

A GWALIOR SUGAR CO. LTD. & ANR.
v.
ANIL GUPTA AND ORS.
(Civil Appeal No. 7760 of 2012)

B NOVEMBER 2, 2012

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

MADHYA PRADESH LAND REVENUE CODE, 1959:

C s. 165(1) - *Transfer of land by 'Bhumiswami' - Company*
owning a sugar factory was granted pattas of subject land in
the year 1941-42 - Transfer of a part of the subject land
challenged in a writ petition under public interest litigation -
Held: The company having acquired the status of a "pucca
D *tenant", with the coming into force of the Land Revenue Code,*
became 'Bhumiswami' of the land - Rights of a bhumiswami
enumerated u/s 165 encompass right to transfer - Right to
transfer being a statutory right and the bar imposed on the
E *right to transfer not being applicable to non-agricultural land,*
a clause in a patta granted in the year 1940-41 cannot restrict
such a right - Nor is there any material to indicate that under
terms of the lease granted u/s101 of Tenancy Act and s.39
of Abolition of Zamindari Act any restriction or bar had been
imposed on the appellant-Company from making such a
F *transfer - Provisions of Urban Ceiling Act and Ceiling on*
Agricultural Holding Act, ex-facie, do not apply to the case of
appellant-company - Urban Ceiling Act, 1976 - Madhya
Pradesh Ceiling on Agricultural Holding Act, 1960 - Madhya
Pradesh Zamindar Abolition Act, 1951 - Madhya Bharat Land
G *Revenue and Tenancy Act (Samvat, 2007) - s.54(vii) - Public*
Interest Litigation.

The appellant-company was, in the year 1941,
granted 215 bighas of land, under 6 pattas issued by the
Zamindar for setting up the sugar factory with a

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prohibition of any kind of agricultural operations thereon. A
After setting up the sugar factory, the company, due to
financial reasons sold about 9 bighas of surplus land. A
writ petition was filed as a public interest litigation
contending that the surplus land was transferred contrary
to terms of the patta in connivance and collusion with
officials of State Government. The stand of the appellant-
company was that the original pattas of the subject land
were granted to it by the Zamindar in the year 1941-42;
that in the year 1950, the status of the appellant in respect
of the said land was recorded as 'Gair Maurusi;" and that
with the coming into force of the Tenancy Act by virtue
of s.54 (viii) of the Tenancy Act the appellant became a
"pucca tenant" and on coming into force of the M.P. Land
Revenue Code, the appellant became 'bhumiswami' with
a right of transfer u/s165(1) of the Code. The initial stand
of the officials of the State was also that the appellant
being "pucca tenant" had acquired the status of
'bhumiswami' and the appellant was exempted from the
operation of the provisions of Ceiling on Agricultural
Holding Act by an order dated 8.1.1976. However, in the
additional return dated 7.8.2007 filed on behalf of the State
the right of the appellant to transfer the land contrary to
terms of pattas was questioned. The High Court directed
for demarcation of surplus land of the appellant-company
under the provisions of both the Urban Land Ceiling Act,
1976 as well as the Madhya Pradesh Ceiling on
Agricultural Holding Act, 1960 and held that the excess
land so demarcated would vest in the Government. The
company was further restrained from effecting any
transfer of urban land allotted to it and any transfer made
were declared null and void. Aggrieved, the company filed
the appeal.

Allowing the appeal, the Court

HELD: 1.1 The rights of a 'bhumiswami' are clearly
enumerated by s.165 of the MP Land Revenue Code

A which encompasses a right to transfer. The bar imposed
on the right to transfer does not apply to non-agricultural
lands and, therefore, would not be relevant to the instant
case. If the right of transfer has been conferred on the
appellant by the provisions of a statute and the bar
B contemplated does not apply to the appellant, then a
clause or a condition in the original patta granted by the
Zamindar in the year 1940-41 cannot restrict such a right.
In any case, there is no specific clause or condition in any
of the original pattas prohibiting or even restricting the
C right of the appellant to transfer any part of the land
allotted to it that may be lying vacant. Neither any material
has been placed before this Court to enable it to take the
view that under terms of the lease granted u/s101 of
Tenancy Act and s.39 of Abolition of Zamindari Act any
restriction or bar had been imposed on the appellant-
D Company from making such a transfer. [para 13] [985-C-
G]

