M.P. HOUSING BOARD

v.

SHIV SHANKAR MANDIL & ORS.

(Civil Appeal Nos. 3840-3841 of 2001)

OCTOBER 24, 2008

[LOKESHWAR SINGH PANTA AND V.S. SIRPURKAR, JJ.]

Madhya Pradesh Land Revenue Code – s.51 – Government land transferred to respondent for establishing industrial unit as per order of Collector – Valid lease deed executed – Cancellation of, on the ground that land was reserved for grazing – Correctness of – Held: Not correct – Permission granted by Housing Board to the Collector to review its order of transfer after a period of 3 years was not correct since review power has to be exercised within reasonable time – Review.

The private respondent filed application before District Industries Centre for a piece of land to establish industrial unit. The said proposal was forwarded to the Tehsildar with request to transfer Survey No.462 recorded as Nazul land. The Tehsildar invited objections. Since no objections were received, after consulting the concerned authorities, Tehsildar proposed transfer to the Collector.

The Collector ordered on 27.7.1991, transfer of the said land to the District Industries Centre. However Housing Board objected to the allotment of Survey No.462 on the ground that said survey number was in the middle of residential plan of the Board and prayed for cancellation of the allotment of the land and for stopping the work commenced by private respondent. The Collector, by his order dt. 27.8.1991 directed the respondents to maintain status quo and further ordered the respondents not to construct on the allotted land.

A The respondents filed the first Writ Petition. During the pendency of the writ petition, on 11.5.1994, the Board of Revenue passed an order at the instance of Collector, permitting the Collector to review its order dated 27.7.1991. Respondents challenged this order by filing B another writ petition. The Collector decided to review the order dated 27.7.1991 in view of the observation of the Board regarding the transfer. The Single Judge of High Court allowed both the writ petitions and held that the order passed by the Collector, restraining respondents C to construct on the leased plot was wholly incorrect. The Single Judge also held that the Collector having already granted permission on 27.7.1991 could not have decided to review that order, that too after 3 years. Two LPAs filed thereagainst were dismissed by Division Bench of High Court.

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In the instant appeals, it was contended for the appellant-Housing Board that it was a reserved land for the grazing and therefore there was clear bar under s.237 of the Madhya Pradesh Land Revenue Code from transfer- E ring the land for the industrial purposes.

Dismissing the appeals, the Court

HELD: 1.1. The land could have been leased out as it was, undoubtedly, a Nazul land owned by the Govern- F ment. The respondent had obtained possession, paid premium, spent money for obtaining the Registered Sale Deed and also made the initial expenditure for preparing the land for raising structures and yet the Government authorities had remained dormant for a good long period G for more than 3 years for deciding to exercise their power of review. Merely by changing the nomenclature of the category of the land which was admittedly sought to be done by the Collector, later on, the said leasehold rights of the respondents could not be set at naught. For that, it would be necessary to cancel the Lease Deed or to nul- H

lify the same through the modality provided by ss.181(1) and 182 of the Madhya Pradesh Land Revenue Code, 1959 and not by the indirect method of changing the category of the land. [Paras 8, 11] (1163-B, C; 1164-G, H; 1165-A)

1.2. It was not specifically proved that the land in question was carrying any Nistar rights. On the other hand, this was specifically admitted to be a "Nazul land". That apart, there was no bar in diverting the unoccupied land. It was shown that this land was specifically set apart for pasture. Barring one revenue entry, the State Government has not produced any evidence at any point to suggest that this particular piece of land was set apart for pasture or for fodder reserve. Under the circumstances, there is no reason to hold that ss.235-237 were applicable. [Para 12] (1167-C, D)

1.3. Even if it is held that the said land was a grazing land and was treated as such before its diversion by Collector for commercial purpose, merely by cancelling the said diversion, the subsequent validly created Lease Deed cannot be set at naught. Both the Single Judge, as well as the Division Bench are correct in holding that the subsequent Lease Deed would hold good. [Para 13] (1167-E, F)

2. The Collector wanted to review his own order under s.51 of the Code and for that purpose, needed the sanction of the Board of Revenue under sub-Section 1(1) of s.51 of the Code. It will be clear from the language that it is a review power and such review power would have to be exercised within a reasonable time. It took more than three years for the State Government to move the Board of Revenue for reviewing the orders. The three years of time, without any explanation, could not be viewed as a reasonable time in view of the fact that the petitioner had obtained possession, paid premium, spent money for obtaining the Registered Sale Deed and have also made the initial expenditure for preparing the land for raising struc-

