

REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. 7991 OF 2019****(ARISING OUT OF S.L.P. (C) NO.1854 OF 2016)****THE STATE OF MADHYA PRADESH****...APPELLANT(S)****VERSUS****SABAL SINGH (DEAD) BY LRS. & ORS.****...RESPONDENT(S)****J U D G M E N T****ARUN MISHRA, J.**

1. The question involved in the appeal is whether the land recorded in the revenue papers before the date of vesting as 'Grass' land can be treated as khud-kasht land of Ex-Zamindar.

2. The suit was filed by the plaintiffs/ respondents, as the successor of the Ex-Zamindar. At the time of the abolition of Zamindari, it was recorded as 'Grass' land, in the name of their predecessor. They prayed for declaration of Bhumiswami rights and permanent injunction, restraining the defendants from interfering in their possession of the land comprised in Survey Nos.77, 83, 191, 195

and 799 corresponding to new Survey Nos.37, 103 and 460 total area 83 Bighas 4 Biswas situated in village Enchada, Tehsil Nateran, District Vidisha in the State of Madhya Pradesh. The defendant – State of Madhya Pradesh treated plaintiffs/respondents as encroacher of agricultural land, and they were threatened with dispossession on 1.5.1980 and 12.10.1980, whereas they have acquired the rights of Bhumiswami under provisions contained in Madhya Pradesh Land Revenue Code as they became Pacca tenant on the abolition of Zamindari. The plaintiffs/ respondents claimed that the land was Khud-kasht land of their predecessors; Nirbhay Singh and Pratap Singh who were Zamindars of Village Enchada.

3. The State Government in the written statement denied the plaint averments. However, it was admitted that Nirbhay Singh and Pratap Singh, the predecessors were the Zamindars of the village Enchada. The land was not a Khud-kasht land. It was recorded as 'Bir,' i.e., 'Grass' land before coming into force of the M.B. Zamindari Abolition Act.

4. The Trial Court dismissed the suit. The First Appellate Court affirmed the same; however, the High Court allowed the second appeal and decreed the suit filed by the plaintiffs. They have been declared to be Bhumiswami of the land, and the permanent injunction has also

been granted. Aggrieved thereby the appeal has been preferred by the State of Madhya Pradesh.

5. It is submitted by the learned counsel appearing for the State that land was not 'Khud-kasht' land. The High Court could not have reversed the concurrent findings of fact recorded by the trial court and the first appellate court in the second appeal. The judgment is based on the misreading of the Khasra entries and provisions of Section 2(c), and Section 4(2) of the Zamindari Abolition Act have not been correctly interpreted.

6. Learned counsel appearing on behalf of the plaintiff/respondents submitted that growing of Grass was also an agricultural purpose. In Khasra for Survey No.77 for Samvat year 2007, cultivation of crop of "Jwar" was mentioned, though in Col.5 thereof. Thus, the said survey No.77 did not vest in the State. The remaining land was Grassland under personal cultivation of Zamindars as such it did not vest in the State. Nirbhay Singh and Pratap Singh became pakka tenant of the disputed land and ultimately acquired the rights of Bhumiswami.

7. The main question for consideration is whether the plaintiff acquired the rights of Pakka tenant under the Zamindari Abolition Act and that of Bhumiswami under the provisions of section 158 of

Madhya Pradesh Land Revenue Code, 1959 (hereafter referred to as "M.P. Land Revenue Code, 1959").

8. The Zamindari system came to be abolished on 2.10.1951 in the erstwhile State of Madhya Bharat. The Zamindari Abolition Act, had been reserved under Article 31(4) of the Constitution of India for the consideration of the Hon'ble President and received his assent in 1951 and was enforced with effect from 2.10.1951, resulting into the abolition of intermediaries. The same was enacted for the public purpose of the improvement of agriculture, and financial condition of agriculturist by abolition and acquisition of rights of proprietors in the village, muhals, chak or blocks settled on Zamindari system which used to be a system of keeping an intermediary between the State and the tenants.

