



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 16th OF JULY, 2025

MISC. PETITION No. 1905 of 2020

SMT. NAGINA

Versus

MADHUSUDAN AND OTHERS

Appearance:

Shri N.K. Gupta- Senior Advocate with Shri Santosh Agrawal and Shri Saket Sharma- Advocates for petitioner.

Shri R.D. Sharma and Shri Ajay Bhargava- Advocates for respondents.

ORDER

This Misc. Petition, under Article 227 of Constitution of India, has been filed against the order dated 20.09.2018 passed by Board of Revenue, M.P., Gwalior in Revision No.1-Revision/Shivpuri/L.R./2018/1203; order dated 06.03.2020 passed by Board of Revenue, M.P., Gwalior in Review No.6118/2018/Shivpuri/LR; and order dated 31.03.2016 passed by Naib Tahsildar, Circle-II, Dinara, Tahsil Karera, District Shivpuri (M.P.).

2. The facts, necessary for disposal of the present petition, in short, are that petitioner filed an application under Section 248 of M.P. Land Revenue Code, 1959 (for brevity "Code") before Tahsildar, Karera, District Shivpuri (M.P.)



registered as Case No.3/2015-16/A-68 pleading inter alia that graveyard has been encroached upon by the respondents. It was pleaded that the land bearing Survey No.329 is the land of graveyard which is adjacent to the highway. The old survey number of graveyard was 203. In the same survey number, a well is situated which is a government land and after settlement the new survey number i.e. 334 was given to the well area. It was the case of petitioner that the area of graveyard i.e. Survey No.329 area 0.020 hectare has been wrongly encroached upon by the respondents and it was prayed that the respondents be dispossessed and the land of graveyard be made available for the community. Respondent No.2-Dinesh Kumar filed a reply pleading that respondent No.1-Madhusudan has sold the land to respondents No.2 and 3 which was the part of Survey No.333 and the construction is being made on Survey No.333. The Tahsildar directed the Patwari to conduct demarcation survey and submit his report. The Patwari without conducting demarcation merely submitted the inspection report mentioning that he has inspected the land bearing Survey No.329 which is not under encroachment by the respondents. It is submitted by counsel for petitioner that report dated 28.12.2015 was not a demarcation report but it was an inspection report.

3. Petitioner submitted her objection to the report. Accordingly, the Tahsildar directed Patwari to appear in the witness box for cross-examination. In the cross-examination he specifically admitted that he had not conducted any demarcation and just by looking at the area, he had submitted the report. It was further admitted by him that he has not prepared any field book because no demarcation was conducted by him. The Tahsildar without settling the boundary dispute and merely on the basis of so-called inspection report rejected the application filed by petitioner under Section 248 of Code.



4. Against the said order, petitioner preferred an appeal before the Court of Sub-Divisional Officer, Karera, District Shivpuri (M.P.) which was registered as Appeal No.162/2015-16-A (Revenue). The Sub-Divisional Officer, after considering the cross-examination of Patwari, revenue record and *Aks* of the village, found that the land which was purchased by the respondents and where the construction is being made is different as the boundaries of the land purchased by them are not tallying with the construction which is being raised by them and further directed the revenue authorities to conduct the demarcation and thereafter to proceed to demolish the illegal construction and remove the encroachment made by respondents. Against the order dated 31.01.2017, the respondents preferred an appeal which was registered as Appeal No.201/2016-17. The Additional Commissioner, Gwalior Division, Gwalior, after considering the arguments raised by the parties passed a reasoned order dated 30.12.2017 and dismissed the appeal filed by respondents. Against the order of Additional Commissioner, respondents preferred a revision which was allowed by the Board of Revenue by order dated 20.09.2018. Against the said order, petitioner preferred a review which too has been dismissed.

5. It is submitted that one more complaint was made by petitioner along with Manjare Aalam to SDO, Karera, District Shivpuri and the complaint was forwarded to Naib Tahsildar, Circle-II, Dinara, Tahsil Karera, District Shivpuri (M.P.) for enquiry and in that case, Enquiry Report was submitted without settlement of boundary dispute and without conducting the demarcation of land and accordingly, the complaint was wrongly rejected. It is submitted that the said complaint was not decided in any judicial proceeding. Another complaint made by petitioner to the Additional Collector in Jansunwai was also rejected. Thus, it is the case of petitioner that in absence of any demarcation, the Authorities have



wrongly come to a conclusion that there is no encroachment by respondents and accordingly it is prayed that the order dated 20.09.2018 passed by Board of Revenue, M.P., Gwalior in Revision No.1-Revision/Shivpuri/L.R./2018/1203; order dated 06.03.2020 passed by Board of Revenue, M.P., Gwalior in Review No.6118/2018/Shivpuri/LR; and order dated 31.03.2016 passed by Naib Tahsildar, Circle-II, Dinara, Tahsil Karera, District Shivpuri (M.P.) be set aside and the public well as well as the graveyard be protected and the authorities be directed to ensure that no further encroachment is made.

