BEGUM SURAIYA RASHID AND ORS. A

v.

STATE OF MADHYA PRADESH AND ORS.

FEBRUARY 20, 2006

[H.K. SEMA AND DR. AR. LAKSHMANAN, JJ.] B

Madhya Pradesh Land Revenue Code, 1959—Sections 109, 116, 117—Land recorded in name of jail department given on lease—Lessee applying for its mutation based on a decree in a suit, and in response to challenge to grant of mutation, pleading **res-judicata**—*Held: As the land involved in the suit had different location and area from the impugned land, challenge to grant of mutation could not be defeated by plea of* **res-judicata**—*Mutation could not be granted as lessee had accepted that the land belonged to the jail department and did not challenge entry in revenue records in the name of latter—Otherwise also, application for mutation made after decades of passing of decree in the suit, was abuse of process of law as such application was to be made within six months from date of lawful acquisition of rights.* C D

The impugned land measuring 59.17 acres in Khasra Nos. 943, 960, 961 and 962 was recorded in the name of jail department since the year 1935. It was given on lease to predecessors of appellants. However, in the year 1989, relying on a decree of Jagir Commissioner dated 2-3-1954 in a suit filed by them, they filed an application for mutation of this land before the Naib Tahsildar under Section 109 of the Madhya Pradesh Revenue Code, 1959. This application was allowed on 29-1-1990. But in an enquiry ordered by Collector of the area, the Naib Tahsildar was held guilty of improper mutation. Thereafter Appellant authority set aside order of mutation. Against this, in a revision preferred by appellants before Board of Revenue under Section 50 of the Code, an enquiry was ordered and report asked for. However, High Court set aside this order. Hence the present appeal. E F G

Aside from the above, in proceedings initiated in 1981 under Section 248 of the Code, for eviction of the appellants from the impugned lands, they were declared trespassers. Order of their eviction passed by the Tahsildar on 16-9-1981 was confirmed by SDO, thereafter by

 H

A Commissioner in second appeal and subsequently by Government, whereby it attained finality.

Appellants contended that the present proceedings revolve around decree of Jagir Commissioner dated 2-3-1954 and were barred by principle of res-judicata., especially as that decree had been affirmed by High Court B and Supreme Court. Respondent Government contended that the decree of the Jagir Commissioner did not include the area of the land in the present dispute.

Dismissing the appeal, the Court

C HELD: 1. From the order of the Jagir Commissioner it is clear that the land involved in that earlier suit was in Khasara Nos. 72/1, 73, 74, 75 and 76 in village Dharampuri and the area of land is 7.26 acres. Undisputedly, the land involved in the present dispute relates to Khasra Nos. 943, 960, 961 and 962 of Jahangirabad area of Bhopal city measuring D 59.17 acres. While it is true that tin issue No. 9 in the said suit reference was made to the order passed by the Jagir Commissioner on 2-3-1954 which was decided was not covered by the Jagir Commissioner's order dated 2-3-1954. The land in the present dispute is distinctly different from the point of view of the location of the land and Khasra Nos. from the subject matter of earlier suit. Therefore, by no stretch of imagination, it E can be said that the present dispute is hit by the principle of res-judicata in view of the decision rendered in Civil Suit No. 180-A/84, which has attained finality. [384-C-F]

Dhanvanthakumariba v. *State of Gujarat,* [2004] 8 SCC 121, *Mahila Bajrangi* v. *Badribai,* [2003] 2 SCC 464 and *Phool Pata* v. *Vishwanath Singh,* F (2005) AIR 3575, held inapplicable.

2.1. It is clear that the land in dispute was recorded in the name of jail department since from 1935 till 1989, when for the first time the appellants filed an application for mutation. [383-F]

G 2.2. The appellants accepted that the land belonged to the jail department and they were only the lessees paying rent of Rs. 375 to the jail department. In all the correspondence not even a reference was made to the order dated 2.3.1954 passed by the Jagir Commissioner. [386-H]

H 2.3. If the appellants were aggrieved by the entry of the Khasra Nos.

in the name of jail department since from 1935, they could have raised the dispute under Section 116 of Madhya Pradesh Land Revenue Code, 1959 to the Tahsildar for its correction within one year from the date of such entry. Section 117 of the Code raises a presumption as to entries in land records being correct until the contrary is proved. Having not availed the aforesaid provisions of law, the only remedy that was open to the appellants was under Section 57(2)(3) of the Code. [387-G-H; 388-A] A B

