

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

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

ON THE 29th OF NOVEMBER, 2023

MISC. PETITION No. 3535 of 2018

BETWEEN:-

**SMT. UMA BHARDWAJ W/O SHRI SANJAY
BHARDWAJ, AGED ABOUT 43 YEARS,
OCCUPATION: HOUSEWIFE LALITPUR
COLONY, LASHKAR, GWALIOR (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI NIKHIL RAI - ADVOCATE)

AND

- 1. MANIRAM S/O SHRI KASHIRAM VILLAGE
GUDA GWALIOR (MADHYA PRADESH)**
- 2. AMAR SINGH S/O KASHIRAM VILLAGE
GUDA GWALIOR (MADHYA PRADESH)**
- 3. INDER SINGH S/O KASHIRAM VILLAGE
GUDA GWALIOR (MADHYA PRADESH)**
- 4. NANDLAL S/O KASHIRAM VILLAGE GUDA
GWALIOR (MADHYA PRADESH)**
- 5. SMT. LADO BAI D/O KASHIRAM VILLAGE
GUDA GWALIOR (MADHYA PRADESH)**
- 6. KAMLA D/O KASHIRAM VILLAGE GUDA
GWALIOR (MADHYA PRADESH)**
- 7. PREMABAI W/O DEVI SINGH VILLAGE GUDA
GWALIOR (MADHYA PRADESH)**
- 8. MOHAN SINGH S/O DEVI SINGH VILLAGE
GUDA GWALIOR (MADHYA PRADESH)**
- 9. NARENDRA S/O DEVI SINGH OCCUPATION:
U/G MINOR , THR. MOTHER PREMA BAI W/O
DEVI SINGH VILLAGE GUDA GWALIOR
(MADHYA PRADESH)**

10. SMT. LAXMI BAI W/O DEVI SINGH VILLAGE GUDA GWALIOR (MADHYA PRADESH)
11. SMT. RAM BEDI W/O VIJAY SINGH VILLAGE GUDA GWALIOR (MADHYA PRADESH)
12. RAKESH S/O VIJAY SINGH VILLAGE GUDA GWALIOR (MADHYA PRADESH)
13. MAKKHAN S/O VIJAY SINGH VILLAGE GUDA GWALIOR (MADHYA PRADESH)
14. JASWANT S/O VIJAY SINGH OCCUPATION: U/G MINOR, THR. MOTEHR RAMBETI W/O VIJAY SINGH VILLAGE GUDA GWALIOR (MADHYA PRADESH)
15. BHAVNA D/O VIJAY SINGH VILLAGE GUDA GWALIOR (MADHYA PRADESH)
16. ANITA D/O VIJAY SINGH OCCUPATION: U/G MINOR THR. MOTEHR RAM BETI W/O VIJAY SINGH VILLAGE GUDA GWALIOR (MADHYA PRADESH)
17. RINKI D/O VIJAY SINGH OCCUPATION: U/G MINOR THR. MOTEHR RAM BETI W/O VIJAY SINGH VILLAGE GUDA GWALIOR (MADHYA PRADESH)

.....RESPONDENTS

(NONE FOR RESPONDNETS THOUGH SERVED)

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

ORDER

1. The present petition is preferred under Article 227 of the Constitution taking exception to the order dated 11.04.2018 passed by trial Court whereby application preferred by the plaintiff under Order XXVI Rule 9 of CPC for appointment of Commissioner has been rejected.

2. Precisely stated facts of the case are that petitioner/plaintiff filed a suit for declaration and permanent injunction in respect of the suit property against the defendant. It was the allegation of plaintiff that suit property has been purchased by the plaintiff from erstwhile owner and thereafter, moved application for mutation before Tehsildar Gwalior which was allowed in name of plaintiff which was marked in revenue records. The said land was demarcated and plaintiff has the right title, interest and possession over the suit property. However, defendants are trying to sell the land belonging to plaintiff and it appears that they are exceeding the land which is available to them in revenue records. Therefore, the instant suit was filed.

3. Along with the suit, an application under Order XXVI Rule 9 of CPC was filed for appointment of Revenue Officer as Court Commissioner so that demarcation or measurement of the land can be carried out. Approach of trial Court is illegal because application was rejected on the ground that Revenue Officers cannot be appointed as Commissioner for carrying out commission.

4. Learned counsel for the petitioner relied upon Section 129 of Madhya Pradesh Land Revenue Code, 1959 and submitted that Revenue Authority is an appropriate authority. He also referred proviso to Order XXVI Rule 9 of CPC to submit that State Government has made rules in this regard.

