THE HIGH COURT OF MADHYA PRADESH
Writ Petition No.5503/2015
GLR Real Estate Private Limited Vs. State of M.P. and others

Gwalior, Dated :17/01/2019

Shri Anoop Chaudhary, Senior Advocate, with Shri Deepak Chandna, Advocate for petitioner.

Shri Harish Dixit, Government Advocate for respondents no.1 to 4/State.

Shri Arvind Dudawat, Advocate for respondent no.5.

Shri Prashant Sharma, Advocate for respondent no.6.

None for other respondents.

This petition under Article 226/227 of the Constitution of India has been filed against the order dated 15/6/2015 passed by the SDO, Revenue, Gwalior in Appeal No.9/2014-15/Appeal, order dated 15/6/2015 passed by the SDO, Revenue, Gwalior in Appeal No.10/2014-15/Appeal, order dated 31/7/2015 passed by the Tahsildar, Circle, Mehra, Gwalior in case No.23/14-15/B-121 and order dated 31/7/2015 passed by the Tahsildar, Circle, Mehra, Gwalior in case No.24/14-15/B-121.

Although a lot of documents have been placed on record in support of claim and counterclaim, but petition can be disposed of on a short point that the orders under challenge were passed without impleading the petitioner as respondent in the said proceedings.

The necessary facts for disposal of the present petition in short are that the petitioner company had purchased a land from Gopal Singh and Betal Singh vide registered sale deeds dated 12/1/2006. Thereafter, the land in question was diverted for non-agricultural purposes by order dated 30/11/2006. The petitioner thereafter obtained NOC from Nazul Department in respect of 30000 sqft. of land. Petitioner applied before the Town & Country Planning Department seeking sanction for construction of housing project comprising of duplex and multistorey buildings. It is the case of the petitioner that after obtaining all necessary permissions from different departments, the petitioner company was granted permission for construction of buildings vide letter dated 9/2/2007. The petitioner thereafter started construction of housing project, namely, Gul Mohar City and independent houses and flats were constructed over the land in question. Various independent houses and flats have been sold to various buyers. As the proceedings were initiated against the petitioner by the State authorities alleging that he has encroached upon the Government land, therefore, the petitioner filed a Writ Petition No.18765/2010 before the Principal Seat at Jabalpur because the Vacation Bench was not available at Gwalior. By

order dated 23/12/2010 the Government functionaries were directed that the proceedings may continue, but no coercive step be taken against the petitioner without the leave of the Court. In the meanwhile, the completion certificate was also issued by the Municipal Corporation, Gwalior. The Writ Petition, so filed by the petitioner before the Principal Seat of this Court, was transferred to the Gwalior Bench and by order dated 13/5/2011 the petition filed by the petitioner was allowed and the order dated 24/10/2010 was quashed with a direction to petitioner to file comprehensive representation before the respondents and the respondents in their turn, were directed to decide the said representation upon giving opportunity of hearing to the petitioner. It was further directed that in case any adverse order is passed, then the same shall not be given effect to for a period of seven days. Thereafter, on 25/5/2011 the Tahsildar, Nazul, Gwalior held that the petitioner has encroached upon the Nazul Forest land comprising of survey nos.18, 22 and 30 and he was directed to be evicted after expiry of seven days. Being aggrieved by the decision taken by the Tahsildar, the petitioner filed a writ petition, which was registered as Writ Petition No.3504/2011 and the said writ petition was allowed by this Court by order dated 16/11/2011

and it was held that the land in question belongs to the company. Thereafter, a Review Petition No.306/2011 was filed by the State of MP, which was also dismissed by this Court by order dated 9/12/2011. The State of MP being aggrieved by the order of the Writ Court as well as the Review Court, filed SLP before the Apex Court and notices were issued and the parties were directed to maintain *status quo.*

It is submitted that thereafter in the month of November, 2014, respondent no.6-Balbeer Singh filed an application before the Tahsildar Gwalior for correction of the revenue entries. It was the case of respondent no.6 that Balveer Singh, Jaswant Singh and Raghvendra Singh were the Bhumsiwami of survey No.20/1-Kha area 1 bigha 16 biswa and survey no.22/2 area 4 bigha, total area 5 bigha 16 biswa. Betal Singh, Gopal Singh, Bharat Singh, Siyaram and Mahendra by playing fraud on his brothers have got the said land mutated in their names without any right and title and accordingly, a prayer was made to delete the name of petitioner company from the revenue records. Notices of the said proceedings were served on the petitioner on 14/11/2014 and a reply was filed by the petitioner on 17/11/2014 and on 8/12/2014 the Tahsildar passed the final order, thereby rejecting the objections raised

by respondent no.6 and it was specifically held that the mutation in the revenue records was not the outcome of any clerical error, but the same was done in compliance of the order passed by the Tahsildar.

