

**HIGH COURT OF MADHYA PRADESH****BENCH AT GWALIOR****SINGLE BENCH****PRESENT****ANAND PATHAK, J.****( WRIT PETITION NO. 12300/2021 )****Gopal & Ors.****Versus****Mangalia & Ors.**

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Shri K.N.Gupta, learned senior counsel with Shri Praveen Kumar Newaskar, learned counsel for the petitioners.

Shri Devendra Chaubey, learned GA for respondents No. 2 to 5/State.

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**Whether approved for reporting : Yes****Law laid down:-**

*(i) M.P. Bhoodan Yagna Adhiniyam, 1968 is a beneficial legislation to consolidate and amend the law relating to the donation of lands for Bhoodan Yagna initiated by Shri Acharya Vinoba Bhave and for the purpose of distribution of such land amongst landless poor persons and for community purposes ;*

*(ii) Bhoodan holder cannot transfer any interest in the land except as provided in Section 30 of*

*Adhiniyam, 1968. In fact no provision for alienation of land has been specifically made in Adhiniyam, 1968, even if Bhoodan holder acquires Bhumiswami rights under Section 33 of the Adhiniyam, 1968 ;*

*(iii) Concept of right to transfer any interest in the land for Bhumiswami under the Adhiniyam, 1968 has to be borrowed from Section 165 (7-a) of the M.P. Land Revenue Code, 1959 but even that provision contemplates permission from Collector. In the present case, since no permission has been taken by the Bhoodan holder from the Collector to alienate the land by way of sale, therefore, proceedings are void ab initio;*

*(iv) In case of any dispute between special and general statute, provisions of special statute (M.P. Bhoodan Yagna Adhiniyam, 1968 in the present case) shall prevail over general statute (M.P. Land Revenue Code, 1959) [See:-**V.M.Salgaocar and Bros Vs. Board of Trustees of Port of Mormugao and Anr., (2005) 4 SCC 613 and Maya Mathew Vs. State of Kerala and Ors., (2010) 4 SCC 498**]; and*

*(v) Fraud vitiates all solemn proceedings; [See:-**Badami (deceased) By Her LR Vs. Bhali, (2012) 11 SCC 574 and Satluj Jal Vidyut Nigam Vs. Raj***

***Kumar Rajinder Singh (Dead) through LRs and  
Ors., (2019) 14 SCC 449].***

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**ORDER  
(Passed on this 05<sup>th</sup> Day of October, 2021)**

Instant petition is preferred by the petitioners under Article 226 of the Constitution of India (mainly under Article 227 of the Constitution of India) being crestfallen by order dated 12/5/2021 (Annexure P/4) passed by the Madhya Pradesh Board of Revenue (hereinafter shall be referred to as “Board”); whereby, appeal preferred by the petitioners under Section 44(2) of M.P. Land Revenue Code, 1959 (hereinafter shall be referred to as “Code”) got dismissed and order dated 5/8/2010 (Annexure P/2) passed by the Additional Commissioner, Chambal Division, Morena has been affirmed and order dated 15/10/2007 (Annexure P/1) passed by the Collector, Sheopur has been set aside.

2. Precisely stated facts of the case are that at village Ichchhapura, District Sheopur, late Motilal Mali S/o Siriya Mali (father of respondent No. 1) was granted a Patta by Bhoodan Board [Constituted as per the M.P. Bhoodan Yagna Adhiniyam, 1968 (hereinafter shall be referred to as “Adhiniyam, 1968”)]. It appears that land was given on Patta purportedly around or after year 1968. In year 1977, petitioners purchased the land through registered sale deed from late Motilal and that is the point of dispute existing between the parties since then.

3. According to respondent No. 1, his father Motilal Mali passed away in year 1974 itself whereas sale deed executed in 1977, therefore, sale deed executed by him allegedly in year 1977 is a forged one. In year 1977, respondent No. 1 was minor and after attaining majority, he filed an application before the Collector, District Sheopur narrating the fact of alleged execution of sale deed by his father (after his death) and according to him same was a fraud committed by the petitioners.

4. It is further submitted that disputed land was given by the Bhoodan Board on lease and therefore, same could not have been sold without the permission of Bhoodan Board / Collector but petitioners by filing false case number (Missal number), caused mutation of land record in their names and forcibly took the possession of land.

