CASE NO.:
Appeal (civil) 1263 of 1992

PETITIONER:
Bhaiji

RESPONDENT:
Sub Divisional Officer, Thandla & Ors.

DATE OF JUDGMENT: 16/12/2002

BENCH:
R.C. LAHOTI & BRIJESH KUMAR & ARUN KUMAR

JUDGMENT:
JUDGMENT

2002(5) Suppl.SCR 116 = 2003 (1) SCC 692

R.C. Lahoti, J.

The M.P. Land Revenue Code 1959 (Act No.20 of 1959) was enacted by the Legislative Assembly of Madhya Pradesh to consolidate and amend the law relating to land revenue, the powers of Revenue Officers, rights and liabilities of holders of land from the State Government, agriculture tenures and other matters relating to land and the liabilities incidental thereto in Madhya Pradesh. There were different laws relating to land revenue, land tenure and other matters touching thereto prevalent in the different regions of the State and the Legislature considered it desirable that there should be one uniform law enacted for whole of the State. There are tribal land holders in many a regions of the State of Madhya Pradesh. The Code took care to enact some special provisions taking special care of protecting the interest of such tribals.

In the year 1980, the State Legislature enacted the Madhya Pradesh Land Revenue Code (Amendment) Act 1980 (Act No.59 of 1980) whereby certain amendments were incorporated and a few new provisions were inserted into the body of the Code. One such amendment is the insertion of Section 170-B which read as under:-

"170-B. Reversion of land of member of aboriginal tribe which was transferred by fraud.__ (1) Every person who on the date of commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 1980 (hereinafter referred to as the Amendment Act of 1980) is in possession of agricultural land which belonging to a member of a tribe which has been declared to be an aboriginal tribe under sub-section (6) of section 165 between the period commencing on the 2nd October, 1959 and ending on the date of the commencement of Amendment Act of 1980 shall, within one year of such commencement, notify to the Sub-Divisional Officer in such form and in such manner as may be prescribed, all the information as to how he has come in possession of such land;

(2) If any person fails to notify the information as required by sub-section (1) within the period specified therein it shall be presumed that such person has been in possession of the

agricultural land without any lawful authority and the agricultural land shall, on the expiration of the period aforesaid revert to the person to whom it originally belonged and if that person be dead, to his legal heirs;

(3) On receipt of the information under sub-section (1), the Sub-Divisional Officer shall make such enquiry as may be deemed necessary about all such transactions of transfer and if he finds that the member of aboriginal tribe has been defrauded of his legitimate right he shall declare the transaction null and void and pass an order revesting the agricultural land in the transferor and, if be he dead, in his legal heirs."

Subsequently, there have been a few changes incorporated in the text of Section 170-B abovesaid. For example, the period of one year specified in sub-Section (1) of Section 170-B later on came to be enlarged to one and a half years and then to two years as it now stands. Similarly, sub-Section (3) has been recast by virtue of notification No.1-70-VII-N-2-83 dated 5th January 1984 issued under sub-paragraph 1 of paragraph 5 of the Fifth Schedule to the Constitution of India which amendment we are ignoring for the purpose of this judgment as the language of the essential part of the sub-Section (3) remains as before and what has been amended is the consequential direction required to be made where certain building or structure have come up on the land forming subject matter of enquiry under sub-Section (3). However, sub-Section (2-A) was inserted between sub-Sections (2) and (3) by Act No.1 of 1998 passed by the State Legislature which reads as under:-

"(2-A) If a Gram Sabha in the Scheduled area referred to in clause (1) of Article 244 of the Constitution finds that any person, other than a member of an aboriginal tribe, is in possession of any land of a Bhumiswami belonging to an aboriginal tribe, without any lawful authority, it shall restore the possession of such land to that person to whom it originally belonged and if that person is dead to his legal heirs:

Provided that if the Gram Sabha fails to restore the possession of such land, it shall refer the matter to the Sub-Divisional Officer, who shall restore the possession of such land within three months from the date of receipt of the reference."

