

**HIGH COURT OF MADHYA PRADESH, PRINCIPLE SEAT AT  
JABALPUR**

**W.P. No.553/1997**

State of Madhya Pradesh ..... Petitioner

Versus

Jagdish Pandey and others ..... Respondents

**CORAM**

**Hon. Mr. Justice A.M. Khanwilkar, Chief Justice**

**Hon. Ms. Justice Vandana Kasrekar**

Whether approved for reporting : **Yes/No**

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Shri Piyush Dharmadhikari, Govt. Advocate for the petitioner.

Shri T.S.Ruprah, Senior Advocate with Shri Harpreet Ruprah,  
Advocate for respondents No.1, 4, 5, 7, 8, 9, 10, 12 and 13.

Shri P.N. Dubey, Advocate for the interveners.

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Reserved on : 31/07/2015

Date of decision : 29/10/2015

**J U D G M E N T**  
**(29/10/2015)**

**Per Ms.Vandana Kasrekar J. :**

The petitioner has filed the present writ petition challenging the order passed by Board of Revenue dated 6<sup>th</sup> June, 1996 (Annexure P-1) passed in Case No.A/11-4/R/342/96 by which the order passed by the Competent Authority under M.P. Ceiling on Agricultural Holdings Act,

1960 has been set aside and the Board has held that the transaction in respect of 357 acres of land by the holder i.e. respondent No.15 in favour of respondents No.1 to 14 is legal and valid and the transactions were not void transactions.

2. The brief facts of the case are that one N.R. Abbot was the owner of the disputed land i.e. respondent No.15 who had executed fourteen sale deeds dated 03/07/1972 in favour of the respondents/purchasers between 01/01/1971 to 07/03/1974. The Competent Authority under M.P. Ceiling on Agricultural Holdings Act, 1960 (hereinafter referred to as 'the Act') declared these transactions as void transactions under Section 4 of the Act. The respondents/purchasers preferred an appeal against the said order passed by the Competent Authority and the Board of Revenue vide order dated 7/9/1977 remanded the matter back to the Competent Authority. The Competent Authority vide order dated 16/4/1981 declared the said sale as void and declared the land admeasuring 495.17 acres as surplus. The appeal preferred by the holder and purchasers was dismissed by the Board of Revenue vide order dated 19/12/1981. Against the said order, the holder and purchasers approached this Court by filing a writ petition. The said writ petition was allowed vide order dated 22/01/1985 and this Court remanded the matter back to the Board of Revenue for rehearing. The Board of Revenue vide order dated 05/06/1985 dismissed the appeal preferred by the holder and purchasers. Against the said order, the holder preferred a review of the order dated 05/06/1986 which was also

dismissed vide order dated 16/04/1986. On 20/09/1994 this Court passed an order in Writ Petition No.452/1985 and remanded the matter back to the Competent Authority to decide the matter afresh after granting opportunity of hearing to all the purchasers and holder. The Competent Authority thereafter passed an order dated 13/05/1996 and declared the sale deeds dated 03/06/1972 as void and made to defeat the provisions of the Act. It was also declared that the holder was holding surplus land admeasuring 495.17 acres. Being aggrieved by the said order passed by the Competent Authority, the purchasers alone preferred appeal before the Board of Revenue. The Board of Revenue vide order dated 06/06/1996, allowed the appeal preferred by the purchasers. Against the said order the present writ petition has been filed by the State Government.