9. Section 3 of the Zamindari Abolition Act provided for vesting of proprietary rights in the State, and the rights of the proprietor shall pass from such proprietor to such other person, to and vests in the State free of all encumbrances. Section 4 provided for the consequence of the vesting of an estate in the State. As per section 4(1)(a) all rights, title and interest of the proprietor in such area, including land (cultivable, barren or Bir), forest, trees, fisheries, wells (other than private wells), tanks, ponds, water channels, ferries, pathways village-sites, hats, and bazaars and mela-grounds and in all sub-soil,

including rights, if any, in mines and minerals, whether being worked or not shall cease and be vested in the State free from all encumbrances automatically. Section 4(2) contains saving in favour of the proprietor to the extent that he shall continue to remain in possession of his Khud-kasht land so recorded in the annual village papers on the date of vesting. Section 2(c) defines the 'Khud-kasht' to mean land personally cultivated by Zamindars or through employees or hired labourers and includes sir land.

10. Section 2(c) and 4 of the Abolition Act are extracted hereunder:

“2. Definitions:-

(c) “*Khud-kasht*” means land cultivated by the Zamindar himself or through employees or hired labourers and includes sir land;

4. Consequence by the vesting of an estate in the State. -

(1) Save as otherwise provided in this Act when the notification under Section 3 in respect of any area has been published in the Gazette, then, notwithstanding anything contained in any contract, grant or document or in any other law for the time being in force, the consequences as hereinafter set forth shall from the beginning of the date specified in such notification (hereinafter referred to as the date of vesting) ensue, namely :-

(a) all rights, title and interest of the proprietor in such area, including land (cultivable, barren or Bir), forest, trees, fisheries, wells (other than private wells), tanks, ponds, water channels, ferries, pathways village-sites, hats, and bazars and mela-grounds and in all sub-soil, including rights, if any, in mines and minerals, whether being worked or not shall cease and be vested in the State free from all encumbrances;

....

(2) Notwithstanding anything contained in sub-section (1), the proprietor shall continue to remain in possession of his Khud-kasht land, so recorded in the annual village papers before the date of vesting.

(3) Nothing contained in sub-section (1) shall operate as a bar to the recovery by the outgoing proprietor of any sum which

becomes due to him before the date of vesting in virtue of his proprietary rights."

(emphasis supplied)

It is apparent from the provisions contained in section 4(1) it contained non-obstante clause and that all rights and interest of the proprietor in the area of Zamindari including the land (cultivable, barren or bir), etc. shall vest in the State automatically. What is saved with the Zamindar was only the land which was under his Khud-kasht, *i.e.*, under his personal cultivation and not the land which was cultivable, barren or bir, *i.e.*, grassland.

11. The requirement of section 4(2) of the Abolition Act is dual that the land should not only be Khud-kasht, but it should be so recorded in the annual village papers before the date of vesting. As the date of vesting was 2.10.1951, the agricultural year in the erstwhile Madhya Bharat commenced from 1st July to 30th June of the succeeding Gregorian calendar year, the only relevant entry was before the date of vesting, *i.e.*, of Samvat 2007. The land is required to be so recorded as 'Khud-kasht' in the revenue papers before the date of vesting. As 2.10.1951 fell in the Samvat year 2008, thus the entry in record of rights of Samvat 2007 assumes significance as that has been made the basis for conferring of the rights on abolition of Zamindari.

12. The land to be saved from vesting was required to be under personal cultivation *i.e.*, Khud-kasht, but besides it must have been so

recorded as “Khud-kasht” in the revenue paper before the date of vesting, i.e., 2007. Thus, there are three requirements namely (i) personal cultivation as defined in Section 2 (c); (ii) entry in the record of right; and (iii) before the date of vesting, i.e., 2007. In case the land was so recorded as Khud-kasht, but was not personally cultivated by the Zamindar as specified in section 2(c), such land shall vest in State.

13. With reference to Khud-kasht land so recorded as per section 4(2) which was under personal cultivation as defined in section 2(c) of the Abolition Act, such a Zamindar acquired rights of pakka tenancy, in the land held by him, under the provisions of section 37 of the Abolition Act. In case of tenant and sub-tenant, Conferral of pakka tenancy rights is dealt with under section 38 of the Abolition Act, 2003. We are concerned here with the rights of the proprietor in which the 'pakka tenancy' rights were conferred under section 37(1) as to land so recorded as Khud-Kasht. The same is extracted hereunder:

“37. Conferral of pacca tenancy rights on proprietor. - (1)
Every proprietor who is divested of his proprietary rights in an estate, chak, block or Muhal shall, with effect from this date of vesting, be a pacca tenant of the khud-kasht land in his possession and the land revenue payable by him shall be determined at the rate fixed by the current settlement for the same kind of land.