(emphasis supplied)

The land forming subject matter of these proceedings was owned by Bhikala and Thanwaria who are members of a tribe which has been declared to be an aboriginal tribe under sub-Section (6) of Section 165 of the Code as contemplated by Section 170-B(1). The appellant too claims to be a similar aboriginal tribal. It appears that the land was sold by the aboriginal tribal bhumiswamis through registered sale deeds and it came to be purchased by the appellant. All these transactions have taken place between 2nd October 1959 and the date of the commencement of the Amendment Act of 1980, meaning thereby, during the period attracting applicability of Section 170-B(1). The appellant did not furnish the information in the form and in the manner prescribed within the period of two years. In the year 1982-83, the Sub-Divisional Officer, Thandla Petlawad, Distt. Jhabua, within whose jurisdiction the land is situated, initiated proceedings under Section 170-B of the Code by calling upon the appellant to show cause in response to the notice issued by the SDO. Soon on

service of the notice the appellant filed a writ petition in the High Court of Madhya Pradesh submitting that the appellant and the vendor bhumiswamis, both being aboriginal tribals notified under Section 165(6) of the Code, the applicability of Section 170-B was not attracted and therefore the notice issued by the SDO was illegal, uncalled for and without any authority in law. The challenge has been rejected by the High Court.

The singular contention advanced by Shri S.K. Gambhir, the learned senior counsel for the appellant, is that looking to the scheme of the Code specially Sections 165, 168, 170-A and 170-B thereof, it is clear that what Section 170-B proposes to embrace within its fold are such transactions as are fraudulent and entered into by aboriginal tribals in favour of non-tribals. The Code does not contemplate any enquiry into and consequent annulling of transactions or reverting back of land from the person in possession to the aboriginal tribe bhumiswami where both the parties are aboriginal tribals notified under Section 165(6) of the Code. Strong reliance was placed on the statement of object and reasons and the language employed by the Legislature in framing sub-Section (2-A) of the Code.

The statement of object and reasons appended to the M.P. Land Revenue Code (Amendment) Bill 1980, as published in M.P. Government Gazette dated 26.9.1980, so far as Section 170-B abovesaid is concerned, is as under:-

"Clause 10 __ All transfers made by members of aboriginal tribes to non-tribals between 2.10.1959 and the date of commencement of the proposed measure will be subject to review and the burden of providing all the necessary information of such transactions and thereby establishing that such transactions were not made due to use of fraudulent methods will be on the purchaser. Failure to notify the information would meet with a consequence of reverting the land to the original aboriginal."
(emphasis supplied)

Shri Gambhir submitted that the statement of objects and reasons makes it very clear that the Legislature had intended to enact the provision for enquiry into transfers made by members of aboriginal tribe to non-tribals. The same inference follows from the language employed by the State Legislature in drafting sub-Section (2-A) of the Code.

Challenge to vires of Section 170-B abovesaid along with Section 170-A was laid before a Division Bench of the High Court of Madhya Pradesh in Dhirendra Nath Sharma Vs. State of Madhya Pradesh & Anr., AIR 1986 MP 122. Justice J.S. Verma (Acting CJ, as His Lordship then was) speaking for the Division Bench, upheld the constitutional validity of Section 170-A and Section 170-B both. The history of legislation resulting in enactment of Section 170-B has been succinctly set out by the Division Bench in paras 2 to 4 of its judgment and it is not necessary to restate the same hereat and if needed the reference can be had to the reported decision. Suffice it to observe that the Division Bench, by tracing the legislative history, concluded vide para 10 that the impugned provisions form a part of the principles of distributive justice by avoidance of illegal transactions of transfers of agricultural lands by members of the aboriginal tribes who were unequals and the legislation is also in implementation of the directive principle contained in Article 46 of the Constitution, which enjoins the State to protect the Scheduled Castes and Scheduled Tribes from all social injustice and from all forms of exploitation. It is true that the Division Bench of the High Court has made a reference to illegal transactions of transfers of

agricultural land by members of the aboriginal tribes to non-tribals in these transactions. But that is so because the Division Bench was dealing with the petition filed by a non-tribal and did not have an occasion to examine the transfers as amongst tribals inter se.

