

The High Court of Madhya Pradesh
MP No. 3452/2019
Ramesh Chandra and Anr. Vs. Vinod Bhargav and Ors.
Gwalior, dt. 04/09/2019

Shri NK Gupta, Senior Counsel with Shri Sanjay Sharma, Counsel for the petitioners.

Shri KS Tomar, Senior Counsel with Shri Neerendra Sharma, Counsel for the respondents No. 1 and 2.

This petition under Article 227 of the Constitution of India has been filed against the order 20th June, 2019 (Annexure P1) passed by Board of Revenue in Review No.5500/2018/Shivpuri/Land Revenue, order dated 24th August, 2018 (Annexure P2) passed by Board of Revenue in Revision No.1208-3/2011 and order dated 09/05/2008 (Annexure P3) passed by Tahsildar, Tahsil Karera, District Shivpuri in Case No.28/2007-2008/A-6.

The necessary facts for disposal of the present petition in short are that the land bearing Survey No.4662, area 1.00 hectare situated in Village Sirsod, Tahsil Karera, District Shivpuri was allotted to the petitioner No.1 on "Patta" by competent authority vide "Patta" dated 22/06/1999 and possession was handed over to the petitioner No.1 and it is claimed that the petitioner No.1 is still in possession of the said land and is enjoying the fruits thereof being the lessee of the land. The copy of the lease deed/ Patta has been annexed as Annexure P4.

It was pleaded that one application was filed by Smt. Vidhyadevi for mutation of her name on the basis of lease deed purportedly executed by the

petitioners in her favour. It was further pleaded that the Tahsildar without issuing any notice to the petitioners and without giving any opportunity of hearing, mutated the name of Smt. Vidhyadevi vide order dated 09/05/2008. It was further pleaded that the Tahsildar should not have mutated the name of Smt. Vidhyadevi because in the revenue record it was specifically mentioned that the land is non-transferable.

Thereafter, the petitioners filed an appeal before the SDO, Karera, District Shivpuri against the order of Tahsildar, which was allowed by order dated 01/07/2009 (Annexure P7) and the order of the Tahsildar was set aside by the SDO. Thereafter, second appeal was filed by Smt. Vidhyadvi and the Additional Commissioner, Gwalior Division, Gwalior dismissed the appeal by order dated 18th July, 2011 (Annexure P8) and affirmed the order passed by SDO, Karera, District Shivpuri.

The order of the Additional Commissioner, Gwalior Division, Gwalior was challenged by respondents No.1 and 2, who are legal representatives of Smt. Vidhyadevi. The Board of Revenue by order dated 24/08/2018 (Annexure P2) set aside the order dated 18th July, 2011 passed by Additional Commissioner, Gwalior Division, Gwalior and the order dated 1st July, 2009 passed by SDO, Karera, District Shivpuri respectively and held that these authorities have failed to notice that the word "non-transferable" was already deleted in the year 2002, therefore, there was no impediment for the petitioners to alienate the property.

Thereafter, the petitioners filed a review petition against the order

dated 24th August, 2018 (Annexure P2) and the same has also stood dismissed by the impugned order dated 20th June, 2019 (Annexure P1).

Challenging the orders passed by the Board of Revenue as well as the Tahsildar, Tahsil Karera, District Shivpuri, it is submitted by the learned Senior Counsel for the petitioners that since the petitioners are illiterate and rustic villagers and merely because they had failed to challenge the genuineness and correctness of the sale deed executed in favour of Smt. Vidhyadevi, would not mean that the petitioners had not claimed any right or title in the property in dispute. It is submitted that since a "Patta" of the Government land was granted to the petitioners, therefore, the said land was non-transferable and the land can be transferred only after obtaining permission from the Collector. It is submitted by the learned Senior Counsel for the petitioners that since the Government land which was given on lease to the petitioners was sold without obtaining permission from the Collector, therefore, it is void and, therefore, the seller Smt. Vidhyadevi or her legal representatives do not get any right or title by virtue of the said sale deed.

Per contra, it is submitted by learned Senior Counsel for the respondents No.1 and 2 that since the petitioners have never challenged the sale deed, which was executed in favour of Smt. Vidhyadevi on 07/07/2005, therefore, it is an admitted position that the petitioners had sold the property in dispute to Smt. Vidhyadevi by registered sale deed dated 07/07/2005 and now, they are estopped from taking a defence that since the said land was given on lease by the State, therefore, the sale deed in absence of the

permission from the Collector, is void. It is further submitted that after selling the property and after receiving the consideration amount the petitioners cannot be permitted to challenge the sale deed on the ground of violation of provisions of law. The petitioners have never claimed that the sale deed was obtained by playing fraud.

