

CASE NO.:
Appeal (civil) 1669 of 2002

PETITIONER:
Baboolal Sharda & Anr

RESPONDENT:
Smt. Savitribai & Ors

DATE OF JUDGMENT: 05/02/2008

BENCH:
DR. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
JUDGMENT

CIVIL APPEAL NO. 1669 OF 2002

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the order passed by a learned Single Judge of the Madhya Pradesh High Court, Indore Bench dismissing the writ petition filed by the appellants under Article 227 of the Constitution of India, 1950 (in short the 'Constitution'). The appellants had challenged the appellate order passed by the Collector in exercise of appellate powers conferred by the Madhya Pradesh Samaj Ke Kamjor Vargon Ke Krishi Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 (in short the '1976 Adhiniyam'). The original order was passed by the SDO on 20.11.1990. The complaint was filed by respondent No. 1 stating that under Section 5 of the Adhiniyam, the land purchased by the appellants needs to be restored to her as transfer to appellants was in violation of the stipulations contained in the Adhiniyam. It was alleged that Ram Prasad Sharda, father of the appellant No. 1 had grabbed the land and after his death the land was in possession of his successor-the appellant No.1. The appellants took the stand that the purchases in question were in court auctions and therefore the Adhiniyam has no application. The SDO did not find any substance in it. According to him, Section 15 of the Adhiniyam clearly applied to the facts of the case. It was also held that Section 6 is also relevant. The SDO did not accept the stand that the purchase being under court auctions, the Adhiniyam had no application holding that under the definition of "lender of money" and "prohibited transaction of loan" the appellants were required to restore the possession of the land to the applicant-respondent No.1. Appeal filed before the Collector as noted above did not bring any relief.

2. Before the High Court the stands taken before the SDO and the Collector were reiterated. But the High Court had abruptly concluded that the appellate order clearly established that the Act was applicable. It did not examine the various points raised.

3. It may be noted at this juncture that there was a period of limitation fixed for filing the claim after enactment of the Adhiniyam. Appellants' specific stand was that the application was filed much beyond the prescribed time. The High Court merely noted that the time for filing the claims was extended. It did not record any positive finding that the application was filed within the extended time.

Section 2 of the Adhiniyam so far as relevant reads as follows:
"2. Definitions - In this Act, unless the context otherwise

requires ;

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(c) "holder of agricultural land" in the weaker sections of the people means a holder of land used for purposes of Agriculture not exceeding eight hectares of unirrigated land within the State whether as a Bhumiswami or an occupancy tenant or a Government lessee either in any one or all of the capacities together within the meaning of the Code.

Explanation.- One hectare of irrigated land shall be equal to two hectares of unirrigated land and vice versa.

(d) "lender of money" means a person advancing loan to a holder of agricultural land, whether registered under the Madhya Pradesh Money Lenders Act, 1934 (No. 13 of 1934) or not;

(f) "prohibited transaction of loan" means a transaction in which a lender of money advances loan to a holder of agricultural land against security of his interest in land, whether at the time of advancing the loan or at any time thereafter during the currency of the loan in any of the following modes, namely;

(i) agreement to sell land with or without delivery of possession;

(ii) outright sale of land with or without delivery of possession accompanied by separate agreement to re-sell it.

(iii) outright sale of land with or without delivery of possession with a distinct oral understanding that the sale shall not be acted upon if the loan is re-paid;

(iv) outright sale of land with or without delivery of possession with a condition incorporated in the sale deed to re-sell it on re-payment of the loan;

(v) transaction in any modes other than those specified in clauses (i) to (iv) affecting interest in land including a fraudulent transaction designed to defeat the provisions of any law regulating money lending to defeat the provisions of any law regulating money lending or interest, for the time being in force, and includes all those transactions in which a lender of money has, after the appointed day but on or before the date of publication of this Act in the Gazette, obtained possession of land of the holder of agricultural land through court or, by force or otherwise or obtained a decree for such possession towards satisfaction of loan;"

