Rishabh Bhargava
Research Scholar
Indore Institute of Law, Indore, India
Email: rishabhbhargava623@gmail.com

ABSTRACT

Chapter XII of MPLRC (Madhya Pradesh Land Revenue Code), 1959 deals with the Bhumiswami, their rights and liabilities. The definition of the word Tenant in this clause is exhaustive. Accordingly, the first condition for a person to be tenant under this clause is that he should hold land from Bhumiswami. Moreover a person, who holds land from a Bhumiswami, should hold it as an occupancy tenant under chapter XIV of MPLRC. Under this code a Tenant means a person who holds land as an occupancy tenant from a Bhumiswami but the status of a Bhumiswami is recognized for the first time by this code and an Occupancy tenant from a Bhumiswami would mean only a person belonging to that class who acquires right of occupancy tenant after the code comes into force.

Generally Bhumiswami or Tenure holder means the owner of the land. They are neither government lessee nor government tenants, simply they are the owners of the land. In spite of the ownership does not vest absolutely in them as according to section 57, state government is owner of all the land but except for the state government, such persons are owners against everyone else. All those persons who were holding land from the government under the various land revenue tenancy laws operative in different parts of the state were brought under the present code and were conferred the status of Bhumiswami under Section 158 of the code. The classes of persons who are termed as Bhumiswami from the date of coming into force of this code are mentioned in clauses (a) to (e) of sub section 1 of section 158 of the code.

Thus this further study looks at the cases regarding different types of Bhumiswami’s, their rights, general interpretation and their claims.

Keywords: Bhumiswami rights and liabilities

INTRODUCTION

History of Land Revenue Code

From time immemorial mankind had distinct association with land. In fact primitive life style was basically land based. Land is one of the major five elements of nature. Almost all cultures, civilizations and Empire were land oriented. Land will continue to exert prime influence on mankind till life exists on earth.

It is a basic source of sustenance of life for all creatures on earth. Let us gratefully respect it and resolve ourselves to enhance its sanctity and fertility. Even in contemporary times land exerts immense influence in our country where 70% of the population which is settled in country side depends on agriculture. Therefore the system of land revenue and land tenure is significant. Some of the Historical backdrops of Land Revenue Legislations are as follows

1. Survey and Settlement Act, 1865.
2. Survey and Settlement (Amending) Act, 1868.
4. The Bombay Land Revenue (Amended) 1913.

Similarly as Legislature might have been not in session, the Bombay Land Revenue Code, (Extension to Saurashtra Area) Ordinance, 1959 (II of 1959) was promulgated to augment the Bombay Land Revenue Code 1879. There was also another enactment on the subject namely the Bombay Revenue Tribunal Act, 1957 which was applicable to the whole state.

To unify and consolidate different acts on the subject of ‘Land and Land Revenue’ into single enactment for application to whole state culminated into our present The Maharashtra Land Revenue Code, 1966.

The brief history of about last 500 years does not necessarily imply that there was no Land Revenue code in ancient India. The ruins of buried cities found in Mohan-jo-daro and Harappa reveals the knowledge of Town Planning prevailing in those days. The land and construction are integral components of Agriculture. In ancient India 1500 years prior to Todarmal our country was rich in Buddhist Architecture. Mighty Emperors like Chandragupta Maurya and Ashoka were great builder. Therefore it is unrealistic to construe that first recorded survey of land was executed by Todarmal in 1540-1545 A.D. The art of measuring land and establishing qualities of soil and its productivity was known in Ancient Indian beyond doubt.

MPLRC (Madhya Pradesh Land Revenue Code), 1959

An act to consolidate and amend the law relating to land revenue, the powers of Revenue officers, rights and liabilities of holders of land from the state government agricultural tenures and other matters relating to land and the liabilities incidental thereto in Madhya Pradesh. Be it enacted by the Madhya Pradesh Legislature in the 10th year of the Republic of India.

