

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ON THE 22nd OF NOVEMBER, 2024

WRIT PETITION No.28077 of 2021

Between:-

**SHRIRAM S/O LT JEEVANLAL BAGHEL,
AGED ABOUT 62 YEARS, VILL MOHANPUR
MURAR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI SUNIL JAIN - ADVOCATE)

AND

**1. GOPAL S/O LT BABU, AGED ABOUT 60
YEARS, VILL MOHANPUR MURAR
(MADHYA PRADESH)**

**2. CHHOTELAL S/O LATE SHRI BABU,
AGED ABOUT 59 YEARS, GRAM
MOHANPUR, MURAR (MADHYA
PRADESH)**

**3. MOHANLAL S/O LATE SHRI BABU,
AGED ABOUT 57 YEARS, GRAM
MOHANPUR, MURAR (MADHYA
PRADESH)**

**4. PRAHLAD S/O SHRI KARNA, AGED
ABOUT 56 YEARS, MOHANPUR MURAR,
GWALIOR (MADHYA PRADESH)**

5. SANTO S/O SHRI KARNA, AGED ABOUT 54 YEARS, MOHANPUR, MURAR (MADHYA PRADESH)

6. RAMKUNWAR D/O SHRI KARNA, AGED ABOUT 52 YEARS, MOHANPUR MURAR, GWALIOR (MADHYA PRADESH)

7. PUSHPA D/O SHRI KARNA, AGED ABOUT 50 YEARS, MOHANPUR MURAR, GWALIOR (MADHYA PRADESH)

8. ASHARAM D/O SHRI KARNA, AGED ABOUT 58 YEARS, MOHANPUR, MURAR (MADHYA PRADESH)

9. BHAGWANDEL D/O HUKUM SINGH, AGED ABOUT 55 YEARS, MOHANPUR, MURAR (MADHYA PRADESH)

10. REVENUE SECRETARY THE STATE OF MADHYA PRADESH VALLABH BHAWAN BHOPAL (MADHYA PRADESH)

11. REVENUE SECRETARY THE STATE OF MADHYA PRADESH VIDISHA (MADHYA PRADESH)

12. TEEKARAM S/O LATE SHRI JEEVANLAL BAGHEL, AGED ABOUT 59 YEARS, GRAM MOHANPUR, MURAR, GWALIOR (MADHYA PRADESH)

.....RESPONDENTS

This petition coming on for admission this day, the court passed the following:

ORDER

The present petition, under Article 226/227 of the

Constitution of India, has been directed against order dated 23.11.2021 passed by Additional Collector, Gwalior whereby Revision No.008/Revision/2021-21 preferred by the petitioner and respondent No.12, Teekaram S/o Shri Jeevan Lal Baghel under Section 50 of the Madhya Pradesh Land Revenue Code, 1959 was rejected while affirming the order dated 09.03.2021 passed by the Divisional Officer, Morar in Case No.0023/Appeal/2020-21 by which application under Section 5 of the Limitation Act, preferred by respondent No. 12 was rejected and as a consequence thereof, the appeal was also rejected.

2. Learned counsel for the petitioner submits that the land bearing Survey Nos.4404, 4405, 4422 & 4423, ad-measuring 0.491, 0.436, 0.669, 1.714 hectares respectively total 4 Kita, ad-measuring 3.323 hectares situated at Village Morar, Gwalior belong to the petitioner, for which batankan has not been done legally and Respondents No.1 to 9 keeping the petitioner in dark had got the said land partitioned and thereafter got the said lands mutated in their names in the revenue records which was per se illegal as there was neither any consent nor any signature of the co-sharers. When this fact came to the knowledge of the petitioner, he moved an application before the Tehsildar to obtain the certified copy of namantran panji which he received on 03.12.2021 vide Annexure P/1 and on the basis of which, an appeal was preferred by the petitioner and Respondent No.12/Teekaram, /o Late Jeevanlal Baghel before the Sub-Divisional Officer which was numbered as 0023/Appeal/2020-21 and vide order dated 09.03.2021, the said

appeal was dismissed being time barred. Against the aforesaid order, a revision was preferred by the petitioner and respondent No.12, Ss/o Shri Jeevan Lal Baghel under Section 50 of the Madhya Pradesh Land Revenue Code, 1959 before the Additional Collector, Gwalior which received the same fate vide order dated 23.11.2021. Being aggrieved by the aforesaid, the present petition has been filed.

