the co-sharer was one made bonafide. With great respect to this decision, I do not find anything in Section 38 of the Contract Act, about the payment being made bona-fide or otherwise. The elementary principle of interpreting a statute is that when the words of a statute are precise and unambiguous, no more is necessary than to expound them in their natural and ordinary sense. The words themselves best declare the intention of the Legislature. In *Barrel v. Fordee* (1932) A.C. 676, 682, it has been observed that the safer and more correct course of dealing with a question of construction is to take the words themselves and arrive if possible at their meaning without, in the first place, reference to cases.

4. In this case it has been proved that the payment of rent has been made to one of the co-owners, and, it is neither just nor equitable that the tenants should be now asked to pay over again to other co-owner. It is, as I have said already, open to the co-owner to bring a suit for the recovery of his share but to saddle the tenants to pay over the entire amount again to the other co-owner is most unjust.

5. It is argued that the plaintiff alone is the owner of the house and that Kasturchand is not a co-owner. But the rent-note which is on the record and which is the basis of the suit contains the names of both. And in this case no declaration is sought that the name of Kasturchand has been wrongly and fraudulently included in the rent-

note. If this rent-note was wrongly and fraudulently executed, then according to Section 39 of the Specific Relief Act, the plaintiff, having a reasonable apprehension that such instrument would cause serious injuries to him, ought to have filed a suit for its cancellation. But he has not done so. I find no substance in the plea that the plaintiff alone is the owner of the house.

6. For reasons stated above, the appeal is allowed with costs throughout to defendants No 1 and 2 and the decisions of both the Courts below are set aside.

Appeal allowed.

I.L.R. [1956] M. P., 3
MISCELLANEOUS PETITION
Before Mr. Justice B.K. Choudhary
 19 December, 1956

MAMRAJ & ors.

...Petitioners *

Vs.

BOARD OF REVENUE, M.P. & ors

...Respondents

(A) Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, M.P. 1950 (1 of 1951), Section 54, Land Revenue Code, 1954, Section 238, Central Provinces & Berar General Clauses Act, Section 5(c)(e) - Continuation of Raiyati Rights Proceeding after repeal of Section 54 of the Act, 1950 - Permissibility - Held - The proceeding under Section 54 of M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, started prior to the repeal of the section could continue under Section 5(c)(e) of the Central Provinces & Berar General Clauses Act, read with Section 239 of M.P. Land Revenue Code.

(Para 2)

Y.P. Verma, for the petitioners.

Cur. ady. vult.

ORDER

B.K. CHOUDHARY, J. :-I have perused the order dated 18-8-1956 of the learned Member of the Board of Revenue and agree with the view taken therein.

*M.P. No. 573/1956 (Jabalpur)

2. Sub-section (1) of section 54 of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 provides for accrual of raiya rights to a proprietor in respect of land not included in the home-farm but which was under his personal cultivation, and empowers the Deputy Commissioner to reserve to such proprietor the rights of a raiya in the whole or part of such land. Section 54 of the Act has been repealed by section 238 of the Madhya Pradesh Land Revenue Code, 1954 which came into operation from 1-10-1955. The proceedings under section 54 of the M.P. Abolition of Proprietary Rights Act started prior to the repeal of the section could continue under section 5(c) and (e) of the Central Provinces and Berar General Clauses Act read with Section 239 of the M. P. Land Revenue Code, as held in the above order. There is no ground for interference.

3. The writ petition is dismissed summarily.

4. In view of the above order, the stay application (I.A. No. 2744/56) is also dismissed.

Petition dismissed.

I.L.R. [1956] M. P., 4
MISCELLANEOUS PETITION
Before Mr. Justice B.K. Choudhary
 20 December, 1956

KANTA BAI (MST.)

...Petitioner *

Vs.

THE STATE

...Respondent

Constitution of India, Article 19, Land Acquisition Act, 1894, Sections 4 & 6 - Whether acquisition of commercial land would violate Freedom of Trade - Held - If the action involves the acquisition of interest in an existing private commercial undertaking, the State can compensate under clause 2 of Article 31 - Petition dismissed. (Para 3)

M.R. Bobde, for the Petitioner.

**Cur. adv. vult.*

ORDER

B.K. CHOUDHARY, J. :- The State Government issued notification no. MP-39-C.R. 6-XII-56, dated the 4th January 1956, under sub-section (1) of section 4 of the Land Acquisition Act. The relevant portion of the notification is as follows:-

“And whereas it appears to the Government of the said State that the lands specified in the Tables I, II and III below and marked on the map as mentioned in the note below the Notification, are likely to be needed for a public purpose, namely, for the prospecting of coal seams, for developing collieries to be owned and worked by the Central Government, notice to that effect is hereby given to all whom it may concern, in accordance with the provisions of sub-section (1) of section 4 of the said Act, and the Government of the said State hereby authorise the Chief Mining Engineer, State Collieries, Ministry of Production, Government of India, and his staff and workmen to exercise the powers conferred by sub-section (2) of the said section 4.”

