

ITEM NO.1

COURT NO.14

SECTION IVA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).4556/2008
(From the judgement and order dated 27/06/2007 in WA No.
1051/2007 of The HIGH COURT OF M.P AT JABALPUR)

OM PRAKASH GUPTA

Petitioner(s)

VERSUS

RAM DAS GADARI & ORS.

Respondent(s)

Date: 24/09/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA
HON'BLE MR. JUSTICE ANIL R. DAVE

For Petitioner(s)

Mr. Shree Pal Singh,Adv.
Mr.Rahul Singh,Adv.
Mr.K.Sita Rama Rao,Adv.
Mr.Anmol B.Karande,Adv.

For Respondent(s)

Ms.Suparna Srivastava,Adv.
Mr. Ram Swarup Sharma,Adv.

Mr.S.N.Rai,Adv.
Mr.Kirti Kumar,Adv.
Mr.Dharmendra Kishor,Adv.
Mr. K.N. Rai ,Adv

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The Appeal is disposed of in terms of the signed order.

(KUSUM SYAL)
SR.P.A.

(RENU DIWAN)
COURT MASTER

(Signed Order is placed on the file)

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8270 OF 2010
Arising out of Special Leave Petition No.4556 OF 2008

OM PRAKASH GUPTA

Appellant(s)

VERSUS

RAM DAS GADARI & ORS.

Respondent(s)

O R D E R

Leave granted.

We have heard the learned counsel appearing for the appellant as also counsel for the respondents.

The subject matter of the present appeal had come before this Court on an earlier occasion by way of an appeal being Civil Appeal No. 564 of 1978. In the said round of litigation between the parties, this Court held that since sanction of the Collector as required under Section 188 of the Bhopal State Land Revenue Act, 1932 (hereinafter referred to as the Act) was not taken by the appellant, therefore, the transfer of land made in favour of the appellant herein was in contravention of Section 188 of the Act. It was also held that such transfer made in contravention of the aforesaid provision could only be legalised by the grant of sanction by the Collector and until such sanction is given or in the event of its refusal, the sale is to

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be treated as usufructuary mortgage on the terms and conditions prescribed by the Collector. The Supreme Court held that the appellant would have a surviving right to the land only if he is usufructuary mortgagee under Section 197 of the Act and that also for a period of 12 years. The Supreme Court directed the Collector to determine whether Hiralal had any surviving right as usufructuary mortgagee.

The matter was considered by the Reference Authority in terms of the order and held that Hiralal had completed 12 years term. The said order was challenged before the High Court. By passing the impugned judgment and order, the High Court has held that the appellant is in possession of the property for more than 12 years and therefore he has not only completed the term of 12 years in the year 1979 but is in fact overstaying. Since the aforesaid 12 years period is over as far as back as 1979 therefore, it was held by the High Court that the appellant has no further surviving right to be in possession of the property and accordingly the writ petition and consequent writ appeal

were dismissed by the High Court.

As the appellant has completed the term of 12 years in the year 1979, therefore the appellant cannot and does not have any surviving right to be a usufructuary mortgagee any more. The appellant therefore no further right in the property. He was also unable to show any sanction or approval from the Collector.

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In that view of the matter, there is no merit in this appeal, which is dismissed.

.....J
(DR.MUKUNDKAM SHARMA)

.....J
(ANIL R.DAVE)

NEW DELHI
SEPTEMBER 24, 2010