A **tures. The said Government could not have allowed the petitioner to do all these things and then chosen to review its own order. That apart, even if the earlier order dated 27.7.1991 was reviewed, it could not set at naught the Lease Deed which was validly created. It could have**
B **cancelled the lease only for the reasons stated in s.182(2) of the Code, which reasons were obviously absent in the instant case. [Paras 14, 15] (1167-G; 1168-D, F, G, H; 1169-A, B)**

State of Gujarat v. Raghav **AIR (1969) SC 1297 – relied**
C **on.**

CASE LAW REFERENCE

AIR (1969) SC 1297 relied on Para 14

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.
D 3840-3841 of 2001

From the final Judgment and Order dated 8.7.1999 of the High Court of Madhya Pradesh, Bench at Gwalior in LPA No. 315 & 296 of 1996

E WITH

C.A. Nos. 3842-3843 of 2001

B.S. Banthia and Vikas Upadhyay for the Appellant.

F R.P. Gupta, M.P. Singh, C.D. Singh, Vibha Datta Makhija and S.S. Khanduja for the Respondents.

The Judgment of the Court was delivered by

V.S. SIRPURKAR, J. 1. This Judgment will dispose of Civil Appeal Nos. 3840-3841 of 2001 and 3842-3843 of 2001.
G All the appeals relate to a common judgment passed by Division Bench of the High Court of Madhya Pradesh, Bench at Gwalior, by which the Division Bench disposed of two Letters Patent Appeals, being Letters Patent Appeal Nos. 315 of 1996 and 296 of 1996. The first two appeals are filed by the Madhya
H Pradesh Housing Board (hereinafter referred to as "the Board"),

whereas, the other two appeals are filed by State of Madhya Pradesh and one of its officers. Controversy relates to a plot of land in Morena, Madhya Pradesh, measuring 11 biswa in Survey Plot No. 462. The private respondent, namely, Shiv Shankar Mandil submitted an application on 29.12.1990 to the General Manager, District Industries Centre, Morena, contending therein that he had his small scale industry manufacturing steel furniture and he needed some land to establish the unit. The General Manager, District Industries Centre, Morena submitted an application by Letter No. 138 dt. 8.1.1991 requesting to transfer Survey No. 462 measuring 11 biswa which was recorded as "Charnoi Extra Nazul" in favour of the respondents for establishing an industry. This proposal was sent to Tehsildar, Morena, who invited objections from various authorities. No objections were, however, received by him. He, thereafter, obtained the consent of the Municipal Officer, Morena. He also consulted Town and Country Planning, Health and Police Departments and proposed the transfer to the Collector. The Collector on consideration of all the facts, ordered on 27.7.1991, a transfer of the said land to the General Manager, District Industries Centre, Morena under Clause 4-3, para 36 of the Revenue book circulars. It is on the basis of this, that the District Industries Centre, Morena by his order dt. 29.07.1991 agreed to allot the said land on three conditions:-

(i) Obtaining the appropriate approval of the lay out plan

(ii) Obtaining building permission from the concerned Department

(iii) Submission of a map of the lay out plan.

In pursuance thereof, a Lease Deed was created for 99 years on 30.7.1991.

2. However, Assistant Engineer, Madhya Pradesh Housing Board, Sub-Division Morena approached the Collector by Letter dt. 23.8.1991 and pointed out that the allotment of Survey No. 462 made by Industries Department to the respondents

A was objectionable. It was pointed out that said Survey Number was in the middle of a residential plan of the Board. It was then pointed out that a letter was already written by Commissioner of the Board for transferring Survey Nos. 458, 462, 482 and 485, which were Government lands in favour of the Board. The B proposal for transfer of Survey No. 462 was, however, already over. Further, the Board had started acquisition proceedings by paying the diversion charges. It was further pointed out that the Board had also sought for paper possession in respect of the aforementioned four Survey Numbers and intended to ex- C ecute a residential plan, wherein, 1000 residential plots had been proposed for solving the residential problem in Morena Town. It was expressed further that if M/s S.S. Industries of the respondents was permitted to establish an industry, then the plan of the Board would be upset and the expenditure invested in the development plan would be wasted. It was, therefore, D prayed that the allotment of the land of Survey No. 462 should be cancelled and the work commenced by M/s. S.S. Industries should be stopped. The Collector, by his order dt. 27.8.1991 directed the respondents to maintain status quo and further ordered the respondents not to construct on the allotted land. The E respondents, therefore, filed the first Writ Petition, being Writ Petition No. 1513 of 1991.

