

STATE OF MADHYA PRADESH & ORS.

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v.

SARDAR D. K. JADHAV

December 14, 1971

[C. A. VADILINGAM AND K. K. MATHEW, JJ.]

Madhya Bharat Abolition of Jagirs Act Samvat 2008 (Act 28 of 1951), ss. 2(1)(ix) and 5(c)—'Occupied land' what is—Protection of s. 5(c) whether available where area of tanks is partly occupied by Jagirdar and partly by tenants.

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Under s. 5(c) of the Madhya Bharat Abolition of Jagirs Act Samvat 2008 (Act 28 of 1951) all tanks, trees etc. in or on 'occupied lands' belonging to or held by the Jagirdar or any other person were excluded from vesting in the State by virtue of s. 4. The respondent filed a writ petition in the High Court claiming that certain tanks built by himself and his predecessor-in-title were on 'occupied land' and therefore came within the protection of s. 5(c). The original order passed by the High Court in the writ petition was set aside by this Court and the High Court was directed to decide afresh the claim made by the writ petitioners under s. 5(c) of the Act. After considering the evidence before it on this question the High Court held that the tanks in question were saved under s. 5(c) and they had not vested in the State under the Abolition Act. In appeal by the State to this Court,

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HELD : 'Occupied land' as defined in s. 2(1)(ix) of the Act comprises broadly two types of lands: (1) four categories of land held under the tenures enumerated in sub-clauses (a) to (d); and (2) comprised in Khud-Kasht and 'homestead'. To attract cl. (c) of s. 5 the tank must be shown in the first instance to be on occupied land that is on land comprised under the tenures enumerated in sub-clauses (a) to (d) or in the land held as khud-kasht and homestead. It is not necessary that the entire tank should be exclusively situated in the land held as khud-kasht and land comprised in homestead. The requirement of the tanks in question being an occupied land will be satisfied even if part of the tank is situated in one or the other of the tenures mentioned in sub-clauses (a) to (d) of cl. (ix) of s. 2(1) and the rest of it is included in the land held as khud-kasht and the land comprised in a homestead. That is, the entire area of the tank must be comprised in either the tenures or the khud-kasht or homestead or in both. Therefore it was not possible to accept the contention advanced on behalf of the appellant State that only those tanks which are on khud-kasht land of the Jagirdar are saved to him. Acceptance of such a contention will be ignoring the clear working of cl. (ix) of s. 2(1) which takes in also lands held on the various tenures referred to therein. [871 D-G]

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Therefore in the present case the mere fact that a part of the tanks was in the occupation of the tenants as tenure-holders did not detract from the operation of the saving cl. (c) of s. 5. The expression 'any other person' is comprehensive enough to take in the persons who were holding the land on one or the other of the tenures enumerated in sub-clauses (a) to (d) of s. 2(1)(ix) of the Abolition Act. Whatever may be the extent of the tanks in the possession of the respondent, as his khud-kasht or homestead and in the possession of the tenure-holders the position ultimately was that the entire extent of the tanks was in 'occupied land' belonging to or held by the Jagirdar or any other person. [872 H-873 B]

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A The judgment of the High Court must accordingly be upheld.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 32 of 1971.

Appeal from the judgment and order dated March 12, 1970 of the Madhya Pradesh High Court in Miscellaneous Petition No. 184 of 1965.

I. N. Shroff, for the appellants.

V. S. Desai, S. K. Mehta, K. L. Mehta, V. K. Sapre and *K. R. Nagaraja*, for the respondent.

C The Judgment of the Court was delivered by

Vaidialingam, J. The short question that arises for consideration in this appeal, on certificate, is whether the High Court has complied with the directions given by this Court in its judgment dated January 25, 1968 in Civil Appeals Nos. 1244 and 1245 of 1967 and adjudicated upon the question whether the

D claim made by the respondent that the tanks and wells in question were constructed on "occupied land" belonging to the Jagirdar within the meaning of s. 5(c) of the Madhya Bharat Abolition of Jagirs Acts, Samvat 2008 (Act 28 of 1951) (hereinafter to be referred as the Abolition Act).