2, The petitioner's husband had obtained a mining lease in respect of certain lands which are included in the notification. She filed objections to the notification (Annexures 5 and 6). The Chief Mining Engineer, State Collieries, submitted his statement against the objections raised by the petitioner over-ruling them. She has, therefore, filed this petition under Article 226 of the Constitution for quashing the notification of the State Government and for restraining the State Government from issuing any notification under section 6 of the Land Acquisition Act.

3 The notification shows that there is a scheme of nationalisation which the State Government intends to undertake in view of the provisions under clause 6(ii) of Article 19 of the Constitution. It would not be inconsistent with the right of the petitioner guaranteed under clause (1)(g) of Article 19. The business may be either carried on by the State itself or by a corporation owned or controlled by the State. If such action involves the acquisition of any interest in an existing private commercial undertaking, the State can compensate under clause (2) of Article 31. There is no ground for quashing the notification nor for restraining the State Government from issuing any notification under section 6 of the Land Acquisition Act.

- 6 S. S. Dharamchand vs. E.A.C., Jabalpur [I.L.R. [1956] M.P.,
4. The petition is dismissed summarily.
5. The stay application is also dismissed.

Petition dismissed.

I.L.R. [1956] M. P., 6
MISCELLANEOUS PETITION
Before Mr. Justice B.K. Choudhary
 20 December, 1956

S.S. DHARAMCHAND } ...Petitioner *
 Vs. }
 E.A.C., JABALPUR & ors. } ... Respondents

**Central Province & Berar Letting of Houses & Rent Control
 Order, 1949 - Dismissal for default for non-appearance -
 Restoration - Permissibility - Held - There is nothing in the
 Act to prevent the officer from suo moto restoring a case,
 dismissed in default. (Para 5)**

Case Distinguished :
 1952 N.L.J. (404).

Cur. adv. vult.

O R D E R

B.K. CHOUDHARY, J. :- This petition is filed by the landlord under Article 226 of the Constitution of India for issue of a writ of certiorari for quashing the order dated 5-8-1955 passed by the Controller of Rents, Jabalpur, (respondent no. 2) and the order of respondent no. 1 dated 13-1-1956 in Rent Control Appeal No. 26-XXXVIII/2 of 1955-56 (Annexure 2).

2. The petitioner is the owner of a house of which respondent no. 3 is the tenant. Respondent no. 3 applied to the Controller of Rents, Jabalpur, for fixation of the fair rent of the premises. The application was registered as Rent Control Case No. 902-XXXVIII-2 of 1953-54. Respondent no. 2 fixed the said case for- 5-8-1955. On that date, when the case was called at about 1.15.p.m., Dharamchand (landlord) was present but respondent no. 3 was absent, and as none appeared for him the Controller Rents dismissed the case in default. The case was restored to file by the Controller of

*M.P. No. 215/1956

Rents the same day, and a notice was issued to the petitioner on 6-8-1955 asking him to appear on 10-9-1955. The relevant order passed by the Controller of Rents is as follows :-

"5-8-55 - The N. A. in person but the applicant not being
1-15. in attendance the case is dismissed in default
and ordered to be filed.

Later. - Shri G. C. Singhai is present and now I
recollect that he had attended in the early
part of the day and I had asked him to come
some time later. The case is, therefore,
restored to file. Put up on 6-8-1955."

3. The petitioner filed an objection on 10-9-1955 against the restoration of the application but it was dismissed by respondent no. 2 on 24-9-1955. The petitioner appealed against the order of the Controller of Rents which was dismissed by respondent no. 1. He has, therefore, filed this petition under Article 226 of the Constitution.

4. It is contended on behalf of the petitioner, on the authority of *Ruplal v. Lala Sheo Shankar* (1952 N.L.J. 404), that the Controller of Rents had no power to restore respondent no. 3's application for fixation of the fair rent to file which was dismissed in default.

