W.A. No. 1627 of 2018
W.A. No. 255 of 2022

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA

ON THE 06th MAY, 2024

WRIT APPEAL No. 1627 of 2018

BETWEEN:-

1. **AMBRISH S/O LATE GOPILAL KELA OCCUPATION: BUSINESS 5, GULMOHAR EXTN. INDORE (MADHYA PRADESH)**
2. **SMT. PREETI W/O AMBRISH KELA OCCUPATION: BUSINESS 5, GULMOHAR EXTN. INDORE (MADHYA PRADESH)**

.....APPELLANTS

(SHRI ABHINAV MALHOTRA - ADVOCATE FOR THE APPELLANTS)

AND

1. **THE STATE OF MADHYA PRADESH SECRETARY VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**
2. **COMPETENT AUTHORITY URBAN LAND CEILING COLLECTORATE , INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI ANIKET NAIK – DY. GOVT. ADVOCATE FOR THE RESPONDENT/STATE)

WRIT APPEAL No. 255 of 2022

BETWEEN:-

1. **GURVINDER SINGH BHATIA S/O KRIPAL SINGH BHATIA, AGED ABOUT 69 YEARS, OCCUPATION: BUSINESS BCC HOUSE, 8/5, MANORAMAGANJ, NAVRATANBAGH MAIN ROAD (MADHYA PRADESH)**

2. SURINDER SINGH BHATIA S/O KRIPAL SINGHM BHATIA, AGED ABOUT 61 YEARS, OCCUPATION: BUSINESS "BCC HOUSE", 8/5, MANORMAGANJ, NAVRATANBAGH MAIN ROAD (MADHYA PRADESH)

3. MRS. GURVINDER KAUR BHATIA W/O SURINDER SINGH BHATIA, AGED ABOUT 58 YEARS, OCCUPATION: BUSINESS "BCC HOUSE", 8/5, MANORMAGANJ, NAVRATANBAGH MAIN ROAD (MADHYA PRADESH)

4. MRS. VEENA BHATIA W/O GURVINDER SINGH BHATIA, AGED ABOUT 58 YEARS, OCCUPATION: BUSINESS "BCC HOUSE", 8/5, MANORMAGANJ, NAVRATANBAGH MAIN ROAD (MADHYA PRADESH)

.....APPELLANTS

(SHRI ABHINAV MALHOTRA - ADVOCATE FOR THE APPELLANTS.)

AND

1. THE STATE OF MADHYA PRADESH PRINCIPAL SECRETARY MANTRALAYA, VALLABH BHAWAN (MADHYA PRADESH)

2. COMPETENT AUTHORITY URBAN LAND CEILING COLLECTORATE, INDORE (MADHYA PRADESH)

.....RESPONDENTS

(SHRI ANIKET NAIK – DY. GOVT. ADVOCATE FOR THE RESPONDENT/STATE)

Reserved on : 08.02.2024

Pronounced on : 06.05.2024

These appeals having been heard and reserved for order coming on for pronouncement this day, ***Hon'ble Shri Justice S.A. DHARMADHIKARI*** *pronounced the following*

ORDER

Matter is heard finally with the consent of parties.

Heard on I.A. No. 1964/2022, an application seeking grant of leave to file appeal under Section 2(1) of the Madhya Pradesh Uccha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 against the final order dated 08.03.2018 passed in W.P. 9293/2010. The said

I.A. Has been filed by the appellant in W.A. No. 255/2022.

Regard being had to the similitude of the controversy involved in the aforesaid appeals, they have been heard analogously and disposed of by this singular order. Both W.A. No. 1627/2018 and W.A. No. 255/2022 are heard analogously and disposed off by this common order.

This intra court appeal under Section 2(1) of the Madhya Pradesh Uccha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 assails the order dated 08.03.2018 passed in W.P. No. 9293/2010 whereby the learned Single Judge is dismissed the writ petition as well as the review petition.

2. <u>Facts of W.A. No. 1627/2018</u>

Brief facts of the case are that the appellant had filed a writ petition seeking quashing of proceedings in respect of land bearing Survey No. 1307/2 admeasuring 0.395 hectares(14000 sq. ft) land situated at Village Khajrana Teh & Distt. Indore. Earlier, the aforesaid land was owned by one Mr. Devikrishna S/o Saligram. Since the year 1972-73, Shri Parmanand, Puranlal and Bharatlal were in possession and had legally acquired ownership rights and recognizing such ownership rights by the order passed by the competent authority. Thereafter, their names were duly mutated in the revenue records in the year 1978. Shri Parmanand & others applied for diversion of the aforesaid land for residential purposes which was allowed vide order dated 14.03.1983. The land owner Shri Parmanand & others had filed necessary statements u/S 6 of the Urban Land (Ceiling and Regulation) Act, 1976[referred to as “the Act of 1976”] and a case was registered as Case No. 149/P-90/C-1/8283, in which after due inquiry, the respondent no.2 had passed an order holding that the land in