6. *Per contra*, petition is vehemently opposed by counsel for respondents. It is submitted by Shri R.D. Sharma that earlier petitioner along with Manjare Aalam had made a complaint which was dismissed by Naib Tahsildar, Circle-II, Dinara, Tahsil Karera, District Shivpuri (M.P.) by order dated 28.11.2015 and it was held that the construction which is being raised by Vinod is on his private land i.e. Khasra No.333/2. It is submitted that thereafter no appeal was preferred and accordingly, that order attained finality. Similarly, another complaint was made by petitioner before Additional Collector, District Shivpuri (M.P.) in *Jansunwai* which too was dismissed by order dated 22.01.2016. Against the said order, petitioner approached the Board of Revenue which was registered as Revision No.662-III-16 which too was dismissed by Board of Revenue by order dated 04.03.2016. Against the order passed by the Board of Revenue, petitioner preferred Writ Petition No.2203/2016 which was withdrawn by petitioner and by order dated 31.03.2016 petitioner was granted liberty to file a fresh application seeking demarcation of lands in question on the premise that the earlier demarcation was carried out in her absence and the Panchnama also does not bear her signatures. Thereafter, third application was filed under Section 248 of the Code which was dismissed by Naib Tahsildar by order dated 31.03.2016. It is



submitted by counsel for respondents that earlier a demarcation was carried out by Revenue Inspector on 14.06.2015 in presence of Vinod Kumar-respondent No.3 and *Panchaz* and thus it is submitted that it is incorrect to say that the land was never demarcated. It is further submitted that there is a canal between Survey No.329 and Survey No.333/2. Therefore, there is no possibility of encroachment upon the graveyard which is situated in Survey No.329.

7. In reply, it is submitted by counsel for petitioner that from demarcation dated 10.06.2015 which has been filed by respondents themselves as Annexure R-9, it is clear that the boundaries of Survey Nos.333/2, 329 and 334 are not clear. It was mentioned that only after actual demarcation, the situation would be clear. It is further submitted that it is clear from report dated 20.01.2016, two graves are situated just behind Survey No.333/2.

8. It is submitted by counsel for parties that Well was situated in Survey No.203/1 which has been renumbered as 334. Graveyard was situated in Survey No.203/2 which has been renumbered as 329. Canal is situated in Survey No.203/2 which has been renumbered as Survey No.332 and the land belonging to petitioner was situated in Survey No.202 which has been renumbered as 332/2.

9. It is submitted by counsel for petitioner that the SDO while setting aside the order passed by Tahsildar had elaborately dealt with the fact that the original owner has alienated in excess of what was owned by him and thus it is submitted that since the demarcation has not been done and the original owner has alienated in excess of what was owned by him, therefore, the subsequent purchasers are raising construction over the land other than what was purchased by them. It is submitted that the Board of Revenue has set aside the order passed by the SDO and Additional Commissioner on flimsy ground and has relied upon the Spot



Inspection Report dated 20.01.2016, however, the admissions made by the Revenue Inspector were not considered at all.

10. Heard learned counsel for the parties.

11. Balram Dhakad, Patwari, who had submitted the Spot Inspection Report dated 26.12.2015 admitted that he had not carried out the demarcation but had merely inspected the spot. He admitted that no field book was prepared and also admitted that unless and until the field book is prepared, the demarcation cannot be said to be a valid one. He admitted that old Survey No.203 was bifurcated into Survey No.329 and 334. He admitted that in the revenue record of the year 1977-78, Chah (चाह) and Graveyard were recorded in Survey No.203/1 and 203/2.

12. The Board of Revenue has relied upon the report dated 20.01.2016 submitted by Naib Tahsildar to Additional Collector. In that report, it was submitted that since the boundaries were not clear, therefore, the Revenue Inspector was directed to submit the demarcation report. The Revenue Inspector has submitted the demarcation report dated 15.06.2015 and in that report it was specifically mentioned that earlier the demarcation was carried out and thereafter spot was inspected.