3. During the pendency of this Writ Petition, the Board of Revenue of Madhya Pradesh passed an order at the instance F of Collector, Morena, permitting the Collector to review his own order dt. 27.7.1991. This order by the Board of Revenue was passed on 11.5.1994. It was challenged by the respondents herein by filing another Writ Petition, being Writ Petition No. 1289 of 1994. The Collector had decided to review the order dt. 27.7.1991 in view of the observations by the Board regard- G ing the transfer of Survey No. 462.

4. Both these Writ Petitions came to be decided by the Learned Single Judge of the High Court of Madhya Pradesh, Bench at Gwalior, who allowed both the Writ Petitions. The H Learned Single Judge, firstly, held that the order passed by the

Collector, restraining respondents to construct in the leased plot was wholly incorrect. The Learned Single Judge also held that the Collector having already granted permission on 27.7.1991 could not have decided to review that order so as to put the clock back and the Board of Revenue had erred in granting such permission under Section 51 of the Madhya Pradesh Land Revenue Code, 1959 (hereinafter called "the Code" for short), which permission was the condition precedent for reviewing the order passed by the Collector. Two Letters Patent Appeals came to be filed against this common order, which have been dismissed by the Division Bench of the High Court of Madhya Pradesh, Bench at Gwalior, necessitating the present two appeals which have been separately filed by the State of Madhya Pradesh, as also by the Board.

5. Shri R.P. Gupta, Learned Senior Counsel and Shri B.S. Banthia, Learned Counsel, appearing on behalf of the appellant, painstakingly, took us through various documents, as well as the provisions of the Code. The basic contention of the Learned Counsel was that this land was a reserved land and there was an entry in the Revenue records, describing the land as "Charnoi Extra Nazul", from which it was clear that it was a reserved land for the grazing and, therefore, there was a clear bar under Section 237 of the Code from transferring this land for the industrial purposes. The initial order of the Collector dt. 27.7.1991, transferring this land to the Industrial Department itself was without jurisdiction. Taking argument further, both the counsel urged that as a result, the Industrial Department could not have created a lease in favour of the respondents and, therefore, the Lease was null and void and ineffective. Both the Learned Counsel urged that the decision of the Board of Revenue, allowing the Collector to review his order dt. 27.7.1991 was a correct decision and should not have been interfered with by the Learned Single Judge, as well as the Division Bench. The arguments went further and suggested that, in fact, the first, as well as the second Writ Petition were premature as the Collector had not so far reviewed his order. The Counsel also urged

A that if an industry is allowed to be set up in the midst of the residential area, it would not only be improper, but would affect the ecology and the citizens living in the neighbouring area would suffer on that count.

6. As against this, the Learned Counsel for the respon-
B dents Shri S.S. Khanduja supported both the orders and pointed out that, firstly, the State Government as well as the Board could not have assailed the Lease Deed, which was a valid Lease Deed for valuable consideration, that too in a Writ Petition filed by the respondents. He pointed out that there is no Civil Suit
C filed for cancellation of Lease Deed which was the only way to wipe out this Deed. According to the Learned Counsel, therefore, the State Government, as well as the Board were trying to get this Lease Deed cancelled in an indirect manner by attacking the transfer of this land in favour of the Industrial Depart-
D ment. The Learned Counsel further urged that there was no question of application under Section 237 of the Code and the Board of Revenue could not have used its discretion to allow the Collector to review the matter after a period of three years and the Learned Single Judge was absolutely right in holding
E that the delay on the part of the State Government and/or the Collector to move for review, was fatal. The Learned Counsel also suggested that there is no question of any ecological imbalance, as already there are industries in the neighbourhood of the said plot. It is on the basis of these rival contentions that
F we have to consider the correctness of the impugned judgments. We may go into some undisputed facts.

7. It was not disputed before the High Court that though there was a request by Housing Commissioner, Bhopal dt. 26.12.1978 in respect of Survey Plot Nos. 458, 462, 482 and
G 485, which were Government lands, no action was taken for acquiring the land in dispute, which is a part of the Survey No. 462. Very strangely, it was pleaded before the High Court that it was by "inadvertence" that the land was not acquired.