3. The power under Section 109 of Madhya Pradesh Land Revenue Code, 1959 can only be exercised by the authority in respect of any person lawfully acquiring a right and such application shall also be filed within six months from date of such acquisition. In the instant case, the land in question was never lawfully acquired by the appellants as they were only the lessees paying Rs. 375 to the jail authorities and there was no question of lawfully acquiring any right as contemplated under Section 109 of the Code. This apart, right if any, is acquired lawfully by any person, such application must be made within six months from date of such acquisition and therefore application made for the first time in 1989 under Section 109 of the Code purportedly on the basis of the order dated 2-3-1954 passed by the Jagir Commissioner was clearly an abuse of the process of law. [386-H; 387-A-C] C D

4. The Board of Revenue erroneously called for the report again by directing a roving enquiry. As was pointed out by the High Court, the Board of Revenue exercised revisional powers which is patently erroneous, contrary to law and it transgressed its revisional jurisdiction by calling report from the Tahsildar despite the impeccable facts available on the record. Thus the High Court was justified in setting aside the said order. [389-B-C] E F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1196 of 2006.

From the Judgment and Order dated 27.10.2005 of Madhya Pradesh High Court in Writ Petition No. 45/2001. G

Ms. Tasneem Ahmadi, Sudhir Kumar Gupta, Anurag Pandey, Ms. Anuradha Thakur, Ms. Deepti Nar and Mukesh Kumar for the Appellant.

Dushyant Dave, Ms. Vibha Datta Makhija for the Respondents.

H

The Judgment of the Court was delivered by

A **H.K. SEMA, J.** Leave granted

The facts of this case revolves as to how the appellants clandestinely and by suppressing the facts tried to grasp the public land measuring 59.17 acres in Khasra Nos. 943, 960, 961, 962 of Jahangirabad (Jail Bag) area of Bhopal city under the guise of order dated 2.3.1954 passed by the Jagir
B Commissioner in respect of land in Khasra Nos.72/1, 73, 74, 75, 76 in village Dharampuri.

The facts of this case are cumbersome and may be recited briefly and strictly for the purpose of disposal of this appeal. The present disputed land
C measuring 59.17 acres in Khasra Nos.943, 960, 961 and 962 was recorded in the name of jail department and situated in the area of Bhopal city near the Arera Hills in front of old jail premises since 1935. It appears that the area was developed as a garden having trees of Mangoes, Jamun, Lemon etc. and the same was used to let out to different contractors and the property was managed from the income received from the fruits grown in the garden. No
D revenue was assessed on that income as the land belonged to the State Government. It is not disputed that the said land was given on lease to one Shri Bhawani Singh and Shri Jameel Ahmed by the Superintendent of Jail for consideration of Rs.375/- per annum. Subsequently one Shri Rashiduzzafar Khan, the predecessor of the appellants, obtained a deed of relinquishment in
E his favour from the lessees Bhawani Singh and Jameel Ahmed. This was done without the concurrence and consent of the Government. Rashiduzzafar Khan continued using the land in the capacity of lessee and used to pay annual rent at the rate of Rs.375/-.

Rashiduzzafar Khan, predecessor of the appellants submitted an
F application in August, 1960 to the Government for recording his name as a Bhumiswami in respect of the said land in Khasra Nos.943, 960, 961 and 962. The same was, however, rejected by an order-dated 5.8.1962. Another application filed by the appellants herein was rejected on 29th/30th January, 1965 on the ground that the land in question was recorded in the name of jail
G department.

Thereafter, a proceeding under Section 248 of the Madhya Pradesh Land Revenue Code, 1959 (hereinafter referred to as 'the Code') was initiated for eviction of the appellants in 1981. It was held that the appellants were the trespassers and order of eviction was passed by the Tahsildar on 16.9.1981.
H The Tashildar's order was challenged before the SDO which was dismissed

on 19.3.1985. SDO's order was challenged before the Commissioner in second appeal and the same was dismissed by the Commissioner on 29.6.1989. The order of the Commissioner was challenged by filing M.P. No.3978 of 1991, which was dismissed as withdrawn on 25.4.1998. Thereafter, the Commissioner's order was assailed before the Revenue Minister and he directed an enquiry in the matter and the said order was set-aside by the Government by its order dated 1.11.1991 on the ground that the Revenue Minister had no jurisdiction to pass such an order. This would show that the order of eviction passed by the Tahsildar on 16.9.1981 attained its finality.