question does not fall within the ambit of provisions of the Act of 1976. On 24.10.1986, Shri Parmanand and others obtained permission for construction from Indore Municipal Corporation. Thereafter, the land owners Shri Parmanand and others sold the aforesaid land in question to Shri Yeshwant Sankla vide registered sale deed dated 05.11.1988. Shri Sankhla sold the land in question to Mrs. Girija Agrawal vide registered sale deed dated 12.10.1992 who had also obtained permission for construction from the Indore Municipal Corporation on 20.11.1993. Thereafter, Mrs. Girija Agrawal sold a part of land i.e. 2945.375 sq.ft. with pakka shed to one Kushiram vide registered sale deed dated 15.05.2000 and had sold the other part of the land i.e. 7890.75 sq. ft by registered sale deed dated 05.04.2004 to the appellants. The appellants herein obtained permission for construction from the Indore Municipal Corporation dated 19.04.2007. A total area of Survey no. 1307 admeasuring 42,000 sq ft. which stood divided in three different parts. Out of the aforesaid total land, 14,000/- sq.ft is owned by the appellant. Another 14,000 sq. ft. was owned by one Mrs Monika Sankhla and another 14000 sq ft of the land is owned by Gurvindar Bhatia. The aforesaid land was shown to be affected by ceiling proceedings in the revenue records. The respondent no.2 declared the aforesaid land as surplus in reopened proceedings Case No. 391/A-90/C-1 and consequently, in the revenue records, since the action of respondent no.2 was an illegal, inoperative and without jurisdiction. Therefore W.P. No. 9293/2010 was filed.

3. <u>Facts of W.A. No. 255/2022</u>

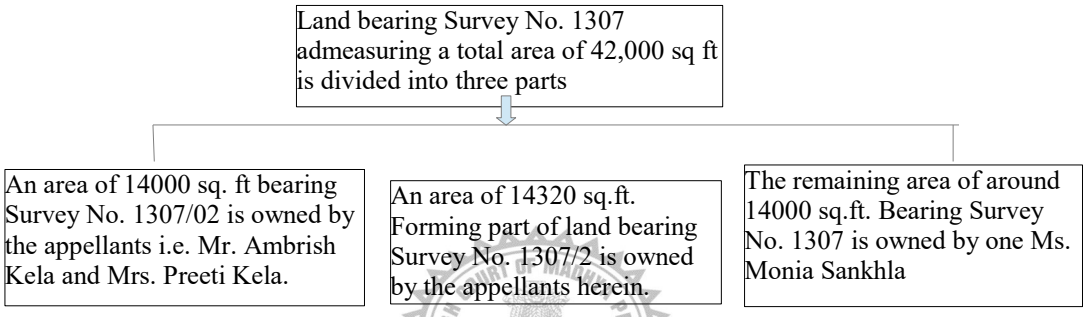
The appellant in this case had also purchased land admeasuring 14,320 sq.ft. Some part of the aforesaid land bearing Survey No. 1307/2 situated at Village Khajrana Teh and Distt. Indore

was purchased vide registered sale deeds dated 08.01.1997, 09.01.1997, 10.01.1997 and 14.01.1997. At the time of purchase, the said land was not the subject matter of any proceedings under the Act of 1976 nor were the appellants informed by the predecessors-in-interest regarding any defect in their title. Thus, they have parted with adequate sale consideration. The appellant became bonafide owner of the land in question with adequate title. On 30.01.1998, the land in question was declared to be surplus land under the provisions of the Act of 1976 based on the statements filed by one Devkrishna under Section 6 of the Act of 1976. Accordingly, entries in the revenue records were modified. The appellant came to know that proceedings initiated under the Act bearing Case No. 391/A-90/C-1 was subjected to challenge before this Court in W.P. No. 9293/2010 in respect of another part of the same land. Since the appellants were also aggrieved by the same ceiling proceedings, they preferred an application I.A. No. 1272/2014 seeking permission to intervene in the writ petition No. 9293/2010. Learned Single Judge allowed the application vide order dated 18.03.2014 and resultantly, appellant herein has joined as intervenor in the writ petition. The learned Single Judge dismissed the writ petition on the ground that third party purchasing the property after issuance of notice u/S 3 of the Act of 1976 does not have any locus to challenge the ceiling proceedings when considering the matter on merits. Thereafter, the review petition was preferred against the order dated 08.03.2018 which was also dismissed on 20.08.2018.

4. After review petition was dismissed, the appellants preferred a writ appeal challenging the order dated 08.03.2018 which was registered as W.A. No. 1627/2018. The appellant joined as intervenor in the said writ appeal vide order dated 12.07.2019.

Subsequenly, the appellants filed application seeking leave of Court to withdraw the intervention filed in writ appeal so as to challenge the impugned judgment/final order dated 08.03.2018 independently. As a result, instant intra Court appeal has been filed.

The Survey No. 1307 that is the subject land stretched across an area of 42,000 sq.ft of land, which stands divided in three different parts as per the flowchart given below:



5. The subject land and other parcels of land owned and possessed by the Kelas and Mrs. Monika Sankhla as stated in the flow chart above were originally owned by one Mr. Devkrishna who had given the whole parcel of land including the subject land on lease to Parmanand, Puranmal and Bharatlal S/o Shri Jasanmal (referred to as 'Parmanand and Ors' hereinafter) for cultivation purposes in lieu of share in such produce. Since 1972, the subject land remained in possession of Parmanand and Ors. in their capacity as 'Marusi Kashtkar' i.e. permanent cultivator and thus Parmanand & Ors. Acquired *bhoomiswami* rights in the subject land on the strength of Section 190 of the Madhya Pradesh Land Revenue Code, 1950(referred to as 'The Code" hereainfter).