Section 6 of the Adhiniyam reads as follows:

"(1) The Sub-Divisional Officer may, on his own motion in any transaction of loan and shall on receipt of an application under Section 5 in the transaction of loan referred to therein, make preliminary enquiry as he may in the circumstances of the case deem fit, to ascertain whether the transaction of loan is a prohibited transaction of loan and notice in Form II to furnish information in the form enclosed with the notice in respect of the land within such time, not exceeding 1 days as may be specified in the notice.

as per sub-sections (2), (3) and (4) of this section which are reproduced below:

(2) The Sub-Divisional Officer shall by a notice served on the parties to the prohibited transaction of loan call upon them to place all relevant facts and documents before him at such place, on such date and at such time as may be specified in the notice.

(3) The Sub-Divisional Officer shall at the place and on the date and time specified in the notice, afford an opportunity to the parties of being heard in person and may, if necessary, examine all of the parties interested in land to elucidate information relevant to the transaction of loan.

(4) During the enquiry the sub-divisional Officer shall, for the purpose of ascertaining the true nature of transaction of loan, try to collect, as far as, may be, information with respect to the following

facts, namely:

- (i) the amount of principal money;
- (ii) the market value of the land at the time of transaction;
- (iii) adequacy of the amount of principal money as consideration for sale in the context of the market value under clause (ii);
- (iv) whether the consideration shown in the document was paid whole or in part privately or before the Sub-Registrar;
- (v) whether possession of the land was actually delivered to the lender of money as per recitals in the said document. If not, when and in what manner the lender of money obtained possession of the land;
- (vi) What were the terms of the actual agreement between the lender of money and the holder of agricultural land including the rate of interest;
- (vii) the extent of urgency for the loan and availability of other sources to the holder of agricultural land to obtain the same;
- (viii) payment, if any, made by the holder of agricultural land to the lender of money towards the loan;
- (ix) whether the lender of money is registered money lender or not;
- (x) any other surrounding circumstances which the Sub-Divisional Officer may deem fit to consider."

Section 15 of the Adhiniyam reads as follows:

"15. Transfer of land which is subject matter of prohibited transaction of loan to be null and void \026Notwithstanding anything contained in any law for the time being in force where a lender of money transfers any land, which may be a subject matter of a prohibited transaction of loan, by way of sale, gift, exchange, lease or otherwise, such transfer shall be deemed to have been made to defeat to provisions of this Act and be null and void."

Section 5 deals with the application for protection and seeking relief under the Act and the same reads as follows:

"5. Application for protection and seeking relief under this Act \026 A holder of agricultural land who is a party to any transaction of loan subsisting on the appointed day or entered into thereafter may apply to the Sub-Divisional Officer within such time; and in such form and manner as may be prescribed for protection and relief under this Act."

4. A bare reading of the various provisions makes the position clear that a holder of agricultural land who is a party to any transaction of loan subsisting on the appointing date or entered into thereafter can apply to the SDO in the prescribed form and manner for protection and relief under the Statute. Undisputedly the purchases made by the appellants were at court auctions. There was no material whatsoever placed before the authorities to show that the lands in question had any relation to any transaction of loan. On the contrary the court auctions were for non-payment of revenue in respect of the lands.

5. Learned counsel for the respondent-State vehemently submitted that the Adhiniyam specifically referred to "Kuchakron" that means manipulation and ill-design. There was no material before the SDO or the Collector or the High Court to show that the appellants had any role to play in the court auction or that they were responsible for non-payment of revenue for which court auctions were held.

6. Above being the position, the Adhiniyam had clearly no application to the facts of the case and therefore the impugned orders passed by the SDO, the Collector and the High Court cannot be maintained and are set aside. The claim made by respondent No.1 deserves to be dismissed.

7. The appeal is allowed but without any order as to costs.