Another attempt was made by the appellants by filing application under Section 57(2) of the Code on 14.11.1983 praying *inter alia* to declare *Bhumiswami* rights in their favour. The said application was filed before the SDO, Bhopal, on the basis of the registered deed dated 6.4.1940 executed by Bhawani Singh and Jameel Ahmed. This application was, however, not pursued by the appellants.

Thereafter, the appellants filed civil suit No.159-A/84 in the Court of District Judge, Bhopal. In the said suit the State Government filed the written statement. The said suit was dismissed on withdrawal on 1.7.1998.

Thereafter, the appellants filed an application for mutation before the Naib Tahsildar in 1989. The said application was allowed by the Tahsildar on 29.1.1990. Suo Motu proceedings were drawn by the Collector, Bhopal on 3.8.1990. An enquiry was ordered against the Naib Tahsildar and by an enquiry report dated 27.4.1994 the Naib Tashildar was held guilty of ordering mutation improperly.

From the aforestated facts it clearly appears that the land in dispute was recorded in the name of jail department since from 1935 till 1989, when for the first time the appellants filed an application for mutation.

At this stage, we may dispose of one of the arguments of Mr. Rohtagi learned senior counsel for the appellants. It is contended that pursuant to the Jagir Commissioner's order dated 2.3.1954 Civil Suit No.180-A of 1984 was filed by the appellants which was decreed by the Trial Court and affirmed by the Division Bench on 17.4.1987 and SLP against the same was dismissed on 6.5.1988. Therefore, the present dispute is barred by the principle of ***res judicata***. He specifically referred to issue No.9 in the said suit. It reads:-

"Whether the order dated 02.03.1954 of the Jagir Commissioner is

A contrary to law and void?"

According to Mr. Rohtagi, the order of Jagir Commissiner dated 2.3.1954 was on one of the issues in suit No.180-A/84 which has been decreed in favour of the appellants and since the present case also revolves around the order dated 2.3.1954 passed by the Jagir Commissioner the present dispute B in hand is barred by the principle of *res judicata.*

In our view, this submission is misconceived. It is not disputed by the respondents that the decree in Civil Suit No.180-A/84 passed in favour of the present appellants has attained finality, SLP being dismissed on 6.5.1988. It is, however, to be noted that it is the specific case of the respondent- C Government that the order of the Jagir Commissioner dated 2.3.1954 which was the subject matter of Civil Suit No. 180-A/84 does not include the area of the land in the present dispute. From the order of Jagir Commissioner as quoted by the Trial Court it clearly appears that the land involved in the earlier suit was in Khasra Nos.72/1, 73, 74, 75 and 76 in village Dharampuri D and the area of land is 7.26 acres. Undisputedly, the land involved in the present dispute relates to Khasra Nos.943, 960, 961 and 962 of Jahangirabad area of Bhopal city measuring 59.17 acres. While it is true that in issue No.9 in the said suit reference was made to the order passed by the Jagir Commissioner dated 2.3.1954 which was decided in favour of the appellants but the land in the present dispute was not covered by the Jagir Commissioner's E order dated 2.3.1954. As already noticed the land in the present dispute is distinctly different from the point of view of the location of the land and Khasra Nos. from the subject matter of earlier suit. Therefore, by no stretch of imagination, it can be said that the present dispute is hit by the principle of *res judicata* in view of the decision rendered in Civil Suit No.180-A/84, F which has attained finality. In this connection, reliance has been placed by Mr. Rohtagi on the cases of *Dhanvanthkumariba* v. *State of Gujarat,* [2004] 8 SCC 121, *Mahila Bajrangi* v. *Badribai,* [2003] 2 SCC 464 and *Phool Pata* v. *Vishwanath Singh.* (2005) AIR 3575. These decisions are of no assistance to the appellants' case.

G Next, Mr. Rohtagi referred to the provisions of the Bhopal Abolition of Jagirs and Land Reforms Act, 1953 (in short the Act), in particularly Section 4, Section 5, sub-section 1(b) of Section 6, Sub-section (2) of Section 6, Section 17 and Section 27. According to Mr. Rohtagi, no appeal has been preferred by the State Government against the Order of the Jagir Commissioner dated 2.3.1954 as provided under Section 27 of the Act. The order passed by H

the Jagir Commissioner has become final. This contention would be of no help to the appellants' case. We have already held that the Jagir Commissioner's order dated 2.3.1954 does not refer to the land in dispute in the present case measuring 59.17 acres. We have also held that the land in question has been recorded in the name of jail department in revenue records since from 1935. It was never Jagirs land prior to the enforcement of abolition of Jagirs Land Reforms Act. That the land in question was not covered by the Jagir Commissioner's order dated 2.3.1954 has been accepted by the appellants by their own conduct.

