

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

**BEFORE
HON'BLE SHRI JUSTICE ANAND PATHAK**

ON THE 15th OF MARCH, 2023

WRIT PETITION No. 2578 of 2022

BETWEEN:-

1. **GEETA PALIWAL, W/O LATE SHRI DURGASHANKAR, AGED ABOUT 78 YEARS, R/O MOHALLA CHANDRAGUPT NAGAR, JHALRAPATAN, JHALAWAD (RAJASTHAN)**
2. **SATYENDRA KUMAR, S/O LT. SHRI DURGASHANKAR, AGED ABOUT 54 YEARS, R/O MOHALLA CHANDRAGUPT NAGAR, JHALRAPATAN JHALAWAD (RAJASTHAN)**
3. **SANDHYA BAI PALIWAL, D/O LT. SHRI DURGASHANKAR, W/O SHRI BHAGIRATH, AGED ABOUT 51 YEARS, R/O VILLAGE MORGADI, TEHSIL KHIRKIYA, DISTT. HARDA (MADHYA PRADESH)**
4. **SHASHI PALIWAL D/O LT. SHRI DURGASHANKAR, W/O SHRI SHYAM KUMAR, AGED ABOUT 62 YEARS, R/O MOHALLA LADPURA, KOTA, RAJASTHAN (RAJASTHAN)**
5. **VANDNA PALIWAL, D/O LT. SHRI DURGASHANKAR, W/O SHRI SURESHCHAND, AGED ABOUT 50 YEARS, R/O JHARDA, MAHIDPUR, UJJAIN (MADHYA PRADESH)**

....PETITIONERS

(BY SHRI SAMEER KUMAR SHRIVASTAVA - ADVOCATE)

AND

1. **SITARAM, S/O SHRI MADHOPRASAD, AGED ABOUT 55 YEARS, R/O VILL. SALRI, TEHSIL SIRONJ, DISTRICT VIDISHA (MADHYA PRADESH)**
2. **MAHESH KUMAR, S/O SHRI LAXMINARAYAN, AGED ABOUT 40 YEARS, R/O VILLAGE SALRI TEHSIL SIRONJ, DISTT. VIDISHA (MADHYA**

PRADESH)

3. OMWATI BAI, D/O SHRI LAXMINARAYAN, W/O SHRI VIMAL SHARMA
4. PUSHPA BAI, D/O SHRI LAXMINARAYAN, W/O SHRI JAGDISH
5. BHAGO BAI, D/O SHRI LAXMINARAYAN, W/O SHRI GIRRAJ SHARMA
6. SHRIBAI, W/O SHRI MADHOPRASAD
7. BALARAM PRAJAPATI, S/O SHRI KASHIRAM
8. LALLU PRAJAPATI, S/O SHRI KASHIRAM, RESPONDENT NOS.3 TO 8 R/O VILLAGE SALRI, TEHSIL SIRONJ, DISTT. VIDISHA (MADHYA PRADESH)
9. ANIL KUMAR MISHRA, S/O SHRI RAMESH KUMAR, R/O GENDE WALI SADAK, RANG NIKLEN, LASHKAR GWALIOR (MADHYA PRADESH)
10. NAIB TEHSILDAR, CIRCLE-III, SIRONJ DISTT. VIDISHA (MADHYA PRADESH)
11. SUB DIVISIONAL OFFICER, SIRONJ, DISTT. VIDISHA (MADHYA PRADESH)
12. ADDITIONAL COLLECTOR, DISTT. VIDISHA (MADHYA PRADESH)
13. COLLECTOR VIDISHA, DISTT. VIDISHA (MADHYA PRADESH)

.....RESPONDENTS

*(RESPONDENT NOS.1, 6 AND 8 BY SHRI ANIL SHARMA - ADVOCATE,
RESPONDENT NOS.10 TO 13 BY SHRI SIRAJ QURESHI - GOVERNMENT
ADVOCATE)*

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

ORDER

With consent, heard finally.

The present petition is preferred by petitioners under Article 226 of the Constitution of India, seeking the following reliefs:

(i) A writ of certiorari may kindly be issued to quash order Annexure P-1 passed by respondent no.12.

(ii) A writ of certiorari may kindly be issued to quash order Annexure P-2 passed by respondent no.11.

(iii) A writ of certiorari may kindly be issued to quash order Annexure P-3 passed by respondent no. 10.