5. Collector issued notice to the petitioners over the said application and vide order dated 15/10/2007 (Annexure P/1) held that permission to sell the land has been given by the Collector on application of petitioners vide order dated 5/1/2004 and therefore, on this ground rejected the application.

6. Being aggrieved by the said order, respondent No. 1 preferred an appeal before the Additional Commissioner, Chambal Division, Morena who in turn, vide order dated 5/8/2010 (Annexure P/2) set aside the order passed by the Collector and remanded the matter back to the Tahsildar, Sheopur with the direction that in case any application is preferred by respondent No. 1 for mutation then proceedings of mutation be ensured.

7. Now it was the turn of the petitioners to agitate the said order before the Revenue Board. Vide order dated 3/2/2016 (Annexure P/3) appeal preferred by petitioners was dismissed by the Revenue Board, but on filing a review application by petitioners, vide order dated 16/11/2016 review was allowed and original appeal restored to its original numbers. Thereafter, vide order dated 12/5/2021 (Annexure P/4), learned Administrative Member of Revenue Board passed a detail order and dismissed the appeal preferred by petitioners under Section 44 (2) of Code.

8. It is the submissions of learned senior counsel for the petitioners that authorities below committed an error in passing the orders Annexures P/2 to P/4 while examining the validity of sale deed dated 6/1/1977 on the basis of Section 158(3) and 165(7-b) of the Code which were not existing on the date of sale deed i.e. 6/1/1977. Provisions as contained in Section 158(3) of Code came into existence in year 1980 and that of Section 165 (7-b) of the Code came into force in year 1992. Validity of sale deed cannot be questioned by Revenue Authorities in revenue proceedings and power lies with the Civil Court. He referred the judgment rendered by this Court in the case of **Murari Vs. State of M.P., 2020 (4) MPLJ 139.**

9. It is further submitted that Collector in his order given findings regarding delay in filing application, whereas, other authorities have not considered the same and caused illegality. Authorities have committed illegality in applying the provisions of Adhiniyam, 1968, which has been repealed by Act No. 21 of 1992.

Father of respondent No. 1, Late Motilal was conferred Bhumiswami rights vide order dated 24/12/1975 and therefore, after conferral of Bhumiswami rights, he sold his property by registered sale deed to present petitioners (or their forefathers). No illegality has been committed.

10. Learned counsel for respondents/State opposed the prayer and submits that petitioners derive their title through Motilal, who died much prior to execution of sale deed and therefore, it was a fraud committed at the instance of petitioners. Further, Motilal was not entitled to execute the sale deed as per relevant statutes. He prayed for dismissal of the petition.

11. Heard learned counsel for the parties at length through Video Conferencing and perused the documents annexed with the petition.

12. In the case in hand, interplay of M.P. Bhoodan Yagna Adhiniyam, 1968 and M.P. Land Revenue Code, 1959 deserves consideration.

13. To address the plight of landless labourers, several beneficial legislations and schemes were promulgated by the then Governments and manifestation of one such intention is Adhiniyam, 1968; which was an Act to consolidate and amend the law relating to the donation of lands for the Bhoodan Yagna initiated by Acharya Vinoba Bhave, distribution of such land among landless poor persons and for community purposes and to provide for matters ancillary thereto, a Board was created with nomenclature **M.P. Bhoodan Yagna Board**. As per the definition

of Existing Board as figured in Section 2 (2) of Adhiniyam, 1968, the said Board included Board under the M.P.Bhoodan Yagna Act, 1953, M.P.Bhoodan Yagna Act, 1955 and Vindhya Pradesh Bhoodan Yagna Act, 1955.