It appears that on 16/12/2014 respondent no.6 filed an appeal before the Court of SDO, Revenue, Gwalior against the order dated 17/4/1998, by which the names of respondents were mutated in the revenue record as well as against the order dated 3/6/1998, by which the partition was made between the erstwhile Bhumiswamis.

It is submitted that although respondent no.6 was well aware of the fact that the petitioner has already purchased the land in question from Gopal Singh and Betal Singh and petitioner is the necessary party, but he deliberately did not implead the petitioner as a party in the appeal, so as to frustrate the legitimate rights of the petitioner and the SDO by order dated 15/6/2015 has passed the final order and allowed both the appeals and mutation order as well as the partition orders were set aside behind the back of the petitioner.

It is submitted by the counsel for the petitioner that on 3/6/1998 a partition had taken place between Betal Singh, Gopal Singh and other Bhumiswamis of the land in dispute.

Respondent no.6 was one of the signatory of the said partition proceedings. Respondent no.6 did not challenge those proceedings for long 16 years, as a result of which, the petitioner under a *bonafide* belief that Betal Singh and Gopal Singh are the owners of the land in dispute, has purchased the said land by different sale deeds dated 12/1/2006. After purchasing the land, the petitioner has also raised residential colony, thereby constructing independent houses as well as multistoreyed building and most of the residential units have been sold and thus, being the *bonafide* purchaser from Betal Singh and Gopal Singh, whose names were mutated in the revenue record on the basis of partition, the petitioner was a necessary party. It is further submitted that the SDO was the OIC in the SLP, which was filed before the Supreme Court. He was aware of the interim order passed by the Supreme Court. He was aware of the fact that this Court while deciding Writ Petition No.3504/2011 has already held that the entire land belongs to the petitioner and he has not encroached upon the Nazul, Forest land and in spite of that the SDO has not only condoned the delay in filing the appeal, but has also set aside the orders of mutation as well as the orders of partition. It is further submitted by the counsel for the petitioner that although

the petitioner has an efficacious remedy of filing an appeal against the order passed by the SDO, but it is well settled principle of law that where the principle of natural justice has been violated, then this Court may entertain the writ petition without throwing on the ground of availability of alternative remedy.

Per contra, it is submitted by the counsel for respondents that it is a glaring case of fraud played by Gopal Singh and Betal Singh. By registered sale deed dated 13/2/1998 Gopal Singh and Gabbar Singh had purchased 0.209 hectare of undivided property from Sahab Singh and Jaswant Singh. Thereafter, they filed an application for partition. As Gopal Singh and Gabbar Singh were strangers to the family of Bhumiswami, therefore, at the most they were entitled for the land to the extent of the share, which was purchased by them by registered sale deed dated 13/2/1998, however, in the partition proceedings by playing fraud, Gabbar Singh and Gopal Singh managed to take the land more than what they had purchased by registered sale deed dated 13/2/1998. It is the well established principle of law that the purchaser of an undivided share is not entitled to purchase a specific piece of land, but he is entitled to purchase to the extent of the share of

his seller and thus, in the partition proceedings the purchasers were entitled only to the extent of share which was purchased by them and not in excess of that. Thus, it is submitted that the illegality, which was committed by the authorities while carrying out the partition proceedings on 3/6/1998, cannot be allowed to be perpetuated.

Heard learned counsel for the parties.

The moot question for consideration in the present case is that:

> "Whether the petitioner was a necessary party in the appeal, which was filed before the SDO against the orders dated 15/3/1998 and 17/4/1998 as well as against the order of partition dated 25/4/1998 and 3/6/1998 or not?"

The petitioner in its rejoinder has stated as under:-

> ".....It is pertinent to mention that this partition order was passed on consent even in which signature of respondent no.6 Balveer also finds place. Copy of this consent partition under Section 178 of MPLRC has been annexed as Annexure-R-3 with the return of respondent no.6."