5. Heard.

6. The instant case is preferred at the instance of

petitioner/plaintiff taking exception to the order dated 11.04.2018 passed by Second Civil Judge, Class-II Gwalior whereby application under Order XXVI Rule 9 of CPC preferred by the petitioner/plaintiff has been rejected.

7. Perusal of impugned order reveals that application has been rejected on the ground that giving direction to the Revenue Officer for local investigation is beyond the purview of trial Court therefore, application was rejected.

8. Here, it appears that purpose of Order XXVI Rule 9 of CPC has not been considered by the trial Court in correct perspective. Order XXVI Rule 9 of CPC is reproduced for ready reference:-

“Order XXVI-Commission-Commission to examine witnesses

9. Commissions to make local investigations.- In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court :

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.”

9. Proviso reveals that where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules. It appears that State Government in exercise of the powers conferred by the proviso Rule 9 Order XXVI of CPC has made the **Madhya Pradesh Commission for Local Investigation, Rule 1962**. Since these rules are not commonly available therefore, this Court intends to reiterate the complete set of rules (although it is a very brief rule) and for ready reference it is reproduced as under:-

**Madhya Pradesh Commission for Local Investigation,
Rule 1962**

I-Preliminary

1. (1) *These rules may be called The Madhya Pradesh Commissions for Local Investigations Rules, 1962.*
 - (2) *They shall extend to the whole of Madhya Pradesh.*
2. *In these rules, unless the context otherwise requires,-*
 - (a) *'Code' means the Code of Civil Procedure, 1908 (V of 1908);*
 - (b) *'Commission' means a Commission issued under Rule 9 of Order XXVI of the First Schedule to the Code;*
 - (c) *'Revenue' Officer means a Tahsildar and Naib-Tahsildar and includes Revenue Inspector, Measurer and Patwari.*

II-Revenue Officers to whom Commission may be Issued

3. In any suit or proceeding in which the court deems a local investigation to be requisite or proper for any of the purposes specified in Rule 9 of Order XXVI of the First Schedule to the Code, it may issue a Commission to any Revenue Officer to make such investigations within his territorial jurisdiction :

Provided that, for special reasons to be recorded in writing, such Commission may be issued to any Revenue Officer to make local investigation outside his territorial jurisdiction.

4. A commission to a Revenue Officer shall be issued through the Collector of the district, to whom he is subordinate and the Collector shall endorse the commission to the Revenue Officer named to make the necessary local investigation.

5. If the Collector is of opinion that the Revenue Officer cannot, with due regard to Government interest, be called upon to make such local investigation, he shall endorse his opinion to that effect on the commission and return it to the court which issued it; and his opinion shall be accepted as conclusively determining that the

services of the Revenue Officer in question are not available.

6. (1) *A Revenue Officer to whom a Commission is issued under these rules shall be entitled to travelling and daily allowance at the rate admissible to him under the Madhya Pradesh Travelling Allowance Rules.*

(2) *He shall also be paid half of the amount fixed by the court as fee for the work of local investigation. The other half shall be credited to Government.*

(3) *Such fee shall be fixed with due regard to the nature of the work, the number of days likely to be taken in the local investigation and the out of pocket expenses over and above the daily allowance likely to be incurred by the Revenue Officer while engaged in the local investigation.*

(4) *Before issuing the Commission the court shall cause the amount of travelling allowance and fee to be deposited by such party or parties and in such proportions as it may consider fit.*

(5) *When the Commission has been duly executed, it will be returned, by the Revenue*

Officer with his report in writing along with a statement of the distances travelled by him. The Court then shall, after such verification as it considers necessary, pay to him the amount of his travelling and daily allowance together with his share of the fee, calculated and determined in accordance with this rule.

(6) The Revenue Officer shall not be entitled to any further travelling allowance or daily allowance from the Government.

III-Officers Other than Revenue Officer to whom Commission may be Issued

7. When in any suit a local investigation for any of the purposes specified in Rule 9 of Order XXVI of the First Schedule to the Code is deemed requisite or proper and the Court considers it necessary to issue a commission for the purpose to an officer other than a Revenue Officer, it shall ascertain from the head of the office where such officer is working, or, where such officer is himself the head of an office, from the officer to whom he is subordinate, whether his services are available.

8. (1) If it decided that the officer can be spared, the Head of the Office or the officer consulted

shall decide the amount of the cost of local investigation to be deposited in Court before the issue of the commission.