3. It was further argued that the Additional Collector while deciding the revision but by the impugned order dated 23.11.2021, had not considered the aspect that the appeal by SDO was not decided on merits nor any discussion in that regard was made by the learned Additional Collector thus the impugned order being per-se illegal deserve to be set aside.

4. It was further submitted that instead of giving opportunity of hearing or leading evidence, the same has been refused illegally which has caused serious injustice to the petitioner. The impugned order Annexure P/3 passed by the Additional Collector maintaining the order Annexure P/2 passed by the SDO is against the principle of natural justice, therefore, the same being not sustainable in the eyes of law be quashed.

5. Heard counsel for the petitioner and perused the record.

6. Admittedly, the petitioner had challenged the order of Tahsildar dated 08.11.1983 by filing an appeal before the SDO, Morar, Gwalior. The Tahsildar had passed an order of partition which was put to challenge by the petitioner. Since the appeal filed before the SDO, Morar, District Gwalior was barred by limitation

being delayed by 38 years, therefore, an application under Section 5 of the Indian Limitation Act was also filed. The said application was dismissed as barred by limitation as proper explanation for delay in filing the aforesaid appeal nor any reasonable explanation has been accorded for the delay caused in filing the appeal and as a consequence thereof, the appeal filed by the petitioner was also dismissed as barred by limitation. It appears that against the order of SDO, Morar, District Gwalior, the petitioner had filed a revision before the Additional Collector, Gwalior. The revision filed by the petitioner before the Additional Collector, Gwalior was dismissed by order dated 23.11.2021.

7. Relevant extract of impugned order dated 23.11.2023 is reproduced as under:-

प्रकरणन्यायलयमेंपंजीबद्ध कर गति के बिन्दुओं पर सुन जकर प्रकृतयेग्य हेने सेग्रह्य किय गया तथा अधिनस्थन्यायलयक रिपोर्ट मंगाय गया। दिनांक 13.08.2021 के अधिनस्थन्यायलयसेअभिलेखप्रप्त हुआ प्रकरणमेंप्रतिप्रार्थियों के पक्षसमर्थनहेतु सूचना पत्र जारी किये गये। प्रतिप्रार्थियों के आगे से अभिलेख प्रेसिडेंट पत्र उपस्थित हुये। अभिलेख के निशानेवर्तनद्वारा प्राप्त अवेदन के प्रतिप्रार्थी के गृह के परिपत्र में प्रतिप्रार्थी अभिलेख द्वारा जवाब प्राप्त किय गया। तत्पश्चात् प्रकरण तर्क हेतु न्यस्त किय गया। प्रकरण में दिनांक 29.09.2021 के अग्र पक्ष अधिका द्वारा लिखित बहस प्राप्त के गृह प्रार्थी अभिलेख द्वारा लिखित बहस में उल्लेखित किय गया है कि अधिनस्थन्यायलय द्वारा दिनांक 177.93.2021 पेशी हेतु न्यस्त के गृह थे किन्तु दिनांक 16.03.2021 के बजय दिनांक 09.03.2021 के हे धरा 5 के अवेदन पत्र के निस्त कर संपूर्ण अपील के निस्त कर दिय गया जे कि विधिक विधीत है। एवं पंजी पर किय गया बखरा एवं बंक्न में विंशति है अवेदन पत्रों के 10 विधि भूमि अधिक दिय गया है एवं पंजी पर किय ग बखरा व बंक्न धरा 178 के विधीत है शेष बहस में निशाने मेमे में उल्लेखित बिन्दुओं के हे देखाय गया है। प्रतिप्रार्थी अभिलेख द्वारा उल्लेख किय गया है कि ग्राम मुखर स्थित उक्त भूमिक विधीत बखरा तस्लीवर द्वारा दिनांक 08/11/1983