3. Learned Govt. Advocate for the petitioner argues that against the impugned order passed by the Competent Authority, only the purchasers had preferred appeal and not the holder, which was not maintainable. As per Section 4 (4) of the Act, the legal presumption that the transaction during the relevant period was void could be rebutted only at the instance of the transferor/holder of the land. Thus, the right to appeal, as provided under Section 4(3) of the Act has been given to the transferor/holder of the land in question. He further submits that in any case the Board of Revenue has exceeded its jurisdiction in re-appreciating the evidence and material on record and taking a different view on the facts duly established on the basis of the record

available. He further argues that while exercising the power under Section 4(3) of the Act, the Board of Revenue cannot re-appreciate the evidence; and, therefore, the order passed by the Board of Revenue deserves to be set aside. He submits that the Board of Revenue has clearly exceeded its jurisdiction by taking into consideration some new facts and circumstances which were not pressed into service before the Competent Authority in the original proceeding. Further, the only ground on which the holder of the land has justified the transfers is for raising funds for the medical treatment of his daughter. He also submits that the holder has not produced any material to even remotely suggest and establish the fact that transfer of lands were made for the treatment of his daughter.

4. Learned Govt. Advocate further submits that the Board of Revenue has committed an error in law with regard to interpretation and scope of Section 4(1) of the Act by wrongly interpreting and holding that the burden of proof was on the Competent Authority – that the agreement was void and was made to defeat the provision of the Act. The Board of Revenue failed to consider that the transfers were made by the holder to his employees, who were not in actual physical possession of the stated land and neither the revenue records were corrected and modified nor the revenue was paid by the purchasers and the same was being paid by the holder himself which clearly established that the transfer of land was nothing but sham and bogus and was made only with an intention to defeat the provisions of the Act. He further

argues that no prior permission of the Collector was taken by the holder as per Section 5 of the Act, which is a mandatory provision; and, therefore, non-compliance of the said provision renders such sale as void transaction. To support his argument, learned Govt. Advocate has relied on the judgment of the Apex Court in the case of **State of Madhya Pradesh Vs. Chundru Veerraju (dead) by LRS.**, reported in **(2003) 12 SCC 286** and the judgment of Full Bench of this Court in the case of **Narbada Prasad Raghunandanlal Vs. State of M.P.** reported in **1981 MPLJ 260**.

5. The respondents/purchasers have filed their reply and in their reply they support the order passed by the Board of Revenue and denied that the transaction being sham and bogus. Learned senior counsel for the respondents/purchasers submits that respondent No.15 has produced ample oral as well as documentary evidence to show that respondent No.15 was in need of money for treatment of his daughter at London. For the said purpose, he had produced passport also. The Board of Revenue while deciding the appeal has taken into consideration all the aspects of the matter. He further argues that the purchasers are, in fact, in possession of the disputed land and they have sown their crops also. He further argues that only on the basis that the holder has failed to produce the photocopy of the passport of his daughter could not be a ground to discard the other evidence produced by respondent No.15. The ground stated by the holder regarding illness of his daughter was a good and sufficient ground. So far as possession of respondents No.1

to 14 on the land in dispute is concerned, the Board of Revenue, in its order, has held that on the basis of statement made by the Patwari who made inspection of the field only twice, cannot be relied to conclude that the respondents No.1 to 14 were not cultivating the land. Further, other witnesses, in their statement, have asserted before the Competent Authority that the purchasers were in possession of the suit land, which cannot be discarded. He, therefore, prays that the writ petition be dismissed with cost.

6. We have heard learned counsel for the parties and perused the record. The State legislature promulgated an Act, known as ‘M.P. Ceiling on Agricultural Holdings Act, 1960’. Section 4 of the said Act provides for transfer or partition made after the publication of the Bill but before the commencement of that. Section 4 of the said Act reads as under :

**“4. Transfers or partitions made after the publication of the Bill but before the commencement of the Act.-** (1) Notwithstanding anything contained in any law for the time being in force, where after, (the 1<sup>st</sup> January, 1971) but before the appointed day, any holder has transferred any land held by him by way of sale, gift, exchange or otherwise or has effected a partition of his holding or part thereof or the holding held by the holder has been transferred in execution of a decree of any Court, the Competent Authority may, after notice to the holder and other persons affected by such transfer or partition and after such enquiry as it thinks fit to make, declare the transfer or partition to be void if it finds that the transfer or the partition, as the case may be, was made in anticipation of or to defeat the provisions of this Act.