1.2 The provisions of the Zamindari Abolition Act,
1951, have been pressed into service for the first time in
E the instant appeal. Neither in the pleadings nor in the
arguments made before the High Court on behalf of the
State, the facts asserted and the legal issues raised
before this Court had been urged. In the absence of any
pleading that the procedure for grant of a fresh lease
F contemplated u/s 39 of the Zamindari Abolition Act had
not been followed by the appellant by making the
requisite application as contemplated by s.101 of the
Tenancy Act, no adverse consequence can be attributed
to the appellant. Rather, the status of the appellant as a
G 'bhumiswami' recorded in the revenue records of the
later years, in the absence of any contrary material, will
have to be understood to be pursuant to the grant of a
fresh lease u/s 39 of the Zamindari Abolition Act read with
the provisions of s.101 of the Tenancy Act. Infact,
H acceptance of the acquisition of the status of

'bhumiswami' by the appellant will render it unnecessary A
to go into the basis of the acquisition of the said status,
which, in any case, appears to be contrary to the
provision of s. 1(2) of the Tenancy Act. The said provision
clearly excludes the villages settled under the Zamindari B
system from the purview of the operation of Part II of the
Tenancy Act, which part of the Act, inter alia, also deals
with the acquisition of the status of "pucca tenant" and
'Bhumiswami' by a tenant. However obliteration of Part II
of the Tenancy Act by operation of s.1(2) thereof does not C
extinguish the different denominations of tenancy
including the status of Bhumiswami which can very well
be acquired by grant of such status by a fresh lease u/s
101 of the Tenancy Act read with s. 39 of the M.B.
Zamindari Abolition Act. [para 12] [984-D-H; 985-A-C]

1.3 The provisions of either of the two Acts, namely, D
the Urban Land Ceiling Act ad the Ceiling on Agricultural
Holding Act, ex-facie, do not apply to the case of the
appellant-Company. [para 14] [985-H; 986-A]

1.4 The judgment of the High Court as well as the E
directions contained therein are set aside. [para 15] [986-
C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No.
7760 of 2012. F

From the Judgment & Order dated 01.12.2007 of the High
Court of Madhya Pradesh at Gwalior in Writ Petition No. 1773
of 2006 (PIL).

Ranjit Kumar, Dhruv Mehta, Abhay A. Jena, Sarthak G
Mehrotra, Bina Gupta, B.S. Banthia, Pranab Kumar Mullick,
Ashish Rana for the Appearing Parties.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. Leave granted. H

A 2. This appeal is directed against the judgment and order
 dated 01.12.2007 passed by the High Court of Madhya
 Pradesh in a Public Interest Litigation registered and numbered
 as Writ Petition No.1773/2006. By the order impugned in the
 present appeal, directions have been issued by the High Court
 B for demarcation of the surplus land of the appellant - Company
 both under the provisions of the Urban Land Ceiling Act, 1976
 (since repealed) (hereinafter referred to as 'the Urban Land
 Ceiling Act') as well as the provisions of the Madhya Pradesh
 C Ceiling on Agriculture Holding Act, 1960 (hereinafter referred
 to as "the Ceiling on Agricultural Holding Act). After the
 demarcation of the excess land in terms of the directions issued
 by the High Court, further directions have been issued for
 vesting of the excess land, both urban and agricultural, in the
 Government. Furthermore, the appellant - Company has been
 D restrained from affecting any transfers of the urban land allotted
 to it and all such transfers as may have been made have been
 declared as null and void by the High Court.

E 3. A brief resume of the relevant facts in which the above
 noted directions have been issued by the High Court may now
 be set out:

F The appellant, a private limited company, is the owner of
 a sugar mill located at Dabra, district Gwalior in the State of
 Madhya Pradesh. A total of 215 bighas (approximately) of land
 was allotted to the appellant - Company in Samvat 1998
 (corresponding to English Calender year 1941) on the basis
 of 6 pattas issued by Zamindar in whom the land had come to
 be vested. The pattas specified that the land was meant for
 setting up of the sugar factory and any kind of agricultural
 G operations therein was prohibited. The pattas also specified
 that the same would be valid till the existence of the factory. After
 setting up of the sugar mill the Company appears to have run
 into certain financial difficulties and for the upkeep of the sugar
 mill and for modernization thereof the Company by a Resolution
 H decided to sell/transfer some parts of the vacant land allotted

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to it. In fact some surplus land stood transferred by way of sale to certain individuals and the area so transferred is roughly about 9 bighas. In these circumstances, the Writ Petition in question was filed as a Public Interest Litigation contending that surplus land has been transferred contrary to the terms of the patta in connivance and collusion with the officials of the State Government. According to the petitioner more such transfers were contemplated.

