

(1970) 09 MP CK 0003

Madhya Pradesh High Court

Case No: M.P. No. 172 of 1968

Ram Krishan Das

APPELLANT

Vs

Mahila Shankar Purwali and
others

RESPONDENT

Date of Decision: Sept. 2, 1970

Acts Referred:

- Madhya Pradesh Land Revenue Code, 1959 - Section 168, 168(1), 168(2), 168(4), 168(5)

Citation: (1976) ILR (MP) 614 : (1970) JLJ 986 : (1971) MPLJ 25

Hon'ble Judges: Bishambhar Dayal, C.J; A.P. Sen, J

Bench: Division Bench

Advocate: R.K. Pandey and R.K. Tankha, for the Appellant; Y.S. Dharmadhikari for Respondents Nos. 1 to 4, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Bishambhar Dayal, C.J.

This writ petition has been filed by Ram Krishan Das who was a pakka tenant under the ryotwari system in the State of Gwalior. He was blind and he had let out the land in dispute to one Ramhans who has since died and the Respondents Nos. 1 to 4 are his heirs. Thus, Ramhans was a sub-tenant of a pakka tenant before the coming into force of the Revenue Administration and Ryotwari Land Revenue and Tenancy Act (Act No. 66 of 1950) [hereinafter called as the Madhya Bharat Tenancy Act]. This Act came into force on 15th August 1950. Before this Act every pakka tenant was permitted to sub-let his holding, whether he was a disabled person or not. The policy of law under the Madhya Bharat Tenancy Act was that the pakka tenants should cultivate the lands themselves. Section 73 of this Act consequently provided that no pakka tenant would sub-let his holding. Section 74 permitted disabled

persons to sub-let but provided that after the disability ceased, the sub-tenancy would come to an end after one year. Section 75 declared all sub-leases granted before the coming into force of the Act to have terminated at the end of the period for which the sub-leases were granted or at the latest at the end of four years from the date of the enforcement of the Act. This section did not protect sub-leases granted before the coming into force of the Act even though such sub-leases may have been granted by a disabled person. The intention obviously was that if a disabled pakka tenant was unable to cultivate himself even after the coming into force of the Act, he could grant a fresh sub-lease u/s 74 and continue the subtenant; but all old sub-leases were terminated. Section 76 provided that after the termination of a sub-lease either u/s 74 or u/s 75, the sub-tenant would be treated as a trespasser and would be liable to ejectment.

In the present case, after the coming into force of the Madhya Bharat Tenancy Act the applicant filed a suit on the 19th March 1953 obviously u/s 76 of the Madhya Bharat Tenancy Act on the allegation that the Plaintiff had sub-let his lands to the Defendant but on the coming into force of the new Act the sub-lease had come to an end. There were other allegations also which need not be mentioned. The Defendant contended that the Plaintiff being an old and blind person was entitled to sub-let u/s 74 of the Act and also that his term had not come to an end and he was not liable to ejectment. During the hearing of the case the Plaintiff made a statement that the Defendant had not paid rent for the last six years. This is relevant only for showing that admittedly the sub-lease had been granted before the Madhya Bharat Tenancy Act came into force. The Tahsildar who decided the case on 15th July 1955 held that since four years had expired from the date on which the Madhya Bharat Tenancy Act came into force, the sub-lease had come to an end on the date of the decree and consequently directed ejectment. There was an appeal by the Defendant-tenant. During the pendency of the appeal, the Madhya Bharat Ryotwari Sub-lessee Protection Act, 1955 (Act No. 29 of 1955 [hereinafter called the Protection Act]) came into force on the 19th October 1955.

By this Protection Act "ryotwari sub-lessee" was defined in section 2 (b) as follows:

"Ryotwari sub-lessee" means a person to whom a pakka Tenant of any Ryotwari land has sub-let on sub-lease any part of his Ryotwari land.