6. As per Section 169(1) of the Code, if any person is in possession of a leasehold land for a continuous period of 5 years in contravention to Section 168(1) of the Code, then such person

becomes the occupancy tenant in respect of such land. Further, a conjoint reading of Section 190 with Section 168 and 169 of the Code would show that '*bhumiswami'* rights accrued to a person who has been occupancy tenant of a land from the commencement of next agricultural year by operation of Section 190 of the Code which reads as follows:

> ***190.*** *Conferral of bhumiswami rights on occupancy tenants. — [(1) Where a bhumiswami whose land is held by an occupancy tenant belonging to any of the categories specified in sub-section (1) of Section 185 except in items (a) and (b) of clause (i) thereof fails to make an application under sub-section (1) of Section 189 within the period laid down therein, the rights of a bhumiswami shall accrue to the occupancy tenant in respect of the land held by him from such bhumiswami with effect from the commencement of the agricultural year next following the expiry of the aforesaid period.] (2) Where an application is made by a bhumiswami in accordance with the provision of sub-section (1) of Section 189, the rights of a bhumiswami shall accrue to the occupancy tenant in respect of the land remaining with him after resumption if any allowed to the bhumiswami with effect from the commencement of the agricultural year next following the date on which the application is finally disposed of. [(2-A) Where the land of a bhumiswami is held by an occupancy tenant other than an occupancy tenant referred to in sub-section (1), the rights of a bhumiswami shall accrue to the occupancy tenant in respect of such land — (a) in the case of occupancy tenants of the categories specified in items (a) and (b) of clause (i) of sub-section (1) of Section 185, with effect from the commencement of the agricultural year next following the commencement of the Principal Act; 115 (b) in any other case, with effect from the commencement of the agricultural year next, following the date*

on which the rights of an occupancy tenant accrue to such tenant.] (3) Where the rights of a bhumiswami accrue to an occupancy tenant under sub-section (1), l[sub-section (2) or sub-section (2-A)] such occupancy tenant shall be liable to pay to his bhumiswami compensation equal to fifteen times the land revenue payable in respect of the land in five equal annual instalments, each instalment, being payable on the date on which the rent payable under Section 188 for the corresponding year falls due, and if default is made in payment, it shall be recoverable as an arrear of land revenue Provided that if from any cause the land revenue is suspended or remitted in whole or in part in any area in any year, the annual instalment of compensation payable by an occupancy tenant holding land in such area in respect of that year shall be suspended and shall become payable one year after the last of the remaining instalments. (4) Any occupancy 'tenant may at his option pay the entire amount of compensation in a lump sum and where an occupancy tenant exercise this option, he shall be entitled to a rebate at the rate of ten per cent. (5) The amount of compensation, whether paid in lump sum or in annual instalments, shall be deposited in such manner and form as may be prescribed by the occupancy tenant with the [Tahsildar], for payment to the bhumiswami. (6) Where the rights of a bhumiswami in any land accrue to an occupancy tenant under this section, he shall he liable to pay the land revenue payable by the bhumiswami in respect of such land with effect from the date of accrual of such rights."

7. Upon applying the said provisions to the present case, it can be seen that Parmanand & Ors became *bhumiswami* rights in favour of Parmanand & Ors. was automatic by operation of law and no order/recognition from any authority as such is required in this regard.

8. Thereafter, Parmanand & Ors. obtained diversion

permission from the Revenue Authorities for residential purpose and the same was granted in their favour by way of order dated 19.07.1982 passed in Revenue Case No. 42/A-2/81-82.

9. Learned counsel for appellants while addressing this Court on I.A. No. 1964/2022 submitted that appellants have preferred this intra Court appeal being aggrieved by the final order passed by the learned Single Judge in W.P. No. 9293/2010 which was filed by the appellants in connected appeal i.e. W.A. No. 1627/2018 against the proceedings initiated under Urban Land Ceiling Act, 1976 in respect of land bearing Survey No. 1307/2 situated at Village Khajrana.

10. It is further submitted that appellants in W.A. No. 255/2022 had also purchased a parcel of the same land bearing Survey No. 1307/2 and being aggrieved by the same ceiling proceedings , they have initially sought permission to intervene in the writ petition which was later on allowed and appellants have been permitted to intervene in the writ petition. However, vide order dated 08.03.2018, the learned Single Judge has dismissed the petition on the ground of maintainability. Thereafter, W.A. No. 1627/2018 was filed by Ambrish Kela and Preeti Kela in which appellant has filed an application for intervention. However, later on sought leave to withdraw the same and challenge the impugned order in the instant W.A. No. 255/2022.

11. It is further submitted that since appellant in W.A. No. 255/2022 are also adversely affected by the order dated 08.03.2018, and therefore, appellants be also allowed to lay an independent challenge to the final order by way of accompanying the W.A. No. 1627/2018. In support of his contention, learned counsel for the appellant has placed reliance on the judgment passed by co-ordinate Bench of this Court in the case of **Rajawat Vs. Dashrath Singh**

Gujjar reported in **(2011) 4 MPLJ 547** which was affirmed by the Apex Court in the case of **Smt. Jatan Kumar Golcha Vs. Golcha Properties P. Ltd**. reported in **(1970) 3 SCC 573**, wherein it was held that an aggrieved person can prefer a writ appeal even though he may not be the main petitioner in the writ petition.

12. Since, appellant's rights have also been prejudiced by the impugned order dated 08.03.2018, therefore, leave deserves to be allowed.

13. Adverting to the merits of the petition, learned counsel for the petitioner has raised various grounds which are enumerated below:

(A) Acquiring of 'bhumiswami' rights in the subject land in the year 1974-75 by virtue of Section 168 and 169 of the Code by Parmanand & Ors.

(i) Learned counsel contended that the subject land was given on lease by erstwhile owner Devkrishna to parmanand & Ors. in the year 1972 for the purpose of cultivation as 'Shikmi Kashtkar'. The lease continued for a period of more than on year as Parmanand & Ors. retained possession of the subject land in contravention to Section 168 of the Code. As such, by virtue of Section 169 of the Code, Parmanand & Ors. became the occupancy tenant.