(2) The Head of the Office or the office consulted shall include in such cost :-

- (i) the likely amount of travelling expenses, with due regard to the status of the officer, and*
- (ii) the fee for the work of local investigation.*

(3) The fee shall be fixed with due regard to the nature of the work, the number of days likely to be taken in local investigation and the out of pocket expenses likely to be incurred by the officer while engaged in the local investigation.

(4) The officer executing the commission shall be entitled to the entire amount of travelling expenses and half of the fee, the other half of which shall be credited to Government. He shall not be entitled to any other travelling allowance or daily allowance from the Government.

(5) The Court shall, before issuing the commission, cause the amount of travelling expenses and the fee of the officer concerned to be deposited by such party or parties and in such proportions as it may consider fit.

9. The Commission shall be issued to such officer through the head of the office under whom he is working or, if he himself is the head of the office, then through the officer to whom he is subordinate.

10. Therefore, rules are in place and Rule-III specifically deals in respect of exigency arises out of Rule 9 of Order XXVI of CPC. It has a laudable purpose also because by issuing a commission to any Revenue Officer and /or any officer other than a Revenue Officer to undertake such investigation makes available level playing field to the parties. Revenue Officer has procedural and technical know how with the Total Station Machine and /or Thorax Machine. Through this method Scientific Investigation about a place can be ascertained. In fact Order XXVI Rule 10A of CPC (Commission for Scientific Investigation) also contemplated such type of investigation and said approach is need of the hour. A poor litigant, if files a suit for boundary dispute or demarcation or related reliefs, then it is difficult for him to bring documents in support of his submission because, as such, he does not have proper documents. Similarly, when he is asked to bring oral evidence in support of his assertion, then it is very difficult for him to bring that evidence/witnesses.

11. The Hon'ble Apex Court in the case of **Sangram Singh Vs Election Tribunal, Kotah, AIR 1955 (SC) 425** has discussed in detail about the plight of witnesses. Therefore, when rules are in place

and Revenue Officers are equipped with advanced machines which are linked to satellites can bring exact “Coordinates” to facilitate the truth then ignoring such valuable evidence and resorting to witnesses (who may or may not be trustworthy) would not be in the interest of justice. **In the litigation, Truth must be the ultimate Victor and Justice should be the ultimate Goal.** Therefore, if Truth comes from plaintiff's evidence or from the neutral player like Commissioner/Revenue Officer, it is immaterial. Truth should not be a casualty in over reliance over procedural/legal formalities yielding delay and confusion.

12. Even otherwise, Section 129 of M.P.L.R.C.,1959 talks about demarcation of boundaries of survey number or sub-division of survey number or block number or plot number and Tehsildar has been entrusted the job of demarcation with the help of Revenue Inspector or Patwari. Therefore, it is all the more imperative that demarcation of land must be delineated. For that **Madhya Pradesh Bhu-Rajasva Sanhita (Seemankan) Niyam, 2018** have been framed in exercise of powers conferred under Section 258 read with Section 129 of the Code 1955. Therefore, Revenue Officers are also duty bound to adhere to these provisions and quickly decide the demarcation applications to avoid frivolous litigation.

13. In the cases of **Shreepat Vs. Rajendra Prasad & Ors. 2000 (6) Supreme 389** and in the case of **Haryana Waqf Board vs Shanti Sarup & Ors, (2008) 8 SCC 671**, Hon'ble Apex Court has discussed the aspect of appointment of Commissioner in cases of encroachment / demarcation / boundary dispute etc.

14. In fact trial Court can appoint Commissioner without application being preferred by the parties therefore, trial Court in such facts and circumstances where dispute is in respect of encroachment/demarcation/boundary dispute etc. must appoint Commissioner/ Revenue Officer for obtaining commission report.

15. In the cumulative analysis, trial Court erred in passing the impugned order while rejecting the application under Order XXVI Rule 9 of CPC. Therefore, impugned order dated 11.04.2018 is hereby set-aside. Trial Court is directed to appoint a Commissioner/Revenue Officer to undertake commission and after conducting the inspection/commission, appropriate report shall be filed and parties shall proceed thereafter in accordance with law.

16. Copy of this order be sent to the State Judicial Academy for sensitizing the the Judicial Officers about the importance of appointment of Commissioner in such types of litigation as referred above.

17. Petition stands allowed and disposed of.

(Anand Pathak)
Judge