(1961) 08 MP CK 0016

Madhya Pradesh High Court

Case No: L.P.A. No. 17 of 1959

Ram Kumar Dani		APPELLANT
	Vs	
State		RESPONDENT

Date of Decision: Aug. 4, 1961

Acts Referred:

- Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 - Section 5(f)

Citation: (1961) JLJ 1153

Hon'ble Judges: P.V. Dixit, C.J; K.L. Pandey, J

Bench: Division Bench

Advocate: J.V. Jakatdar and I.S. Mishra, for the Appellant; H.L. Khaskalam Addl. Govt. Advocate and P.R. Padhye, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

P.V. Dixit, C.J.
This is a Letters Patent appeal from an order of Shrivastava J. dismissing an application under Article 226 of the Constitution filed by the appellants challenging the validity of the settlement of 0.20 acres of land with respondents Nos. 2 to 8 and claiming a declaration that they were entitled to the said land.

2. The appellants'' case briefly was that the land in question was a part of an embankment of a tank which they were entitled to hold u/s 5 (f) of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (I of 1951). Before the appellants that tanks include "the pars around them." This contention Was accepted by the learned Single Judge, but he took the view that normally the pars would be of narrow width going round the tank or a part of it and in such cases they would certainly form part of the tank, but that in cases where the pars were of considerable width and armed not merely as ''pars'' for the retention of the water in the tank but covered a space of cultivable land, they could not be

considered a part of the tank. The learned Single judge proceeded to observe that in the latter type of cases it was usual to give separate khasra numbers to such pars and as in the present case the disputed 0. 20 acre forming a part of the pars had been built upon by the respondents, the appellants had no light to compel the State to settle that area with them.

3. Having heard learned counsel for the parties we have reached the conclusion that this appeal must be allowed. The learned Single Judge was no doubt right in holding that the words "embankments (bandhans) used in Section 5 (g) denote those plots of land which are surrounded by raised walls for the purpose of retaining water in them for better cultivation and that the absence of the use of the word ""embankments"" in clause (f) does not lead to the conclusion that the tanks referred to in that clause mean and denote only the pool or pond of water and not any construction or structure surrounding it. For the purpose of clause (f) a tank clearly includes an embankment as understood in its ordinary meaning. There are, however, no words in clause (f) to qualify the nature of embankment or pars surrounding a tank so as to limit the inclusion only of embankments of a certain height or base in a tank. If labour and material has been expended in the construction and maintenance of an embankment and if it has been constructed with a view to dam up water then the embankment irrespective of its height base or surface width is a part and parcel of the tank. It was never the case of the respondents that the ridge of earth surrounding the tank resulted from the forces of nature and was not any construction done by the appellants, and that the appellants were only entitled to the pool or pond of water. On the other hand, the appellants distinctly averred that the embankments had been constructed by their forefathers. If, as we think, for the purposes of clause (f) tanks include embankments, no matter what their width or height is, then the fact that the entire embankment or a portion of it has been recorded as grass land or is a waste land or has been built upon by others cannot disentitle the proprietor to hold the embankment under clause (f).

4. Learned Government Advocate was unable to refer us to any statutory provision sanctioning the practice of giving separate khasra numbers to "pars of wide width" and recording them as grass land or waste land. In the absence of any such statutory provision, it cannot be held that pars or embankment "of considerable width" cannot be considered as part of the tank. In this case it is noteworthy that the appellants have been allowed to retain possession of a major portion of the embankment of the tank. Their claim in relation to 0.20 acre forming a part of the embankment was disallowed merely because that land had been built upon by the respondents Nos. 2 to 8. If the appellants have been allowed to retain a major portion of the pars on the basis that it forms a part of the embankment and thus of the tank itself, then there is no reason to think that the disputed land which is also a part of the pars is not a part of the tank. If the land is a part of the tank, then it does not cease to be so merely because the respondents have used it for their own

purpose.

5. For the foregoing reasons the decision of the learned Single Judge is set aside. The settlement of the area of 0. 20 acre in question with respondents Nos. 2 to 8 is quashed and it is declared that the appellants are entitled to hold u/s 5 (f) of the Act the area of 0. 20 acre comprising of 0.18 acre in mauza Gudihari, tahsil and district Raipur; recorded as plot No. 1548, and 0. 20 acre in the same village recorded as plot No. 1551. The appellants shall have costs of this appeal and of the petition before the learned Single Judge from the respondents Nos. 2 to 8. Counsel''s fee is fixed at Rs. 50. The outstanding amount of the security deposit shall be refunded to the appellants.