13. From the reply which has been filed by respondents it appears that spot inspection was carried out by Tahsildar on 10.06.2015 and he found that the boundaries are not clear and therefore, it was held that unless and until the demarcation is carried out it would not be possible to find out the encroachment and by order dated 10.06.2015 itself, the parties were directed not to raise any further construction. Thereafter, a report dated 15.06.2015 was prepared by the Revenue Inspector in which it was mentioned that demarcation was carried out and thereafter the spot inspection was done. The respondents have filed a copy of report dated 16.06.2015 which was forwarded by Revenue Inspector to Tahsildar.



In this report, it was specifically mentioned that Survey No.333/2 was demarcated in presence of Vinod Kumar and he was informed about the boundaries and at the time of demarcation the Panchaz were present. Panchnama has been filed and that Panchnama is signed by Vinod Kumar and other Panchaz but it does not bear the signatures of petitioner. Neither in the Panchnama nor in the report submitted by the Revenue Inspector to Tahsildar dated 16.06.2015, it was mentioned that petitioner was present but she refused to sign the Panchnama. But it appears that another report which has been filed as Annexure R-8 it was mentioned by the Revenue Inspector that petitioner was present at the time of demarcation and she had refused to sign. It appears that another report dated 16.06.2015 was given by Revenue Inspector to Tahsildar which has been filed as Annexure R-8, according to which the demarcation of Survey No.329 was carried out and in that it was mentioned that the foundation dug by Vinod Kumar is situated in Survey No.333/2 and two graves are constructed on the northern side of Survey No.333/2. The field book which should have been prepared at the time of demarcation of Survey No.329 has not been produced. Although it is submitted by counsel for respondents that the *Aks Naksha* was prepared, Annexure R/6, but fairly conceded that the field book has not been placed on record.

14. Be that whatever it may be.

15. Furthermore, it is nowhere mentioned that prior to carrying out demarcation of Survey No.329 or 333/2 any prior notice was given to petitioner. Two reports have been placed on record which were submitted by Revenue Inspector to Tahsildar; one is in respect of Survey No.333/2 and another is in respect of Survey No.329 but the field books of both the said demarcations have not been placed on record. Further, the SDO in his order dated 31.01.2017 passed



in case No.152/15-16 A. Maal had specifically held that respondent No.1 Madhusudan has illegally alienated the property to Vinod Kumar who has encroached upon the government graveyard situated in Survey No.329 and Well area situated in Survey 334. That aspect has not been dealt with by the Board of Revenue.

16. Under these circumstances, this Court is of considered opinion that the matter can be resolved for once and all by directing the authorities to conduct the demarcation afresh in the presence of parties.

17. Accordingly, order dated 20.09.2018 passed by Board of Revenue, M.P., Gwalior in Revision No.1-Revision/Shivpuri/L.R./2018/1203; order dated 06.03.2020 passed by Board of Revenue, M.P., Gwalior in Review No.6118/2018/Shivpuri/LR; and order dated 31.03.2016 passed by Naib Tahsildar, Circle-II, Dinara, Tahsil Karera, District Shivpuri (M.P.) are hereby **set aside**. Even the order dated 31.01.2017 passed by Sub-Divisional Officer, Karera, District Shivpuri (M.P.) in case No. 152/15-16 A.Maal and order dated 30.12.2017 passed by Additional Commissioner, Gwalior Division, Gwalior, in Case No.201/2016-17 Appeal are hereby **nullified**. The matter is remanded back to the Naib Tahsildar, Circle-II, Dinara, Tahsil Karera, District Shivpuri (M.P.) to resolve the matter by getting the properties demarcated in presence of the parties.

18. The parties are directed to appear before the court of Naib Tahsildar, Circle-II, Dinara, Tahsil Karera, District Shivpuri (M.P.) on 20.08.2025. The Naib Tahsildar, Circle-II, Dinara, Tahsil Karera, District Shivpuri (M.P.) shall fix 29.08.2025 for demarcation and shall constitute the demarcation team for the said purpose. In case if the parties fail to appear on 20.08.2025 before the court of Naib Tahsildar, Circle-II, Dinara, Tahsil Karera, District Shivpuri (M.P.), then no fresh notice will be required to be issued to the absentee party. If any of the



parties fails to participate in demarcation on 29.08.2025, then the said absentee shall not be entitled to raise a contention that demarcation was carried out in his/her absence. After the demarcation is carried out, the Tahsildar shall grant opportunity to all the contesting parties to file their objections and shall pass a final order under Section 129(4) of the Code.

19. The proceedings under Section 248 of the Code shall be decided in the light of the demarcation report.

20. Needless to mention that if any of the parties is aggrieved by the order passed by Tahsildar under Section 129(4) of the Code, then the aggrieved party shall be free to approach the SDO under Section 129(5) of the Code.

21. With aforesaid observation, this petition is finally *disposed of*.

(G.S. Ahluwalia)
Judge