Relevant Excerpts of Section 168 & 169 of the Code are reproduced herein below for convenience and ready reference:

> ***168.*** *Leases.— (1) 3[Except in cases provided for in sub-section (2), no bhumiswami shall lease any land comprised in his holding for more than one year during any consecutive period of three years*
>
> ***169.*** *Unauthorised lease etc.—If a bhumiswami (i) leases out for any period any land comprised in his holding in contravention of Section 168; or (ii) by an arrangement*

which is not a lease under sub-section (1) of Section 168 allows any person to cultivate any land comprised in his holding otherwise than as his hired labour and under that arrangement such person is allowed to be in possession of such land for a period exceeding two years without being evicted in accordance with Section 250; the rights of an occupancy tenant shall, — (a) in the case of (i) above, thereupon accrue to the lessee in such land; and 97 (b) in the case of (ii) above, on the expiration of a period of two years from the date of possession, accrue to such person in that land Provided that nothing in this section shall apply to a land comprised in the holding of a bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6) of Section 165 and which is leased out by him or in respect of which he has made an arrangement as aforesaid, as the case may be.]

(ii) It is further contended that Section 190 of the Code provides that in case, land is held by an occupancy tenant then rights of *bhumiswami* accrue to such tenant on and from the commencement of next agricultural year following the date on which the rights of an occupancy tenant accrued. In the present case, Parmanand & Ors. were in possession of the subject land from 1972 onwards. Hence, the rights of *bhumiswami* accrued to Parmanand and Ors. in the year 1974-75.

(iii) Relevant excerpts of Section 190 of the Code are reproduced below for convenience and ready reference:

190.

….....

[(2-A) Where the land of a bhumiswami is held by an occupancy tenant other than an occupancy tenant referred to in sub-section (1), the rights of a bhumiswami shall

accrue to the occupancy tenant in respect of such land — (a) in the case of occupancy tenants of the categories specified in items (a) and (b) of clause (i) of sub-section (1) of Section 185, with effect from the commencement of the agricultural year next following the commencement of the Principal Act; 115 (b) in any other case, with effect from the commencement of the agricultural year next, following the date on which the rights of an occupancy tenant accrue to such tenant.] "

(iv) As regards the objection raised by the respondent that conferral of *bhumiswami* rights require a declaration by a civil court of competent jurisdiction, it is humbly submitted that the same is incorrect and false. It is settled law that conferral of bhumiswami rights by virtue of Sections 168, 169 and 190 of the Code is automatic and there is no need for express recognition of the same by any authority or Court of law.

'..... The conferral of rights of occupancy tenant under Section 169 of the Code are automatic, the moment there is contravention of Section 168(1). In other words, the moment a lease spills over one year during a period of three consecutive years, the right of occupancy is conferred on the lessee. The appellant becomes an occupancy tenant and consequently, a Bhumiswami under Section 190(2A) of the Code much before 1-1-71, even if the finding of the Lower Appellate Court be kept intact.'

(v) To bolster his submissions, learned counsel for the appellants has pressed into service various judgments of this Court. **Kashiram Vs. State of Madhya Pradesh and Others** reported in **(1996) SCC Online MP 102**

Jagdish Prasad Vs. Chandrabha reported in **1972 MPLJ SN 73**

Badri Bai Vs. Daulatram & Ors. [Second Appeal No. 252/2001 and 254/2001]

[Civil Appeals No. 5A and 9 of 2000. D/d 28.04.2010]

(vi) Learned counsel for the appellants contended that the said rights were expressly recognized by the Revenue Authorities of the respondents as is evident from the Khasra records, mutation order, ordersheets in the earlier ceiling proceedings and the affidavit furnished by Devakrishna. It is pertinent to mention that respondents in their additional reply have categorically accepted/admitted such conferral *bhumiswami* rights in favour of the predecessors of the appellants i.e. the present appellants i.e. Parmanand & Ors. Way back in 1974-75. Relevant excerpts in this regard are reproduced below for convenience and ready reference:

> "11,12 - इस चरण में याचिकाकर्ता द्वारा पी&21 खसरा पांचसाला वर्ष 79 -80 की प्रति प्रस्तुत कर परमानन्द का नाम अंकित होने के कथन करते हुए तहसील न्यायालय में म.प्र. भू-राजस्व संहिता, 1959 की धारा 109-110 एवं 190 के अन्तर्गत प्रकरण प्रचलित रहने तथा वर्ष 74-75 से निरन्तर प्रश्नाधीन भूमि पर अपना कब्जा तहसील न्यायालय द्वारा स्वीकार करने के कारण उक्त प्रश्नाधीन भूमि राजस्व रिकार्ड में परमानन्द आदि के नाम अंकित होने सम्बन्धी किये गये कथन स्वीकार है। किन्तु इस सम्बन्ध में स्पष्ट किया जाता है कि तहसील न्यायालय द्वारा पारित आदेशानुसार की गई नामान्तरण की कार्यवाही नगर भूमि सीमा अधिनियम, 1976 के तहत की गई अतिशेष भूमि की कार्यवाही को प्रभावित नहीं करेगी।"

(vii) Hence, the *bhumiswami* rights of Parmanad & Ors stood fortified in the subject land before the commencement of the Act of 1976 i.e. on 09.09.1976. Therefore, the objection of the respondent

that since Parmanand & Ors. were not owners in revenue records, ceiling proceedings were initiated against Devkrishna is absolutely farcical and is liable to be rejected.

(B) <u>Parallel/double proceedings reopened after 12 years in respect of the same land cannot be permitted under the law when the Subject land was adjudged to be non-surplus in the ceiling proceedings initiated against Parmanand & Ors.</u>

(i) The writ Court failed to consider that Parmanand & Ors had filed their return under Section 6 of the Act of 1976 in the year 1983 and had shown the subject land as their own. The ceiling proceedings in case of Parmanand & Ors were registered as 149/P, 90/C-1/82-83 and vide an order dated 27.06.1984, the respondent no.2 held that subject land does not fall within the ambit of the Act of 1976. The said order was never challenged by the respondent/State nor set aside by any Court and the same has attained finality.