This Act may be called The Madhya Pradesh Land Revenue Code, 1959. It extends to the whole of Madhya Pradesh but nothing contained in this Code except the provisions relating to liability of land for payment of land revenue, the assessment of land revenue with reference to the use of land, realisation of land revenue and all provisions ancillary thereto shall apply to such areas as may, from time to time, be constituted as reserved or protected forest under the Indian Forest Act, 1927 (XVI of 1927). This Code shall come into force on such date as the State Government may, by notification, appoint.

1. The MPLRC (Madhya Pradesh Land Revenue Code), 1959 came into force on 2nd October 1959.
2. Under MPLRC, Agriculture year means the year commencing on the 1st date of July. The dates of commencement of Agricultural year and Revenue year shall be appointed by state government.
3. The date which is notified by state government as the date of commencement of Revenue year is 1st October.
4. The Principal seat of Revenue Board is in Gwalior (M.P.).
5. Under MPLRC, State government is the owner of all lands of the state.
6. A person who at the time of coming into force of the MPLRC, 1959 Held a land as a Pattedar tenant in the Vindhya Pradesh region shall be called as a Bhumiswami.
7. On his death, the interest of Bhumiswami shall not pass by any contract. Also a Bhumiswami can transfer his land on lease for a period of one year in 3 consecutive years.
8. Under MPLRC, 1959 Within 2 years, the non tribal Bhumiswami may apply for restoration of possession of his land from where he has been illegally dispossessed.

9. When a Bhumiswami is deemed to abandon his rights (a) if he has ceased to cultivate his holdings for 2 years. (b) if he has not paid the land revenue. (c) if he has left the village of his usual residence.

10. The position of a Tenant prior to the date on which the code brought was into force does not appear to have been dealt within this definition. The definition which is specially devised for the purpose of the code throws no light on the nature of the right which invests the holder of land with the status of an occupancy tenant at the commencement of the code.

**Bhumiswami**

Before going to the term Bhumiswami, it’s important for us to understand the term ‘Tenant.’ Tenant means a person holding land from a Bhumiswami as an Occupancy Tenant under Chapter XIV [Sec 2 (1) (y), MPLRC, 1959]

**Tenant**

The definition of the word ‘Tenant’ in this clause is exhaustive. The first condition for a person to be tenant under this clause is that he should hold land from Bhumiswami. Further it is provided that the person holding land from a Bhumiswami, should hold it as an occupancy tenant under Chapter XIV of MPLRC, 1959. A tenant is by the definition a person who holds land as an occupancy tenant from a Bhumiswami but the status of a Bhumiswami is recognized for the first time by the code and an occupancy tenant from a Bhumiswami would mean only a person belonging to that class who acquires rights of an occupancy tenant after the code comes into force.

The position of a tenant prior to the date on which the code was brought into force does not appear to have been dealt within this definition. The definition which is specially devised for the purpose of the code throws no light on the nature of the right which invests the holder of land with the status of an occupancy tenant at the commencement of the code.

**Tenure Holder**

Tenure holder means a person who holds land from the state government and who is or is deemed to be Bhumiswami under the provisions of this code [Sec 2 (1) (z), MPLRC, 1959].

The definition of Tenure Holder under the clause is very simple. A person is called “Bhumiswami” who holds land from the state government and is either Bhumiswami or deemed to be Bhumiswami under this code. For a person, who is called Bhumiswami, provisions of chapter XII should be looked into. Section 157 says that there will be only one class of tenure holder and the name given to him is Bhumiswami.

**Class of Tenure**

There shall be only one class of Tenure-Holders of land held from the state to be known as Bhumiswami.

By enacting section 157 of the code, the Legislature has declared that ownership in all lands etc belong to the state government. But it is not necessary that all such lands are held by the state government. This section for the first time says that from the state government, all person holding land as tenure holders shall be called Bhumiswami, meaning thereby owner of the land. (Sec 158, MPLRC, 1959)

Even though absolute ownership does not vest in such persons, still leaving aside the state government, such persons are owners against everyone else. They are neither tenants nor government lessees who are dealt with separately.

