HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

JUSTICE SUJOY PAUL.

Writ Petition No. 5074/2015

Major Singh and others
Vs.
State of MP and others

Shri N.K.Gupta, Sr. Advocate with Shri Sanjay Sharma, Advocate for the petitioners.
Shri RBS Tomar, Govt. Advocate for respondents No.1 and 2.
Shri Raja Sharma, Advocate for respondents No.3 to 6.

O R D E R
(24/09/2015)

Challenge in this petition is made to the order dated 31.7.2015, whereby the Tahsildar in pursuant to his earlier order dated 14.7.2014 passed a detailed order against the petitioners.

2. Brief facts necessary for adjudication of this matter are that respondents No.3 to 6 filed an application before Tahsildar, contending that in between the land of petitioners and respondents No.3 to 6, there exists a route of 15 ft. wide and thereafter there exists the land of petitioners bearing survey Nos. 273, 274, 275, 276, 278, 266 and 260. It is stated in the said application that the said route in between the land of parties is in existence for last 50 years. The parties are using this route for ingress and egress and same has wrongly been blocked by the petitioners. Thus, the application aforesaid was filed with a prayer of reopening of the route. The said application was registered by respondent No.2 as Case No.03/13-14/A-13. The respondent No.2 passed an interim order dated 30.7.2014. Against this order, admittedly, the

petitioners have filed a revision before the Commissioner, Gwalior Division, Gwalior. The revision is admittedly pending consideration before the Commissioner.

3. Respondents No.3 to 6 filed an application dated 15.7.2015 before the Tahsildar seeking compliance of earlier order dated 30.7.2014. The present petitioners filed reply stating that against the order dated 30.7.2014, revision is pending before the competent authority and, therefore, matter be kept in abeyance. The respondent No.2 passed the impugned order in exercise of power under Section 132 of M.P.Land Revenue Code (for short, the “Code”) and directed to pay Rs.1000/- as fine for not following the order dated 30.7.2014 and the Revenue Inspector was directed to approach the place with police authorities for opening the route. The expenses incurred in aforesaid exercise by revenue/police authorities was directed to be recovered from present petitioners as arrears of land revenue. In addition, both the parties were directed to submit bond of Rs.10000/- each as per Sections 107 and 116 of the Code of Criminal Procedure.

4. Shri N.K.Gupta, learned senior counsel advanced singular contention. He submits that although their exists a remedy under the Code to assail the order dated 31.7.2015, this petition is directly filed because the order is without authority, jurisdiction and competence. He submits that as per Section 131 of the Code, the Tahsildar is required to conduct a local enquiry and decide the matter finally. It is urged that Section 132 can be availed only when a decision is being disobeyed. It is urged that the order dated 30.7.2014 cannot be treated as a 'decision' as per Sections 131 and 132 of the Code. Thus, the order impugned is without jurisdiction. He placed reliance on

the judgment of Supreme Court, reported in *AIR 1961 SC 1795 (Tirumalachetti Rajaram vs. Tirumalachetti Radhakrishnayya Chetty and others).* He also relied on another judgment of Supreme Court in *Smt. Ramkanya Bai and another vs. Jagdish and others,* reported in *(2011) 7 SCC 452*.

5. *Per Contra,* Shri RBS Tomar and Shri Raja Sharma, learned counsel for the State and respondents No.3 to 6, respectively, supported the impugned order. They contended that the word “decide” and “decision”, used in Sections 131 and 132 of the Code must be read as per its literal meaning. Even if an interlocutory application is decided, it is a decision on the said application. Reliance is placed on *AIR 1961 SC 1795 (Tirumalachetti Rajaram vs. Tirumalachetti Radhakrishnayya Chetty and others)*. Shri Sharma also relied on the judgment of AP High Court, reported in *AIR 2002 AP 224 (Divisional Forest Officer, Eluru vs. District Judge, West Godavari Dist. and others).* The Gujarat High Court judgment in *Shanabhai Shivabhai Thakore and others vs. Mukeshbhai Ramanbhai and another,* reported in [(1978) 19 GLR 85], is relied upon to contend that the meaning of “to decide” is to (i) render a judgment on an issue of fact or law (ii) on the basis of assessment of existing material (iii) after weighing pros and cons by (4) employing the process of ratiocination. When pros and cons are not weighed, when material is not assessed, when rational faculty is not taxed, there can be no decision. Thus, it is urged that there is no jurisdictional error, which warrants interference by this Court.

