

HIGH COURT OF MADHYA PRADESH

M.P.No.2004/2020

(Smt. Pratibha Acharya Vs. Kamlesh Mohan Shrivastava & Others)

Gwalior, Dated : 31.07.2020

Shri K.K.Shrivastava, learned counsel for the petitioner.

Shri Sameer Kumar Shrivastava, learned counsel for the respondent No.1.

Shri Sankalp Sharma, learned Panel Lawyer for the State.

In the wake of unprecedented and uncertain situation due to outbreak of the Novel Corona virus (COVID-19) and considering the advisories issued by the Government of India, this application has been heard and decided through video conferencing to maintain social distancing. The parties are being represented by the respective counsel through video conferencing, following the norms of social distancing/ physical distancing in letter and spirit.

The present petition has been filed challenging the orders dated 07.02.2020 (Annexure P/1) passed by Sub-Divisional Officer, District Vidisha and 25.05.2019 (Annexure P/2) passed by Tehsildar, District Vidisha and whereby the appeal filed by the petitioner has been dismissed.

It is alleged that the petitioner has filed an application for demarcation with respect to Survey No.2610/1/1 and the demarcation was got done. Thereafter, an application was filed by the respondent for demarcation with respect to the property belonging to them and the aforesaid applications were also allowed. The objections filed by the

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present petitioner were not properly considered. Thereafter, he has preferred an appeal against the demarcation order. The appeal was rejected by the impugned order. It is submitted that the lands of the respondents have been taken over in the National High Way Project and by making the demarcation of the land which are adjoining to the present petitioner's land, and in connivance with the authorities the respondents are trying to encroach upon the petitioner's land. It is submitted that all the survey numbers should together be considered and demarcation be done jointly in presence of both the parties. The aforesaid will make the picture clear and the land will be properly demarcated. It is submitted that all the survey numbers mentioned in para 1 of the petition be taken into consideration jointly for demarcation. He has prayed for quashment of the impugned order with a direction to the respondent/authority to redemarcate the entire land again.

Learned counsel for the respondent has appeared in the matter and has argued that the demarcation of the land on the application being made by the petitioner as well as the respondent was got done by the authorities on four occasions. He has read over the relevant para of the impugned order to point out that Survey No.2610/1/1 area 0.544 and Survey No.2610/2/1 area 0.188 hectare have already been demarcated. The orders i.e. 04.05.2019 and 02.12.2019 with respect to

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the demarcation passed by the respondents/authorities were found to be correct. The appellate authority has affirmed the order passed by the Demarcating Authority. It is submitted that this is the petition under Article 227 of the Constitution of India. The factual matrix of the case could not be considered. It is further contended that the petitioner is free to file another application for demarcation before the concerning authorities. The authorities may treat the same.

Heard the learned counsel for the parties.

From the perusal of the impugned order, it is seen that on four occasions, the demarcation proceedings have been taken up by the respondents/authorities and the demarcation with respect to the properties in question alongwith the properties has been done by the authorities. The demarcation order was put to challenge by way of appeal wherein the appellate authority has affirmed the orders and passed the demarcation proceedings. The application for demarcation was filed by the respondents and the demarcation with respect to the property as mentioned in the application is only done by the authorities. The prayer of the petitioner that all the four survey numbers pointed out by him should be jointly demarcated cannot be considered in an application wherein there is no mention of the survey numbers. Even otherwise this is petition under Article 227 of the Constitution of India and this Court is having limited scope of

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supervisory jurisdiction. No error could be pointed out by the counsel for the petitioner in the impugned order passed by the authorities. The prayer for joint demarcation of all the survey numbers cannot be entertained in writ petition. The Hon'ble Supreme Court in the case of **Shalini Shyam Shetty Vs. Rajendra Shankar Patil (2010) 8 SCC 329**, and has held as under:-

“(a) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(b) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(c). In exercise of its power of superintendence High Court 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. In other words the jurisdiction

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Considering the aforesaid directions issued by the Hon'ble Supreme Court, this Court is having limited supervisory jurisdiction and has pointed out the grounds of which the same can be entertained. This Court does not deem it appropriate to entertain this petition. The order impugned has appears to be rightly being passed. The same does not call for any interference under the petition under Article 227 of the Constitution of India. Accordingly, the petition is dismissed.

However, the liberty is extended to he petitioner that he may apply for demarcation by making a fresh application to the concerning authorities.

E-copy of this order be provided to the petitioner and it is made clear that E-copy of this order shall be treated as certified copy for practical purposes in respect of this order.

AK/-

(Vishal Mishra)
Judge