Heard the learned Counsel for the parties.

Sections 158(3) and 165 (7-b) of the MP Land Revenue Code read as under:-

"S.158(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."

"165(7-b). Notwithstanding anything contained in subsection (1), a person who hold land from the State Government or whom right to occupy land is granted by the State Government or the Collector as a Government lessee and who subsequently becomes Bhumiswami of such land, shall not transfer such land without the permission of a Revenue Officer, not below the rank of a Collector, given for reasons to be recorded in writing."

From the plain reading of this Section, it is clear that the Government

lessee can not dispose of the land within 10 years of the grant of lease and thereafter, the land can be alienated only after obtaining due permission from the Collector.

The Division Bench of this Court in the case of **Mulayam Singh and Another vs. Budhuwa Chamar and Others**, reported in **2002 RN 250** has held as under:-

"5. It is not in dispute that no permission from the Collector was obtained and the sale was made without the permission of Collector. The respondent cannot transfer his land even though he is declared Bhumiswami, without the permission of the Collector. Transfer was made without such permission, so the appellants will not get any legal rights. In the circumstances, the Additional Collector has rightly held that the sale was in contravention of the provisions of Section 165(7-B) of the Code and is void. Mutation effected on the basis of sale was set aside and the land was directed to be recorded in the name of the respondent No.1."

This Court in the case of **Raheesh Khan vs. Suresh Chand and Others**, reported in **2007 RN 218** has held as under:-

"7.....From the provisions of section 158(3) and 165(7-b) of the MP Land Revenue Code, it is crystal clear that unless and until prior permission is granted by the Collector with cogent reasons regarding sale of the Patta land, the sale is not permissible. The said provisions have been engrafted in the Act to restrict the transfer of the land, which has been granted on lease by the State Government to landless persons and such persons cannot be deprived of the land by any transfer except as permissible under the said provisions of the Act and gives jurisdiction to the Collector to consider such a prayer only after a period of ten years and not before that. After expiry of the period of ten years, the lessee cannot execute a sale deed in favour of stranger without obtaining prior approval of the State Government. The prior approval is one of the precondition for executing the sale deed. Since no permission was

granted, therefore, the sale deed executed by the father of respondents 2 to 4 in favour Meera Bai on 30.11.1985 vide Ex.P-9 is void and is ineffective and the Courts below have not committed any legal error in doing so and dismissing of the suit of the appellant....."

This Court in the case of **Mandu and another vs. State of MP and others**, reported in **2015 (3) MPLJ 229** has held as under:-

"9. These findings when tested on the anvil of the provisions contained under section 165(7-a) as it existed when the transaction were effected wherein prior permission was a mandatory precondition and no prior permission having been sought even if the holding is beyond ten years, the decision arrived at by the Collector that the sale was a nullity ought not to have been interfered with."

This Court in the case of **Savina Park Resorts and Tours Pvt. Ltd. Vs. State of MP and others**, reported in **2012 (1) MPLJ 562** has held as under:-

"14. Although section 165(6-b) gives power to the Collector to ratify the transfer or refuse the same in accordance with law, the question is whether the order passed by the Collector is in consonance with section 165 of the Code. The order passed by the Collector dated 14-1-2010 shows that the report was obtained from the Revenue Officer by the Collector and it was found that patta was granted to Harmukha on 4-1-1994 treating him to be a landless person. The report placed before the Collector shows that the said seller never obtained any permission as per section 165(7-b) from the competent authority to sell it. Accordingly, on suo motu revision the sale was found to be *void and non est* in the teeth of the provisions of the Code by the Collector. Interestingly, Harmukha son of Shamle, caste Jatav, in his reply before the Collector stated that he never sold the land in question nor the sale deed contains his signature. The Collector accordingly gave a finding that admittedly the mandate of section 165(7-b) is violated. No permission is obtained by the seller as mandated in aforesaid provision to sell the land in question. Accordingly, the Collector cancelled the patta, which was issued on 4-1-1994 and came to hold that the said sale deed is *void ab initio*.