In the case of Atmasingh v. Bhagwandas [1995 RN 311 (HC)], it was held that every person who at the time of coming into force of this code, belongs to any of the following classes shall be called a
Bhumiswami and shall have all the rights and be subject to all the liabilities conferred or imposed upon a Bhumiswami by or under this code.

In the case of Hanumant Singh v. Shafique Ahmed Khan [1997 (2) MPW 441], it was held that for the first time the MPLRC, 1959, Vide section,157 has called certain classes of persons ‘Bhumiswami’ and has declared that such Bhumiswami’s shall have all the rights and be subject to all the liabilities conferred or imposed upon a Bhumiswami by or under this code. The provisions of the code do not apply to evacuee property vested in the central government.

Now it’s very important to discuss about the term Bhumiswami

**Bhumiswami**

The code used the term Bhumiswami for the tenure holder but the proper word used should be Bhumidhari which means holder of the land on certain statutory terms and conditions. A Bhumiswami is known as the tenure holder but he is not the holder of tenancy rights. The code only adopted the word Bhumiswami to represent tenure holders of the state but Bhumiswami is a misnomer for a tenure holder.

According to Section 158 of MPLRC, 1959

[(1)] Every person who at the time of coming into force of this code, belongs to any of the following classes shall be called a Bhumiswami and shall have all the rights and be subject to all the liabilities conferred or imposed upon a Bhumiswami by or under this code, namely :-

(a) every person in respect of land held by him in the Mahakoshal region in Bhumiswami or Bhumidhari rights in accordance with the provisions of the MPLRC, 1954 (II of 1955);

(b) every person in respect of land held by him in the Madhya Bharat region as a Pakka tenant or as a Muafidar, inamdar or concessional holder, as defined in the Madhya Bharat Land Revenue and tenancy Act, samvat 2007 (66 of 1950);

(c) every person in respect of land held by him in the Bhopal region as an occupant as defined in the Bhopal state Land Revenue Act, 1932 (IV of 1932);

(d) (i) every person in respect of land held by him in the Vindhya Pradesh region as a pachapan paintalis tenant, pattedar tenant, a grove holder or as a holder of tank as defined in the Vindhya Pradesh Land Revenue and Tenancy Act, 1953 (III of 1955)

(ii) every person in respect of land (other than land which is a grover or tank or which has been acquired or which is required for government or public purposes) held by him in the Vindhya Pradesh region as a gair haqdar tenant and in respect of which he is entitled to a Patta in accordance with the provisions of sub-section (4) of section 57 of the Rewa Sate Land Revenue and Tenancy code,1935;

(iii) every person in respect of land held by him as a tenant in the Vindhya Pradesh region and in respect of which he is entitled to a patta in accordance with the provisions of sub- sections (2) & (3) of section 151 of the Vindhya Pradesh Land Revenue and Tenancy Act, 1953 (III of 1955), but has omitted to obtain such patta before the coming into force of this code,

(e) every person in respect of land held by him in Sironj region as a khatedar tenant or as a grove holder as defined in the Rajasthan Tenancy Act, 1955 (3 of 1955).

[(2)] a Ruler of an Indian state forming part of the state of Madhya Pradesh who, at the time of coming into force of this code, was holding land or was entitled to hold land as such Ruler by virtue of the covenant or agreement entered into by him before the commencement of the constitution, shall, as from the date of coming into force of this code, be a Bhumiswami of such land under the code and shall be subject to all the rights and liabilities conferred and imposed upon a Bhumiswami by or under this code.

[(3)] every person –
(i) who is holding land in Bhumiswami right by virtue of a lease granted to him by the state government or the Collector or the Allotment officer on or before the commencement of the MPLRC (Amendment) Act, 1992 from the date of such commencement, and

(ii) to whom land is allotted in bhumiswami right by the state government or the Collector or the Allotment officer after the commencement of the MPLRC (Amendment) Act, 1992 from the date of such allotment,

Shall be deemed to be a bhumiswami in respect of such land and shall be subject to all the rights and liabilities conferred and imposed upon a bhumiswami by or under this code:

Provided that no such person shall transfer such land within a period of ten years from the date of lease or allotment.