(ii) The competent authority under the Act of 1976 vide final order dated 27.01.1992 passed in Case No. 76/A-90/C-1/89-90 had also held that the subject land belong to Parmanand & Ors and the same was excluded from the owernship of Devkrishna. However, the Officers/authorities of the State illegally and without jurisdiction reopened proceedings under the Act of 1976 against Devkrishna in the year 1996 i.e. after a period of 12 years from the passing of order dated 27.06.1984 under a completely false pretext, which was not permissible in law as the competent authority had become *functus officio.*

(iii) It is further submitted that respondent being a welfare 'State' is expected to act fairly and not in a manner which is arbitrary and violative of rights guaranteed to an individual under the

Constitution of India. However, the conduct of the respondent in initiating parallel/double proceedings on the same subject matter without notice to the parties concerned i.e. Parmanand & Ors. and without challenging the previous order which had attained finality is manifestly arbitrary and falls foul of Article 14 of the Constitution of India.

(iv) The Respondent also failed to bear in mind that the Act of 1976 being an ex-proprietary legislation like land acquisition Act, even if intended to achieve social public interest, has to be construed strictly , in as much as it deals with the right of the owner to have his property. Therefore, the State is required to strike a proper balance between the right of property of an individual citizen and the collective needs of the society for which such laws are made.

(v) In support of his above contention, learned counsel for the appellants has relied upon the judgments which are as follows:

M/s Kewal Court Pvt. Ltd. And Anr. Vs. The State of West Bengal and Ors.

Gautamprasad K. Tripathi Vs. State of Gujarat reported in 2014 SCC Online Guj 3680.

(C) No objection/challenge was made when amendment to pleadings was allowed by this Court.

(i) In this regard, learned counsel for the appellants submitted that Parmanand & Ors. Became *bhumiswami* by virtue of Section 168, 169 and 190 of the Code and as evident from the documents placed on record by the appellants, however, due to slip of mind while drafting the petition, it was incorrectly stated in para 5.1 that Devkrishna sold the land in question in the year 1972-73 to Parmanand & Ors. When in fact Parmanad & Ors. had acquired title to the subject land as a

statutory consequence of the lease made by Devkrishna.

(ii) To rectify the typographical error, the appellants had filed I.A. No. 2699/2023 to amend the petition which was allowed in the absence of any objection by the respondents.

(iii) It is further submitted that the case of the appellants have been consistent and the respondent cannot at such belated stage merely by oral arguments raise such objection after amendment being allowed by this Court.

(iv) Relevant extracts of the rejoinder filed by the appellants in W.A. No. 1627/2018 are reproduced below for convenience and ready reference:

> "(11) यह कि, परमानन्द, पूरणमल, भरतलाल पिता जसनमल का नाम राजस्व रिकार्ड में वर्ष 77-78 में दर्ज हो चुका था। खसरे की प्रति प्रदर्श पी – 21 रिजाइन्डर के साथ प्रदर्श पी – 21 के रूप में संलग्न की जा रही है।
>
> (12) यह कि, परमानन्द, पूरणमल, भरतलाल पिता जसनमल विरूद्ध देवकृष्ण पिता सालिगराम का प्रकरण तहसील न्यायालय में चला था जिसका नामान्तरण आदेश 18.07.1978 में हुआ की प्रति रिजाईन्डर प्रदर्श पी – 22 के साथ प्रदर्श पी – 22 के रूप में संलग्न की जा रही है।
>
> (13) यह कि, मूल भू-धारक देवकृष्ण पिता सालिगराम द्वारा एक शपथ-पत्र रिस्पोन्डेन्ट क्रं. 2 के समक्ष दिनांक 11/11। 1983 को प्रस्तुत किया गया था। इस शपथ-पत्र में दुवकृष्ण द्वारा स्पष्ट रूप से यह कथन किये थे कि "मेरे द्वारा अधिनियम 1976 के अन्तर्गत विवरणी दिनांक 16-05-1977 को प्रस्तुत की गई थी उसमें मैंने 1307 / 2 क्षेत्रफल 0-395 हेक्टर दर्शायी गई है।
>
> उक्त जानकारी मेरे द्वारा, पटवारी द्वारा जानकारी प्राप्त

के अनुसार दी गई थी, जबकि सर्वे क्र- 1307-2 क्षेत्रफल 0-395 हेक्टर भूमि को परमानन्द, पूरणलाल, भरतलाल पिता जसनमल के आधिपत्य कब्जे की भूमि को भी मैंने अपनी भूमि समझ कर दर्शायी गई थी। जबकि सर्वे नंबर 1207/2 की भूमि आधिपत्य एवं कब्जे में सन् 74-75 से परमानन्द, पूरणलाल, भरतलाल पिता जसनमल का ही है व राजस्व प्रकरण क्र. 2 अ – 46 /77-78 दिनांक 18/7/1977 को धारा 109, 110, 190 मध्यप्रदेश भू- राजस्व संहिता 1969 के अन्तर्गत मेरा नाम भू-राजस्व संहिता 1969 के अन्तर्गत मेरा नाम भू-अभिलेख रिकार्ड में कम किया गया है।
प्रदर्श पी – 23 शपथ-पत्र की छाया प्रति रिजाईन्डर के साथ प्रदर्श पी – 23 के रूप में संलग्न की जा रही है।"

(v) Learned counsel further submitted that in view of the provisions of Repeal Act of 1999, only factum of taking over of legal and actual possession ought to have been considered by the Court – a mere paper *panchanama* would not suffice.