That the land in the present dispute is not a part of the order dated 2.3.1954 passed by the Jagir Commissioner is also fortified by the following facts which we will be reciting presently.

In the Civil Suit No.159-A/84 filed by the appellants, *inter alia* prayed the following relief:

> "(A) A decree for declaration be passed in favour of the plaintiffs and it be decreed that the plaintiffs have become Bhumiswamis and owners of the suit lands situated in Bhopal town at Hoshangaband Road mentioned in Khasra Nos. and area as shown below:-

Khasra Nos.	Area
943	25.92
960	12.39
961	7.23
962	13.63
Total:	59.17 acres.

In the said suit, the appellants admitted in paragraph 5 that Bhawani Singh and Jameel Ahmed used to send Rs.375/- to jail department which was paid by late Nawab Rashid Uz- Zafar Khan from 1940 till his death, and after his death in 1961 the plaintiffs reunited the amount till 1978, when the jail department refused to accept the payment.

In paragraph 11 it is stated that the Naib Tahsildar, Nazul, Bhopal passed an order dated 16th September, 1981 evicting the plaintiffs from the land which has attained finality. As already noticed the suit was withdrawn by the appellants and was dismissed on withdrawal on 1.7.1988.

In paragraph 22 of the plaint, the plaintiffs averred that they paid income tax and wealth tax on the stud and agricultural farm and it was assessed by

A the Income Tax and other Taxation authorities. In the return filed by the appellants on 8.6.1968 in paragraph 5 (Jail Bagh Farm), the appellants admitted that they are only lessees of the land and that they paid a rent of Rs.375/- per annum to the jail department of M.P.

In the application filed before the SDO by the appellants on 14.11.1983
B it is also admitted in pargraph 5 that late Rashiaz Zaffar Khan used to send Rs.375/- yearly in the leased account to the jail department. In the said application Khasra Nos.943, 960, 961 and 962 and total area of the land measuring 59.17 acres are shown. A prayer was made that the appellants be declared as Bhumiswami of the disputed lands.

C In the letter dated 30.7.1968 counsel for the appellants addressed to the Assistant Controller of Estate Duty, Indore, in connection with the estate duty of Late Nawabzada Rashiduzzafar Khan, it is stated in paragraph 4 of the letter as under:-

D *"Jail Bag Farm:*

Copy of the Khasra in respect of Jail Bag Land, Khasra Nos. 943, 960, 961 and 962 of village Shahar is enclosed. *As this land is owned by the Jail Department, as per land records, it is called Jail Bag Farm. Our client pays rent of Rs.375/- per annum to the Jail*
E *Department of M.P. in respect of this land owned by the Jail Department."*

(emphasis supplied)

In the letter dated 18.10.1962 written by the Chartered Accountant of
F the appellants to the Deputy Controller of the Estate Duty, it is stated in 3.9 that Stud Farm (Jail Bagh) standing in the area of about 59 acres, which is used for breeding of horses, and that land does not belong to the owners.

The facts as adumbrated above would clearly show that all along the appellants accepted that the land belonged to the jail department and they
G were only the lessees paying rent of Rs.375/- to the jail department. In all the correspondences as recited above not even a reference was made to the order dated 2.3.1954 passed by the Jagir Commissioner.

For the first time in 1989 an application was made under Section 109 of the Code for mutation purportedly on the strength of the order dated
H 2.3.1954 passed by the Jagir Commissioner. The power under Section 109

can only be exercised by the authority in respect of any person lawfully acquiring a right and such application shall also be filed within six months from the date of such acquisition. In the instant case, as already noted, the land in question was never lawfully acquired by the appellants as they were only the lessees paying Rs.375/- to the jail authorities and there was no question of lawfully acquiring any right as contemplated under Section 109 of the Code. This apart, right if any, is acquired lawfully by any person, such application must be made within six months from the date of such acquisition and therefore application made for the first time in 1989 under Section 109 of the Code purportedly on the basis of the order dated 2.3.1954 passed by the Jagir Commissioner was clearly an abuse of the process of law.

We may now make a quick survey of the relevant Sections of the Code, for the purpose of disposal of the case at hand.

Chapter IX, Section 104 of the Code deals with the land records.

Section 108 of the Code deals with the record of rights and shall include the following particulars:

> (b) the names of all occupancy tenants and Government lessees together with survey numbers or plot numbers held by them and their area, irrigated or unirrigated;

Section 117 of the Code deals with the presumption as to entries in land records and it provides that all entries made under this Chapter in the land records shall be presumed to be correct until the contrary is proved.