Explanation – In this section, the expression “Ruler” and “Indian State” shall have the same meanings as are assigned to these expressions in clauses (22) and (15) respectively by Article 366 of the Indian Constitution.

**ACTUAL BHUMISWAMI RIGHTS TO AN OCCUPANCY TENANT**

**Bhumiswami Rights**

A Bhumiswami pays land revenue to the government under Section 159. Every person belonging a Bhumiswami under section 158 shall pay as land revenue – (a) if he was paying land revenue in respect of the lands held by him – such land revenue; or (b) if he was paying rent in respect of the lands held by him – an amount equal to such rent.

According to Section 164, Subject to his personal law the interest of a Bhumiswami is heritable and passes on his death by inheritance, survivorship or bequest as the case may be.

Subject to certain restrictions contained in Section 165 and 168, A Bhumiswami may transfer any interest in his land.

A Bhumiswami can also lease his land but the restriction is that normally he cannot lease any land for more than one year during any consecutive period of three years. There is no restriction for grant of leases in respect of certain categories of Bhumiswami, such as widow, unmarried women and persons suffering from social, physical or mental disabilities. This is provided in Section 168 (2).

In the case of Nahar v. Dulkalhin (1974 JLJ 250), it is important to notice that there is no provision in the act for ejectment of a Bhumiswami at the instance of the government. These features clearly show that as it was held by J. Dubey that there is no relationship of landlord and tenant between the government and the Bhumiswami.

In the case of Sardar Virendra Singh v. Additional Property Tax Commissioner [1981(II) MPWN 58 (DB)], it was held that a Bhumiswami is called a Tenure Holder but he is not a holder of tenancy rights. The Bhumiswami in these circumstances can well be described as the owner of the land or more correctly owner of the rights in the land which he holds under the state.

**Occupancy Tenant**

Section 185 of MPLRC, 1959 basically talks about the Occupancy Tenants but the MPLRC recognizes only one type of Tenure holders, namely a Bhumiswami. All those persons who were holding land from the government under the various land revenue tenancy laws operative in different parts of the state were brought under the present code and were conferred the status of Bhumiswami under Section 158 of the code.

In the case of Khushilal v. Board of Revenue (1967 JLJ 296), it was held that, it would appear illogical to assume that the legislature conferred bhumiswami rights on the holders of land excepting the Muafidars, when Muafidars from other regions were made Tenure Holders. The context of the act
thus requires that the definition of an Occupant should be interpreted liberally so as to include a Muafidar also.

In the case of Hanumant Singh v. Shafique Ahmed Khan [1997 (2) MPW 441], it was held that the plaintiff claimed that he was an occupancy tenant and became Bhumiswami on coming into force of the MPLRC, 1959. But he could not establish that he was an occupancy tenant. A person in order to be an occupancy tenant has to be a sub-tenant of a Khatedar tenant or a grove holder or a sub-tenant or a tenant of Khatedar. Not only this, it was also found that the land was a service land and it could not be given on lease for a period exceeding one year. It was held that the plaintiff was not entitled to the benefit of Sec.158 of the Code.

Claim of acquiring Bhumiswami Rights

There are some cases which basically talks about the claim of acquiring Bhumiswami Rights which are as follows;

In the case of State of MP v. Balveer Singh (AIR 2001 MP 268), it was held that Bhumiswami rights accrue only in cases of limited category and only on specified grounds. Accrual of Bhumiswami rights by adverse possession is not contemplated under the Code.

In the case of Ramlal v. Mangal Singh [2000 RN 30 (HC)], it was held that a person, who was neither Muafidar, nor Inamdar nor concessional holder under the Madhya Bharat Act, cannot be mutated as Bhumiswami under the Code.

In the case of Kesharbai v. Ramkhillawan [1993 RN 194(HC)], it was held that status of Pattedar tenant accruing under Rewa Act. Acquisition of Bhumiswami rights to such tenant is automatic. It does not depend on mutation entries.

