



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE HIRDESH

ON THE 8th OF MAY, 2025

WRIT APPEAL No. 566 of 2025

SUKHWATI TEKAM AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Vibhor Kumar Sahu and Shri Vikram Singh- learned Counsel for appellants.

Shri Vivek Khedkar- learned Additional Advocate General/ Senior Counsel for respondents/ State.

ORDER

Per. Justice Hirdesh

The instant intra-Court appeal under Section 2 (1)7 of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayneeth Ko Appeal) Adhiniyam, 2005 is preferred by the appellants assailing the order dated 20th of January, 2025 passed by learned Single Judge in Writ Petition No.4332 of 2023 whereby the writ petition filed by the appellants (petitioners therein) has been dismissed.

Reliefs sought by appellants are as under:-

"(7) 1. The impugned order dated 20.1.2025 passed in WP No. 4332/202023 by learned Single Judge, Hon'ble Justice Shri Milind Ramesh Phadke Ji ji may kindly be pleased to set aside/quashed in the interest of justice.

2. That, the impugned order dated 29/09/18 Annexure P/1 in the aforesaid petition passed by the respondent no.2 may kindly be set aside.

3. That, the order dated 16/08/17 Annexure P/2 passed by the respondent no.3 may kindly be set aside.

4. That, the respondent may be directed to provide the salary increment to appellant which are not affected by the order dated 16/08/17



(Annexure P/2) and also all other consequential benefits in this respect.

5. That, in alternative to above relief, respondent may be directed to provide the proper opportunity of hearing to appellant and to consider the matter of disciplinary action against the appellant afresh.

6. Any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case same may kindly be granted to the petitioner.

In a narrow compass, the facts of the case are that appellants entered into an agreement with M/s.Sant Shri Sudhasagar Builders and Developers *vide* agreement to sell dated 22-07-2022, claiming themselves to be members of Scheduled Tribe and for residential purposes, they applied for diversion of land bearing Survey Nos. 40/01, 40/02, 40/03, 48/01 and 48/02 situated in village Borkheda Gird, Patwari Halka No.55, Tehsil Guna, District Guna and sought permission from the Town and Country Planning for development of residential colony in the said land. In pursuance of granting permission from Town and Country Planning dated 20-10-2022, thereafter appellants applied before the SDO (Revenue), Guna in respect of development permission for construction of colony. The SDO (Revenue), in turn, called report from the Tahsildar. On the basis of report, the SDO (Revenue) *vide* order dated 30-01-2023, rejected the application of appellants stating that appellants belong to Scheduled Tribe and there is a bar of Section 165(6) of MPLRC. Being aggrieved, the appellants filed a writ petition before the writ Court and the same has been dismissed *vide* order impugned. Hence, this appeal.

It is contended on behalf of appellants that the land in question diverted for residential purpose and the provisions under Section 165(6) of MPLRC are limited to agriculture. Denial of permission for development of land is made only on the ground of applicability of Section 165(6) of MPLRC, but overlooking such aspect, the writ Court had passed the order impugned which is manifest, illegal and contrary to law.



On the other hand, learned Counsel for the State supported the order impugned and prayed for dismissal of this appeal.

Heard learned counsel for the parties and perused the impugned order as well as record.

Provisions of Section 165(6) of MPLRC read as under:-

"6) [Notwithstanding anything contained in sub-section (1) the right of bhumiswami belonging to a tribe which has been declared to be an 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-

(i)in such areas as are predominately inhabited by aboriginal tribes and from such date as the State Government may, by notification, specify, not be transferred nor it shall be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe in the area specified in the notification;

(ii)in areas other than those specified in the notification under clause (i), not to be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan 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.

Explanation. - For the purposes of this sub-section the expression "otherwise" shall not include lease.]