Respondent no.6 has not controverted this submission made in the rejoinder. In the present case, the partition took place on 3/6/1998 and 25/4/1998. Respondent no.6 maintained his silence for 16 long years and filed the appeal on 16/12/2014. As the appeal was barred by limitation, therefore, an application under Section 5 of the Limitation Act was also filed. In the said application, it was mentioned by the respondent no.6 that he came to know about the illegal partition or mutation on 19/12/2014. However, prior to that, respondent no.6 had already moved an application before the Tahsildar for correction of the revenue entries and in the said proceedings, the petitioner was made a respondent and the said application was rejected by the Upper Tahsildar by order dated 8/12/2014 (Annexure P/15). In the said proceedings, the interested parties were summoned and the petitioner had filed his reply and report from Patwari was also obtained. Thus, respondent no.6 was aware of the fact that the petitioner is a necessary party for the reason, that not only its name was recorded in the revenue records, but also the petitioner has already purchased the property and the respondent no. 6 was also supposed to know the ground reality with regard to the status of the property, as a residential colony has already been

constructed over the same.

Without entering into the controversy that whether the partition proceedings or the mutation proceedings were in accordance with law or not, this Court is of the considered opinion that respondent no.6 by maintaining silence for a long period of 16 years had created a situation where the third party, i.e. the petitioner, under a belief that its sellers are the owners of the land in dispute by virtue of the partition, had purchased 30000 sqft. of land and had also carried out the construction work and the completion certificate has also been issued by the Municipal Corporation.

Whether the SDO should have maintained *status quo* as directed by the Supreme Court or not, was also one of the aspect, which was to be considered by the SDO.

Be that as it may. This Court is of the considered opinion that by not taking any action against the mutation orders as well as partition orders, which were passed in the year 1998 for considerable long period of 16 years, respondent no.6 had created such a situation where the third party rights have been created in favour of petitioner, who in its turn has sold several residential units to several buyers.

The words “necessary party” mean that without whom an

effective order/decree cannot be passed. In the present case, it is not disputed by the counsel for respondent no.6 that in case if the partition proceedings or the mutation proceedings, which had taken place in the year 1998, are set aside, then it would adversely affect the rights of the petitioner. For creating such a situation only respondent no.6 is responsible, as he had maintained silence for a period of 16 long years. When a question was put to the counsel for respondent no.6 that when respondent no.6 himself had signed the partition proceedings, then why he did not challenge the same at the earliest, then it was replied by the counsel for respondent no.6 that the illegality cannot be allowed to continue in perpetuity. The submission made by the counsel for respondent no.6 was not the reply to the query raised by this Court. This Court is concerned about the fact that whether the petitioner is a necessary party or not. Once respondent no.6 had maintained silence for a period of 16 years, as a result of which, third party had stepped in by purchasing the land from the persons, whose names were mutated in the revenue records, then this Court is of the considered view that respondent no.6 cannot take advantage of his silence by proceeding against the petitioner without affording him an opportunity of hearing.

The Supreme Court in the case of **Godrej Sara Lee Ltd. v. Commr. (AA)** reported in **(2009) 14 SCC 338** has held as under :

> **"13.** Even otherwise, in our opinion, the question as to whether the said notification could have a retrospective effect or retroactive operation being a jurisdictional fact, should have been determined by the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India as it is well known that when an order of a statutory authority is questioned on the ground that the same suffers from lack of jurisdiction, alternative remedy may not be a bar. (See *Whirlpool Corpn.* v. *Registrar of Trade Marks* and *Mumtaz Post Graduate Degree College* v. *Vice-Chancellor*.)"

The Supreme Court in the case of **M.P. State Agro Industries Development Corpn. Ltd. v. Jahan Khan** reported in **(2007) 10 SCC 88** has held as under :

> **"12.** Before parting with the case, we may also deal with the submission of learned counsel for the appellants that a remedy by way of an appeal being available to the respondent, the High Court ought not to have entertained his petition filed under Articles 226/227 of the Constitution. There is no gainsaying that in a given case, the High Court may not entertain a writ petition under Article 226 of the Constitution on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. The rule of exclusion of writ jurisdiction due to availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of

> the availability of an alternative remedy, a writ court may still exercise its discretionary jurisdiction of judicial review, in at least three contingencies, namely, (*i*) where the writ petition seeks enforcement of any of the fundamental rights; (*ii*) where there is failure of principles of natural justice; or (*iii*) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In these circumstances, an alternative remedy does not operate as a bar. (See *Whirlpool Corpn.* v. *Registrar of Trade Marks*, *Harbanslal Sahnia* v. *Indian Oil Corpn. Ltd.*, *State of H.P.* v. *Gujarat Ambuja Cement Ltd.* and *Sanjana M. Wig* v. *Hindustan Petroleum Corpn. Ltd.*)"