E The facts leading up to the present decision of the High Court may be stated: In Samvat 1885 the Ruler of the erstwhile Gwalior State conferred on the predecessor in title of the respondent the Jagir of Mauza Siroli situated in Pargana Gwalior. The Abolition Act came into force on December 4, 1952. Section 3 provides for resumption of Jagir-lands by the Government. Under sub-section (3), the date appointed under s. 3 as

F the date for resumption of Jagir-lands is "the date of resumption". After the issue of notification under s. 3, appointing a date for resumption, all the property in the Jagirdar including Jagir-lands, forest, trees, fisheries, wells, tanks, ponds etc. stood vested in the State under s. 4 of the Abolition Act. But under s.5(c) all tanks, trees, private wells and buildings in or on the occupied lands, belonging or held by the Jagirdar or any other person, were excluded from vesting.

H After the abolition of Jagirs under the Abolition Act, proceedings were initiated for determining the compensation payable to the respondent and the same was determined. Out of the amount, so determined, certain loans were deducted and the balance amount was paid. The Madhya Pradesh Land Revenue

position ultimately was that the entire extent of the tanks was in 'occupied as the Code) came into force on October 2, 1959. Section 251

of the Code provided for vesting in the State Government all tanks situated on unoccupied lands, in the circumstances mentioned therein. The said section made provision for claiming compensation in the manner laid down therein.

The respondent on April 5, 1961 made an application to the Collector, Gwalior under s. 251 of the Code claiming compensation for tanks which, according to him, had been built by himself and his predecessor in title over an area of 1679 bighas and 18 biswas of land. There were various orders passed by the authorities in connection with the said claim for compensation.

The respondent moved the Madhya Pradesh High Court under Art. 226 of the Constitution by two writ petitions to quash two orders of the Collector of Gwalior and two orders of the Additional Commissioner, Gwalior Division. The writ petitions were opposed by the State on the ground that the four tanks claimed by the writ petitioner were really not tanks and in any case the tanks were not on "occupied land" within the meaning of s. 5(c) of the Abolition Act and the wells claimed by him had also vested in the State under s. 4(1)(a) of the Abolition Act.

The High Court by its judgment dated November 30, 1966 allowed the writ petitions and quashed the four orders, referred to above, on the ground that the claim made by the respondent that the tanks were on "occupied land" under s. 5(c) of the Abolition Act, has to be decided by the Jagir Commissioner in the manner required under s. 17 of the said Act.

The State challenged before this Court in Civil Appeals Nos. 1244 and 1245 of 1967, the decision of the Madhya Pradesh High Court. The contention raised on behalf of the State was that s. 17 of the Abolition Act had no application and that it was the function of the Jagir Commissioner alone to inquire whether the claim of the writ petitioner under s. 5(c) of the Abolition Act was well founded on merits and then refer the matter for the final decision of the Government under s. 17 of the Abolition Act. After a consideration of the scheme of the Abolition Act and in particular of s. 17, this Court accepted the contention of the State and held that the inquiry contemplated under s. 17 by the Jagir Commissioner relates to compensation to be paid to the Jagirdar whose Jagir is vested in the State Government and once the compensation is determined and paid, no further inquiry under s. 17 is contemplated. In this view, by its judgment dated January 25, 1968, this Court set aside the orders passed by the High Court.

This Court further held that the writ petitioner, namely, the present appellant before us, is not left without any remedy to

- A agitate his claim that the tanks and wells claimed by him were constructed on occupied land and that they have been saved from vesting in the Government under s. 5(c) of the Abolition Act. It was held that if the writ petitioner was able to establish this plea, the State Government will have no power or authority to take possession of such tanks and wells, as the title thereto
- B did not vest in it in view of s. 5(c) of the Abolition Act. It was further held that s. 5(c) has an over-riding effect on s. 4 of the Abolition Act. In this view this Court held that it was the duty of the High Court to have decided the jurisdictional fact as to whether the tanks and wells claimed by the present respondent belonged to the Jagirdar within the meaning of s. 5(c) of
- C the Abolition Act and that, if the High Court accepted the said contention, the High Court was competent to issue a writ under Art. 226 of the Constitution directing the State to hand over possession of the said tanks and wells to the writ petitioner. Ultimately, for all the reasons given in its judgment, this Court set aside the decision of the High Court and remanded the proceedings for deciding afresh the claim made by the writ petitioner under s. 5(c) of the Abolition Act. Liberty was given to the parties to place before the High Court such further evidence, oral and documentary, as they may desire to give on the point at issue. The main judgment was given in Civil Appeal No. 1245 of 1967. For the same reasons given in the said judgment, Civil Appeal 1244 of 1967 was also remanded in accordance with the directions given in Civil Appeal No. 1245 of 1967. The said decision of this Court is reported in *State of Madhya Pradesh and others v. Sardar D. K. Jadhav*⁽¹⁾.