It will be noted that by this definition it was not made necessary that the sublease should still be subsisting on the date of the Act; but any person to whom a sub-lease had been granted by a pakka tenant was defined as a sub-lessee. By Section 3 of the Protection Act ejectment of such sub-lessee was prohibited excepting those sub-lessees in whose favour the sub-leases had been granted u/s 74 of the Madhya Bharat Tenancy Act. The result of this protection was that all sub-lessees, who had been granted sub-leases even before the Madhya Bharat Tenancy Act came into force and whose sub-leases had come to an end on 15th August 1954, after the expiry of four years from the date of the enforcement of the Madhya Bharat

Tenancy Act, were given protection from ejectment. But the only sub-leases that could be granted under the Madhya Bharat Tenancy Act by disabled persons u/s 74 were not given protection. By Section 4 of the Protection Act all suits and proceedings for the ejectment of sub-lessees were stayed and by subsequent amendments such stay continued for four years till some time in 1959. Section 6 of this Protection Act provided that after the expiration of the Act pending proceedings would restart "subject to the provisions of any law, which may then be in force." As a result of the passing of this Protection Act, although the sublease in favour of the Defendant-tenant had come to an end, he could not be ejected and this controversy whether he was entitled to the protection under the Protection Act went on between the parties from one Court to another till 11th January 1961 when the Board of Revenue by its order remanded the case to the Sub-Divisional Officer for restarting ejectment proceedings as the period of protection had come to an end.

By the time these proceedings were restarted by the Sub-Divisional Officer, the Madhya Pradesh Land Revenue Code, 1959, came in force from October, 1959. In the Court of Sub-Divisional Officer the tenant-Respondents claimed that they had acquired occupancy rights u/s 185(1)(ii)(b) of the Code. The relevant part of this Sub-section may be read thus:- "185 (1) Every person who at the coming into force of this Code holds-

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(ii) in the Madhya Bharat region:-

* * *

(b) any land as ryotwari sub-lessee as defined in the Madhya Bharat Ryotwari sublessee Protection Act, 1955 (29 of 1955);

shall be called an occupancy tenant and shall have all the rights and be subject to all liabilities conferred or imposed upon an occupancy tenant by /or under this Code.

To this acquisition of occupancy rights there was an exception by Sub-section (3) of this Section 185 which is as follows:-

(3) Nothing in Sub-section (1) shall apply to a person who at the coming into force of this Code, holds the land from a Bhumiswami who belongs to any one or more of the classes mentioned in Sub-section (2) of Section 168.

It may be conceded here that the Petitioner is a pakka tenant who is a disabled person and comes within one of the classes mentioned in Sub-section (2) of section 168. The question for determination, therefore, is whether the sub-tenants acquire occupancy rights u/s 185(1)(ii)(b) of the Code or are excluded from acquiring such rights by Sub-section (3) thereof. It is also relevant here to see the definition of the word "tenant" given in the M. P. Land Revenue Code by Section 2(i)(y). That definition is as follows:

"tenant" means a person holding land from a Bhumiswami as an occupancy tenant under Chapter XIV.

It may be noted that Section 185 is in Chapter XIV of the Code. When the case went back for taking ejectment proceedings the tenant-Respondents objected that they had acquired occupancy rights and could not be ejected. The Sub-Divisional Officer did not agree and directed the Tahsildar to proceed with execution. There was an appeal and the Commissioner held that by virtue of Section 185(3) of the M. P. Land Revenue Code the Respondents were excluded from getting occupancy rights. The matter then went to the Board of Revenue in second appeal. Learned single Member of the Board of Revenue by his order dated 14th June, 1966, was unable to come to a conclusion. On the one hand, he felt that the sub-tenancy having come to an end, the subtenants were trespassers and, on the other hand, that such sub-tenants had been held to be tenants within the meaning of Section 185(1). He, therefore, referred the matter to a Division Bench of the Board. The Division Bench framed three questions and after a long discussion of the law came to the conclusion that the sub-lessees could not claim occupancy rights on account of Section 185(3); but that they could not be ejected in pursuance of the old proceedings pending under the Madhya Bharat Tenancy Act and could only be ejected u/s 168(4) of the M. P. Land Revenue Code. The result of this decision was that the learned single Member, when the case went back to him, directed that the application of the pakka tenant for ejectment must be dismissed as he would be entitled to eject only under the conditions provided by Section 168(4) of the M. P. Land Revenue Code. Against this order of the Board of Revenue, the present writ petition has been filed.