The Supreme Court in the case of **A.V. Venkateswaran v. Ramchand Sobhraj Wadhwani** reported in **(1962) 1 SCR 753** has held as under :

> **"8.** The only point, therefore, requiring to be considered is whether the High Court should have rejected the writ petition of the respondent in limine because he had not exhausted all the statutory remedies open to him for having his grievance redressed. The contention of the learned Solicitor-General was that the existence of an alternative remedy was a bar to the entertainment of a petition under Article 226 of the Constitution unless (*1*) there was a complete lack of jurisdiction in the officer or authority to take the action impugned, or (*2*) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or non est. In all other cases, he submitted, Courts should not entertain petitions under Article 226, or in any event not grant any relief to such petitioners."

The Supreme Court in the case of **Harbanslal Sahnia v. Indian Oil Corpn. Ltd.** reported in **(2003) 2 SCC 107** has held as under :

> **"7.** So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (*i*) where the writ petition seeks enforcement of any of the fundamental rights; (*ii*) where there is failure of principles of natural justice; or (*iii*) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See *Whirlpool Corpn.* v. *Registrar of Trade Marks*.) The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

The Supreme Court in the case of **Popcorn Entertainment v. City Industrial Development Corpn.** reported in **(2007) 9 SCC 593** has held as under :

> **"1. Maintainability of the writ petition**
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> **21.** As regards non-maintainability of the

writ petition, the appellant relied upon the following decisions of this Court wherein this Court has held that the writ petitions can be held to be maintainable under certain circumstances:

(*i*) *Gunwant Kaur* v. *Municipal Committee, Bhatinda*

(*ii*) *Century Spg. and Mfg. Co. Ltd.* v. *Ulhasnagar Municipal Council*

(*iii*) *Bal Krishna Agarwal (Dr.)* v. *State of U.P.*

(*iv*) *Whirlpool Corpn.* v. *Registrar of Trade Marks*

(*v*) *Harbanslal Sahnia* v. *Indian Oil Corpn. Ltd.*

(*vi*) *Corpn. of the City of Bangalore* v. *Bangalore Stock Exchange*

(*vii*) *ABL International Ltd.* v. *Export Credit Guarantee Corpn. of India Ltd.*

(*viii*) *Sanjana M. Wig* v. *Hindustan Petroleum Corpn. Ltd.*

22. He invited our attention to *Whirlpool Corpn. case* wherein this Court has held that there are three clear-cut circumstances wherein a writ petition would be maintainable even in a contractual matter. Firstly, if the action of the respondent is illegal and without jurisdiction, secondly, if the principles of natural justice have been violated, and thirdly, if the appellants' fundamental rights have been violated."

The Supreme Court in the case of **Mumtaz Post Graduate Degree College v. University of Lucknow** reported in **(2009) 2 SCC 630** has held as under :

"23. Furthermore, when an order has been passed by an authority without jurisdiction or in violation of the principles of natural justice, the superior courts shall not refuse to exercise

> their jurisdiction although there exists an alternative remedy. In this context, it is appropriate to refer to the observations made by this Court in *Whirlpool Corpn.* v. *Registrar of Trade Marks*: (SCC p. 10, para 15)
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> "*15*. … But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."
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> (See also *Guruvayoor Devaswom Managing Committee* v. *C.K. Rajan*.)"

The Supreme Court in the case of **Union of India v. Guwahati Carbon Ltd.** reported in **(2012) 11 SCC 651** has held as under :

> **"8.** Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in *Munshi Ram* v. *Municipal Committee, Chheharta*. In the said decision, this Court was pleased to observe that: (SCC p. 88, para 23)
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> "*23*. … when a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking [remedy] are excluded."
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> **9.** A Bench of three learned Judges of this Court in *Titaghur Paper Mills Co. Ltd.* v. *State of Orissa* held: (SCC p. 440, para 11)
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> "*11*. … The Act provides for a complete machinery to challenge an order of

> assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed…."
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> **10.** In other words, existence of an adequate alternative remedy is a factor to be considered by the writ court before exercising its writ jurisdiction (see *Rashid Ahmed* v. *Municipal Board, Kairana*).
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> **11.** In *Whirlpool Corpn.* v. *Registrar of Trade Marks* this Court held: (SCC pp. 9-10, para 15)
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> "*15*. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

The Supreme Court in the case of **Whirlpool Corpn. v. Registrar of Trade Marks** reported in **(1998) 8 SCC 1** has held as under :

> **"15.** Under Article 226 of the Constitution,

the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

16. *Rashid Ahmed* v. *Municipal Board, Kairana* laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting writs. This was followed by another Rashid case, namely, *K.S. Rashid & Son* v. *Income Tax Investigation Commission* which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, "*unless there are good grounds therefor*", which indicated that alternative remedy would not operate as an absolute bar and that writ petition under Article 226 could still be entertained in exceptional circumstances.