- F After remand, when the matter was taken up by the High Court, both the appellant and the respondent, filed many documents and examined witnesses with particular reference to the claim regarding the wells and the tanks made by the respondent under s. 5(c) of the Abolition Act.

- G The respondent laid his claim on the ground that the tanks and wells had been constructed on lands which were his Khudkasht lands as also on lands held on tenure by other persons. But ultimately his claim was on the basis that the wells and tanks were all on occupied land belonging to the Jagirdar or any other person, as laid down under s. 5(c) of the Abolition Act.

- H The State, on the other hand, denied the right of the respondent to claim any right in the said tanks and wells on the ground that they were not located on occupied land belonging to the Jagirdar, but were situated on lands which were in the possession of tenants. Hence, according to the State, the said tanks and

(1) [1968] 2 S.C.R. 823.

wells were not saved to the respondent under s. 5(c) of the Abolition Act, and that they have vested in the State, as rightly held by the Revenue authorities. In short, the contention of the State appears to have been that only those tanks and wells, which are on occupied land belonging to the Jagirdar and in his possession as Khudkasht land alone are saved under s. 5(c) of the Abolition Act.

At this stage we may mention that though the respondent laid claim to certain wells also in addition to the tanks, it is seen from the judgment of the High Court that during the stage of arguments, it was represented on his behalf that three out of five wells were already in his possession and that no adjudication is necessary regarding those wells. Regarding the other two wells, it is also seen that the respondent abandoned his claim before the High Court. Therefore, the entire controversy, which the High Court had to decide centred round the claim, regarding the tanks, made by the respondent under s. 5(c) of the Abolition Act.

Though various matters have been adverted to by the High Court in its judgment, its material findings are as follows : That the four tanks as also the pick-up weir are tanks within the meaning of the Abolition Act. The four tanks as also the pick-up weir belonged to the respondent at the time of the resumption of Jagirs under the Abolition Act, namely, December 4, 1952; Section 5(c) is clearly attracted if the right of ownership or possession of the tanks belonged either to the Jagirdar or to any other person as against the said right belonging to the community at large or the State. The fact that a part of the bed of the tanks may be in the occupation of tenants is of no consequence in holding in favour of the respondent under s. 5(c) of the Abolition Act; The entire area of the tanks in the possession of the respondent must as his Khud Kasht land and also in the occupation of the tenants are both saved under s. 5(c) and do not vest in the State under s. 4 of the Abolition Act. On these findings, the High Court accepted the contention of the respondent and held that the tanks claimed by him are saved under s. 5(c) and they have not vested in the State under the Abolition Act.

We may state at this stage that the High Court has not thought it necessary to consider the precise area of each one of the tanks as the tenants were not parties to the proceedings. Ultimately, the High Court held that on resumption of Jagirs under the Abolition Act, the four tanks and the pick-up weir are saved to the respondent under s. 5(c) of the Abolition Act, subject to certain observations contained in the judgment. In consequence, the High Court quashed the four orders of the Revenue authorities, referred to, in the judgment.

A Though Mr. I. N. Shroff, learned counsel for the State, has raised several contentions, in our view, most of them do not survive in view of the specific directions contained in the order of remand passed by this Court. The only two contentions that have been advanced by him and require to be considered are : (1) That the High Court has not complied with the directions given by this Court in its order of remand; and (2) The High Court has not found that the said tanks are situated on "occupied land" so as to be saved under s. 5(c) of the Abolition Act. The counsel has, no doubt, pointed out certain other circumstances, which, according to him, constitute an infirmity in the judgment of the High Court.

