

PETITIONER:
STATE OF MADHYA PRADESH AND ORS.

Vs.

RESPONDENT:
KRISHNARAO SHINDE AND ORS.

DATE OF JUDGMENT 29/01/1991

BENCH:
THOMMEN, T.K. (J)
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THOMMEN, T.K. (J)
SAHAI, R.M. (J)

CITATION:
1991 AIR 489 1991 SCR (1) 174
1991 SCC (2) 81 JT 1991 (1) 239
1991 SCALE (1) 78

ACT:
M.P. Land Revenue Code, 1959-Sections 2(h), 181 and 182-Company whether a Government lessee.

HEADNOTE:

The Company-Respondent No. 3 entered into a contract of lease with the State Government for a period of one year and later it was extended for a further period of ten years.

When proceedings were initiated on 16.7.1952 to eject the Company, the Company filed suit for declaration of title and perpetual injunction.

The trial Court holding that the Company did not become a 'pakka' tenant under Section 54(vii) of Part II of Act No. 66 of 1950 in respect of the suit land and that the Company was "a Government lessee under section 181 of the M.P. Land Revenue Code, 1959, and was not an occupancy tenant under section 185 of the Code, dismissed the suit.

This judgment, was affirmed by the High Court in First appeal, observing that the land held by the Company under the lease was neither zamindari nor ryotwari land.

Against that judgment, the Company filed an appeal in this Court which was withdrawn in 1971.

Subsequently, the State entered into an agreement with the Company to grant a fresh lease for a period of ten years from 9.2.1971 subject to the payment of enhanced rent as agreed upon between the parties.

Since the Company failed to pay the agreed rents and contravened the conditions of the lease, proceedings were initiated under Section 182(2)(i) of the Code, for eviction of the Company from the land in question.

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Eviction order was quashed by the High Court holding that the lease in question was not covered by section 181 of the Code and that the Company could not be evicted by the summary proceeding provided for under that section, against which the appeal has been filed.

Allowing the appeal, this Court,

HELD: 1. A 'Government lessee' is defined under the M.P. land Revenue Code, 1959 as "a person holding land from the State Government under section 181". [178E]

2. As per the provisions in section 181 of the M.P.

Land Revenue Code, 1959 whether or not the company has been holding the land in terms of the original lease or under the newly stipulated terms of the lease, the Company has been holding the land from the State Government and it has never been an ordinary tenant as defined in the Madhya Bharat Act No. 66 of 1950. Accordingly, whether considered in term of sub-section (1) or sub-section (2) of section 181, the Company has been at all material times a Government lessee in respect of the land in question. [179 G-180 A]

3. It was in terms of sub-section 2(i) of section 182 that the Additional Collector made his Order for eviction of the Company. The finding of the Additional Collector is a finding of fact based on evidence and is not liable to be questioned in these proceedings. Large amounts are due and payable by the Company as rent. In the circumstances, the Additional Collector was well justified in having recourse to the proceeding prescribed under section 182 of the Code. [180 F-181 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1046 of 1982.

From the Order dated 20.9.1980 of the Madhya Pradesh High Court in M.P. No. 84 of 1978.

Dr. N.M. Ghatate, S.V. Deshpande and S.K. Agnihotri for the Appellants.

Aman Vachher, S.K. mehta, Mrs. Anjali Verma, D.N. Mishra (for JBD & Co.) and Ashok Srivastava for the Respondents.

The Judgment of the Court was delivered by

T.K. THOMMEN, J. This appeal by the State of Madhya Pradesh arises from the Order of the Madhya Pradesh High Court in Misc. Petition No.84 of 1978 quashing Order dated 1.10.1977 of the Additional Collector, Gwalior, whereby he initiated proceedings against the 3rd respondent, the Gwalior Dairy Limited (hereinafter called 'the Company') under section 182(2)(i) of the M.P. Land Revenue Code, 1959 ('the Code'). Respondent Nos. 1,2 and 4 are shareholders of the third respondent. The High Court by the impugned Order held that the Company was not a Government lessee within the meaning of section 181 [read with section 2(h)] and was, therefore, not liable to be proceeded against in terms of section 182.