17. A specific and clear rule was laid down in *State of U.P.* v. *Mohd. Nooh* as under:

"But this rule requiring the exhaustion of statutory remedies before the writ will be

granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."

18. This proposition was considered by a Constitution Bench of this Court in *A.V. Venkateswaran, Collector of Customs* v. *Ramchand Sobhraj Wadhwani* and was affirmed and followed in the following words:

"The passages in the judgments of this Court we have extracted would indicate (*1*) that the two exceptions which the learned Solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive, and (*2*) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court."

19. Another Constitution Bench decision in *Calcutta Discount Co. Ltd.* v. *ITO, Companies Distt. I* laid down:

"Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction.

> Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against the Income Tax Officer acting without jurisdiction under Section 34, Income Tax Act."
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> **20.** Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.
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> **21.** That being so, the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show-cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the "Tribunal"."

Furthermore, it appears that the first paragraph of the impugned orders passed by the S.D.O. has been wrongly mentioned as the facts mentioned in the opening paragraph of the impugned order, have nothing to do with the controversy involved in the present case.

Furthermore, the petitioner has also placed on record the

order-sheets of the SDO, Gwalior to show that by order dated 1/10/2015 the SDO, Jhansi Road, Gwalior has also realized his mistake and was of the view that after going through the record of the present writ petition, it is clear that the orders, which were passed by him, do not appear to be proper in the light of non-joinder of necessary party, therefore, the proceedings for review may be initiated. As per the certified copy of the order-sheets of the SDO, Jhansi Road, Gwalior, the next date for hearing was fixed on 10/12/2015. Today, Shri Deepak Chandna, counsel for petitioner, has filed an affidavit that no order sheet subsequent to 18/11/2015 was supplied to the petitioner. Thus, this Court is of the considered opinion that even the SDO, Jhansi Road, District Gwalior has subsequently realized that the impugned orders passed by him are apparently bad because of non-joinder of necessary party.

Taking the cumulative effect of the case, this Court is of the considered opinion that as respondent no.6 had maintained beautiful silence for a period of 16 years after the partition proceedings had taken place, as a result of which, third party rights have been created and the land in dispute has been sold and resold to various persons and thus, a situation has been created where the subsequent purchasers can be said to be

the necessary parties in the appeal, which was filed by respondent no.6 before the SDO, Jhansi Road, Gwalior. Accordingly, the order dated 15/6/2015 passed by the SDO, Revenue, Gwalior in Appeal No.9/2014-15/Appeal, order dated 15/6/2015 passed by the SDO, Revenue, Gwalior in Appeal No.10/2014-15/Appeal, order dated 31/7/2015 passed by the Tahsildar, Circle, Mehra, Gwalior in case No.23/14-15/B-121 and order dated 31/7/2015 passed by the Tahsildar, Circle, Mehra, Gwalior in case No.24/14-15/B-121 are hereby set aside.

The petitioner as well as respondent no.6 are directed to appear before the SDO, Jhansi Road, Gwalior on 11/2/2019. The petitioner shall submit all its objections before the SDO, within a period of one month from thereafter. The SDO shall consider all the claims and objections raised by the petitioner as well as by respondent no.6 and shall also consider the effect of the interim order dated 13/7/2012 passed by the Supreme Court in SLP Nos.11174-11175/2012.

It is made clear that this Court has not considered any claim or counterclaim/objections raised by the parties and has not expressed any opinion on the merits of the case, therefore, the SDO shall be at liberty to decide the matter from the stage

of filing of the appeal. The copy of the application filed under Section 5 of the Indian Limitation Act shall also be supplied to the petitioner. The question of condonation of delay shall also be decided by the SDO, Jhansi Road, Gwalior, after considering the objections raised by the parties, if any.

With aforesaid observations and directions, the petition is finally disposed of.

(G.S. Ahluwalia)
Judge

Arun*