C On the other hand, Mr. V. S. Desai, learned counsel for the respondent, has pointed out that the directions of this Court have been fully complied with and that after a very elaborate consideration of the materials placed before it by both the parties, the High Court has recorded a finding that the tanks claimed by the respondent are on "occupied land" belonging to or held by the Jagirdar or any other person as required under s. 5(c) of the Abolition Act. The fact that the High Court has not considered it necessary to adjudicate upon the exact area of the tanks is of no consequence because that is a matter to be decided as between the Jagirdar and the other tenure-holders, if any. Once the requirement that the tanks are on occupied land and that they belong to the Jagirdar or to any other person, is satisfied, they are saved under s. 5(c) of the Abolition Act. That was the only point that the High Court was directed to adjudicate upon and on that aspect clear findings have been recorded by it.

F Before we deal with the contentions of the learned counsel on both sides, it is necessary to refer to the material provisions of the Abolition Act. The expressions "Homestead" and "Occupied land" are defined in sub-clauses (iv) and (ix) of s. 2(1) and they are as follows :

"2(1) In this Act unless the context otherwise requires—

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G (iv) "Homestead" means a dwelling-house together with any court-yard, compound, attached garden or bari, and includes any out-building used for agricultural purposes and any tank or well appertaining to the dwelling-house.

H (ix) "Occupied land" means land held immediately before the commencement of this Act on any of the following tenures, namely,

- (a) Ex-proprietary;
- (b) Pukhta Maurusi;
- (c) Mamuli Maurusi;
- (d) Gair Maurusi;

and includes land held as Khud-kasht and land comprised in a homestead;"

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"Section 5 : Private wells, trees, buildings, house-sites and enclosures.—Notwithstanding anything contained in the last preceding section—

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- (c) all tanks, trees, private wells and buildings in or on occupied land belonging to or held by the Jagirdar or any other person shall continue to belong to or, be held by such Jagirdar or other person."

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Regarding the first contention we are satisfied that the High Court has complied with the directions given by this Court in its remand order. The High Court was directed to decide the jurisdictional fact as to whether the tanks and wells claimed by the respondent belonged to the Jagirdar and were saved under s. 5(c) of the Abolition Act. Therefore, the only investigation that had to be made by the High Court was on the point, referred to above. In fact, it is seen that the High Court has been very considerate when it allowed the appellant to raise various other questions, such as, the *locus standi* of the respondent, to file the writ petition, the question of non-impleading of the tenants in possession of lands over which part of the tanks are situated and the undue delay in filing the writ petition. Further, the High Court has allowed the appellant to raise the question that the respondent is estopped from seeking relief regarding the tanks under s. 5(c) in view of the stand taken by him before the Revenue authorities in his application for award of compensation. These matters should not have been permitted to have been raised by the appellant. If these contentions were available to the appellant, they should have been raised before this Court in the appeals, referred to earlier. Any how the High Court has gone into those matters and held against the appellant. Therefore, far from not complying with

- A** the directions given by this Court, it has even allowed the appellant to raise certain contentions which were not available to it at the stage when the matter was being considered after remand. Therefore, the first contention will have to be rejected straight-away.
- B** Regarding the second contention, it is also clear from the judgment of the High Court that it has very elaborately considered the various aspects presented to it, both by the appellant as well as the respondent. After a consideration of the materials so placed before it and having due regard to the provisions of the Abolition Act, the High Court, as we have pointed out earlier, has considered, as directed by this Court, the main question whether the tanks are saved under s. 5(c) of the Abolition Act. In that connection the High Court had naturally to consider the scope of the definition of "Occupied land" under s. 2(1)(ix) of the Abolition Act. It is after a consideration of all these aspects that the High Court has found that the four tanks belonged to the respondent at the time of resumption and the said tanks were on occupied land belonging to the Jagirdar or any other person. Therefore, it considered the question properly as per the remand order and has given a finding on the same. As to whether the said finding is correct or not, is a different matter. But the criticism that it has not considered the point regarding the saving of the tanks under s. 5(c) of the Abolition Act, cannot be accepted.
- E** Now coming to the merits, it is clear that as and from the date of resumption, the consequences enumerated under s. 4 will have full effect. Except as otherwise provided in the Abolition Act, normally under cl. (a) of Section 4(1) the right, title and interest of every Jagirdar and of every other person claiming through him in his Jagir lands including among other items, tanks, shall stand resumed to the State. The saving is provided under s. 5. If the respondent is able to establish that the tanks in question are on occupied land belonging or held by the Jagirdar or any other person, then those tanks are saved in favour of the respondent under s. 5(c) of the Abolition Act. It may be mentioned at this stage that though the items are all described as tanks, it is in evidence that they get sub-margined at times and at other times portions of the same are being cultivated either by the respondent or by other persons under certain tenures. That is, parts of the tanks are included and held by the respondent as khud kasht and rest of it is held by the tenure-holders, who have got tenancy rights over them.
- H** As the other tenure-holders, namely, the tenants, were not parties before the High Court, the question of the extent of the area of the tanks was not decided and it was left open. But the