4. The stand of the officials - respondents, initially, was that land measuring about 178 bighas stood recorded in the name of the appellant - Company in the revenue record of Samvat 2013. In the said records the name of the appellant was recorded as a "pucca tenant" under Section 54 (vii) of the Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 (hereinafter referred to as 'the Tenancy Act'). Thereafter with the coming into force of the MP Land Revenue Code in the year 1959 the name of the appellant - Company was recorded as a 'bhumiswami' in respect of the aforesaid land. The revenue records in support of the above facts were in fact enclosed to the return filed before the High Court on behalf of the State. A report dated 2.5.2003 of the primary revenue authority i.e. Naib Tehsildar reciting the above facts and the fact that the appellant Company was exempted from the operation of the provisions of the Ceiling on Agricultural Holding Act by an order dated 8.1.1976 passed by the competent authority was also enclosed to the said return. Subsequently, however, an additional return dated 7.8.2007 was filed on behalf of the state wherein the right of the appellant to transfer the land contrary to the terms of the pattas issued to it was questioned, notwithstanding, its status as a Bhumiswami under the Land Revenue Code, 1959.

5. The appellant - Company and its principal Director who were impleaded respondent Nos.12 and 13 in the PIL, in their return, placed before the High Court copies of the original pattas granted by the then Zamindar in Samvat 1997-98 (English Calender year 1941-42). It was claimed that on the

A basis of the entries in the revenue records, namely, Khasra of
 village Dabra, Samvat 2007 (equivalent to English calendar
 year 1950) the status of the appellant - Company in respect of
 the land in question was recorded as 'Gair Mairusi'. The
 appellant - Company had contended that with the coming into
 B force of the Tenancy Act, w.e.f. 15.8.50, by virtue of the
 provisions of Section 54 (vii), the status of the appellant -
 Company became that of a "pucca tenant". Thereafter, on the
 coming into force of the Land Revenue Code in the year 1959,
 the status of the appellant - Company was that of a bhumiswami
 C which vested in the appellant - Company a right of transfer of
 the land under Section 165 (1) of the Code. The bar imposed
 on such transfer by sub-section (4) of section 165 did not apply
 to the case of the appellant - Company in view of the fact that
 the land that it was holding was non-agricultural land. The
 D appellant - Company, in its return before the High Court, had
 also referred to an order dated 22.11.1993 of the Under
 Secretary to the Government of India, Ministry of Law Justice
 and Company Affairs (Department of Company Affairs) which
 had noticed all the above facts including the reasons for the
 E transfers of some of the lands held by the appellant - Company
 already made or proposed. It was contended that by virtue of
 the aforesaid order dated 22.11.93 approval of the Central
 Government for commencement of business of sale of surplus
 land by the company was granted. Another significant fact that
 was mentioned by the appellant - Company in its return is a
 F proceeding before the High Court of Madhya Pradesh in
 Second Appeal No.482 of 2002 which stood concluded by order
 dated 25.8.03 holding that the appellant - Company had
 acquired the status of Bhumiswami in respect of the land
 allotted to it.

G 6. On a consideration of the respective cases pleaded by
 the contesting parties and on due consideration of the materials
 on record the High Court had thought it fit to pass the impugned
 directions, details of which have already been noticed.
 H Aggrieved, this appeal has been filed.

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7. We have heard Shri Ranjit Kumar, learned senior counsel for the appellant and Shri B.S. Banthia, learned counsel for the respondent Nos. 3-12. None has appeared on behalf of the PIL petitioners who have been impleaded as the respondents 1 and 2 in the present appeal.