15. A Division Bench of this Court in 2002 (2) MPLJ 480, *Mulayam Singh vs. Budhwa Chamar* held as under:-

"5. It is not in dispute that no permission from the Collector was obtained and the sale was made without the permission of Collector. The respondent cannot transfer his land even though he is declared Bhumiswami, without the permission of the Collector. Transfer was made without such permission, so the appellants will not get any legal rights. In the circumstances, the Additional Collector has rightly held that the sale was in contravention of the provisions of section 165(7-B) of the Code and is void. Mutation effected on the basis of sale was set aside and the land was directed to be recorded in the name of the respondent No.1." (Emphasis added)

16. Accordingly, I am unable to hold that the Collector has committed any error of law in passing the impugned order. So far the question of not deciding the petitioner's application dated 26-8-2008 preferred under section 165(6-b) of the Code is concerned, since the alleged transaction was *void ab initio*. There was no need to pass any separate order and said application is deemed to be rejected on passing of final order by the Collector on 14-1-2010. It is also relevant to mention that the Supreme Court in (1996) 7 SCC 765, *Keshabo and another vs. State of MP and Others*, held as under:-

"The MP Revenue Code is a welfare legislation made to protect the ownership rights in the land of a Scheduled Tribe to effectuate the constitutional obligation of Articles 39(b) and 46 of the Constitution read with the Preamble. Economic empowerment of a tribal to provide economic democracy is the goal. Prevention of their exploitation due to ignorance or indigency is a constitutional duty under Article 46. Agricultural land gives economic status to the tiller. Therefore, any alienation of land in contravention of the above objectives is void."

Therefore, I have no hesitation to hold that any transaction by petitioner and Harmukha is void and Collector has not committed any illegality in passing the impugned order. Thus, this point is also decided against the petitioner.

Point(D):

17. So far the contention that the transfer of land by Bhumiswami is after a period of ten years is concerned, this point is also no more *res integra*. The Division Bench in *Mulayam Singh's* case (supra) held as under:-

"This provision was enacted on 28-10-1992, much after the

transaction of sale in this case. Though it provides that after expiry of a period of ten years, the land may be transferred but it is also subject to the prohibition of section 165(7-B) of the Code. So until and unless such a permission is granted by the Collector with cogent reasons, the sale is not permissible. The above-said enactment has been made to restrict the transfer of the land which has been granted on lease by the State Government to landless person and such person cannot be deprived of the land by any transfer except as permissible under section 165(7-B) of the Code and gives jurisdiction to the Collector to consider such a prayer only after a period of ten years and not before that."

This Court in 2002 (1) MPLJ (Note 2) *Budhuwa Chamar vs. Board of Revenue, MP and ors.*) held as under:-

"(b) M. P. Land Revenue Code, 1959, SS. 165 (7-B) and 50-Transfer of Land by Bhumiswami- If permission of Collector is not obtained such transfer is void an initio - In absence of permission when the transfer is bad in law, by no stretch of imagination it can be said that the sale-deeds would be treated as valid in the eye of law- One need not seek declaration that the sale-deeds are bad in law as they do not confer any right for the simple reason that there was no prior permission of the Collector."

The Chhattisgarh High Court in the case of **Smt. Vijayben Patel vs.**

State of CG, reported in 2014 (3) CGLJ 77 has held as under:-

13. The question for consideration is whether the **Section 165(7-b) of the Code** is directory in nature as contended by Shri Bharat, learned Counsel for the appellants.

14. It is also well settled that when negative words are used, the Court will presume that intention of legislature was that the provisions are mandatory in character.

15. The Supreme Court in case of *Nasiruddin and Others vs. Sita Ram Agrawal* (2003) 2 SCC 577 has held as under:--

37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract words to a

statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well-settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression 'shall or may' is not decisive for arriving at a finding as to whether statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well-settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character.

16. Likewise, the Supreme Court in case of *Meera Sahni Vs. Lieutenant Governor of Delhi and Others* (2008) 9 SCC 177, while considering Section 8 of the Delhi Lands (Restrictions on Transfer) Act, 1972 which prescribes that no registering officer shall not register any document unless the transferor produces before such registering officer a permission in writing of the competent authority for such transfer. The Supreme Court, after considering the scheme of the Act has held that such provision has to be construed strictly and observed in Para 36 of the report, which reads as under:--

"36. The Registering Officer who is required to register a document whereby the land is purported to be transferred by sale, mortgage, gift, lease or otherwise was statutorily under an obligation not to register any such document unless the person seeking to transfer the land produces before such registering officer a legal, valid and statutory permission in writing of the competent authority for such transfer. The aforesaid exception provided in the **Delhi Lands Act** for grant of permission despite acquisition is a statutory exception and should be construed strictly in the light of the said provisions, namely, in the light of **provisions of Sections 5 and 8 of the Delhi Lands Act.**"

17. The Supreme Court in case of *Keshabo and another Vs. State of M.P. and others* : (1996) 7 SCC 765, considering the **Section 165(6) of the M.P. Land Revenue Code** held that obtaining permission for alienation of land was condition precedent from the competent authority in writing, if not taken the sale in contravention of said provision would be void. Paragraphs 3 & 4 of the report are as under:--