Section 114 of the Code deals with the land records and it provides that in addition to the map there shall be prepared for each village a khasra or field book.

Section 116 deals with the disputes regarding entry in khasra or in any other land records and it provides that if any person is aggrieved by an entry made in the land records prepared under Section 114 he shall apply to the Tahsildar for its correction within one year of the date of such entry.

In the present case Khasra Nos. were entered in the name of jail department since from 1935 and if the appellants were aggrieved they could have raised the dispute under Section 116 to the Tahsildar for its correction within one year from the date of such entry. As already noted Section 117 raises a presumption as to entries in land records being correct until the

A contrary is proved. Having not availed the aforesaid provisions of Law, the only remedy that was open to the appellants was under Section 57(2)(3).

Section 57 Chapter VI of the Code deals with the land and land revenue. It provides that all lands belong to the State Government, and all such lands including standing and flowing water, mines, quarries, minerals and forests B reserved or not, and all rights in the sub-soil of any land are the property of the State Government. Proviso to Section 57 provides that the Section shall not affect any rights of any person subsisting at the coming into force of this Code in any such property. Sub-section 2 of Section 57 provides that if any dispute arises between the State Government and any person in respect of C any right under sub-section (1) such dispute shall be decided by the Sub-divisional Officer. Further, sub-section 3 provides that if any person is aggrieved by any order passed by the SDO under sub-section 2 he may file a civil suit to contest the validity of the order within a period of one year from the date of such order

D As already noticed the appellants filed a Civil Suit No.159-A/84 and it was dismissed on withdrawal on 1.7.1998.

As already noted on application being filed by the appellants in 1989, the Tahsildar by ex-parte order dated 29.1.1990 ordered the land in question to be mutated in the name of the appellants. The Tahsildar in his order also E noticed that the name of the jail department is mentioned in the land records. However, the order was passed ex-parte on the ground that despite several letters sent to the jail department none appeared on its behalf. We have already noted that the order passed by the Naib Tahsildar dated 29.1.1990 was an abuse of the process of law. The said order was set-aside by the F Appellate Authority, in our view, rightly by a detailed order passed on 24.6.1996. Aggrieved thereby a revision under Section 50 of the Code was preferred before the Board of Revenue. Section 50 reads:-

> "50. Revision.-(1) The Board (or the Commissioner)/(x x x) or the (Settlement Commissioner or the Collector or the Settlement Officer) G may at any time on its/his motion or on the application made by any party for the purpose of satisfying itself/himself as to legality or propriety of any order passed by or as to the regularity of the proceedings of any Revenue Officer subordinate to it/him call for, and examine the record of any case pending before, or disposed or by such officer, and may pass such order in reference thereto as it/he

H

thinks fit:

On a cursory reading of Section 50 it postulates that the Board of Revenue would exercise revisional powers if the revenue officer subordinate to it, appears to have exercised a jurisdiction not vested in it by law or to have failed to exercise a jurisdiction so vested or to have acted in the exercise of its jurisdiction illegally or with material irregularity. In the instant case, the Board of Revenue erroneously called for the report again by directing a roving enquiry. As was pointed out by the High Court, the Board of Revenue exercised revisional powers which is patently erroneous, contrary to law and it transgressed its revisional jurisdiction by calling report from the Tahsildar despite the impeccable facts available on the record. Thus, the High Court was justified in setting-aside the said order.

Even in the report submitted by the Naib Tahsildar on 7.9.1996 it is stated as under:

> "In the Patwari record 1995-96 Khasra No.943, area 25.92 Khasra No.960, area 12.39, Khasra No.961 area 7.23, Khasra No.962 area 13.63, on total 59.17 acre in the Khasra, *Department of Jail is recorded.* But at the place Stud Farm is constructed."
>
> (emphasis added)

The report shows that the land in dispute was clearly recorded in the revenue records in the name of jail department and the board of revenue acted contrary to the facts in ordering mutation to be carried out in favour of the appellants. It is unfortunate.

In the facts and circumstances this appeal is devoid of merits and deserves to be dismissed which we hereby do. Considering the fact that the appellants were suppressing the facts at every stage of proceeding, we deem it necessary that the appeal deserves to be dismissed with costs which we quantify at Rs.10,000/- (Rs.Ten Thousand Only). The appeal is dismissed with costs.

V.S. Appeal dismissed.