It is well known that some of the aboriginal tribes are nomadic and some indulge into crimes traditionally and historically. The purpose of settling land with the tribals mostly which is done at very concessional rates and at times even without involving an obligation to pay the land revenue, is so done with a view to see that the aboriginals settle at one place abandoning nomadism and picking up tilling the soil as their vocation by settling at one place and earning livelihood by labour and toil. It is also well known that creamy layers have developed and even as amongst socially unprivileged some have acquired affluence. An affluent shrewd tribal may indulge into exploiting his fellow beings. Possibility cannot be ruled out where a non-tribal may manage to have land transferred apparently but not in reality in the name of a tribal and taking advantage of his status, affluence or any other means, conferring him with capacity to exploit, may till the land to his own advantage depriving the aboriginal tribal from the benefits of the land settled by the State with him. All such cases are taken care of by Section 170-B.The purpose of enacting Section 170-B of the Code is very wide. The object sought to be achieved, as its drafting indicates, is to gather and make available all statistics with the State officials so as to find out how much land belonging to aboriginal tribals is in possession of anyone to whom it does not belong as on the cut off date. The information having been collected the enquiry under sub-Section (3) shall be directed towards finding out the nature of transaction resulting into transfer of land ___ whether such transaction of transfer has resulted in the aboriginal tribal having been defrauded of his legitimate right in the land? Sub-Sections (1), (2) and (3), as enacted in 1980, have to be read as part of one whole scheme. If the submission of Shri Gambhir is correct then the object of enquiry under sub-Section (3) would have been to find out if such transaction of transfer has resulted in an aboriginal tribal having been defrauded of his legitimate right by person not belonging to aboriginal tribe. But that is not so. Nowhere in the entire scheme of sub-Sections (1), (2) and (3) of Section 170-B, as enacted in 1980, there is the least indication of confining the applicability of the provision to such transactions of transfer as were entered into by a member of aboriginal tribe in favour of a member not belonging to aboriginal tribe. No exception has been enacted by the Legislature so as to exclude from the purview of Section 170-B transactions of transfer between two persons both of whom are members of aboriginal tribes. Had it been so, the Legislature would have specifically said so. The language of the Section as drafted in 1980 is clear and unambiguous and does not admit of any doubt so far as this aspect is concerned.

Sub-Section (2-A) came to be enacted in 1998. An attempt at placing construction on the language of a statute enacted in the year 1980 and trying to find out its meaning and extent of operation by reference to the words employed in drafting a piece of legislation in the year 1998 may not be countenanced by principles of interpretation. Sub-Section (2-A) contemplates a limited category of cases where (i) any person other than a member of an aboriginal tribe is in possession of any land of a bhumiswami belonging to an aboriginal tribe, and (ii) without any lawful authority. The power is conferred on the Gram Sabha. It contemplates a summary and quick remedy for restoration of possession so as to provide quick relief at the hands of a local body to an aboriginal tribe on the twin conditions being satisfied. The very fact that the language employed by the Legislature in 1998 while drafting sub-Section (2-A) is materially different from the language employed by it in 1980 while drafting sub-Sections (1), (2) and (3) of Section 170-B, is rather suggestive of

the fact that the Legislature was conscious of the wide scope of the original provision and therefore kept the scope of sub-Section (2-A) confined to a limited category of transactions as the power was being conferred on Gram Sabha. The essential ingredient vitiating the transaction of transfer under Section 170-B as enacted in 1980 is fraudulent nature of transaction resulting in deprivation of legitimate right of an aboriginal tribal while all that is required to be seen for the purpose of sub-Section (2-A) as inserted in 1998 is transfer by an aboriginal tribal in favour of a non-aboriginal tribal and that transfer being without any lawful authority, without regard to the nature of transaction whether it is fraudulent or not. Sub-sections (1), (2) and (3) of Section 170-B employ the expressions 'every person', 'any person' and 'all such transactions of transfer' respectively; Sub-section (2-A) speaks of 'any person, other than a member of aboriginal tribe'. That is a material distinction.