"3. It is contended by the learned counsel for the appellants that the notification under **sub-section (6) of Section 165** was published in 1977 and the sale having been made in 1960, the

finding of the Tribunal that the sale is void, is not correct in law. We find no force in the contention. Section 165(6) reads thus:

165(6) Notwithstanding anything in sub-section (1) the right of Bhoomiswami belonging to a tribe which has been declared to be aboriginal tribe by the State Government by a notification in that behalf for the whole or part of the area to which this code applies shall not be transferred to a person not belonging to such tribe without the permission of a Revenue Officer not below the rank of Collector, given for reasons to be recorded in writing.

4. A reading of this sub-section would also clearly indicate that the Bhoomiswami right belonging to a tribe, which has been declared to be aboriginal tribe by the State Government by a notification in that behalf, for the whole or part of the area to which the Code applies, shall not be transferred to a non-tribal person, not belonging to such tribe, without prior permission of the Revenue Officer not below the rank of Collector, given for reasons to be recorded in writing. The Board of Revenue has pointed out that prior to the amendment in 1976, obtaining permission for alienation of the land was a condition precedent. If that condition precedent, viz., obtaining prior permission from the competent authority for reasons to be recorded therein was not taken, the sale in contravention of the Act, therefore, becomes void. It is a welfare legislation made to protect the ownership rights in the land of a Scheduled Tribe to effectuate the constitutional obligation of **Articles-39 (b) and 46 of the Constitution** read with the Preamble. Economic empowerment of a tribal to provide economic democracy is the goal. Prevention of their exploitation due to ignorance or indigency is a constitutional duty under **Article 46. Agricultural** land gives economic status to the tiller. Therefore, any alienation of land in contravention of the above objectives is void. It is contended that the application under Section 170[1] should have been filed within two years from the date of sale. Since the application was not so filed, the authorities were not right in directing entertainment of the application. It is not in dispute that the authority has jurisdiction suo motu to go into the violation of the statutory provisions. Even otherwise, since it is a beneficial legislation, the authorities are bound to give effect to constitutional policy; they are not devoid of jurisdiction, even if it is filed beyond limitation to entertain the applications. It is a matter of public policy and of discretion. Under these circumstances, we do not think there

is any substantial question of law warranting interference."

Thus, any sale deed executed in violation of the provisions of Sections 158, 165(7-B) of the MP Land Revenue Code is void.

Therefore, this Court is of the considered opinion that the Board of Revenue lost sight of the fact that the petitioners might not have challenged the correctness of the sale deed by filing a civil suit, but since the sale deed was executed in violation of mandatory provisions of Section 165(7-b) of the MP Land Revenue Code, therefore, the sale transaction is void.

It is further submitted by the learned Senior Counsel for the petitioners that the Board of Revenue has relied upon the order passed by the Coordinate Bench of this Court in the case of **Adhunik Grih Nirman Sahkari Samiti Mydt. vs. State of MP and another**, reported in **2013 RN 8**, to hold that the provisions of Section 165(7-b) of the MP Land Revenue Code were not retrospective. It is submitted that, the said order has been challenged by the State by filing Writ Appeal No.275/2013 and the effect and operation of the order passed by the Coordinate Bench of this Court in the case of **Adhunik Grih Nirman Sahkari Samiti Mydt.(supra)** has been stayed.

Under such circumstances, it is held that the sale deed dated 07/07/2005 executed by the petitioners in favour of Smt. Vidhyadevi was void, being in violation of provisions of Section 165(7-b) of the MP Land Revenue Code.

Thus, it is clear that the sale deed executed in favour of Smt.

Vidhyadevi by the petitioners on 07/07/2005 was *void ab initio*. Therefore, no right or title stood transferred in favour of Smt. Vidhyadevi as a result of which the respondents No.1 and 2 also could not acquire any right due to void sale deed in favour of Smt. Vidhyadevi. It is held that the mutation of names of the respondents no.1 and 2 in the revenue records, as directed by the Tahsildar by its order dated 09/05/2008 as well as the orders dated 24/08/2018 and 20/06/2019 passed by the Board of Revenue, are bad in law and accordingly, they are set aside and the names of the respondents No.1 and 2 are directed to be deleted from the revenue records.

Now, the next question for consideration is that whether under these circumstances, the names of the petitioners should be restored back in the revenue records or not; and whether they are entitled to remain in possession of the land in dispute or not ?

It is the claim of the petitioner that they are still in possession of the land in dispute, whereas it is the claim of the respondents No.1 and 2 that they were placed in possession after execution of the sale deed.