14. The landless persons were given land on Patta under **chapter V (Distribution of Land)**. Certain provisions were made regarding powers of Board to make allotment and grant lease of land. Section 30 prescribe conditions of allotment which are material for adjudication of this case. Same are reproduced as under:-

*“30. The person to whom land is allotted under this Act shall be recorded in village papers or record of rights as a Bhoodan holder and shall hold the land subject to the following terms and conditions, namely:-*

*(a) the Bhoodan holder shall be deemed to hold the land directly from the State Government and shall be liable to pay the land revenue that may have been or may be assessed on such land;*

*(b) his rights shall, on his death, pass to his heirs: Provided that where any such heir holds land in his own right, the land already held by him together with the land that he may inherit shall not exceed ten acres:*

*(c) the holder shall not transfer any interest in the land except as security for loans in favour of a co-operative society registered under the Madhya Pradesh Co-operative Societies Act, 1960 (17 of 1961), of which he is a member, or the State Government for recovery of loans advanced under the Land Improvement Loans Act, 1883 (19 of 1883),*

*or the Agriculturists Loans Act, 1984 (12 of 1984);*

*(d) the holder shall not sub-let the land for any period whatsoever:*

*Provided that when a Bhoodan holder is unable to cultivate his holding on account of-*

*(i) his joining the armed forces during a national emergency; or*

*(ii) any unforeseen calamity:*

*he may, on obtaining a certificate to that effect from the Gram Panchayat or, where there is no Gram Panchayat, from the Patel, subject the whole or any part of his holding for a period-*

*(a) in the case falling under clause (I), during which the emergency lasts and such further period thereafter ending with the agricultural year in which he returns from active duty;*

*(b) in the case falling under clause (ii) of one year during any consecutive period of three years;*

*(e) the holder shall not allow the land to ie fallow for a period in excess of two consecutive years;*

*(f) the holder shall pay the land revenue to the State Government on due date;*

*(g) the condition of temporary lease made under section 28 shall be such as may be prescribed by regulations.”*

15. Breach of any of the conditions as referred in Section 30 may result into the consequence as prescribed in Section 31; whereby, the Board (now Collector by Amendment Act, 1992) can take back the land.

16. Section 33 provides the rights to Bhoodan holder to acquire Bhumiswami rights. Section 33 reads as under:-

*“33. Any person holding land as a Bhoodan holder for **ten years** continuously in accordance with the provisions of this Act shall, at the expiry of the said*



*period, acquire the rights of Bhumiswami under the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959) and the title and interest of the Board in the said land shall cease.”*

17. At this juncture, it would be relevant to reiterate Section 165 (7-a) of the Code also to make factual aspect clear and same is reproduced as under:-

***“165.Right to transfer.***

*(7-a) Notwithstanding anything contained in sub-section (1), no Bhumiswami specified in section 33 of the Madhya Pradesh Bhoodan Yagna Adhiniyam, 1968 (No. 28 of 1968) shall have the right to transfer any interest in his land specified in the said section without the permission of the Collector.”*

It would be relevant to mention here that the fact that such provisions was inserted by M.P. Act No. 15 of 1975 and therefore, as per Section 165 (7-a) without the permission of Board or Collector, no Bhumiswami shall have the right to transfer any interest in his land.

18. If Sections 30, 31 and 33 of the Adhiniyam, 1968 are seen in juxtaposition vis-a-vis Section 1654 (7-a) of Code then it appears that Bhoodan holder shall have no right to transfer any interest in the land except provided in Section 30 (c) even after he gets the Bhumiswami rights and understandably so because this is a beneficial legislation; wherein, Bhoodan holder is landless person and to secure his well being even after grant of Patta, certain stringent provisions are being made so that he may not be persuaded, pressurized or allured to transfer his interest in the land

rendering him a landless person again. Such social welfare legislation is to be seen in that context and therefore, any Act or interpretation which defeats the very legislative purposes deserves rejection. However, concept of alienation of land by way of sale by Bhumiswami can only be derived through Section 165 (7-a) of the Code, but it also puts a rider / caveat of permission from Collector.

19. Bhoodan holder cannot transfer any interest in the land except as provided in Section 30 of Adhinyam, 1968. In fact no provision for alienation of land has been specifically made in Adhinyam, 1968, even if Bhoodan holder acquires Bhumiswami rights under Section 33 of the Adhinyam, 1968.

20. Concept of right to transfer any interest in the land for Bhumiswami under the Adhinyam, 1968 has to be borrowed from Section 165 (7-a) of the M.P. Land Revenue Code, 1959 but even that provision contemplates permission from Collector. In the present case, since no permission has been taken by the Bhoodan holder from the Collector to alienate the land by way of sale, therefore, proceedings are void ab initio.