(vi) Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (referred to as 'Repeal Act' hereinafter) clearly provides that if actual physical possession of excess vacant land has not been taken by the competent authority, the ceiling proceedings would abate meaning thereby that any person who is in possession of the property under proceedings, as a valid transferee has the right to claim relief on the basis of mandatory provision of the Repeal Act. However, learned Writ Court failed to consider that in the present case there existed a construction on the subject land and as such, the possession could have been taken only in two ways i.e. either by actually dispossessing the occupier or by demolishing the existing construction. Admittedly, in the present case, neither the occupiers were dispossessed nor the existing construction was demolished.

Therefore, the *panchnama* - a mere paper *panchanama* could not have conferred any right in favour of the State Government.

(vii) Learned writ Court has further failed to consider that for ensuring compliance of mandatory provision of the repealing Act, it is necessary to not only issue a 30 days' notice to the holder/owner but also to the occupier of the subject land. Admittedly, no such notice was ever given to the occupiers who were in possession of the subject land as well as the house constructed therein. Accordingly, the possession *panchnama* in the present case was not only illegal but was merely a paper *panchnama* prepared solely to by-pass the mandatory provisions of the Repealing Act. On this sole ground, the ceiling proceedings are required to be quashed and set aside.

(viii) Learned counsel for the appellant submitted that in view of the above discussion, it is crystal clear that the subject land was under the ownership and possession of Parmanand and Ors. and not Devkrishna. Hence, the reopening/initiation of parallel proceedings on the same subject land is illegal.

14. Per contra, learned counsel for the respondent vehemently opposed the prayer and submitted that W.A. No. 255/2022 filed by Gurvinder Singh Bhatia is not maintainable, since he was not a party to the writ petition and has approached this Court directly and even not challenged the relief for quashment of proceedings, therefore the proceedings stood abated. Grant of leave to file appeal would not make the same maintainable without considering the period of limitation.

15. He further submitted that appellant in W.A. No. 255/2022 had purchased the land after the notification of Section 10(3) of the Act of 1976. He further submitted that appellant had never sought relief for

quashment of ceiling proceedings in the writ petition and now the appellant is seeking the relief in the writ appeal. Even otherwise, grant of leave does not give absolute right to the appellant to file writ appeal since procedural proprietory requires to prefer a writ petition and then only right accrues to the appellant to come before this Court in intra Court appeal against the order passed in the writ petition as there is no direct order against the appellant affecting his rights.

16. Learned counsel for the State further by raising the plea of estoppel submitted that appellant has taken different grounds in the intervention application filed in the writ petition and has made different pleadings in the writ appeal.

17. On all these grounds, I.A. No. 1964/2022 deserves to be dismissed and consequent thereupon, the writ appeal is also liable to be dismissed.

18. Heard, learned counsel for the parties and perused the record.

19. Before dwelling upon merits of the case, this Court proceeds to decide I.A. No. 1964/2022.

20. Question is whether a person who is not a party before the learned single Judge can maintain a Writ Appeal or not ?

21. In this context, the judgment rendered by the Apex Court in the case of **V.N. Krishna Murthy and Another Vs. Ravikumar and Others** reported in **(2020) 9 SCC 501** is worthy of reference. Relevant paras 15 to 20 are reproduced below for convenience and ready reference:

> *"15. Section 96 and 100 of the Code of Civil Procedure provide for preferring an appeal from any original decree or from decree in appeal respectively. The aforesaid provisions do not enumerate the categories of persons who can file an*

appeal. However, it is a settled legal proposition that a stranger cannot be permitted to file an appeal in any proceedings unless he satisfies the Court that he falls with the category of aggrieved persons. It is only where a judgment and decree prejudicially affects a person who is not party to the proceedings, he can prefer an appeal with the leave of the Appellate Court. Reference be made to the observation of this Court in Smt. Jatan Kumar Golcha Vs. Golcha Properties Private Ltd.1:-

> *"It is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the Appellate Court and such leave should be granted if he would be prejudicially affected by the Judgment."*

16. This Court in State of Punjab & Ors. Vs. Amar Singh & Anr.2 while dealing with the maintainability of appeal by a person who is not party to a suit has observed thus :-

> *"Firstly, there is a catena of authorities which, following the dictum of Lindley, L.J., in re Securities Insurance Co., [(1894) 2 Ch 410] have laid down the rule that a person who is not a party to a decree or order may with the leave of the Court, prefer an appeal from such decree or order if he is either bound by the order or is aggrieved by it or is prejudicially affected by it."*

17. In Baldev Singh Vs. Surinder Mohan Sharma and Ors 3., this Court held that an appeal under Section 96 of the Civil Procedure Code, would be maintainable only at the instance of a person aggrieved by and dissatisfied with the judgment and decree. While dealing with the concept of person aggrieved, it was observed in paragraph 15 as under:-

> *"A person aggrieved to file an appeal must be one whose right is affected by reason of the judgment and decree sought to be impugned."*

18. In A. Subash Babu Vs. State of A.P. and Anr.4, this Court held as under:-

> *"The expression 'aggrieved person' denotes an elastic and an elusive concept. It cannot be confined that the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the complainant's interest and the nature and extent of the prejudice or injuries suffered by him."*

19. The expression 'person aggrieved' does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one, whose right or interest has been adversely affected or jeopardized (vide Shanti Kumar R. Canji Vs. Home Insurance Co. of New York 5 and State of Rajasthan & Ors. Vs. Union of India & Ors.6).