Who is in possession of the land in dispute, shall be considered at later part of this order.

"Patta" in respect of the Government land is granted under the Revenue Book Circular to a landless person, so that he can earn his livelihood.

In view of Section 158(3) of the MP Land Revenue Code, a "Patta" is granted to a landless person for his survival, therefore, he is governed by the

mandatory provisions of Section 165(7-b) of the MP Land Revenue Code. The grant of "Patta" is not by way of right, but it is by way of assistance by the Government, so that the landless persons who have no source of income, can earn their livelihood by cultivating the land. Therefore, the lessee is under obligation to fulfil the liabilities of lessee and since the Government "Patta" is granted for his livelihood, therefore, the sale of the same without permission of the Collector has been prohibited under Section 165(7-b) of the MP land Revenue Code.

The Chhattisgarh High Court in the case of **Smt. Vijayben Patel (supra)**, has held that the negative words which have been used, are indicative of the intention of the Legislature that the provision is mandatory in nature.

Thus, where the statutory prohibition has been created thereby restraining the sale of the Government land, then it has to be followed in its strict sense because the said provision has been made in order to protect the poor and innocent landless persons from the clutches of the unscrupulous persons.

In the present case, it is an admitted position that the petitioners have never challenged the sale deed dated 07/07/2005 alleging any fraud by Smt. Vidhyadevi. The petitioners are resisting the claim of the respondents No.1 and 2 for getting their names muted only on the ground that since the sale deed was executed in violation of the provisions of Section 165(7-b) of the MP Land Revenue Code, therefore, the sale deed is void.

Section 111 of the Transfer of Property Act reads as under:-

"111. Determination of lease.—A lease of immoveable property determines—

- (a) by efflux of the time limited thereby;
- (b) where such time is limited conditionally on the happening of some event—by the happening of such event;
- (c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event;
- (d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right;
- (e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them;
- (f) by implied surrender;
- (g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter [* * *]; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; [or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event]; and in [any of these cases] the lessor or his transferee [gives notice in writing to the lessee of] his intention to determine the lease;
- (h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other."

The plain reading of above Section would clearly indicate that if a lessee has impliedly surrendered the lease, then the lease granted in his favour, shall stand determined. "Patta" of the Government land was given to the petitioners for their survival and earning livelihood and once, they had decided to part away the Government land by alienating the same to Smt. Vidhyadevi after receiving the consideration amount, then it is clear that the petitioners are not in need of any Government land for their survival. Once

the need of the lessee is over, he/they have decided to alienate the Government land, then it can be safely said that the lessee has impliedly surrendered the lease and, therefore, the lease granted in favour of the petitioners shall stand determined under Section 111 of the Transfer of Property Act. Under these circumstances, the petitioner were under obligation to return the land back to the State Government, so that the State Government may utilize the same or further allot the same to other landless and needy persons. Once the need of the petitioners is over and once they had decided to impliedly surrender the lease by alienating the land to private persons without obtaining prior permission of the Collector, then they are not entitled to continue in possession of land given by the Government on lease.

Under these circumstances, it is held that it would be a futile attempt to find out as to who is in actual possession of the land in question. If Smt. Vidhyadevi was placed in possession at the time of execution of sale deed, even then respondents no.1 and 2 are not entitled to maintain their possession for the simple reason that the sale deed dated 07/07/2005 executed in favour of the predecessor-in-title Smt. Vidhyadevi was void and if the petitioners are still in possession of the land in dispute, even then they are not entitled to remain in possession because they have impliedly surrendered the lease.

Under these circumstances, it is held that the sale deed dated 07/07/2005 executed by the petitioners in favour of Smt. Vidhyadevi is *void ab initio* being executed in violation of mandatory provisions of Section 165(7-b) of the MP Land Revenue Code. It is further held that by virtue of

sale deed dated 07/07/2005, respondents no.1 and 2, who are legal representatives of Smt. Vidhyadevi, are also not entitled to maintain the possession (in case they were placed in possession by the petitioners) and similarly, the land cannot be restored back to the petitioners and if the petitioners are still in possession of the land, then they are also not entitled to maintain their possession.

Accordingly, the Collector, Shvipuri is directed to immediately take possession of the land in dispute. Let necessary compliance be made within **one month from today**. The Collector, District Shivpuri is directed to submit the compliance report before the Principal Registrar of this Court within a period of **one month from today**.

The Registry is directed to immediately send a copy of this order to the Collector, for necessary information and compliance.

With the aforesaid observations, this petition is **finally disposed of**.

(G. S. Ahluwalia)
Judge