(2) Nothing in this Section shall apply to a transfer made by a holder –

(a) who does not hold land in excess of the ceiling area; or

(b) who is a member of a family and where all the members of the family together do not hold land in excess of the ceiling area; as specified in subsection (1) of Section 7 as substituted by Section 8 of the Madhya Pradesh Ceiling on Agricultural Holdings (Amendment) Act, 1974 on the date of the transfer.

(3) any person aggrieved by an order of the Competent Authority under this section may prefer an appeal against such order to the Board of Revenue. The decision of the Board and subject to the decision of the Board in appeal the decision of the Competent Authority shall be final.

(4) In regard to every transfer to which this section applies the burden of proving that the transfer was not benami or was not made in any other manner to defeat the provisions of this Act shall be on the transferor.

(5) Notwithstanding anything contained in any law for the time being in force,-

(i) no Court shall entertain any suit for the specific performance of any contract of sale of land on the basis of any agreement or document made on or before the 1<sup>st</sup> January, 1971, or

(ii) any decree passed by a Civil Court for the specific performance of the contract of sale of land on the basis of any agreement or document made (on or before the 1<sup>st</sup> January, 1971) shall be null and shall not be enforceable, if such suit or decree is for the purpose of defeating the provisions of this Act.”

7. As per this section, any transfer, transactions made between the publication of the Bill but before commencement of the Act i.e. from 01/01/1971 to 07/03/1974, are illegal and void. That legal presumption, however, is rebuttable. Such transactions, in law, will have to be declared as invalid, if it is found after conducting due enquiry that the

same was made in anticipation of or to defeat the provisions of the Act.

8. In the present case, admittedly, the disputed fourteen transactions were made by respondent No.15 on one day (03/07/1972) i.e. between 01/01/1971 to 07/03/1974; and, therefore, burden of proof that the said transfer was not benami or was not made to defeat the provisions of the Act rested on the holder or transferor. The holder and transferor in the present case justified the transaction on the ground that it was due to grave and urgent need of finance/money for the treatment of his daughter who was suffering from 'Cerebral Palsy'. However, the holder has not produced any documentary evidence to establish that his daughter had to undergo such treatment during that period at London and incur heavy expenses therefor. He has not produced passport of his daughter and, therefore, the finding regarding the fact that the holder was badly in need of money for treatment of his daughter at London is not based on any legal and tangible evidence. It is pertinent to note that all the purchasers who were the employees of the holder and the fourteen transactions were of the same day, created reasonable suspicion against those transactions. The Full Bench of this Court in the case of **Narbada Prasad Raghunandanlal (supra)** in paragraph-17 has held as under :

17. Arguments were also addressed as to the ambit of the burden of proof laid on the transferor by sub section (4) of Section 4. In this connection, it was submitted that a mere denial by the transferor that he intended to defeat the provisions of the Act by the transfer or at any rate the giving of a plausible explanation by him should be sufficient to discharge the burden of proof. It was also submitted that the



transferor cannot prove anything else in discharging the burden to prove a negative. We are unable to agree. The occasion and reason for making the transfer are specially within the knowledge of the transferor. It is for him to state the facts relating thereto and to prove them by preponderance of probabilities. If the transferor is able to state and establish any good reason for the transfer by preponderance of probabilities, it should be held that the burden of proof laid on him under Section 4(4) is discharged. Looked from this angle it cannot be said that the burden on the transferor is to prove a negative fact. To hold that a mere denial or putting forward of some plausible explanation for the transfer would discharge the burden of proof laid by sub-section (4) would be entirely defeating its provisions for it would be easy for every transferor to deny that he made the transfer with a view to defeat the provisions of the Act and to put forward a plausible explanation which may be entirely false. In this connection, our attention was drawn to *P. Sambasiva Rao Vs. Revenue Divnl. Officer* which was followed by a Division Bench in *Chandrasekhar Vs. State of M.P.* The Andhra Pradesh case does lay down that if the transferor gives some plausible explanation, the burden of proof laid on him under Section 7 of the Andhra Pradesh Ceiling on Agricultural Holdings Act is discharged and the explanation given by the transferor must be accepted. To the same effect is the ruling of the Division Bench in *Chandrasekhar's case*. We are unable to agree with the view taken in these cases. Such a view will reduce sub-section (4) of Section 4 to a dead letter. A transferor must not only give a plausible explanation for the transfer but also support it by evidence and make it acceptable by preponderance of probabilities. It is only then that it can be said that the burden of proof is discharged.”