(6-a) Notwithstanding anything contained in sub-section (1), [the right of a bhumiswami other than a bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6), in the land excluding the agricultural land] shall not be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to aboriginal tribe without the permission of the Collector given for reasons to be recorded in writing:

Provided that every such transfer effected which is not in accordance with the provisions herein contained shall, unless such transfer if ratified by the Collector in accordance with the provisions hereinafter contained, be void and shall be of no effect whatsoever, notwithstanding anything contained in this Code or any other law for the time being in force.

(6-b) Notwithstanding anything contained in the Limitation Act, 1963 (No. 36 of 1963), the Collector may on his own motion at any time or on an application made in this behalf within three years of such transaction in such form as may be prescribed, make an enquiry as he may deem fit, and may, after giving a reasonable opportunity of being heard to the persons affected by the transfer, pass an order ratifying the transfer or refusing to ratify the transfer.

(6-c) The Collector shall in passing an order under sub-section (6-a) granting or refusing to grant permission or under sub-section (6-b) ratifying or refusing to ratify the transaction shall have due regard to the



following :-

- (i) whether or not the person to whom land is being transferred is a resident of the Scheduled Area;
- (ii) the purpose to which land shall be or is likely to be used after the transfer;
- (iii) whether the transfer serves, or is likely to serve or prejudice the social, cultural and economic interest of the residents of the Scheduled Area;
- (iv) whether the consideration paid is adequate;
- (v) whether the transaction is spurious or benami; and
- (vi) such other matters as may be prescribed.

The decision of the Collector granting or refusing to grant the permission under sub-section (6-a) or ratifying or refusing to ratify the transaction of transfer under sub-section (6-b), shall be final, notwithstanding anything to the contrary contained in this Code.

Explanation.-For the purpose of this sub-section,-

- (a) "Scheduled Area" means any area declared to be a Scheduled Area within the State of Madhya Pradesh under paragraph 6 of the Fifth Scheduled to the Constitution of India;
- (b) the burden of proving that the transfer was not spurious, fictitious or benami shall lie on the person who claims such transfer to be valid.

(6-d) On refusal to grant the permission under sub-section (6-a) or ratification under sub-section (6-b), the transferee, if in possession of the land shall vacate the possession forthwith and restore the possession thereof to the original bhumiswami.

(6-e) If the bhumiswami for any reason whatsoever fails or is unable to take possession of the land of which the right of possession stands restored to him under sub-section (6-d), the Collector shall cause the possession of land to be taken and cause the land to be managed on behalf of the bhumiswami subject to such terms and conditions as may be prescribed till such time as the original bhumiswami enters upon his land :

Provided that if any resistance is offered in restoring possession, the Collector shall use or cause to be used such force as may be necessary.

[***]

(6-f) The provisions of sub-section (6-a) to [(6-ee)] shall have effect, notwithstanding anything to the contrary contained in this Code or any other law for the time being in force.]

It is true that Section 165(6) of MPLRC lays down that when a member of an aboriginal tribe wants to sell his/her land to a person, who does not belong to an aboriginal tribe, permission of Revenue Officer, not below the rank of a Collector is necessary. It only implies that without such permission, no transfer/sale of land



can be said to be valid. The SDO (Revenue) rejected the application of appellants stating that appellants belong to Scheduled Tribe and there is a bar of Section 165(6) of the MPLRC and requisite permission under Section 165(6) of MPLRC has to be obtained by appellants. Without permission, the appellants want to sell/transfer their land for construction of colony through the Developer, which is not permissible in law.

Having perused the impugned order, we are of the considered opinion that the findings recorded by the learned Single Judge are based on facts available on record, therefore, impeccable and the conclusion has been drawn after applying the correct principles of law.

Consequently, no indulgence is warranted in the instant *intra-court* appeal.

Appeal being *sans* merits is hereby *dismissed*.

It is relevant to note that learned counsel for the appellants has drafted the appeal memo, is not in a proper manner as the reliefs quoted therein are not relevant to the present case and the said reliefs sought for by the appellants are related to service matter. Such casualness deserves depreciation. Appellants and their counsel are advised to be more cautious in future.

(ANAND PATHAK)
JUDGE

MKB

(HIRDESH)
JUDGE