5. The decision in *Ruplal v. Lala Sheo Shankar* (supra) is not applicable to the facts of the instant case. In that case the point for determination was whether an ex-parte order in favour of the landlord giving him permission to serve a notice on the tenant determining his tenancy could be set aside by the Rent Controller. The order passed by the Rent Controller in that case was the final order. In the instant case no prejudice is caused to the petitioner, as no final order determining the fair rent of the premises has been passed behind his back. The order-sheet dated 5-8-1955 in the Rent Control case shows that counsel for respondent no. 3 had attended the Court of the Controller of Rents in the earlier part of the day and he was directed to come some-time later. Some-time later when the case was called at 1.15 p.m., the Controller of Rents evidently forgot the above direction and finding respondent no. 3 absent dismissed the application in default. There is nothing in the C.P. and Berar letting of Houses and Rent Control Order, 1949 to prevent the Controller of Rents from restoring the application suo motu the same day which

was dismissed by his own mistake. It appears from the appellate order that a notice has been issued to the petitioner for enquiry into the application made by respondent no. 3 under clause 4 of the letting of Houses and Rent Control Order. The order of restoration passed by the Controller of Rents is final subject to a decision in appeal by the Deputy Commissioner under sub-clause (3) of clause 21 of the C.P. and Berar Letting of Houses and Rent Control Order, 1949. There is no ground for interference.

6. The petition is dismissed with costs. Counsel's fee Rs. 50/-.

Petition dismissed.

I.L.R. [1956] M.P., 8
MISCELLANEOUS PETITION
Before Mr. Justice B.K. Choudhury
 21 December, 1956

SETH MOTILALSA

... Petitioner*

Vs.

RUPCHAND & anr.

... Respondents

Central Province & Berar Letting of Houses & Rent Control Order, 1949, Clause 22(1)(b) & 24 - Allotment of the house - Ex parte decision - Permissibility - Petitioner did not inform within seven days that house had fallen vacant - The authority was empowered to allot house under clause 24 without intimating the landlord as he failed to intimate within seven days that house had fallen vacant. (Para 4)

Cur. adv. vult.

ORDER

B.K. CHOUDHARY, J. :- This petition is filed by the landlord under Article 226 of the Constitution of India for a writ of certiorari for quashing the orders dated 5-1-1956 and 15-3-1956 passed by the second respondent.

2. The petitioner's house no. 337 in ward no. 21, Jawaharganj, Khandwa, was in the occupation of the Nimar District Co-operative Central Bank as tenant. The Bank informed the Deputy Commissioner directly that it had vacated the house on 1-12-1955.

The Deputy Commissioner by an order dated 10-12-1955 allotted the house to Shri S.V. Sharma, District Welfare Officer. As he declined to take the house, it was then allotted to Shri Bhatnagar, Overseer, by an order dated 2-1-1956. This order was served on the petitioner on 12-1-1956. As Shri Bhatnagar also declined to occupy the house, it was allotted to Shri. Rupchand Sindhi (respondent no. 1), a displaced person, by an order dated 5-1-1956. The petitioner on 21-12-1955 gave intimation to the Allotment Officer as required by clause 22(1)(b) of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949. He filed an objection before the Allotment Officer objecting to the allotment in favour of respondent no. 1 stating that the order of allotment of the house to him was illegal. The objection was disallowed by the Deputy Commissioner by an order dated 15-3-1956. The petitioner has, therefore, filed this petition.

3. The petitioner's case is that the allotment orders dated 2-1-1956 and 5-1-1956 and the order of cancellation of the allotment order dated 2-1-1956, as also the order of allotment dated 10-12-1955, were passed ex parte and hence they are illegal. It is also contended that after the landlord intimated to the Deputy Commissioner that the house had fallen vacant, the allotment order could not be passed under clause 24 but under clause 23 of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949, and as such the allotment order was void and inoperative. As against this it is submitted on behalf of respondent no. 2 that the intimation given by the petitioner (Ex.P-8) was invalid as it was not given within seven days from the date on which the house was vacated, and therefore the order of allotment was rightly made under clause 24 of the Order.

4. Clause 22(1) (b) of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 requires the landlord to give intimation to the Deputy Commissioner within seven days from the date on which he becomes finally aware that the house will become vacant. The petitioner has failed to show that he was not aware of the fact that the house had fallen vacant on 1-12-1955. Therefore, the intimation given by him on 21-12-1955 (Ex.P-8) is of no effect. Under these circumstances the Deputy Commissioner was

empowered under clause 24 of the Order to make the allotment of the house in favour of respondent no. 1 without previous intimation to the landlord. I see no ground to interfere with the order of allotment passed by respondent no. 2 in favour of respondent no. 1.

5. The petition is dismissed with costs. Counsel's fee Rs. 25/-. The balance of the amount of security deposited by the petitioner be refunded to him.

Petition dismissed.

I. L. R. (1956) M.P.

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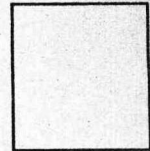
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