8. Learned counsel for the appellant has contended that in the revenue records pertaining to the land in question, as existing prior to commencement of Tenancy Act, the appellant - Company was recorded as a 'Gair Mairusi'. After coming into force of the Tenancy Act w.e.f. 15.8.1950 the appellant - Company acquired the status of a "pucca tenant" under Section 54(vii) of the Act. The said status entitled the appellant - Company to the status of "bhumiswami" once the MP Land Revenue Code, 1959 came into force. The aforesaid position, it is pointed out, had been accepted and acknowledged by the State Government in the return filed by it before the High Court. Learned counsel has also pointed out that the status of the appellant - Company as a bhumiswami had not been disputed in the additional return filed on behalf of the State - wherein the only contention urged is that such status would not confer in the appellant a right to transfer the land contrary to the terms of the patta. Learned counsel has also referred to the order of the Government of India, Ministry of Law Justice and Company Affairs dated 22.11.1993 as well as the judgment and order of the High Court of Madhya Pradesh dated 25.08.2003 in Second Appeal No. 480 of 2002 to contend that the transfers already made or proposed by the appellant - company were with due permission of the competent authority of the Government of India and the right of the appellant - company to affect such transfers, as a bhumiswami, had attained finality in law by virtue of the judgment passed in the proceedings of the Second Appeal before the High Court. Learned counsel had vehemently argued that the right of a bhumiswami to transfer the land being a statutory right, the exercise thereof cannot be curtailed by the conditions of the patta, as urged in the additional return dated 7.8.2007 of the State.

A 9. Proceeding further, learned counsel has pointed out that the Urban Land Ceiling Act stood repealed w.e.f. 22.3.1999 and thus was not in force on the date of the judgment of the High Court. The provisions of the said repealed Act, therefore, could not have been applied to the case of the appellant. In so far as the Ceiling on Agricultural Holding Act is concerned, it is pointed out that in the report of the Tehsildar dated 02.05.2003 it has already been recorded that the appellant - Company was exempted from the provisions of the said Act. In such a situation the High Court could not have invoked the provisions of either of the enactments to the present case so as to justify the directions under challenge.

10. The State which had initially supported the case of the appellant before the High Court had reiterated before us the stand taken by it in the additional counter filed before the High Court on 7.8.2007. Shortly put, it is urged that the land held by the appellant was allotted for the purpose of industry and not agriculture. It is pointed out that after coming into force of the Madhya Pradesh Zamindari Abolition Act, Samvat 2003, w.e.f. 2.10.1951, the land stood reverted to the Government. Under Section 39 of the Zamindari Abolition Act it was incumbent on the appellant to submit an application for grant of a fresh lease to be issued by the State Government under Section 101 of the Tenancy Act of 1950. It is contended that no such application was filed nor any fresh lease was granted by the State Government under the aforesaid provisions of the two Acts in question. The acquisition of the status of bhumiswami, in the absence of a fresh lease under Section 101 of the Tenancy Act, has been questioned on the aforesaid basis. It is also contended that the order of the Government of India, Ministry of Law Justice and Company Affairs dated 22.11.93 was not a permission authorizing to the appellant - Company to sell the land. In so far as the Civil Court decree is concerned, it is contended that the said decree pertains only to land covered by three specific khasra Nos. i.e. 1760/1, 1755/1 and 1776/1 and not to the entire area allotted. In any case according to the

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State, the said decree would not be binding on it in as much **A**
as it was not a party to the suit and the resultant proceedings.

11. The provisions of section 101 of the Tenancy Act and
section 39 of the M.B. Zamindari Abolition Act may be
extracted herein below for the purpose of necessary clarity in **B**
the discussions that will have to follow:

Section 101 of the Tenancy Act

"101. Leases for non-agricultural purposes - (1) The
Government may grant leases of land to be used for other **C**
than agricultural purposes. The rights and liabilities of the
lessee of such land shall be such as may be defined by
the terms of his lease.

Special leases for agricultural purposes - (1) In order to **D**
develop and demonstrate farming by mechanical means
or in view of the special circumstances of *[any tract or
piece of land] the Government may also grant leases of
land for agricultural purposes on special and specified
conditions. The rights and liabilities of the lessee of such **E**
land shall be such as may be defined by the terms of the
lease.

(2) The Government may either generally or specially
delegate any of its powers under this section to such officer **F**
as may be specified in this behalf."