(emphasis supplied)

On a bare reading of the aforesaid judgment, it is seen that the transferor was not only required to give plausible explanation for transfer but also support it by credible legal evidence which can be said to be acceptable by preponderance of probabilities. It is only then, it

can be said that the burden of proof is discharged. In the present case, as the holder has failed to produce any documentary evidence regarding treatment of his daughter, therefore, had failed to discharge the burden beyond preponderance of probabilities. Mere production of passport by the holder does not entail in discharging the burden of proof provided by the statute to substantiate the fact asserted by him about the seriousness of the illness of his daughter and more so disposal of surplus land because of necessity of funds therefor.

9. It is to be noted that in the present case, the appeal was not filed by the holder. The holder has thus allowed the finding of fact recorded by the Competent Authority against him on the factum of failure to discharge the burden of proof to attain finality. The purchasers who are claiming through the holder, therefore, cannot be allowed to contend to the contrary. Indeed, the said finding has been assailed by the purchasers by filing appeal. As per Section 4(4) of the Act, the transaction becomes rebuttable with regard to transfer or sale as void, only at the instance of transferor/holder of the land. Thus, it is the holder and transferor of the land who can rebut the transaction. The right to appeal, as provided under Section 4(3) of the Act, is to be the person aggrieved i.e. transferor/holder of the land. Since the purchasers are not required to and have no means to rebut the presumption operating against the holder; and are further not competent to discharge the burden of proving that the transfer was not void within the meaning of Section 4(1) of the Act and, thus, on conjoint reading of Section 4(1),

4(3) and 4(4) of the Act, it becomes clear that the person aggrieved necessarily means the holder of the land and the said finding can only be assailed by the holder. The purchaser at best could be made as a proper party in the appeal and could claim only through the holder (their predecessors in title). They cannot claim higher right than that of their predecessors in title. Thus, the Board of Revenue has committed a patent error by entertaining the appeal and, in particular, reverse the finding of fact recorded against the holder at the behest of purchasers. It is to be further noted here that although the lands were transferred by way of sale to the purchasers but they were not found to be in actual physical possession and neither the revenue record were corrected or modified nor the revenue was paid by the purchasers. It has been held that the revenue was being paid by the holder himself. Even on the basis of the statement made before the Competent Authority, the purchasers have failed to show their identity of the land and the names of the crops which were sown by them during the relevant period. On the basis of such statement, it becomes clear that the purchasers were not in possession of the said land; and, therefore, in law, the transfer of the land was nothing but a sham and bogus transfer and was made with an intention to defeat the provisions of the Act. In the light of the aforesaid discussion, the decision of the Division Bench relied by the counsel for the respondent in **Chandrashekar Harprasad Vs. State of M. P. and others** reported in **1981 M.P.L.J. 97** will be of no avail to the holder of the land or for that matter the subsequent purchasers

claiming through the holder.