The Order of the Additional Collector, Gwalior, which was impugned in the High Court, was made consequent on the failure of the Company to pay the rent agreed upon between the Government and the Company subsequent to the unconditional withdrawal by the Company of its Civil Appeal No. 299 of 1967 which was pending in this Court. That appeal had been brought to this Court by the Company against an earlier judgement of the High Court dated 30.6.1964 in First Appeal No. 1 of 1961 whereby the High Court, confirming the judgement of the trial court and dismissing the Company's appeal, held that the land admeasuring 495.05 acres was held by the Company in terms of the lease granted by the State and the Company was not a 'pakka' tenant and did not enjoy the status of a "Gair Maurusi" tenant.

The Company entered into a contract of lease with the Gwalior State Government (Sanitary Engineering Department) for a period of one year in Samvat 1999. The lease was extended for a further period of ten years in Samvat 2000. When proceedings were initiated on 16.7.1952 to eject the

Company, the Company filed Suit No. 14 of 1960 for declaration of title and perpetual injunction. Issue No. 1(1) in that Suit was in the following words:

"Whether the plaintiff in accordance with paras 5 & 6 of the Plaint was a 'gair Maurusi tenant' and now by virtue of the Revenue Administration and Ryotwari Land Revenue and Tenancy Act of Samwat 2007 has become a 'Pakka Tenant'.

If so, what is its effect on the suit?"

That issue was answered in the negative. The Court held that the Company did not enjoy the status of Gair Maurusi tenant and that it had not become a 'pakka' tenant under section 54(vii) of Part II of Act

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No. 66 of 1950 in respect of the land in question. The Court held that the Company was "a Government lessee under section 181 of the M.P. Land Revenue Code, 1959 with the rights and liabilities enumerated in section 182". It was also held that the Company was not an occupancy tenant under section 185 of the Code as it had not become an ordinary tenant earlier in Madhya Bharat under Act No. 66 of 1950. This judgement, as stated earlier, was affirmed by the High Court by its judgement dated 30.6.1964 in First Appeal No. 1 of 1961. The High Court observed that the land held by the Company under the lease was neither zamindari nor ryotwari land. The Zamindari Abolition Act did not apply to the land as it had become vested in the State long prior to the Act. The High Court observed:

".....the lands comprised in the Gwalior Sewage Farm were never notified to be a Ryotwari village. The lands which have been acquired by the Gwalior State in connection with the Gwalior Sewage Farm could not, after their acquisition for a public purpose be notified to be part of a Ryotwari village....the lands were not 'Pandat' lands nor were the lands included in Ryotwari village. Special leases granted by the erstwhile Gwalior State in respect of such lands as had been acquired for a public purpose, namely construction of a sewage system were governed not by any law for the time being in force but by the terms of lease in each case. I have already explained above that to these lands the provisions of the Zamindari Abolition Act did not apply, since they were already held by the State when that came into force.... the defendant (the State) has been successful in showing that the plaintiff (the Company) never acquired the status of a Gair Maurusi tenant in respect of the land in dispute at any time prior to the coming into force of the Act No. 66 of 1950 and that he could not, by virtue of the provisions of that Act become a Pukka tenant thereof".

It was from that judgement that the Company had brought to this Court Civil Appeal No. 299 of 1967 and that appeal was, as stated earlier, unconditionally withdrawn by the Company in 1971. Subsequently, the State entered into an agreement with the Company to grant a fresh lease for a period of ten years from 9.2.1971 subject to the payment of enhanced rent as agreed upon between the parties. Since the Company failed to pay the agreed rents and thus contravened the conditions of the lease, proceedings were initiated by the

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Additional Collector by his Order dated 1.10.1977 for

eviction of the Company from the land in question. That Order was made under section 182(2)(i) of the Code. It was that Order which was quashed by the High Court by its impugned Order dated 20.9.1980. The High Court held that the lease in question was not covered by section 181 of the Code and that the Company could not be evicted by the summary proceeding provided for under that section.

As stated earlier, the High Court had, in the earlier proceeding held that the Company was not a 'pakka' tenant. That judgement of the High Court became by the unconditional withdrawal of the appeal filed in this Court against it. The Madhya Pradesh Land Revenue and Tenancy Act, Samvat 2007 (Act No 66 of 1950), which was the law in force until repealed by the M.P. Land Revenue Code, 1959, defined "pakka tenant" as follows:

"S. 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 recognised as such by a competent authority.