8. The execution of the Sale Deed and the validity thereof
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is not disputed. The contention is that the land could not have been transferred, there being Nistar rights of grazing on the land. The Learned Counsel for the appellant when confronted with the specific question as to whether the Government could have leased out the land independently without transferring it to the Industrial Department, did not dispute such power Therefore, it is clear that the land even otherwise (without being transferred to the Industrial Department) could have been leased out as it was, undoubtedly, a Nazul land owned by the Government. The original petitioner (respondent herein) had obtained possession, paid premium, spent money for obtaining the Registered Sale Deed and also made the initial expenditure for preparing the land for raising structures and yet the Government authorities had remained dormant for a good long period for more than 3 years for deciding to exercise their power of review.

9. At this juncture, it will be useful to consider findings given by the Learned Single Judge, who allowed both the petitions. The Learned Single Judge appears to have come to the conclusion that this was a valid Lease Deed for valuable consideration and the same could not be set at naught or nullified by exercise of power of review by the succeeding Collector under Section 51 of the Code as the only grounds on which the Lease could be set aside were provided specifically by Section 182 of the Code, which provisions could not be controlled by Section 51 of the Code. The Learned Single Judge also found that there was no breach of any of the provisions of Section 182 of the Code, so as to nullify the Lease. The Learned Single Judge also held that the authorities could not move for a permission to review the order dt. 27.7.1991 after a lapse of three years and the exercise was not in the reasonable time.

10. The Division Bench, firstly, considered the question raised before it regarding the validity of the Letters Patent Appeals and held them tenable. The question of tenability has not been argued before us. We will, therefore, not go into that question. As regards the merits, the Division Bench in para 55 of its Judgment, noted that there was a clear admission in the counter

A affidavit filed by the respondent No. 3 therein that the land in dispute was surrounded by the land acquired by the Board and was the Nazul land. The Division Bench, therefore, expressed that when this Nazul land was transferred to the Industrial Department and thereafter, leased out to the respondents herein, B it had ceased to be a land as envisaged under the Zamindari Abolition Act and was a non agricultural land. The Division Bench then went on to consider the provisions of Section 234 of the Code, which stipulate preparation of Nistar Patrak embodying scheme of management of all unoccupied lands in the village C and all matters incidental thereto and more particularly, the matters specified in Section 235 of the Code. The Division Bench went on to note the Revenue book circular issued by the State Government, issuing the directions in various matters in regard to the management of the land vested in the State Government. It made a reference to "Rajasva Pustak Paripatra, D Khand 4, Kramank 1" and noted that the terms 'Nazul' and 'Milkiyat Sarkar' referred in that book suggested that the lands in possession of the State Government or the Central Government were to be classified in the two categories, i.e., 'Nazul' and Milkiyat Sarkar.' It also noted the admission that this land E was a Government land and had obviously become a part of the urban land, since it was not to be used for agricultural purposes.

11. It was, therefore, obvious that the land was, undoubtF edly, a property of the Government under Section 57(1) of the Code and the Collector had granted the permission for diversion of this land for setting up the industry. We have carefully examined the provisions of Section 181(1) and 182 of the Code, which pertain to the lease and we are of the considered opinG ion that merely by changing the nomenclature of the category of the land which was admittedly sought to be done by the Collector, later on, the said lease hold rights of the respondents could not be set at naught. For that, it would be necessary to cancel the Lease Deed or to nullify the same through the modality provided by Section 181(1) and 182 of the Code and not by the H

indirect method of changing the category of the land. Section 181(1) and 182 of the Code reads as under:-

> "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 by Collector and who is not entitled to hold as a Bhumiswami shall be called a Government lessee in respect of such land.
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> 182. *Rights and liabilities of a Government lessee:* (1) A Government lessee shall, subject to any express provisions 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 1895).
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> (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:-
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> (i) that he has failed to pay the rent for a periof of three months from the date on which it became due; or
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> (ii) that he has used such land for purposes other than for which it was granted; or
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> (iii) that the term of his lease has expired; or
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> (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."

Section 234 of the Code contemplates preparation of Nistar Patrak, which is prepared for embodying a scheme of management of all unoccupied land in a village. Section 235 of the Code provides for the matters to be provided for in Nistar Patrak and sub-Section (a) whereof is as under:-

A "235. *Matters to be provided for in Nistar Patrak:*- The matters which shall be provided for in the Nistar Patrak shall be as follows, namely:-

(a) terms and conditions on which grazing of the cattle in the village will be permitted.

B

(b) Not relevant

(c) Not relevant

(d) any other matter required to be recorded in the Nistar Patrak by or under this Code."