In the case of Dattatray v. Krishnarao [1991 RN 408 (SC)], it was held that incident of impartibility and special mode of succession of primogeniture of Jagir lands extinguished. Holders acquired Bhumiswami rights.

In the case of Raghuvansh kumar v. state of MP [1991 RN 215 (HC)], it was held that land situated in a princely State which merged in Vindhya Pradesh region. Gair haqdar tenant continued in possession. He became entitled to pattedar rights under the Vindhya Pradesh Act of 1953 and ultimately became Bhumiswami.

In the case of Ramsingh v. State of MP [1988 RN 187 (HC)], it was held that the plaintiff's and their predecessor in title were in possession of the land for over 12 years and the defendant State in paragraph 3 of the written statement has clearly admitted that Ragunath Singh and others who were the predecessor in title of the plaintiffs were Maurusi Kashtkar. After the abolition of Jamindari, the plaintiffs became Pakka tenant and under Madhya Pradesh Land Revenue Code they became Bhumiswami of the said land by virtue of provisions contained in Clause (b) of sub-section (1) of section 158 thereof.

In the case of Sukhlal v. Narainprasad [1986 RN 342 (HC)], it was held that a sub-tenant, staking his claim to be a pakka tenant under section 38(2) would leave nothing in the hands of anybody else except the State because he thereby asserts not only his tenancy rights in the land, but virtually ownership in the land. Indeed, as appears clear from sub-section (1) of section 38, the tenant of a proprietor under whom a sub-tenant used to hold the land, ceased to have any interest in the land as soon as not he, but the sub-tenant becomes a pakka tenant. What is further contemplated under sub-section (2) is that a sub tenant becomes a pakka tenant by depositing requisite amount to exercise the statutory right granted to him there under and the superior interest of the tenant is put on the stake as soon as his sub-tenant chooses to exercise his statutory right. Now according to Sec. 158(l)(b) of the Code. A pakka tenant become a Bhumiswami by operation of law which leaves obviously nothing in the hands of the tenant. The statutory rights envisaged under the provisions aforesaid are indeed to be judicially noticed as yet. There should be no hesitation to say at once that the legal adage -once a
tenant always a tenant is statutorily effected by the provisions of section 38 of the Act and Section 158 of the Code. The special law must prevail on the general law and must be given full meaning and effect.

**Acquisition of Bhumiswami Rights by adverse possession**

In the case of Badrilal v. Govind (1992 RN 166), it was held that right of Bhumiswami can be acquired by adverse possession among an individual i.e. on the land of a Bhumiswami with the help of section 27 of Limitation Act 1963.

In the case of Ramcharan v. Bhura [1989 (I) MPWN 246 (HC)], it was held that the Single Bench decision in Bagdirarn stands overruled by the Full Bench decision of this Court in Kashiram v. Nathu (1980 RN 516). Accordingly the question of law on which the appeal has been admitted has to be answered in the affirmative and in favour of the plaintiff- appellant. Whether the plaintiff has proved his adverse possession extending over the statutory period of 12 years is basically a question of fact that should be left to be adjudicated upon by the lower appellate Court which is the final Court of fact.

In the case of Ramu v. Government of M.P [1988 RN 152 (HC)], it was held that the only question that arises for consideration in this appeal is whether the requirement of knowledge to the respondent State is lacking in the present case which does not entitle the appellant prescriptive title. Both the Courts below on critical examination of the evidence have concurrently found that the plaintiff and prior to him his forefathers were in cultivating possession of the same for last about 70 years. This finding is finding of fact not open to challenge. To acquire title by adverse possession all that a party has to establish is that the possession was overt act without any attempt for concealment thereof from the person against whom the time is running so that the real title holder exercises due diligence as to what is happening on his property.

**REINSTATEMENT OF BHUMISWAMI IMPROPERLY DISPOSSESSED**

According to Section 250 of MPLRC, 1959 basically enacts a remedy for reinstatement of a Bhumiswami improperly dispossessed reads as under

Section 250 (1) if a Bhumiswami dispossessed of the land otherwise than in due course of law or if any person unauthorized continues in possession of any land of the Bhumiswami to the use of which such person has ceased to be entitled under any provisions of this code, the Bhumiswami or his successor in interest may apply to the Tahsildar for restoration of the possession within 2 years from the date of dispossession or from the date on which the possession of such person becomes unauthorized, as the case may be.