Section 39 of the M.B. Zamindari Abolition Act

"39. Grant of fresh lease for land given for purposes other
than agriculture **G**

A person who has taken land on lease from the proprietor
for any purpose other than agriculture shall apply within six
months from the date of vesting, to obtain from the

*. The word "or place of land" are inserted by M.B. Act No. 18 of 1952. **H**

A Government a new lease under Section 101 (1) of Madhya
 Bharat Revenue Administration and Ryotwari Land
 Revenue and Tenancy Act, Samvat 2007, and the
 Government may grant a lease subject to such terms and
 conditions for securing the rent and utility of land as may
 B be deemed proper. From the date of vesting up to the
 grant of new lease the person shall be deemed to be a
 lessee of the Government for that land on the same
 conditions on which the lease was granted to him by the
 proprietor. If the Government does not think it proper in the
 C public interest to grant the lease, the amount of
 compensation shall be paid at market value."

12. At the very outset, it must be made clear that the
 provisions of the Zamindari Abolition Act, 1951, have been
 pressed into service for the first time in the present appeal.
 D Neither in the pleadings nor in the arguments made before the
 High Court on behalf of the State, the facts now asserted and
 the legal issues now raised had been urged. However, the
 question raised being with regard to the effect of a statutory
 enactment we have considered the same. In the absence of any
 E pleading that the procedure for grant of a fresh lease
 contemplated under section 39 of the Zamindari Abolition Act
 had not been followed by the appellant by making the requisite
 application as contemplated by section 101 of the Tenancy Act,
 no adverse consequence can be attributed to the appellant as
 F contended on behalf of the State. Rather, the status of the
 appellant as a bhumiswami recorded in the revenue records
 of the later years, in the absence of any contrary material, will
 have to be understood to be pursuant to the grant of a fresh
 lease under section 39 of the Zamindari Abolition Act read with
 G the provisions of section 101 of the Tenancy Act. Infact,
 acceptance of the acquisition of the status of bhumiswami by
 the appellant in the aforesaid manner will render it unnecessary
 for us to go into the basis of the acquisition of the said status
 as argued by the learned counsel for the appellant, which, in
 H any case, appears to be contrary to the provision of section 1(2)

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of the Tenancy Act. The said provision clearly excludes the villages settled under the Zamindari system from the purview of the operation of Part II of the Tenancy Act, which part of the Act, inter alia, also deals with the acquisition of the status of "pucca tenant" and "Bhumiswami" by a tenant. However obliteration of Part II of the Tenancy Act by operation of section 1(2) thereof does not extinguish the different denominations of tenancy including the status of Bhumiswami which can very well be acquired by grant of such status by a fresh lease under sections 101 of the Tenancy Act read with section 39 of the M.B. Zamindari Abolition Act.

13. The rights of a bhumiswami are clearly enumerated by Section 165 of the MP Land Revenue Code which encompasses a right to transfer. The bar imposed on the right to transfer does not apply to non-agricultural lands and, hence, would not be relevant to the present case. If the right of transfer has been conferred on the appellant by the provisions of a statute and the bar contemplated does not apply to the appellant, we do not see how a clause or a condition in the original patta granted by the Zamindar in samvat 1978-79 (corresponding to English Calender year 1940-41) can restrict such a right. In any case, there is no specific clause or condition in any of the original pattas prohibiting or even restricting the right of the appellant to transfer any part of the land allotted to it that may be lying vacant. Neither any material has been placed before us to enable us to take the view that under terms of the lease granted under Section 101 of Tenancy Act and Section 39 of Abolition of Zamindari Act any restriction or bar had been imposed on the appellant - Company from making such a transfer.

14. In view of the aforesaid conclusions the issue with regard to applicability of the Urban Land Ceiling Act and the Ceiling on Agricultural Holding Act, need not detain us, save and except to hold that the provisions of either of the aforesaid Acts, ex-facie do not apply to the case of the appellant -

- A Company. We would further like to observe on the view taken by us it is not necessary to go into the question as to whether the decree affirmed by the High Court of Madhya Pradesh in S.A. No.482 of 2002 binds the State or whether the same is in respect of the entire land holding of the appellant - Company
- B or only a part thereof.

15. In view of the foregoing discussions and conclusions reached we allow this appeal and set aside the judgment and order dated 01.12.2007 of the High Court as well as the directions contained in the said order.

C

R.P.

Appeal allowed.