C

Section 236 mandates as under:-

"236. *Provision in Nistar Patrak for certain matters:* In preparing the Nistar Patrak as provided in Section 235, the Collector shall, as far as possible, make provision for-

D

(a) free grazing of the cattle used for agriculture.

(b) removal free of charge by the residents of the village for their bona fide domestic consumption of-

E

(i) forest produce;

(ii) minor minerals;

(c) Not relevant."

F

Section 237 mandates that Collector may set apart unoccupied land for the purposes given in that Section, which include as many as about 10 purposes. Sub-Section 1(b) mentions for pasture, grass bir or fodder reserve. Sub-Section (2) spells out a specific bar in the following words"-

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"(2) Lands set apart specifically for any purpose mentioned in sub-Section (1), shall not otherwise be diverted without the sanction of the Collector.

(3) Subject to the rules made under this Code, the Collector may divert such unoccupied land, which is

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set apart for the purposes mentioned in clause (b) of sub-Section (1) subject to secure minimum two percent of the agriculture land of that village for the said purposes in to abadi or for agricultural purposes."

12. Relying heavily on Section 237(2), the contention raised before us, as well as before the High Court was that this being a Nistar land, could not have been diverted by the Collector. We do not see any such bar. In the first place, it is not specifically proved that this was a land carrying any Nistar rights. On the other hand, this was specifically admitted to be a "Nazul land". That apart, we do not see any bar in diverting the unoccupied land. It is shown that this land was specifically set apart for pasture. Barring one revenue entry, the State Government has not produced any evidence either before the Learned Single Judge or before the Division Bench of the High Court or even before us to suggest that this particular piece of land was set apart for pasture or for fodder reserve. Under the circumstances, we do not see any reason to hold that Sections 235-237 were applicable herein.

13. Even if it is held that the said land was a grazing land and was treated as such before its being diverted by Collector for commercial purpose, merely by cancelling the said diversion, the subsequent validly created Lease Deed cannot be set at naught. Both the Learned Single Judge, as well as the Division Bench are correct in holding that the subsequent Lease Deed would hold good.

14. The subsequent stance for reviewing the diversion order is slightly intriguing. The Collector wanted to review his own order under Section 51 of the Code and for that purpose, needed the sanction of the Board of Revenue under sub-Section 1(1) of Section 51 of the Code. Section 51 runs as under:-

"51. Review of orders:- (1) The Board and every Revenue Officer may, either on its/his own motion or on the application of any party interested, review any order

A passed by itself/himself or by any of its/his predecessors in office and pass such order in reference thereto as it/he thinks fit:

provided that-

B (i) if the Commissioner, Settlement Commissioner, Collector of Settlement Officer thinks it necessary to review any order which he has not himself passed, he shall first obtain the sanction of the Board, and if an Officer subordinate to a C Collector or Settlement Officer proposes to review any order, whether passed by himself or by any predecessor, he shall first obtain the sanction in writing of the authority to whom he is immediately subordinates."

D It will be clear from the language that it is a review power and such review power would have to be exercised within a reasonable time. We agree with the Learned Single Judge that in this case, it took more than three years for the State Government to move the Board of Revenue for reviewing the orders. E The Learned Counsel appearing on behalf of appellants tried to suggest that at that time, there was status quo order pending, passed by the High Court on the first Writ petition filed by the respondents herein. We have examined the record carefully and we find nothing in the record suggesting that the State F Government could not have exercised the power under Section 51 of the Code. In *AIR 1969 SC 1297 State of Gujarat Vs. Raghav,* this Court held that the review power should be used in reasonable time. We accept the finding of the Learned Single Judge as confirmed by the Division Bench of the High Court that the power of review has to be exercised within a reason- G able time and that in this case, three years of time, without any explanation, could not be viewed as a reasonable time in view of the fact that the petitioner had obtained possession, paid premium, spent money for obtaining the Registered Sale Deed and have also made the initial expenditure for preparing the H

land for raising structures. The said Government could not have allowed the petitioner to do all these things and then chosen to review its own powers. A

15. That apart, even if the earlier order dt. 27.7.1991 was reviewed, it could not set at naught the Lease Deed which was validly created. It could have cancelled the lease only for the reasons stated in Section 182(2) of the Code, which reasons were obviously absent in the case. In that view, we are of the clear opinion that the impugned judgments of the Division Bench of the High Court confirming the judgment of the Learned Single Judge of that Court are correct judgments and need no interference. We, therefore, dismiss these appeals, but without any orders as to the costs. B C

D.G. Appeals dismissed.