The Division Bench of Madhya Pradesh High Court in Dhirendra Nath Sharma's case has held that sub-Section (2) would not result in the person in possession being divested of his land without an enquiry under sub-Section (3) though sub-Section (2) by itself does not speak of any enquiry. In spite of failure to furnish information within the period prescribed by sub-Section (1), the consequence which flows is the raising of a presumption, not conclusive but a rebuttable one, which shall be taken into consideration while holding an enquiry under sub-Section (3). This interpretation was placed by the Division Bench in Dhirendra Nath Sharma's case because it was necessary to do so for saving sub-Section (2) from being rendered ultra vires the Constitution. One of the submissions made before the Division Bench was that the person in possession of the land would be deprived of means of livelihood necessary for his existence without any enquiry and that would contravene Article 21 of the Constitution. It was submitted before the Division Bench by the learned Additional Advocate General appearing for the State that the practice which was being followed by the Sub-Divisional Officers of the State was to hold an enquiry under sub-Section (3) and then pass a final order irrespective of the fact whether the person in possession has notified the information as required by sub-Section (1) or not. The Division Bench held that the fact that an order contemplated by sub-Section (3) has to be passed even in cases falling within the ambit of sub-Section (2) it is sufficient to indicate that there is no usurpation of judicial function thereby and there is no arbitrariness in the procedure nor is there the vice of absence of enquiry. This was further explained by another Division Bench of Madhya Pradesh High Court in Atmaram & Ors. Vs. State of M.P. & Ors., 1995 MPLJ 633.

Reference to the Statement of Objects and Reasons is permissible for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute, and the evil which the statute sought to remedy. The weight of judicial authority leans in favour of the view that Statement of Objects and Reasons cannot be utilized for the purpose of restricting and controlling the plain meaning of the language employed by the Legislature in drafting statute and excluding from its operation such transactions which it plainly covers. (See Principles of Statutory Interpretation by Justice G.P. Singh, Eighth Edition 2001, pp.206-209).

The learned senior counsel for the appellant placed strong reliance on M/s Girdhari Lal and Sons Vs. Balbir Nath Mathur and Ors. (1986) 2 SCC 237 wherein it has been held that the courts can by ascertaining legislative intent place such construction on statute as would advance its purpose and object. Where the words of statute are plain and unambiguous, effect must be given to them. The Legislature may be safely presumed to have intended what the words

plainly say. The plain words can be departed from when reading them as they are leads to patent injustice, anomaly or absurdity or invalidation of a law. The Court permitted the Statement of Objects and Reasons, Parliamentary Debates, Reports of Committees and Commissions preceding the Legislation and the legislative history being referred to for the purpose of gathering the legislative intent in such cases. The law so stated does not advance the contention of Shri Gambhir. The wide scope of transactions covered by the plain language of Section 170-B as enacted in 1980 cannot be scuttled or narrowed down by reading the Statement of Objects and Reasons.

It is true that in para 10 of Dhirendra Nath's case (supra) the Division Bench makes a casual reference to 'avoidance of illegal transactions of transfers of agricultural land by members of aboriginal tribes who were unequals with the non-tribes in these transactions', but that observation about the legislative history of the provision is clearly based on the Statement of Objects and Reasons. The Division Bench was not dealing with the question whether the case of a tribal in possession of agricultural land of another tribal would attract applicability of Section 170-B(1) or not; nor was it dealing specifically with the question whether a transaction of transfer, the transferor wherein is a member of aboriginal tribe though made in favour of a similar member would be covered by sub-section (3) or not even if the transaction has resulted in a member of a aboriginal tribe being defrauded of his legitimate right. The expression employed by the Division Bench while dealing with legislative history of the enactment cannot be pressed in service for supporting the submission seeking to restrict and narrow down the application of the provision.

It is not necessary to refer to Sections 165, 168 and 170-A as it is unnecessary, in our opinion.

The petition filed by the writ petitioner before the High Court was entirely misconceived and, in a way, premature. The show cause notice issued by the Sub-Divisional Officer cannot be said to be without jurisdiction. The appellant should have participated in the enquiry after showing cause. Instead he chose to rush post haste to the High Court. The High Court rightly turned down the writ petition.

The appeal is held devoid of any merit and is liable to be dismissed. It is dismissed accordingly though without any order as to the costs.