In view of the different changes of law mentioned above, the only question for consideration now is whether the sub-tenants acquired occupancy rights u/s 185(1)(ii) (b) or whether they were prevented from getting those rights by Sub-section (3) thereof and, if so, could they be ejected only in fresh proceedings complying with the provisions of Section 168(4) of the M. P. L. R. Code or could the old proceedings be continued. The contention of learned Counsel for the applicant pakka tenant is that he is entitled to continue the old proceedings. This is denied on behalf of the Respondents, and the contention of learned Counsel for the Respondents is that the Respondents have acquired occupancy rights and cannot be ejected.

The sub-lease in favour of the sub-tenant having been granted before the Madhya Bharat Tenancy Act came into force, it was terminated by virtue of Section 75 thereof on the 15th August, 1954. Although the pakka tenant was a disabled person, he did not grant any fresh sub-lease u/s 74 of that Act. The sub-tenant became a trespasser after that date by virtue of Section 76 of that Act. Such a person was given protection by the Protection Act of 1955, and his ejectment was stayed. Such a person, although his sub-lease had come to an end, was called a sub-lessee by the

Protection Act. When the M. P. Land Revenue Code came into force, there were two kinds of sub-tenants existing: (1) those whose sub-tenancies had come to an end but who were protected by the Protection Act and were called sub-tenants by that special Act although otherwise they were not sub-tenants and (2) those in whose favour sub-tenancies had been granted by disabled persons u/s 74 of the Madhya Bharat Tenancies Act and who were not protected by the Protection Act. Section 185 of the M. P. Land Revenue Code has to be interpreted in these circumstances. Section 185(1)(ii) (b) deals with a person who holds land as a sub-lessee as defined by the Protection Act. Therefore, for the purposes of this Sub-section a special definition of "sub-lessee" has been expressly mentioned. This was necessary, for under the definition of a "tenant" given in the M. P. Land Revenue Code, he would not be a sub-tenant. This Sub-section has been interpreted by now in several cases. Although the normal meaning of the words "holds land" would be "having a right to be in possession of the land" and "holding" would, therefore, be referable to a right in the land, but while interpreting this Sub-section two main reasons have led Courts to come to the conclusion that the sub-lessees whose leases had come to an end would also be included. The first of the two important reasons was that this Sub-section used the term "sub-lessee" in a special sense as defined in the Protection Act and not in the usual sense. As seen above, under the Protection Act sub-lessees who had once got a valid lease in their favour but whose leases had come to an end were called sub-lessees and were protected. The second reason was that if this wider meaning was not given to Sub-section (1) of section 185, the result would be that no person would get protection under the Act. We have seen above that all sub-leases granted before the Madhya Bharat Tenancy Act came into force were declared terminated by Section 75 of that Act and the sub-lessees were declared trespassers by Section 76 of that Act after the expiry of the longest period of four years from the enforcement of that Act. This period of four years came to an end on 15th August 1954. Under the Madhya Bharat Tenancy Act no pakka tenant could grant a fresh lease except a disabled person. Thus, when the Protection Act came into force on the 19th October 1955, there were no sub leases in existence except those which were granted by disabled persons u/s 74 of the Madhya Bharat Tenancy Act. Therefore, if a sub-tenant to get occupancy rights under Sub-section (1) of Section 185 had to show that he had a subsisting lease, he could only be a sub-tenant to whom a sub-lease had been granted by a disabled person u/s 74 of the Madhya Bharat Tenancy Act. Such a person was clearly excluded from the operation of the Protection Act as well as by the operation of Sub-section (3) of Section 185 of the M. P. Land Revenue Code, if the pakka tenant continued to be a disabled person on the date of the coming into force of the M. P. Land Revenue Code, Section 185(3). To prevent Sub-section (1) of Section 185 of the Code being completely otiose it had to be read reasonably and it was held that a sub tenant who once got a valid tenancy in his favour but who was in possession though the sub-tenancy had come to an end, was covered within the phrase "holds the land as a sub-lessee" and must acquire occupancy rights. The present Respondents are fully

covered by the provisions of this Sub-section and, therefore, acquire occupancy rights unless their case is excluded by Sub-section (3) of Section 185.