Explanation--The term 'Pukhta Maurusi' included Istmurardar tenants, Malikana Haq-holder tenants, Hakkiyat Mutafarrikat Sharah Muayyana and Sakitul Mikiyat tenants".

An 'ordinary tenant' is defined by Act No. 66 of 1950 as "a tenant other than a Pakka tenant and shall not include a sub-tenant". The position, therefore, was that, in terms of Act No. 66 of 1950, the Company was not a pakka tenant, as found by the High Court in the earlier judgement, and, therefore, it was, according to the said Act, an ordinary tenant.

The High Court had found in the earlier proceeding that the land in question was held by the Company under lease from the Government after it had been acquired by the Government for a public purpose of the State. The question, therefore, is whether the Company was, as found by the Additional Collector, a Government lessee within the meaning of the Code. It is to be noticed that subsequent to the withdrawal of the appeal from this Court, fresh terms were agreed upon between the Company and the Government to enable the Com-

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pany to remain in possession of the land as a lessee. The Company is thus a person holding the land from the State Government. This is so whether or not the Company is deemed to be holding over under the old lease or holding, upon termination of that lease, under and in terms of the fresh conditions agreed upon between the parties to enable the Company to remain in possession of the land as a lessee. In either event, the Company has been holding the land from the State. It is not and cannot be disputed that the original lease was obtained from the predecessor State and the Company continued to remain in possession of the land under the newly stipulated terms agreed upon between the Company and the successor State, namely, the Madhya Pradesh State.

A 'Government Lessee' is defined under the M.P. Land Revenue Code, 1959 as "a person holding land from the State Government under section 181", Section 181 of the Code reads:

"181. Government Lessees. (1) Every person who holds land from the State Government or to whom a right to occupy land is granted by the State Government or the Collector and who is not entitled

to hold land as a Bhumiswami shall be called a Government lessee in respect of such land.

(2) Every person who at the coming into force of this Code-

(a) hold any land in the Madhya Bharat region as an ordinary tenant as defined in the Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 (66 of 1950); or

(b).....

(c)..... shall be deemed to be a Government lessee in respect of such land".

These provisions show that whether or not the Company has been holding the land in terms of the original lease or under the newly stipulated terms of the lease, the Company has been holding the land

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from the State Government and it has never been an ordinary terms as defined in the Madhya Bharat Act No. 66 of 1950. Accordingly whether considered in terms of sub-section (1) or sub-section (2) of section 181, the Company has been at all material times a Government lessee in respect of the land in question. Accordingly, section 182 of the Code is attracted. That section reads:

"182. Rights and liabilities of Government lessee-
-(1) A Government lessee shall, subject to any express provision in this Code, hold his land in accordance with the terms and conditions of the grant, which shall be deemed to be a grant within the meaning of the Government Grants Act, 1895 (XV of 1985).

(2) A Government lessee may be ejected from his land by order of a Revenue Officer on one or more of the following grounds, namely:-

(i) that he has failed to pay the rent for a period of three months from the date on which it became due; or

(ii) that he has used such land for purpose other than for which it was granted; or

(iii) that the term of his lease has expired or

(iv) that he has contravened any of the terms and conditions of the grant:

Provided that no order for ejectment of a Government lessee under this sub-section shall be passed without giving him an opportunity of being heard in his defence".

It was in terms of sub-section 2(i) of section 182 that the Additional Collector made his order for eviction of the Company. The finding of the Additional Collector is a finding of fact based on evidence and is not liable to be questioned in these proceedings. His finding shows that large amounts are due and payable by the Company as rent and that the rents have remained unpaid for a period far in excess of three months from the dates on which they became due. In the circumstances, the Additional Collector was well justified in having recourse to the proceeding prescribed under section 182 of the

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Code. The finding of the High Court to the contrary was, in our view, totally unjustified and opposed to law.

In the circumstances, the impugned Order of the High Court dated 20.9.1980 in Misc. Petition No 84 of 1978 is set aside. The Order of the Additional Collector dated 1.10.1977 in Case No. 1-75-76A-39: 182 shall stand restored. The appeal by the State is allowed with costs throughout.

V.P.R.

Appeal allowed.

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