20. In Srimathi K. Ponnalagu Ammani Vs. The State Of Madras represented by the Secretary to the Revenue Department, Madras and Ors .7, this Court laid down the test to find out when it would be proper to grant leave to appeal to a person not a party to a proceeding against the decree or judgment passed in such proceedings in following words:-

> *"Now, what is the test to find out when it would be proper to grant leave to appeal to a person not a party to a proceeding against the decree or judgment in such proceedings? We think it would be improper to grant leave to appeal to every person who may in some remote or indirect way be prejudicially affected by a decree or judgment. We think that ordinarily leave to appeal should be granted to persons who, though not parties to the proceedings, would be bound by the decree or judgment in that proceeding and who would be precluded from attacking its correctness in other proceedings."*

22. In light of above discussion, we would examine whether the order passed by the learned single Judge prejudicially affects the right of the appellants or not.

23. A person may not be a party to the decree or order but he may with leave prefer an appeal from such decree or order if he is either bound by the order or decree or is aggrieved by it or is prejudicially affected by it. In every case, considering its specific facts and circumstances , the court may decide in its discretion whether in such a case, leave is to be granted or not, though no hard and fast rule can be laid down in the matter as each case depends on its own facts.

24. The words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something.

25. In legal acceptation a party or person is aggrieved by a judgment, decree, or order, so as to be entitled to appeal whenever it operates prejudicially and directly upon his property or pecuniary rights or interests, or upon his personal rights and only when it has such effect.

26. In the present case, we are satisfied that the appellant has the legitimate right to ventilate his grievance that the appellant's right are adversely affected after the land in question as the same was declared as surplus land on 30.01.1998. and the same stood vested in favour of the State Government. Therefore, the expression 'person aggrieved' has to be given an extended meaning and specially in the present

context, we are of the opinion that the appellant is a person aggrieved as he being the owner of one of the parcels of land bearing Survey No. 1307/2 has a right to challenge the ceiling proceedings as was challenged by the other land owner i.e. the petitioner in the writ petition and appellant in W.A. No. 1627/2018. Thus, in our view, the appellant is an aggrieved person and we accordingly overrule the objection of the respondent/State as regards maintainability of the appeal by the appellant even in the absence of appellant being a party to the order challenged in the writ appeal.

27. Accordingly, I.A. No. 1964/2022 is allowed and appellant is permitted to prosecute this appeal, though he was not a party in the writ petition before the learned Single Judge.

28. Coming to the merits of the case, following are the key points of consideration:

(A) Taking over of possession

(i) The learned writ Court failed to consider that even the alleged *panchnama*, it has been clearly noted that the land is not vacant in nature and there exists a residential construction on the land in question. Hence, possession could have been taken only in two ways, first, by actually dispossessing the occupier or secondly, by demolishing the existing residential structures. Admittedly, in the present case, neither the occupier were dispossessed nor the existing residential structures were demolished. As such, it is clear that by way of the alleged *panchnama*, only paper possession of the land in question was taken over by the competent authority. Notably, in innumerable cases, the Apex Court and various High Courts have unanimously held that in cases were paper panchnamas are prepared without taking over actual physical possession of the disputed land, no

rights shall accrue in favour of the State over such land and the ceiling proceedings shall stand abated. [See:**State of Uttar Pradesh v. Hariram** reported in **(2013) 4 SCC 280**, Para 42 & **Gajanand Kamlya Patil Vs. Additional Collector and Competent Authority (ULC) and Ors. r**eported in **(2014) 12 SCC 523 Para 12**].

(ii) In the case in hand, no notice u/S 10(5) of the Act of 1976 was ever served to the person/persons who was/were in possession of the land in question and also the provisions relating to the mandatory notice period of 30 days were not complied with by the respondent no.2. Under such circumstances, it is apparent that actual possession of the land was not taken over by the respondent no.2 and in the absence of taking over of actual possession, the ceiling proceedings are liable to be quashed in terms of the Repeal Act.

(iii) This Court is supported in its view by the judgment passed by the Apex Court in the case of **Banda Development Authority Vs. Moti Lal Agarwal and Others** reported in **(2011) 5 SCC 394.**

Relevant Paras are reproduced below for ready reference and convenience:

> *"What should be the mode of taking possession of the land acquired under the Act? This question was considered in Balwant Narayan Bhagde v. M.D. Bhagwat (1976) 1 SCC 700. Untwalia, J. referred to the provisions contained in Order XXI Rules 35, 36, 95 and 96 of the Code of Civil Procedure, decisions of different High Courts and opined that even the delivery of so called "symbolical" possession is delivery of "actual"possession of the right, title and interest of the judgment-debtor. Untwalia,J.further observed that if*

the property is land over which there is no building or structure, then delivery of possession over the judgment-debtor's property becomes complete and effective against him the moment the delivery is effected by going upon the land. The Learned Judge went on to say:

> *"When a public notice is published at a convenient place or near the land to be taken stating that the Government intends to take possession of the land, then ordinarily and generally there should be no question of resisting or impeding the taking of possession. Delivery or giving of possession by the owner or the occupant of the land is not*
> *required. The Collector can enforce the surrender of the land to himself under Section 47 of the Act if impeded in taking possession. On publication of the notice under Section 9(1) claims to compensation for all interests in the land has to be made; be it the interest of the owner or of a person entitled to the occupation of the land. On the taking of possession of the land under Section 16 or 17 (1) it vests absolutely in the Government free from all incumbrances. It is, therefore, clear that taking of possession within the meaning of Section 16 or 17 (1) means taking of possession on the spot. It is neither a possession on paper nor a "symbolical" possession as generally understood in civil law. But the question is what is the mode of taking possession? The Act is silent on the point. Unless possession is taken by the written agreement of the party concerned the mode of taking possession obviously would be for the authority to go upon the land and to do some act which would indicate that*

the authority has taken possession of the land. It may be in the form of a declaration by beat of drum or otherwise or by hanging a written declaration on the spot that the authority has taken possession of the land. The presence of the owner or the occupant of the land to effectuate the taking of possession is not necessary. No further notice beyond that under Section 9(1) of the Act is required. When possession has been taken, the owner or the occupant of the land is dispossessed. Once possession has been taken the land vests in the Government."