6. Parties confined their arguments to the extent indicated above.

7. I have heard learned counsel for the parties and perused the record.

8. I deem it proper to reproduce the relevant Sections of the Code for ready reference, which read as

under:-

Section 131	Section 132
Rights of way and other private easements.- (1) In the event of a dispute arising as to the route by which a cultivator shall have access to his fields or to the waste or pasture lands of the village, otherwise than by the recognised roads, paths or common land, including those road and paths recorded in the village Wajib-ul-arz prepared under section 242 or as to the source from or course by which he may avail himself of water, a Tahsildar my, after local enquiry, decide the matter with reference to the previous custom in each case and with due regard to the convenience of all the parties concerned. (2) No order passed under this section shall debar any person from establishing such rights of easement as he may acclaim by a civil suit.	**Penalty for obstruction of way, etc**.- Any person who encroaches upon, or causes any obstruction to the use of a recognised road, path or common land of a village including those roads and paths recorded in the village Wajib-ul-arz or who disobeys the decision of a Tahsildar passed under section 131, shall be liable, under the written order of a Tahsildar stating the facts and circumstances of the case, to a penalty which may extend to [ten thousand]/ [one thousand] rupees.

(Emphasis Supplied)

9. Interestingly, both the parties have relied on the judgment of Apex Court in *Tirumalachetti Rajaram (supra)*. The Apex Court considered the question, what is the denotation of the word “decision”, used in clause in question. In para 7, it is opined that “there is no doubt that decision in the context means the decision on the points for determination. That of course is the meaning of the word “decision”, but whether or not the word “decision” means the decision on one point or the decision of whole suit comprising of all the points in

dispute between the parties must inevitably depend upon the context.....”

10. Justice V.R.Krishna Iyer, in his characteristic way held that adopting the principle of literal construction of the statute alone, in all circumstances without examining the context and scheme of the statute, may not subserve the purpose of the statute. In unique words, His Lordship said that “such an approach would be *“to see the skin and miss the soul”.* Whereas, *“the judicial key to construction is the composite perception of the deha and the dehi of the provision”.* See, *(1977) 2 SCC 256 (Board of Mining Examination v. Ramjee).* The Apex Court in *(1987) 1 SCC 424 (RBI vs. Peerless General Finance and Investment Co.Ltd.)* opind that “interpretation must depend on the text and the context.... Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpretd when we know why it was enacted.” This view is consistently followed by Supreme Court in catena of judgments. In *(2013) 3 SCC 489 (Ajay Maken vs. Adesh Kumar Gupta and another),* the Supreme Court followed the said ratio.

11. Thus, it is necessary to examine as to in what context, the words “decide” and “decision” have been used in Sections 131 and 132 of the Code.

12. A microscopic reading of Section 131 of the Code makes it clear that in the event of a dispute relating to a route, on which a cultivator is claiming access to his field etc., the Tahsildar may “after local enquiry decide the matter”. These words are important which show that the intention of law-makers was that in the event of such dispute, the Tahsildar may conduct a local enquiry and “decide” the matter. As per the plain text and in the context the words “decide the matter” are used in Section 131, in my view, it does not talk about an

interim decision or a decision on any interlocutory stage. It talks about “deciding the matter”. Hence, the words “decide” and “decision” employed in Sections 131 and 132 respectively talk about final decision of the dispute. Similarly, Section 132 talks about “decision” of Tahsildar passed under Section 131. Since it is held that the word “decide the matter” used under Section 131 relates to a final decision, there is no difficulty in holding that the decision passed under Section 131 must be a final decision and not an interlocutory one.

13. The Apex Court in *Smt. Ramkanya Bai (supra),* considered Section 131 of the Code for a different purpose, yet in para 6, the Apex Court opined that an analysis of Section 131 of the Code shows that it provides for the adjudication by Tahsildar, in respect of disputes raised by a cultivator, relating to certain easementary rights. The Apex Court further opined that Section 131 provides that such disputes shall be decided in each case by Tahsildar after a local enquiry with reference to certain relevant consideration. The decision must be relating to a right of way or right to take water etc. In the same judgment, in para 16, the Apex Court held that the decision of Tahsildar after a summary enquiry with reference to 'previous custom' is open to challenge in a civil suit.

14. The word “decision” in a different statute, as per the text and in the context in which it is used, may have a different meaning. The judgments cited by Shri Raja Sharma are based on different statutes. However, as per my judgment, the correct interpretation of provision in hand would be that which is based on proper consideration of “Deha” and “Dehi”.

15. As analyzed above, it is clear that the word “decide” and “decision” used in said provisions relate to a final decision of a dispute raised by a cultivator.

Admittedly, no final decision has been taken by the Tahsildar. The order dated 30.7.2014 (Annexure P/4) is an interim/interlocutory order. Thus, this order, by no stretch of imagination, can be treated to be a 'decision' for invoking Section 132 of the Code. Hence, I find force in the argument of the petitioners that the impugned order is without authority, jurisdiction and competence. The existence of “decision” under section 131 of the Code is *sine qua non* for exercising power under Section 132 of the Code. The Tahsildar has not decided the dispute/matter as per Section 131 of the Code. Thus, the powers under Section 132 were erroneously invoked by the Tahsildar.

16. Consequently, the order dated 31.7.2015 is set aside. The matter is remitted back to the Tahsildar to proceed in accordance with law.

17. Petition is allowed. It is made clear that this Court has not expressed any view on merits of the matter.

(Sujoy Paul)
Judge

(yog)