

Writ Petition No. 17148/2007

26.3.2015

Shri Sanjay Patel, learned counsel for the petitioners.

Shri Ashish Anand Bernard, learned Government Advocate for respondent Nos. 1 and 2.

None for respondent Nos. 3 and 4 though served.

Heard.

Order dated 8.2.2006 passed by Additional Commissioner is being assailed vide this petition; whereby while setting aside the order passed on 28.1.2002 by Collector, Mandla, the sale of land bearing Khasra No. 14 area 0.68 hectare, Khasra No. 1 area 1.23 hectare, Khasra No. 18 area 1.41 hectare, Khasra No. 162 area 0.60 hectare and Khasra No. 3 area 1.15 hectare, Patwari Halka No. 32, Village Khupsar by petitioners in favour of respondent No. 3 has been upheld.

Collector on the finding that the land in question being given on lease to respective petitioners in the year 1975-76, its transfer without seeking prior permission as contemplated under Section 165 (7-b) of M.P. Land Revenue Code, 1959 was void and, therefore, the sale was set aside.

Reversing the order, Additional Commissioner found that the lease being granted in years 1975-76 and the transfer being effected in the year 1990, was not hit by Madhya Pradesh Land Revenue Code (Amendment) Act, 1992.

Amendment Act, 1992 inserted following sub-section (3) under Section 158:

“3. Every person -

- (i) who is holding land in Bhoomiswami right by virtue of a lease granted to him by the State Government or the Collector or the Allotment Officer on or before the commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 1992 from the date of such commencement, and
- (ii) to whom land is allotted in Bhoomiswami right by the State Government or the Collector or the Allotment Officer after the commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 1992 from the date of such allotment,

shall be deemed to be a Bhoomiswami in respect of such land and shall be subject to all the rights and liabilities conferred and imposed upon a Bhoomiswami by or under this Code:

Provided that no such person shall transfer such land within a period of ten years from the date of lease or allotment.

Corresponding amendment was also brought in sub-section (7-a) of Section 165 of Code 1959 whereby following expressions were inserted:

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

The above provision as it existed at the time when the transfer was effected, i.e., in the year 1999 was as follows:

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

Thus, incumbent it was upon the parties concerned to have obtained the permission before effecting the transfer of a land specified under Section 33 of Madhya Pradesh Bhoodan Yagna Adhiniyam, 1968.

Section 33 of 1968 Act provides for:

“33. Bhoodan holders to acquire Bhoomiswami rights.- Any person holding land as a Bhoodan holder for ten years continuously in accordance with the provisions of this Act shall, at the expiry of the said period, acquire the rights of Bhoomiswami under the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959), and the title and interest of the Board in the said land shall cease.

It is evident from the facts of the present case that the petitioners were allottees of land by the State Government and respondent Nos. 3 and 4 having failed to establish that the allotment was not under the Act of 1968, the petitioners acquired Bhoomiswami right over the property in question.

Ignoring this aspect, Commissioner reversed the order passed by Collector on the following finding:

“6. उपरोक्त तर्कों के परिपेक्ष्य में मैंने अधीनस्थ न्यायालय से प्राप्त अभिलेखों का अवलोकन किया। अपीलार्थी की ओर से इस न्यायालय में खसरा पांच साला की सत्य प्रतिलिपियां प्रस्तुत की गई हैं, जिनके अवलोकन से ज्ञात होता है कि विवादित भूमि का पट्टा उत्तरवादी क्रमांक 2 से 7 को वर्ष 1975-76 में प्रदान किया गया था। विवादित भूमि उनके द्वारा वर्ष 1990 में विक्रय की गई है। संहिता की धारा 3 का परन्तुक इस प्रकार है कि आवंटन या पट्टे की तारीख से 10 वर्ष की कालावधि के भीतर ऐसी पट्टे या आवंटन की भूमि का अंतरण नहीं किया जा सकेगा। मैंने अपीलार्थी द्वारा प्रस्तुत न्यायिक दृष्टांत का अवलोकन किया। इसमें माननीय राजस्व मंडल ने यह अवधारित किया है कि पट्टे के संबंध में जो बंदिशें हैं, वे पट्टे दिये जाने के 10 वर्ष की अवधि के भीतर की हैं, उसके बाद के लिये नहीं। इस प्रकरण में उत्तरवादीगण को पट्टा वर्ष 1975 में प्रदान किया गया था। जबकि उनके द्वारा भूमि का विक्रय वर्ष 1990 में किया गया है। अतएव माननीय राजस्व मंडल द्वारा पारित उपरोक्त न्यायिक दृष्टांत इस प्रकरण में भी लागू होता है।”

These findings when tested on the anvil of the provisions contained under Section 165 (7-A) as it existed when the transaction were effected wherein prior permission was a mandatory pre condition and no prior permission having been sought even if the holding is beyond ten years, the decision arrived at by the Collector that the sale was a nullity ought not to have been interfered with.

Thus considered, the impugned order dated 8.2.2006 is set aside and the order passed by Collector on 28.1.2002 is upheld.

Petition is allowed to the extent above. No costs.

(SANJAY YADAV)
JUDGE