This brings us to the interpretation of Sub-section (3) of Section 185 of the M. P. Land Revenue Code. The Sub-section has been quoted above. The purpose of this Sub-section is to exclude from the operation of Sub-section (1) those sub-tenants who "hold the land from a Bhumiswami" who is a disabled person. In this Sub-section the special definition of "sub-lessee" as in the Protection Act has not been incorporated and, therefore, the phrase "holds the land from a Bhumiswami" must be read in the normal sense which means that the sub-tenant ought to have a subsisting lease in his favour under which he has a right to continue in possession. The first consideration which led to the interpretation of Sub-section (1) of Section 185 in a different way is, therefore, not open in interpreting this Sub-section. Moreover, the second argument which forced a special interpretation of Section 185(1) is also not applicable here. The exclusion created by this Sub-section (3) would still be operative on the sub-leases which were granted u/s 74 of the Madhya Bharat Tenancy Act and which were validly in force on the date when the M. P. Land Revenue Code came into force, even though the wider connotation given to Sub-section (1) is not given to this Sub-section (3). It cannot, therefore, be said that Sub-section (3) would, becomes otiose if a wider cannot-ation is not given to the phrase "holds the land from a Bhumiswami".

It may also be noted that the words "holds the land from a Bhumiswami" are words which clearly refer to an existing relationship. It is also important to note that exactly the same phrase has been used in Section 168(5) of the M. P. Land Revenue Code, which is as follows:

Where on the coming into force of this Code any land is held on lease from a Bhumiswami who belongs to any one or more of the classes mentioned in Sub-section (2), such lease shall, on the coming into force of this Code, be deemed to be a lease granted in pursuance of Sub-section (2).

Section 168(2) authorizes a disabled Bhumiswami to grant sub leases, and section 168(1) prohibits others from doing so for more than one year in a consecutive period of three years with a few exceptions. Sub-section (5) provides for treating the sub-leases (by disabled persons) existing on the date of the Code as sub-leases granted under the Code. This Sub-section (5), therefore, can only be made applicable to those sub-leases which were in existence on that date. It was not the purpose of this Sub-section to declare trespassers to be lessees and upon that assumption to say that those assumed sub-leases would be treated as having been granted under Sub-section (2) of Section 168. The scope of Sub-section (5) of Section 168 and Sub-section (3) of Section 185 must necessarily be the same and, therefore, under Sub-section (3) of Section 185 only those sub-lessees are excluded from acquiring occupancy rights whose subleases were subsisting on the date when the M. P. Land Revenue Code came into force.

Lastly, it may also be noted that from the date of the passing of the Protection Act in 1955 the policy of legislation has been to maintain the possession of the tillers of the soil and to bestow upon them the rights of occupancy so that they may not be disturbed. Any exception to the creation of such rights in favour of the sub-tenants must be strictly interpreted, and Sub-section (3) of Section 185 being an exception to the creation of occupancy rights under Sub-section (1) of Section 185 must be strictly construed and exclusion from such rights should not be easily inferred. A large number of cases were brought to our notice, but we find that there is no case exactly on the point which has arisen for consideration in this case. Only observations here and there can be utilized for coming to a conclusion. We need not encumber this order by a discussion of the case-law which is not directly on the point.

The result, therefore, is that this writ petition must be and is dismissed on the ground that the Respondents have acquired occupancy rights u/s 185(1)(ii) (b) of the M. P. Land Revenue Code and are not liable to ejection. Parties will bear their own costs. The outstanding amount of the security deposit shall be refunded to the Petitioner.