

**(1999) 02 MP CK 0018**

**Madhya Pradesh High Court**

**Case No:** M.P. No. 145 of 1989

Kunjilal Das and Others

APPELLANT

Vs

Preetam Chand and Another

RESPONDENT

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**Date of Decision:** Feb. 5, 1999

**Acts Referred:**

- Madhya Pradesh Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharakon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 - Section 2, 5

**Citation:** (1999) 1 MPLJ 635

**Hon'ble Judges:** R.S. Garg, J

**Bench:** Single Bench

**Advocate:** Rajendra Tiwari and Rajendra Shrivastava, for the Appellant; J.P. Agarwal, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

R.S. Garg, J.

This order shall dispose of M.P. No. 145/89, Kunjlaldas and Ors. v. Preetamchand and Ors., M.P. No. 147/89, Kunjlal Das and Ors. v. Milluram and Ors. and M.P. No. 148/89, Kunjlal and Ors. v. Hakeemchand and Ors. as the common question arises for consideration in these cases.

The facts necessary for disposal of the present petitions are that one Chhabildas filed an application u/s 5 of M.P. Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharakon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976, inter alia pleading that particular agricultural lands were given by him to the respective purchasers in fact as a security against the loan advanced by the said money lender, therefore, and as the transaction was a

prohibited transaction of loan, the transaction be declared as a nullity and possession be restored back to him. After notice, the respective defendants/respondents appeared before the Sub-Divisional Officer who after making an enquiry and after hearing the parties held that said Chhabildas and after his death his legal representatives were falling within the definition of "holder of agricultural land" and as the transaction was a prohibited transaction of loan, said Chhabildas (since deceased through his legal representatives) was entitled to the relief claimed for. Being aggrieved by the said order, each of the purchaser preferred an appeal u/s 8 of the Act. The Appellate Authority, in its impugned order, held that the application filed by said Chhabildas was barred by limitation and secondly said Chhabildas was not "holder of agricultural land", therefore, he or his legal representatives were not entitled to any relief. He accordingly allowed the appeals and set aside the order passed by the Sub-Divisional Officer. Being aggrieved by the said orders, the petitioners have filed these three separate petitions.

Learned counsel for petitioners submits that the Appellate Court was absolutely unjustified in holding that the application filed u/s 5 of the Adhiniyam 1976 was barred by limitation and was also unjustified in holding that said Chhabildas was not holder of the agricultural land. According to him, the Collector could not set aside the well reasoned order passed by the Sub-Divisional Officer.

Learned counsel for the State has not made any comments.

In the matter of Jahar Singh and Another etc. Vs. Collector, Shivpuri District and Others, the Court has recorded a finding that the Adhiniyam is not a temporary enactment but a perpetual one. The Division Bench was also of the opinion that Sections 4, 5 and 6 and Rules 1 and 3 of 1978 Rules cannot be invoked to hold that it is enacted with a limited life. The Court was also of the opinion that in view of Sections 12, 15 and 16 intention of legislature is clear that Adhiniyam was enacted as permanent measure. Apart from this, it is not in dispute that the period for filing the application was extended from time to time. In view of the dictum of this Court and the extension notifications issued by the State Government, it cannot be held that the application filed by said Chhabildas was barred by limitation.

For appreciation of the second question raised by the learned counsel for petitioners, it is necessary to see that what was in fact the intention of the legislature.

The preamble of the Act says that present is an Act to better economic condition of holders of agricultural land in the weaker sections of the people by providing further relief from agricultural indebtedness by nullifying the land grabbing designs resorted to in many a form by lenders of money while and after extending credit to them and matters connected therewith. The preamble further says that whereas it is necessary to relieve the holders of agricultural land in the weaker sections of the

people from such exploitation by nullifying such past transaction of loan as also to put a stop to such transaction.

From the preamble, it would clearly appear that the Act has been brought into existence to provide better economic conditions to the "holders of agricultural land"; save them from the land grabbing designs of the money lenders and provide them proper relief and to relieve them from the exploitation by nullifying past transactions.

It is trite that the legislature when enacts an Act for providing benefit to a particular person, class or classes, then the benefit is to be extended to that particular person, persons, class or classes only and none else.

Section 2(c) defines "holder of agricultural land" as under :-

"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 or four hectares of irrigated land with 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."

Section 2(f) of the Adhiniyam defines "prohibited transaction of loan" as under :-

"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 resell 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 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;
- (vi) words and expressions used but not defined in this Act and defined in the Code or the Transfer of Property Act, 1882 (No. IV of 1882) shall have the meaning

respectively assigned to them in the Code or that Act, as the case may be."

If these two definitions are read together, it would show that a transaction can be held to be a prohibited transaction of loan if the lender of money had advanced loan to holder of agricultural land. Under these circumstances, before seeking relief under the provisions of this Act, the applicant must satisfy the authority that on the date of the transaction, he was holder of agricultural land as defined under the Adhiniyam, 1976.

The Sub-Divisional Officer on basis of the Patwari report came to the conclusion that said Chhabildas was not having eight hectares of unirrigated land and after his death as he was survived by his wife and five sons, none of them would be possessing land beyond eight hectares, therefore, each of them would be falling within the purview of the definition of "holder of agricultural land". In the opinion of this Court, the approach was patently illegal. The Sub-Divisional Officer was required to see whether on the date of the transaction, deceased Chhabildas was holder of agricultural land or not. If on the date of the transaction, said Chhabildas was possessing more than eight hectares of unirrigated land, then certainly he was not falling within the definition. If any other construction is accepted, it would lead to anomalous situation because a person on the date of the transaction even if possessed 100s acres of land later on may transfer or alienate the same and on the date of the application may come and say that he does not have more than eight hectares of land, therefore, the benefits under the Act be given to him. The law says that the holders of agricultural land in the weaker sections of the people are to be protected from the land grabbing designs of the money lenders. The Court is required to see whether on the date of the transaction, the complainant was in fact holder of agricultural land or not. The Court is not required to see whether on the date of the application filed u/s 5 or on the date of the order to be passed by the Sub-Divisional Officer, whether he could be termed as "holder of land."

The definition of "prohibited transactions of loan" if is read in its true perspective, it would lead to an irresistible conclusion that only such transaction would be a prohibited transaction of loan in which a lender of money advances loan to a holder of agricultural land against the security. According to language, the loan must be advanced by the "lender of money" to the "holder of agricultural land". Any finding that on the date of the application or on the date of the final order such person was possessing less than eight hectares of unirrigated land would not provide any foundation for setting aside the transaction. When the loan is to be advanced to the holder of agricultural land, then the cause of action is the date of the loan and in accordance with the definition, the Tribunal or the Court is only required to see whether on the date of the transaction, he could be termed as holder of the agricultural land or not.

In the present case, the Collector on the basis of Kist Bandi Khatoni has found that the transactions were for the period between 1973 to 1975 and according to Kist

Bandi Khatoni for the year 1975-76, said Chhabildas was recorded Bhumiswami over 41.96 acres of land. Said 41.96 acres of land would in any case be not less than 16 hectares. If on the date of the transaction, said Chhabildas was possessed of 16 hectares of land, by no stretch of imagination, he could be termed as "holder of agricultural land". The Collector was certainly justified in setting aside the order passed by the Sub-Divisional Officer.

Though on the first point, I agree with the learned counsel for the petitioners, but on the merits, I am unable to grant any relief to the petitioners. These petitions, deserve to and are accordingly dismissed. There shall be no orders as to cost. Security amount, if any, be refunded to the petitioners in each of the case, after due verification.