

## Sub-Divisional Officer, Mandla vs Pirma Gond on 10 March, 1969

**Equivalent citations: 1969(1)UJ302(SC)**

### JUDGMENT

Grover, J.

1. This is an appeal by special leave from a judgment of the Madhya Pradesh High Court.
2. Respondent No 1 a proprietor of village Jhulpur was the owner of the Tank covering an area of 9.21 acres situate in Khasra No. 403. In the wazibularz in operation at the material time it was recorded that the villagers could use the water of the Tank for drinking purposes and the proprietor respondent No. 1 was agreeable to their doing so. The Madhya Pradesh Abolition of Proprietary Rights) Estates, Mahals. Alienated Lands) Act, 1950 hereinafter referred to as the "Act" came into force on March 31, 1951. Section 3 provided for vesting of proprietary rights in the State and Section 4 dealt with the consequences of the vesting. Under Section 5 certain properties were to continue to remain in possession of the proprietor or other persons An application was made by respondent No. 1 on July 7, 1955 under Section 5 of the Act to the Nistar Officer, Mandla on which the following order was passed :

"The tank is entered in Khasra No. 403, area 9.21 acres but no body's possession qua the tank is entered. Pirma grows singhara in the tank. Therefore, this tank is settled in favour of Pirma under Section 5(g) for Rs. 18-4-0 as rent. This order should be entered in column (f) and removed from column (a)."

However, on February 5, 1961 the Collector, Mandla, made an order under Section 251(1) of the Madhya Pradesh Land Revenue Code, 1959, hereinafter called the "Revenue Code". He provisionally declared that the tank had vested in the State absolutely as from April 6, 1959. An inquiry was started in order to find out whether the necessary conditions prescribed by the aforesaid section were satisfied. It was finally declared on August 2, 1962 by appellant No. 1 that the tank had absolutely vested in the State under Section 251(1) of the Revenue Code. By an order dated July 26, 1963 appellant No. 2 the Naib Tehsildar of Nainpur let out the tank to respondent No. 2 for the year 1963-64. Respondent No. 1 filed a petition under Article 226 of the Constitution challenging the orders dated August 2, 1962 and July 6, 1963 made by appellant No. 1 and appellant No. 2 respectively.

3. The grounds taken in the petition, inter alia, were that the tank had already vested in the State under the Act and it was not covered by the provisions of the Revenue Code. Moreover no proper enquiry had been made under Section 251 of the Revenue Code. The High Court, by its judgment

dated March 6, 1964, upheld the contention of respondent No 1 and it was also found that he had not been afforded a proper opportunity as envisaged under sec, 251 of the Revenue Code.

Section 251(1) of the Revenue Code provides :

"251(1) All tanks situated on unoccupied land on or before the date of coming into force of the Act, providing for the abolition of the rights of intermediaries in the areas concerned and over which members of the village community were, immediately before such date, exercising rights of irrigation or Nistar, shall, if not already vested in the State Government, vest absolutely in the State Government with effect from the 6th April 1959 :

Provided that nothing in this section shall be deemed to "affect any right of a lessee in the tank under a lease subsisting on the date of vesting of the tank which shall be exercisable to the extent and subject to the terms and conditions specified in the lease ;

Provided further that tank no shall vest in the State Government, unless

(a) After making such enquiry as he deems fit, the Collector satisfied that the tank fulfills the conditions laid down in this sub-section; and

(b) notice has been served on the parties interested and opportunity given to them for being heard "

The relevant provisions of the Act may next be reproduced. Section 3 --Vesting Of Proprietary Rights In The State.

(1) Save as otherwise provided in this Act, on and from a date to be specified by a notification by the State Government, in this behalf all proprietary rights in an estate, mahals, alienated village or alienated land, as the case may be, in the area specified in the notification, vesting in a proprietor of Such estate, mahal, alienated village, alienated land, or in a person having interest in such proprietary right through the proprietor, shall pass from such proprietor or such other person to and vest in the State for the purposes of the State free of all encum-berances."

"Section 4.--Consequences of the vesting-

(1) xxx xxx xxx

(a) all rights, title and interest vesting in the proprietor or any person having interest in such proprietary right through the proprietor in such area including land (cultivable or barren), grassland, scrub jungle, forest, trees, fisheries, 'Wells, tracks, ponds, water-channels, ferries, Pathways, village sites, hats, bazars and melas and in

all subsoil, including rights, if any, in mines and minerals, whether being worked or not, shall cease and be vested in the State for purposes of the State free of all encumbrances; and the mortgage debt or charge on any proprietary right shall be a charge on the amount of compensation payable for such proprietary right to the proprietor under the provisions of this Act;

XXX XXX XXX "Section 5--Certain Properties to Continue in Possession of Proprietor or other persons-

Subject, to the provisions in Section 47 & 63

(a) .....

(b) .....

(c) .....

(d) .....

(e) All tanks situate on occupied land and belonging to or held by the outgoing proprietor or any other person shall continue to belong to or be held by such proprietor or other person;

(f) all tanks, belonging to or held by the outgoing proprietor which are situate on land other than village site or occupied land and in which no person other than such proprietor has any right of irrigation shall belong to or be held by such proprietor;

(g) all tanks and embankments (Bandhans) belonging to or held by the outgoing proprietor or any other person which are situate on land other than village site or occupied land and the beds of which are under cultivation of such proprietor or such other person shall belong to or be held by such proprietor or such other person and the land under such tanks and embankments shall be settled with such proprietor or such other person on such terms and conditions as the State Government may determine."

4. On behalf of the appellants it has been argued that the tank in question could not be regarded to have vested in the State under the provisions of the Act. Support for this has been sought from the fact that the tank was settled under Section 5(g) which it is said showed that it had not vested in the State and reserved for the use of the outgoing proprietor. If there was no vesting of the tank in the State under the provisions of the Act, Section 251 of the Revenue Code would be clearly applicable. Stress has been laid on giving a harmonious construction to Section 3.4 and 5 of the Act and Section 251 of the Revenue Code. It has also been urged that a proper opportunity was afforded to respondent No. 1 in the proceedings taken under Section 251 of the Revenue Code. The High Court dealt with the first contention thus:

"The annual paper Ex. P-II indicates that the tank had become vested in the State upon the commencement of the Abolition Act and was being dealt with accordingly. On 7th July 1955, the tank was ordered to be settled with the petitioner, who had been cultivating singharas (water nuts) in that tank. This could be done only under Clause (g) of Section 5 of the Abolition Act because there could be no question of settling a tank falling under Clause (f) of this section with the ex-proprietor. We are unable to accept the argument that tanks falling in Clause (g) *ibid* should not be regarded as vested in the State. In our opinion even these tank vested in the State though, having regard to the consideration mentioned in the clause, they were intended to be settled with the ex-proprietor or other person concerned."

In our opinion the High Court was clearly right in holding that the tank having once vested in the State (as per Ex.P-II) there was no question of another vesting taking place under Section 251 of the Revenue Code. That section dealt with the vesting of those tanks only which had not already vested in the State upon the commencement of the Act. This is plain from the words to be found in that section i.e. "if not already vested in the State Government." As regards the second point of a proper opportunity having not been afforded to respondent. No. 1 in the proceedings held under Section 251 of the Revenue Code, the conclusion of the High Court is one of fact and no ground has been made out for not accepting the same as final and binding.

There is no merit in this appeal and it is dismissed with costs.