(emphasis supplied)

14. The pakka tenant has been defined in section 54(vii), Part II of the Madhya Bharat Land Revenue and Tenancy Act, (Samvat 2007)

(Act No.66 of 1950). Besides that, the Zamindari Abolition Act conferred right of pakka tenant on a proprietor concerning the khudkasht land and so recorded in revenue papers before the date of vesting. Section 54(vii) of Madhya Bharat Land Revenue and Tenancy Act is extracted hereunder:

“54.(vii) *Pakka tenant* – means a tenant who has been or whose predecessor in interest had been lawfully recorded in respect of his holding as a “Ryot Pattedar”, “Mamuli Maurusi”, “Gair Maurusi”, and “Pukhta Maurusi” when this Act comes into force or who may in future be duly recognized as such by a competent authority.”

15. The pakka tenancy rights are conferred on a proprietor concerning Khud-kasht land in his possession.

16. M.P. Land Revenue Code, 1959 was enacted on the formation of Madhya Pradesh and came into force w.e.f. 2.10.1959 to unify the law concerning land. Section 158 of M.P. Land Revenue Code, 1959 provided classes/ categories which shall be called tenure holder, i.e., Bhumiswami. Section 158(1)(a) of M.P. Land Revenue Code, 1959 conferred Bhumiswami rights on a tenant or Muafidar, etc. Provisions of section 158 (1)(b) provided that 'pakka tenant' shall be called Bhumiswami in M.P. Land Revenue Code, 1959, in case he was a pakka tenant or a Maufidar, Inamdar or Concessional holder as defined in Madhya Bharat Land Revenue and Tenancy Act, Samvat

2007 (66 of 1950). The provisions of section 158 of the M.P. Land Revenue Code, 1959, read as under:

158. [1] Every person who at the time of coming into force of this Code, belongs to any of the following classes shall be called a Bhumiswami and shall have all the rights and be subject to all the liabilities conferred or imposed upon a Bhumiswami by or under this Code, namely :-

(a) every person in respect of land held by him in the Mahakoshal region in Bhumisami or Bhumidhari rights in accordance with the provisions of the Madhya Pradesh Land Revenue Code, 1954 (II of 1955);

(b) every person in respect of land held by him in the Madhya Bharat region as Pakka tenant or as a Muafidar, Inamdar or Concessional holder, as defined in the Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 (66 of 1950)

(c) every person in respect of land held by him in the Bhopal region as an occupant as defined in the Bhopal State Land Revenue Act, 1932 (IV of 1932);

(d) (i) every person in respect of land held by him in the Vindhya Pradesh region as a pachapan paintalis tenant, pattedar tenant, a grove holder or as a holder of tank as defined in the Vindhya Pradesh Land Revenue and Tenancy Act, 1953 (III of 1955)

(ii) every person in respect of land (other than land which is a grove or tank or which has been acquired or which is required for Government or public purposes) held by him in the Vindhya Pradesh region as a gair haqdar tenant and in respect of which he is entitled to a patta in accordance with the provisions of sub-section (4) of section 57 of the Rewa State Land Revenue and Tenancy Code, 1935.

(iii) every person in respect of land held by him as a tenant in the Vindhya Pradesh region and in respect of which he is entitled to a patta in accordance with the provisions of subsections (2) and (3) of section 151 of the Vindhya Pradesh Land Revenue and Tenancy Act, 1953 (III) of 1955), but has omitted to obtain such patta before the coming into force of this Code,

(e) every person in respect of land held by him in Sironj region as a Khatedar tenant or as a grove holder as defined in the Rajasthan Tenancy Act, 1955 (3 of 1955)

[(2) A Ruler of an Indian State forming part of the State of Madhya Pradesh who, at the time of coming into force of this

Code, was holding land or was entitled to hold land as such Ruler by virtue of the covenant or agreement entered into by him before the commencement of the Constitution, shall, as from the date of coming into force of this Code, be a Bhumiswami of such land under the Code and shall be subject to all the rights and liabilities conferred and imposed upon a Bhumiswami by or under this Code.”

17. For conferral of Bhumiswami rights on sub-tenants, the process of conferral of rights of occupancy tenant is provided under section 185 of M.P. Land Revenue Code, 1959 and the conferral of Bhumiswami rights on such occupancy tenants is provided under section 190 of M.P. Land Revenue Code, 1959.