21. Here in the present case father of respondent No. 1 was a Bhoodan holder as per the M.P. Bhoodan Adhinyam, 1968 or erstwhile Bhoodan Act of 1955, then also he had no authority to transfer his rights to petitioners in year 1977 because Section 165 (7-a) of the Code (which came into existence in 1975) categorically bars such transfer of interest without the permission of Collector. No such permission was taken by the petitioners or their predecessors before getting the sale deed executed

surreptitiously, in year 1977, therefore, such proceedings were *void ab initio* and on this count alone, contention of respondent No. 1 gains ground and submissions of petitioners deserve rejection.

22. Learned Administrative Member of the Revenue Board very elaborately and reasonably discussed the different factual and legal contours of the controversy and thereafter passed a well reasoned order.

23. So far as the ground regarding death of father of respondent No. 1 is concerned, this is a fact (not denied with the help of documents) reflects over the conduct of petitioners because then sale deed dated 6/1/1977 becomes a document obtained through fraud and it is settled in law that fraud vitiates all solemn proceedings. [See. *Badami (deceased) By Her LR Vs. Bhali, (2012) 11 SCC 574 Satluj Jal Vidyut Nigam Vs. Raj Kumar Rajinder Singh (Dead) through LRs and Ors., (2019) 14 SCC 449*].

24. Interestingly, in the case in hand, Collector asked for the proceedings from the subordinate Revenue Authorities, in response thereto, and then Sub Divisional Officer, Sheopur showed his inability to provide the record because according to him the record got burnt in a fire episode in record room at some earlier point of time. But SDO, referred the fact that as per the Khasara Panchshala from year 1973 to 1977, name of Moti over the disputed property is referred as Bhoodan Agriculturist ( भूदान कृषक ) and in year 1975 and 1976, he has directly been referred as Bhumiswami, therefore, the person who was a Bhoodan holder /peasant suddenly becomes

Bhumiswami and within one year or so, sale deed is being executed, whereas the same has been disputed by son of executant on the ground that executant (Moti) was not alive on the date when execution took place. It reflects over the conduct of then Revenue Officers as well as the intention of petitioners. As referred above, it constitutes a proceeding which is *void ab initio* because sale deed and land is obtained through fraud and is devoid of legal sanctity. Collector, Sheopur in his order dated 15/10/2007 (Annexure P/1) miserably failed to appreciate all these aspects and passed a very peculiar order leading to inconsistency and absurdity.

25. Since the learned senior counsel for the petitioner tried to address over Section 165 (7-b) of the Code but that provision also does not come to his rescue because matter is covered under Section 165 (7-a). Even, the Section 165 (7-b) of Code also contemplates permission from the Collector. Here no such permission was taken and very surprisingly Collector in year 2004 gave permission to petitioners, who are purchasers of land, whereas, permission was required to be taken by Bhoodan holder at the time of execution of sale deed, that too, if he was at all entitled to sell the land.

26. Even otherwise, in case of any dispute between Special and General Statutes,, provisions of Special Statute (M.P. Bhoodan Yagna Adhinyam, 1968 in present case) shall prevail over General Statute (MPLRC, 1959). *[See:-V.M.Salgaocar and Bros Vs. Board of Trustees of Port of Mormugao and Anr., (2005) 4 SCC 613 and Maya Mathew Vs. State of Kerala and Ors., (2010) 4*

***SCC 498].***

27. Therefore, on this count also, case of petitioners lacks merits.

28. In view of above facts to do the justice with respondent No. 1, Additional Commissioner, Chambal Division, Morena as well as Board of Revenue rightly rejected the case of petitioners and directed concerned Tahsildar to consider the application of respondent No. 1 for mutation so that he can enjoy the rights as it flows to him right from **Section 30 (b) of Adhiniyam, 1968.**

29. In the considered opinion of this Court, both the Courts below have not caused any arbitrariness or illegality in passing the impugned orders, rather they did substantial justice while directing the Tahsildar for mutation of land in the name of legal heirs of Bhoodan Holder Motilal including the present respondent No. 1 Mangalia S/o Motilal, Resident of village Ichchhapura, Tahsil and District Sheopur, M.P..

30. Resultantly, petition preferred by petitioners sans merits. Admission declined. Petition is dismissed.

31. Copy of the order be sent to Collector, Sheopur for information and compliance.

**(Anand Pathak)**  
**Judge**

**jps/-**