के विय गया। अध्यापक अपने अपने खर्च पर फिले 38 वर्ष से कबिजे हेतु वकालत करते चले आ रहे हैं। न्यायलय अस्तित्वहीनता के द्वारा अभिलेख में भी अंकित विय गया है कि ऊर्ध्व इच्छा व ऊर्ध्व स्मृति के अनुसार वे दिनांक 08.11.1983 को अध्यापक व अध्यापक के मध्य बखार विय गया है जिसे लगभग 38 वर्ष बाद ऊर्ध्व अध्यापक के अध्यापक द्वारा चैलेंज विय गया है तथा किम्बदन्त पर्याप्त कारण भी नहीं बताय गया है।

मेरे द्वारा निम्नलिखित अध्यापक संलग्न दस्तावेज अधिनस्थ न्यायलय से प्राप्त अभिलेख एवं अध्यापक अभिलेख द्वारा प्राप्त लिखित बखार के अन्तर्गत विय गया। अन्तर्गत में पय गया कि निम्नलिखित द्वारा ग्राम गुरा में स्थित भूमि सर्वे क्रमंक 4404 खब 0.491 हेक्टेयर, सर्वे क्रमंक 4405 खब 0.436 हेक्टेयर, सर्वे क्रमंक 4422 खब 0.669 हेक्टेयर, सर्वे क्रमंक 4423 खब 1.714 कुल विल 4 कुल खब 3.323 हेक्टेयर भूमि के विधित बखार एवं बंक्न भी तक नहीं होने से एवं प्रतिप्रार्थनों ने अध्यापकों के सूचित विये और पंजी पर बखार एवं बंक्न का लिय थ के विरुद्ध अपील संबंधित अध्यापकीय अधिकारी के यहाँ के गई जिसमें अध्यापकीय अधिकारी द्वारा सुनवाई कर धरा 5 के अध्यापक दिनांक 09.03.2021 को निस्त कर दिया गया है। ऊर्ध्व संबंध में निम्नलिखित द्वारा भी कोई ठोस दस्तावेज प्राप्त नहीं विय गया है। इस प्रकार अधिनस्थ न्यायलय द्वारा प्रकरण क्रमंक 0023/अपील 2020-21 में पस्ति अध्यापक दिनांक 09.03.2021 विधित जंच उपांत पस्ति विय गया है। इस तरण प्रार्थ द्वारा सुत निम्नलिखित अध्यापक निस्त विय जवर अधिनस्थ न्यायलय के अध्यापक स्थिर ख जत है। संबंधित सूचित है। अधिनस्थ न्यायलय के अभिलेख अध्यापक के प्रति के सथ वपस है। वद कार्यक्षति प्रकरण ऊर्ध्व से कम हेतु वखित रिपोर्ट है

8. From perusal of the aforesaid order, it would be evident that the petitioner remained negligent in not filing the appeal in due time and without any justified reasons and unexplained, the delay of 38 years would have been condoned, thus, the Revisional Court had rightly dismissed The revision.

9. Even otherwise the scope of interference in exercise of jurisdiction under Article 227 of the Constitution of India is limited. The Supreme Court in the matter of **Shalini Shyam Shetty and Another vs. Rajendra Shankar Patil** reported in

(2010) 8 SCC 329 has held that High Court in exercise of its power cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. The High Court can exercise this power when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there is manifest failure of justice or the basic principles of natural justice have been flouted.

10. Thus, this Court finds that no illegality or perversity committed by the Trial Court in passing the impugned orders herein. Accordingly, the admission is **declined** and the present petition being sans merits is hereby **dismissed**.

(Milind Ramesh Phadke)
Judge