**10.** As per Section 5 of the Act, no land can be transferred by way of sale or by way of gift, exchange, lease or otherwise except the permission of Collector in writing. Sub section (2) provides that Collector may refuse to give such permission if in his opinion the transfer or sub-division of land is likely to defeat the object of this Act. In the present case, on the basis of the record, it has been categorically held by the Competent Authority that no prior permission of the Collector was obtained by the holder under Section 5 of the Act and, therefore, in the light of the non-compliance of the mandatory provision, as stated above, the sale ought to be treated as void.

**11.** The Apex Court in the case of **Chundru Veerraju (dead) by LRS. (supra)**, in paragraph-6, in similar circumstances, has held as under :

“6. We have carefully considered the submissions made by the learned counsel on either side. It is not in dispute that nine sale deeds were executed in the month of September and October, 1971 and one sale deed was executed in December, 1971. The Act came into force with effect from 1-1-1973 but as far as the ceiling law is concerned, the notified date is 1/1/1975. Admittedly, all the sale transactions were between 24/1/1971 to 1/1/1975. The controversy that was to be resolved was, whether the area of land covered by these ten sale deeds could be excluded on the ground that these transactions were effected bona fide and not to defeat the provisions of the Act in regard to the ceiling area. The Primary Tribunal, on the basis of oral and documentary evidence, held that these sale deeds were brought into existence to defeat the provisions of the act in relation to the ceiling area. In other words, they were not bona fide transactions and the respondent did not discharge the burden of proof placed on him in this regard in terms of Section 7 of

the Act. In so doing, the Primary Tribunal has recorded the following reasons: in the sale deeds, the declarant, that is, the original respondent, and his wife did not state that they had sold the lands on the ground that they had become old and they were suffering from blood pressure and weakness and were to invest the sale consideration amount in moneylending business; in all the sale deeds, the declarants have taken lesser amounts at the time of sale and delivered possession of the lands and permitted the vendees to pay the remaining sale consideration amount later. No vendor will deliver the possession of lands by taking lesser amounts and allow the vendees to pay the remaining sale consideration amount later; the sale of lands made between September and December 1971 of an area of 89.86 acres covered by ten sale deeds within a period of two months or little more gave rise to the impression that the lands were disposed of in anticipation of and with a view to defeat the provisions of the Act in relation to the ceiling area; the land revenue receipts do not contain the survey numbers of the lands purchased by the vendees. Further neither the declarants nor the vendees have produced the land revenue receipts of earlier years. The stamped receipts are only bought up to suit the evidence and the contentions of the declarants. The Primary Tribunal has also looked into the other evidence and on a detailed consideration, concluded, as already indicated above, that these transactions covered by ten sale deeds were not bona fide and they were executed with a view to circumvent the provisions of the Act and as such the area covered by the ten sale deeds should not be excluded from the holding of the declarant, that is the original respondent. ....  
 .....”

12. The respondents relying on the observations of the Supreme Court in the Case of **Surya Devi Rai Vs. Ram Chander Rai and others – (2003) 6 SCC 675** had argued that the scope of interference in writ jurisdiction is circumscribed. However, in the present case we find that the Board of Revenue exceeded its jurisdiction in re-appreciating the evidence and material on record. More so, it has committed

manifest error in overturning the finding of fact recorded by the Competent Authority against the holder at the instance of the purchaser. The finding of fact so recorded by the Competent Authority was in conformity with the evidence produced by the holder who alone could have substantiated the defense taken by him that disposal of the surplus land during the relevant period was due to extreme necessity and not intended to defeat the provisions of the Act. The decision of the Board cannot stand the test of judicial scrutiny on either count.

**13.** In view of the aforesaid discussion, the order passed by the Board of Revenue is not sustainable in law and, therefore, the same is hereby set aside and the order passed by the Competent Authority dated 13.5.1996 is revived – declaring that the holder of the land held surplus land on the specified date and the fourteen sale deeds were void and intended to defeat the provisions of the Act.

**14.** The writ petition is allowed with no order as to cost.

(A.M.Khanwilkar)  
Chief Justice

(Ms. Vandana Kasrekar)  
Judge

