

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

HON'BLE SHRI JUSTICE AMIT SETH

WRIT PETITION No. 1867 of 2018

***GAURISHANKAR SHARMA (DELETED) THROUGH LRS (A) SMT BAIJANTI
AND OTHERS***

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri G.S. Sharma - Advocate for the petitioners.

Ms. Padamshri Agrawal Panel Lawyer for the respondents No. 1 to 4/State.

Shri Mahesh Goyal, learned counsel for the Lrs of respondent No. 5.

ORDER

(Delivered on this day of 4th November, 2025)

1. With the consent of learned counsel for the rival parties, matter is heard finally.
2. The instant writ petition under Article 226/227 of Constitution of India has been filed by the petitioners challenging the order dated 30/07/2015 passed by Sub Divisional Officer, whereby, appeal preferred by the respondent No. 5 against the order dated 02/01/2013 passed by Naib Tehsildar, Circle – Antari was allowed. The petition also challenges the orders dated 25/07/2016 & 13/12/2017 passed by the Additional Commissioner, Gwalior Division Gwalior (M.P.) and Board of Revenue, Gwalior (M.P.) respectively, whereby, second appeal and revision preferred by the petitioners against the order dated 30/07/2015 have been rejected.

3. The facts in brief to decide this petition are that an application seeking division of plot in respect of the land bearing survey Nos. 1271/1 & 1272/2 came to be filed by the petitioners before the Naib Tehsildar, Circle – Antari which came to be allowed by the Naib Tehsildar vide order dated 02/01/2013. An appeal was preferred by the respondent No. 5 against the said order in terms of section 44 (1) of MPLRC, 1959 before the Sub Divisional Officer, Bitharwar, District Gwalior along with an application for condonation of delay in filing the appeal. The Sub Divisional Officer after condoning the delay allowed the appeal vide order dated 30/07/2015 and set aside the order dated 02/01/2013 passed by the Naib Tehsildar concerned. The second appeal and revision preferred by the petitioners against the said order dated 30/07/2015 came to be rejected by the Additional Commissioner, Gwalior Division, Gwalior and Board of Revenue, Gwalior (M.P.) vide orders dated 25/07/2016 & 13/12/2017 respectively. These impugned orders are under challenge in the instant writ petition.

4. Learned counsel for the petitioner raises solitary contention that Sub Divisional Officer allowed the appeal preferred by the respondent No. 5 only on the ground that the respondent No. 5 was not heard by the Naib Tehsildar while passing the order dated 02/01/2013. He submits that if the Sub Divisional Officer was of the opinion that the respondent No. 5 was required to be heard then recourse was open to remand the matter for consideration afresh. However, in the instant case, the Sub Divisional Officer while setting aside the order dated 02/01/2013 passed by the Naib Tehsildar had allowed the appeal in toto without remanding the matter. He further submits that

even Sub Divisional Officer himself has not considered the appeal on merit. Accordingly, he submits that the aforesaid jurisdictional error ought to have been appreciated by the second appellate authority as well as by the revisional authority, who have glossed over the same. In view of above, he submits that the instant petition deserves to be allowed and the matter deserves to be remanded for passing the suitable orders.

5. On the other hand, learned State counsel as well as learned counsel for the respondent No. 5 opposed the writ petition and submit that impugned orders do not warrant any interference by this Court.

6. No other point has been pressed by learned counsel for the parties.

7. Heard learned counsel for the rival parties and perused the material available on record.

8. The conclusive paragraphs of the order passed by the Sub Divisional Officer read as under :-

“अध्यापक के तर्कों का मन्मथ किया गया। अधीनस्थ न्यायलय के फ़रारण का अन्वेषण किया। रा.नि. हल्का पट्टरी द्वारा 1272 के तर्मीम व बंक्कन का प्रस्तव अधीनस्थ न्यायलय के प्रस्तुत किया, प्रथम अदेश पत्रिका दिनांक 2/1/13 में अदेश पत्रिका किया। उक्त प्रस्तव में अधीलर्थ के भूमि 1272/2 का तर्मीम किया, ह्तिष्ठ पक्षार है। अधीनस्थ न्यायलय के फ़रारण पंजीबद्ध किया जकर अध्यापकों के सुझाई का अन्वेषण दिया जन आवश्यक था। अधीनस्थ न्यायलय द्वारा एक पक्षीय रूप से प्रस्तव का पीक्षा किया बिना अदेश पत्रिका किया। जे स्थिर रखे जाने योग्य नहीं पय जता।
उक्त विचम उपरान्त अधीनस्थ न्यायलय का फ़रारण क्रमांक 3/12-13/अ3 2/1/13 निस्त किया जता है। अधील स्वीकार के जती है।”

9. Bare perusal of the conclusion recorded by the Sub Divisional Officer would reveal that there has been no adjudication on merit of the claim of either of the party by the Sub Divisional Officer. He has interfered solely on the ground of non-compliance of principles of natural justice. In the considered opinion of this Court while interfering in the order passed by the Naib Tehsildar on the said ground either Sub Divisional Officer ought to have examined the merits of the claim of the rival parties or ought to have remanded the matter to the Naib Tehsildar for afresh consideration on merits of the claims of the parties.

10. In view of above, the orders impugned dated 25/07/2016 passed by the Additional Commissioner, Gwalior Division, Gwalior, dated 13/12/2017 passed by the Board of Revenue, Gwalior (M.P.) are set aside and the order dated 30/07/2015 passed by the Sub Divisional Officer is modified to the extent that the matter now stands remitted to the Naib Tehsildar concerned for hearing of the issue in hand afresh in accordance with law after affording opportunity of hearing to all the concerned. The disposed of case No. 3/12-13/~~31~~-3 by the Naib Tehsildar, Bitharwar, District Gwalior is restored to its original number. Parties shall appear before the Naib Tehsildar, Bitharwar, District Gwalior on 01/12/2025. On petitioners' producing certified copy of the order passed in the instant case today, the Naib Tehsildar, Bitharwar, District Gwalior shall hear and dispose of the proceedings in accordance with law after affording opportunity of hearing to all concerned.

11. With the aforesaid directions, the instant writ petition stands disposed of.

12. All interlocutory applications, if any, stand disposed of.

Certified Copy as per rules.

(AMIT SETH)
JUDGE

Durgekar*