entire extent of the tanks had been given by the respondent as 1679 bighas and 18 biswas of land and this claim was fully known to the Revenue authorities, who raised the specific plea that the said tanks are not on occupied land. Therefore, the circumstance that the High Court did not adjudicate upon the question of the extent of the tanks, is of no consequence and it is not material for the point in dispute.

In order to get the tanks in question saved under s. 5(c) of the Abolition Act, the respondent will have to establish : (a) They were on occupied land; and (b) They belonged to or were held by the Jagirdar or any other person.

We have already extracted the definition of "occupied land". The essential ingredient of such land is that it must have been held immediately before the commencement of the Abolition Act under one or other of the four tenures mentioned in sub-cls. (a) to (d). We have not been shown about the existence of any other type of tenure. The occupied land will also include as per the definition lands held by the Jagirdar as khud kasht as well as the land comprised in a homestead. Therefore, occupied land comprises broadly of two types of lands: (1) four categories of land held under the tenures enumerated in sub-clauses (a) to (d); and (2) comprised in khud-kasht and "Homestead". To attract cl. (c) of s. 5, the tank must be shown, in the first instance, to be on occupied land, that is, on land comprised under the tenures enumerated in sub-clauses (a) to (d) or in the land held as khud-kasht and homestead. In our opinion, it is not necessary that the entire tank should be exclusively situated in one or other of the tenures enumerated in sub-clauses (a) to (d) of s. 2(1)(ix) or exclusively in the land held as khud-kasht and land comprised in homestead. The requirement of the tanks in question being on occupied land, will be satisfied even if part of the tanks is situated in one or other of the tenures mentioned in sub-clauses (a) to (d) of cl. (ix) of s. 2(1) and the rest of it is included in the land held as khud-kasht and land comprised in a homestead. That is, the entire area of the tank must be comprised in either the tenures or the khud-kasht and homestead or in both. Therefore, it is not possible to accept the contention advanced on behalf of the appellant State that only those tanks, which are on khud-kasht land of the Jagirdar are saved to him. Acceptance of such a contention will be ignoring the clear wording of cl. (ix) of s. 2(1), which takes in also lands held on the various tenures referred to therein.

From this, it follows that the mere fact that a part of the tanks is in the occupation of the tenants as tenure-holders does not detract from operation of the saving cl. (c) of s. 5. There is no controversy that at the material date the occupied lands on which

- A** tanks are situated belonged to or were held by the Jagirdar or any other person. The expression "any other person" is comprehensive enough to take in the persons who were holding the land on one or other of the tenures enumerated in sub-clauses (a) to (d) of s. 2(1) (ix) of the Abolition Act. Whatever may be the extent of the tanks in the possession of the respondent, as his khud-kasht or homestead and in the possession of the tenure-holders, the position ultimately is, that the entire extent of the tanks is in "occupied land" belonging to or held by the Jagirdar or any other person. The actual extent and the area held by the Jagirdar and the tenure-holders can be worked out only in the presence of both those parties.
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- C** To conclude, we are satisfied that the High Court has applied the correct test to find out whether the tanks are saved under s. 5(c) of the Abolition Act. We are also in agreement with the finding of the High Court that the four tanks and the pick-up weir are saved to the respondent under s. 5(c) of the Abolition Act.
- D** In the result, the judgment and order of the High Court are confirmed and this appeal dismissed with costs.

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Appeal dismissed.