



**IN THE HIGH COURT OF MADHYA PRADESH**

**AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 24<sup>th</sup> OF OCTOBER, 2024**

**WRIT PETITION No. 4224 of 2024**

***DINESH AND OTHERS***

*Versus*

***THE STATE OF MADHYA PRADESH AND OTHERS***

**Appearance:**

Shri Aviral Vikas Khare - advocate for the petitioners

Ms. Harshlata Soni, appearing on behalf of Advocate General.

**ORDER**

1] This petition has been filed by the petitioners under Article 226 of the Constitution of India seeking the following reliefs:-

“(i) To issue the appropriate writs, orders, directions thereby calling for the record of the Petitioners cases;

(ii) To issue the appropriate writs, orders, directions thereby quashing the order dated 07.02.2024 passed in 0365/appeal/2023-24 by Ld. Additional Commissioner, Indore (Respondent No. 2) and the order dated 04.12.2023 passed by Collector.

(iii) Cost of the case may also be awarded to the petitioner.

(iv) Any other relief this Hon'ble Court as may deem just and proper in the facts and circumstances of the case be also made.”

2] The petitioners are aggrieved by the order dated 07/02/024 passed by the Additional Commissioner, Indore as also the order



dated 04/12/2023 passed by the Collector. Vide order dated 04/12/2023, the Collector has denied the prior permission for transfer of land under Section 165(7-b) of the M.P. Land Revenue Code, 1959 (hereinafter referred to as “the Code of 1959”) which has been affirmed by the Commissioner vide order dated 07/02/2024.

3] Counsel for the petitioners has drawn the attention of this Court to the order passed by this Court in *W.P. No.1117/2021* in the case of *Bharat Singh and another vs. State of M.P. and others*, whereby, while relying upon the decision rendered by the Division Bench of this Court in the case of *State of M.P. through Principle Secretary, Department of Revenue and another vs. Adhunik Grih Nirman Sahkari Samiti reported as 2024 SCC Online MP 1752*, the petition has been allowed as in the aforesaid case also, the issue was that whether s.165(7-b) of the Code of 1959 shall be applicable on the Bhumi Swami rights conferred even before coming into force of amendment incorporating the said section.

4] Counsel for the State, on the other hand has opposed the prayer, however, it is not denied that the order passed by the Division Bench at Gwalior in the case of *Adhunik Grih Nirman Sahakari Samiti (supra)* has already attained the finality wherein it is held that the Bhumi Swami rights conferred before amendment shall not be affected by amending provision of Section 165(7-b) of the Code, thus, requiring no prior permission for transfer.

5] Heard. On due consideration of submissions and on perusal of the documents filed on record as also the decisions relied upon, this



Court finds that so far as the order passed by this Court in the case of ***Bharat Singh and another (supra)*** is concerned, the relevant paras of the same read as under:-

3] Counsel for the petitioners has submitted that the aforesaid dispute involved in the case regarding applicability of Section 165(7-b) of MPLRC, 1959 has already been tackled by co-ordinate Bench of this Court in the case of Adhunik Grih Nirman Sahkari Samiti Maryadit vs. State of M.P. & Another reported in 2013 Revenue Nirnay 8 whereby this Court has opined that Section 165(7-b) cannot be applied retrospectively. Counsel has also relied upon another judgment of the co-ordinate Bench of this Court delivered by Justice Shri J.K. Maheshwari, as his Lordship then was in W.P. No.17127/2016 and other connected petitions, the relevant paras of the same reads as under:-

“13. Thereafter, referring the provisions of Madhya Pradesh Land Revenue Code and the judgments of Hon'ble the Supreme Court so also the provisions of the statutory interpretation, this Court in Adhunik Grih Nirman Sahkari Samiti Maryadit (supra) has observed as:-

“28. There is no mention in Section 165 (7-b) of the Code of 1959 to the effect that it would apply retrospectively. It is clear from the provisions of the section that it takes away the vested rights acquired by a Bhumiswami and it creates a new obligation or imposes a new duty in regard to taking prior permission from the Collector in the event of sale of the land, hence, the section could not be presumed to be retrospective in operation. The rights, which were granted to the original lease holders namely Mukhtyar Singh, Saheb Singh and Vijay Singh prior to 1980 as Bhumiswami could not be taken away by the provisions of the aforesaid Code. A Bhumiswami had a vested right to sell the land and their rights are unfettered and unaffected by introduction of Section 165 (7-b) of the Code of 1959. The same position is in regard to Section 158 (3) of the Code of 1959 because it was introduced by way of amendment dated 28.10.1992.”

“14. In view of the aforesaid, it can safely be concluded that the respondent Nos.1 to 26 have been declared Bhumiswami as per order of the Collector dated 2.9.1963 and the provision of Section 165 (7-b) of MPLR Code have been brought by the Act No.15 in the year 1980 and subsequently by the Act No.17 in the



year 1992 on introducing the provision of Section 158(3) of MPLR Code, therefore, those provisions would not attract after declaring the respondent Nos.1 to 26 as Bhumiswami and they are not supposed to take permission to sell the land to which they have been declared as Bhumiswami of the land for which the lease was initially granted in their favour. In such circumstances, the order passed by the Collector refusing to grant permission to sell the land in a case in which the respondents were not supposed to comply the requirement is non est and if such an order is set aside by the Board of Revenue, the plea taken by the State Government in the petition regarding nonobservance of maxim audi alteram partem is of no substance, therefore, such plea is hereby repelled. Thus, the question posed in Writ Petition No.17127/2016 is answered in favour of respondents.”

(emphasis supplied)

4] Thus it is submitted that the impugned order be set aside and the order of mutation passed in favour of the petitioner be reinstated.

5] Counsel for the respondent/State on the other hand opposed the prayer and submitted that against the order passed by this Court in Adhunik Grih Nirman Sahkari Samiti Maryadit (supra) a writ appeal has already been filed before the Division Bench in the year 2013 and the same is still pending and admittedly there is no stay in operation in the said SLP.

6] On due consideration of the aforesaid submissions, as also the aforesaid judgments rendered by co-ordinate Benches of this Court, and on perusal of the documents available on record, considering the fact that as the predecessor in title of the petitioner was given Bhumiswami rights in the year 1975, i.e., prior to 1980, the bar u/s.165(7) of MPLRC, 1959 would not be applicable and the permission of the Collector was not required. Thus, this Court has no hesitation to hold that the impugned orders cannot be sustained on the annals of the aforesaid judgments rendered by this Court, and accordingly, the orders dated 02.02.2021 (P/1) and 09.03.2020 (P/2) are hereby set aside and the orders of mutation dated 11.08.2017 and 31.05.2019 are restored.”

(emphasis supplied)

6] Thus, considering the facts of the present case where the *Bhumi Swami* rights have already accrued to the petitioners



predecessor in title on 18/05/1976 (Annx.P/11), and had also been confirmed by the State Govt. on 19/06/1979 (Annx.P/12), which has also not been rebutted by the respondents, the provisions contained in Section 165(7-b) brought in force subsequently shall not apply. In view of the same, this Court is inclined to allow the present petition.

7] Accordingly, the impugned orders dated 04/12/2023 and 07/02/2024 are hereby quashed.

8] The writ petition stands *allowed* and *disposed of*.

*Sd/-*

**(SUBODH ABHYANKAR)**  
**JUDGE**

krjoshi