(2) the Tahsildar shall, after making an enquiry into the respective claims of the parties, decide the application and when he orders the restoration of the possession to the Bhumiswami, put him in possession of the land.

(3) the Tahsildar may at any stage of the enquiry pass an interim order for handing over the possession of the land to the Bhumiswami, occupancy tenant or Government lessee, as the case may be, if he finds that he was dispossessed by the opposite party within 6 months prior to the submission of the application under this section. In such case the opposite party shall, if necessary, be ejected under orders of the Tahsildar.

(4) when an interim order has been passed under sub section (3) the opposite party may be required by the Tahsildar to execute a bond for such sum as the Tahsildar may deem fit for abstaining from taking possession of land until the final order is passed by the Tahsildar.

(5) if the person executing a bond is found to have entered into or taken possession of the land in contravention of the bond, the Tahsildar may forfeit the bond in whole or in part and may recover such amount as an arrear of land revenue.
(6) if the order passed under sub section (2) is in favour of the applicant the Tahsildar shall also award compensation to be paid to the applicant by the opposite party, provided that the amount of compensation shall not exceed 10 times the revenue of the land for each year’s occupation.

(7) the compensation awarded under this section shall be recoverable as an arrear of land revenue.

(8) when an order has been passed under sub section (2) for the restoration of the possession to the Bhumiswami the Tahsildar may require the opposite party to execute a bond for such sum as the Tahsildar may deem fit for abstaining from taking possession of the land in contravention of the order.

(9) where an order has been passed under sub section (2) for the restoration of the possession of the Bhumiswami, the opposite party shall also be liable to fine which may extend to five thousand rupees, provided that it shall not be competent to the Tahsildar to impose a fine of amount exceeding one thousand five hundred rupees but if in any case he considers that circumstances of the case warrant imposition of a higher fine, he may refer the case to the Sub Divisional officer who shall after giving the party concerned an opportunity of being heard, pass such orders in respect of fine as he may deem fit.

Moreover Section 257 of MPLRC, 1959 provides Exclusive Jurisdiction of Revenue Authorities reads as under :

Section 257 : Except as otherwise provided in this code, or in any other enactment for the time being in force, no civil court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the state government, the Board or any Revenue officer is by this code, empowered to determine, decide or dispose of, and in particular and without prejudice to the generality of this provision, no civil court shall exercise jurisdiction over this matter – (clause x) any decision regarding reinstatement of a Bhumiswami improperly dispossessed under section 250.

CONCLUSION

At last by a concluding point that it must a chance to be remembered that a Bhumiswami need a title however he may be not those "Swami" of the "Bhumi" which he holds, in the sense of supreme ownership, On account Concerning illustration proclaimed in section 257 of the Madhya Pradesh Land Revenue Code, ownership of land vests in the state Government, yet, he may be a Bhumiswami. He will be not be a mere Lessee.As much privileges need aid higher What's more predominant. They would associated should the individuals of a proprietor in the feeling that they are transferable What's more heritable, and, he can't a chance to be denied of as much possession, but Eventually except the due process of law and under statutory provisions, Also as much privileges can't make curtailed except by legislations. Since remedy under section 250 is accessible on a Bhumiswami, those applicant need fundamentally on substantiate that he is a Bhumiswami, which implies that those Tahsildar might try under those inquiry of title in place on focus if the applicant may be or may not be A Bhumiswami, Furthermore on that basis it is contended that since the Tahsildar is empowered under the Revenue Code, as much decision will be within the mischief of Clause (x) of Section 257, or the general provision contained in the opening part of Section 257.Therefore this analysis gives to understand the concept of Tenure Holders by looking into the provisions resrepresenting the Bhumiswami which is only recognized by the Tenure Holder as stated by The Madhya Pradesh Land Revenue Code, 1959.

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