(iv) The learned Writ Court failed to consider the effect of the Repeal Act which clearly provides that even if a land has been declared as excess vacant land/surplus land, but no possession has been taken by the competent authority in accordance with law, such proceedings shall invariably stand lapsed. As such, it is the duty of the writ Court to determine whether actual physical possession of the land in question was ever taken over by the respondent no.2 by complying with the provisions of Section 10(5) and 10(6) of the Act of 1976.

(B) Panchnama drawn at the time of taking of possession

(i) The proceedings stood abated on 17.02.2002 by virtue of the repeal act as the actual possession of the land in question was never taken by the authorities and that the panchnama dated 23.06.1999 is only a worthless paper exercise and is sham and void. It mentions that the houses/structures were standing on the land in question, but no actual possession was taken thereof in the manner provided by law. No notice under Section 10(5) of the Act of 1976 was issued to the persons who were in actual possession of the land in question and the structures standing thereon that day. The issuance of notice to the

original *bhumiswami* who had no right, title or interest left in the land in question was meaningless and was in gross violence of the mandatory requirements of law. Moreover, the entire exercise was made by three Government officials without ensuring or even attempting to procure the presence of two independent witnesses as required by law and the panchnama is virtually a panchnama without panchas and a mere paper work.

(ii) The judgment rendered by Apex Court in the case of **Banda Development Authority(supra)** is worthy of reference wherein the Court has held that preparing a Panchnama is sufficient to take possession and has laid down the following principles:

> *"37. The principles which can be culled out from the above noted judgments are:*
>
> *i) No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.*
>
> *(ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.*
>
> *(iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to*

an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

(v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken."

(iii) In the case of **Balmokand Khatri Educational and Industrial Trust, Amritsar v. State of Punjab & Ors** reported in **(1996) 4 SCC 212,** the Court ruled that under compulsory acquisition it is difficult to take physical possession of land. The normal mode of taking possession is by way of drafting the Panchnama in the presence of Panchas and observed thus:

"4. It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4-1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and

> *giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession."*

29. On the basis of aforesaid discussion on these key issues, this Court conclude that learned Writ Court further failed to consider that the governing law mandates taking over of actual possession of the land in question by complying with the mandatory statutory provisions of Section 10(5) of the Act of 1976 which inter-alia provides that a 30 days' notice should be given not only to the actual owner of the land, but also to the occupier. In the present case, no such notice was ever served to the occupiers who were admittedly in possession of the land as well as house constructed thereon. Thus, for want of compliance of the mandatory provisions of law, the said *panchnama* ought not to be allowed to invade the rights of the appellants herein.

30. Further, the Repeal Act clearly provides that if the actual physical possession of the excess vacant land has not been taken by the competent authority, the proceedings would abate.

31. Even otherwise, it is settled position of law that an expropriatory legislation must be strictly construed. The legislation in the present case are indisputedly expropriatory in nature and, therefore, for want of compliance of the mandatory provisions as contained in Section 10(2) of the Repeal Act, vesting of land in favour of the State are liable to be set aside and all actions taken pursuant thereto also deserves be quashed.

32. This Court further conclude that the learned Writ Court has not taken into account that Devkrishna himself had filed an affidavit on 11.11.1983 for excluding the land in question from the ceiling

proceedings, as the land in question stood transferred in favour of Parmanand & Ors.

33. It is an undisputed position of the present case that the respondent no.2 in Case No. 149/P-90/C-1/82-83, by way of an order dated 27.06.1984 has held that the land in question does not fall within the ambit of the Act and the land was declared to be free from ceiling limits. Relying upon this order, the land was subsequently purchased by successor in interest of Parmanad and ors. and eventually by the appellants in 1997. The order dated 27.06.1984 has neither been set aside nor modified by any competent Court of law. Under such circumstances, the land could not have been declared as surplus by way of the impugned proceedings.

34. The Writ Court further failed to consider that unlike the appellants in W.A. No. 1627/2018, the appellants in W.A. No. 255/2022 had acquired right, title and interest in the land in question much before passing of the Order under Section 10(3) of the Act of 1976 on 09.04.1999. Therefore, without considering the case of the appellants, the impugned final judgment/final order dated 08.03.2018 was wrongly passed and the appellants in W.A. No. 255/2022 are also entitled for the relief as sought for by the appellants in W.A. No. 1627/2018.

35. In view of the aforesaid discussion and in the light of the judgments rendered by the Apex Court discussed above, we conclude that ceiling proceedings have not been carried out as per the relevant provisions of law. In the result, the order passed by learned Single Judge in W.P. No. 9293/2010 dated 08.03.2018 as well as the proceedings in case No. 391/A-90/C-1 passed by the respondent no.2 are hereby set aside.

36. W.A. No. 1627/2018 and W.A. No. 255/2022 are allowed. State is directed to update the revenue entries in the revenue records by recording the name of appellants in the light of this order. No order as to cost.

37. Let a copy of this order be placed in the record of W.A. No. 255/2022.

(S.A. Dharmadhikari)
Judge

(Devnarayan Mishra)
Judge

sh/-