18. Under section 185 of the M.P. Land Revenue Code, 1959 every person who at the coming into force of the Code holds any 'Inam land' as a tenant or as a subtenant or as an ordinary tenant or any land as ryotwari sub-lessee as defined in the Madhya Bharat Ryotwari Sub-Lessees Protection Act, 1955, any Jagir land as defined in Madhya Bharat Abolition of Jagirs Act, 1951 as a subtenant or as a tenant of a subtenant, or any land of proprietor as defined in Madhya Bharat Zamindari Abolition Act, 1951 as a sub-tenant or as a tenant of a subtenant shall be called as “Occupancy Tenants”. Under section 189 of MPLRC, 1959 right was given to a Bhumiswami, whose land is held by an occupancy tenant, to resume the land within one year of the coming into force of this Code, if he was holding the area of land under his cultivation below twenty-five acres of unirrigated land. The

right was given to him to apply for the resumption of the land held by his occupancy tenant for his cultivation and his failure to do so within the specified period, Section 190 of the M.P. Land Revenue Code, 1959 conferred the rights on the occupancy tenant of the Bhumiswami. Rights of Bhumiswami accrued to the occupancy tenant regarding the land held by him on the expiry of the period fixed for resumption of the land as specified in section 190(1).

19. In the present case the rights have been claimed under section 158 of the M.P. Land Revenue Code, 1959 on the ground that the predecessors of the plaintiff were pakka tenants and acquired Bhumiswami rights under section 158 of M.P. Land Revenue Code, 1959. Under section 37(1) of Madhya Pradesh Zamindari Abolition Act, "pakka tenancy" rights were conferred upon only on such a proprietor with respect to the land under his possession as Khud-kasht land as per section 2(c) read with section 4(2).

20. When we consider the entry of 2007 placed on record by the learned counsel on behalf of the plaintiff, it is apparent that Survey No.77, 191, 195 and 199 are recorded as "Bir land." Concerning survey No.83 also finding recorded by the trial court and a first appellate court is that the same was recorded as "Bir land," i.e., "grassland." Learned counsel appearing on behalf of the plaintiffs/respondents has submitted that at least concerning Survey No.77,

entry of cultivation of 'Jwar' was recorded in Column No.5. Whereas in Column No.21 and 22 there was the entry of the 'Bir.'

21. It is apparent from Khasra entries before the date of vesting; in the relevant Samvat year 2007, the land is not recorded as Khud-kasht of the erstwhile zamindars, *i.e.*, predecessor in interest of the plaintiffs. The land not being so recorded as Khud-kasht in the revenue papers before the date of vesting, the mandatory requirement of section 4(2) of the Abolition Act, is not fulfilled. Such land is not saved from vesting under section 4(1) of the Abolition Act, 2003 as a cultivable, barren or Bir land vested in the State automatically free from all encumbrances. Thus, the grassland, *i.e.*, 'bir' land as per section 4(1) of the Act vested in the State.

22. Apart from that requirement of section 2(c), there had to be personal cultivation of the land by the Zamindar was not fulfilled. The land was required to be personally cultivated either by Zamindars himself or through employees or hired labourers. There was no personal cultivation recorded in revenue papers of erstwhile Zamindars and land was also not so recorded as Khud-kasht land.

23. It is submitted that growing of Grass is an agricultural purpose under section 55 of Madhya Bharat Land Revenue Tenancy Act, as there was an entry of 'grass,' *i.e.*, 'Bir' in the revenue paper of Samvat

Year 2007 before the date of vesting, such grassland did not vest in the State. Section 55 is extracted hereunder:

“55. **Duties of a tenant** – A tenant shall use his holding only for agricultural purposes namely:-

- i) the growth of any crops, except such as may, from time to time, be prohibited by the Government; or
- ii) the growth of Grass or food for cattle; or
- iii) the growth of trees; or
- iv) the erection of a dwelling house for his domestic use; or
- v) the erection of such buildings or other structures as he may reasonably require for the purpose of his agriculture; or
- iv) the construction and maintenance of any work of the kind described in section 56.”

24. No doubt about it that a tenant was required to use his holding for agricultural purposes. The growth of Grass or food for cattle inter alia was one of the agricultural purposes. In our opinion, there is no requirement for a tenant personally to cultivate the land as on the date of abolition as such provision lends no help to a proprietor. The rights of the proprietor are quite different. The rights of the proprietor are limited to land cultivated personally and so recorded as required under the provisions of the Abolition Act, instrumental for bringing the agrarian reforms and conferred the rights on the actual tiller of the land by removing the intermediaries.

25. Bir land is vested in State under Section 4(1). The grass is naturally grown without effort, and it cannot be said to be produced by way of rendering one's labour or through employees or hired labour. The land should have been under Khud-kasht i.e., personal cultivation and so recorded of the ex-proprietor to be saved from vesting as statutorily mandated. There is a specific provision in Section 4(1) of the Abolition Act that the grassland, i.e., 'Bir land,' held by the proprietor automatically vested in the State free from all encumbrances. In which case land lying fallow also vested in the State.

26. Now we come to entry of Samvat year of 2007. There is presumption of correctness of Khasra entries under section 52 of Madhya Pradesh Land Revenue Tenancy Act unless the contrary is proved. Section 52 is extracted hereunder:

“52. Presumption as to entries in Annual Village Papers – All entries made under this Chapter in the Annual Village Papers shall be presumed to be correct until the contrary is proved.”

27. The Khasra in the relevant year in Samvat year 2007 as to Survey No.77 contains the entry of crop of 'Jwar' in Column No.5 which is meant for recording the name of tenants, his father's name, caste, and residence and the nature of his rights. The Columns to record the cultivation of crop of Kharib and Rabi are Column Nos.10

to 15. All these columns are empty in the Khasra concerning all the disputed survey numbers, and when we come to the column containing an entry for the land lying uncultivated, there was the entry of 'bir' land, which has been scored out. Thus, the entry makes it clear that it was not so recorded as Khud-kasht land and there was no personal cultivation as such the land automatically vested in the State under Section 4(1) of Abolition Act.

28. The tenancy can be proved by Khasras entries alone. The revenue entries carry a statutory presumption of correctness under the provisions of Section 52 and unless rebutted, the statutory presumption of correctness attached to the entries is an inevitable one. Unless such the presumption is rebutted, entries cannot be discarded. The entry produced of 2007 is not as per the rules, it contains an entry of 'Jwar' in column No.5 which is not meant for recording such cultivation and in the Khasra column 21 and 22 which originally recorded 'Bir,' i.e., Grassland. Both entries are irreconcilable with each other. The entries have been made of 'Jwar' cultivation in a column not meant for recording cultivation, the entry is *ex-facie* spurious manipulated one, impermissible and inconceivable and is against instructions contained in *Kawayad patwariyan*, as such no presumption of it being correct can be drawn under the provision of Section 52 of Madhya Bharat Land Revenue Tenancy

ActThe entry which is on the face of it has been illegally made and is contradicted by the original entries in Column Nos.21 and 22 in the same Khasra. Even otherwise land is not recorded as Khud-kasht land.

29. About entries in revenue record Trial Court and First Appellate Court, have recorded a concurrent finding of fact that the land was not under personal cultivation. It was not open to the High Court to interfere with the findings of fact, which was based on the proper appreciation of evidence on record. Even the plaintiff was unable to state whether there was any crop in the relevant year 2007 before Zamindari abolition. Such finding of fact based on proper appreciation of evidence could not have been interfered with by the High Court within the ken of Section 100, CPC.

30. The decision of High Court of Madhya Pradesh in *Bheron Singh vs. Government of M.P.*, 1983 R.N. 243 has been relied upon, on behalf of the plaintiffs/ respondents, in which the entry of "Bir" land, i.e., Grass Land came up for consideration, which was made in the column of 'Alavajot' i.e., not under plough. The plaintiff in the said case was erstwhile Zamindar of the suit land, and it was recorded as 'Khudkasht land.' We are unable to accept the proposition mentioned above as the provision of section 4(1) of the Abolition Act, 2003 had not been considered in *Bheron Singh* (supra). Where 'Bir' land vests in

the State and only the land under personal cultivation as defined in section 2(c) and so recorded as Khud-Kasht as per section 4(2), was saved from vesting. 'Grass' was recorded in Alavajot column *i.e.*, in area not under plough. The decision in *Bhairon Singh* (supra) cannot be said to be laying down good law, as such it is overruled.

31. Resultantly, the judgment and decree passed by the High Court deserves to be and are set aside. The judgment and decree passed by the Trial Court are restored. The appeal is accordingly allowed. No costs.

..... J.
(ARUN MISHRA)

..... J.
(M.R. SHAH)

**OCTOBER 14, 2019;
NEW DELHI.**