(iv) An appropriate writ or order may kindly be issued dismissing the application filed by respondent no.1 to 9 for mutation (Annexure P-4) since the same is without jurisdiction.

(v) An appropriate writ or order may kindly be issued condoning the delay in filing of the appeal filed by petitioners before respondent no.11 by allowing the application for condonation of delay (Annexure P-10).

(vi) Cost of this petition may kindly be awarded to the petitioners.

(vii) Any other relief which this Honble High Court deems fit in the facts and circumstances of the case may also kindly be granted.

2. Precisely stated facts of the case are that respondent no.1 submitted an application for mutation in respect of the properties situate at Sironj, the description of which is pleaded in the petition. Original owner was late Durgashankar who had 2.805 hectares in his name out of total 3.960 hectares. Petitioner no.1 is wife of deceased Durgashankar and petitioner nos.2 to 5 are his children.

3. Respondent no.1, on the basis of an alleged Will dated 5.6.1999 claiming the property to be bequeathed in his name by late Durgashankar, moved an application under sections 109 and 110 of the Madhya Pradesh Land

Revenue Code, 1959 (for brevity, "the Code") before Naib Tahsildar, Sironj, district Vidisha. As per the contents of Will, respondent no.1 and late Durgashankar were in acquaintance and deceased had some property as referred above at Sironj and he was the original resident of Jhalawad (Rajasthan). Because of the services he rendered to deceased, Will was executed in favour of respondent no.1 by deceased and therefore mutation application was preferred.

4. Revenue Inspector submitted a report on 3.12.2020 (Annexure P/6) that since deceased was a resident of Jhalawad and his legal representatives reside there, therefore appropriate steps be taken for intimation to legal heirs but ignoring the said report, Naib Tahsildar proceeded and passed impugned order dated 18.12.2019.

5. After sometime petitioners came to know about such development, therefore preferred an appeal before the Sub-Divisional Officer, Sironj, district Vidisha, on 22.12.2020 but the said appeal got dismissed on the point of delay and vide order dated 12.7.2021 an application under section 5 of the Limitation Act preferred by petitioners was dismissed. Thereafter, petitioners preferred a revision before Collector, district Vidisha, under section 50 of the Code and vide order dated 21.12.2021 Additional Collector, Vidisha, dismissed the revision and affirmed the order passed by the Sub-Divisional Officer, Sironj. Therefore, the petitioners are before this court.

6. It is the submission of learned counsel for petitioners that petitioner no.1 is wife of deceased Durgashankar and petitioner nos.2 to 5 are their children. Necessary Aadhar cards and other documents were attached with the petition to demonstrate their relationship with deceased. Since they were living

at Jhalawad, therefore they did not know about the developments carried out at Sironj whereby respondent no.1 fabricated a Will in his favour and tried to receive the disputed property through the said false and fabricated Will. For mutation, he moved an application before the Naib Tahsildar, Sironj, without impleading the present petitioners as party-respondents. Surprisingly, Naib Tahsildar, Sironj, entertained the said application and even did not care to call the report from Jhalawad where deceased breathed his last and where petitioners reside. Revenue Inspector filed a report in this regard and referred the fact about residence of deceased and his legal representatives at Jhalawad but ignoring the said report, Naib Tahsildar passed the impugned order. Therefore, it is a malacious proceeding intended to be carried out by respondent no.1 to get ownership over the properties belonging to petitioners.

7. It is also the submission of learned counsel for petitioners that question of mutation on the basis of Will cannot be entertained by the Tahsildar or any revenue authority. It is the domain of the Civil Court. In other words, appropriate remedy would have been available for respondent no.1 to assert his rights on the basis of alleged Will in competent Civil Court. Learned counsel for petitioners therefore raised a point regarding maintainability of mutation proceedings where mutation was sought on the basis of a Will. He relied upon the judgment of Supreme Court reported in *AIR 2000 SC 1283 Rohini Prasad and others Vs. Kasturchand and another*, as well as in the case of *Jitendra Singh Vs. State of Madhya Pradesh (SLP (C) No.13146/21) = 2021 SCC OnLine SC 802*, Full Bench judgment of this Court in the case of *Ramgopal Kanhaiyalal Vs. Chetu Batte, AIR 1976 MP 160*, Division Bench judgment of this Court in the case of *Hariprasad Bairagi Vs. Radheshyam and others, 2021 (2) Revenue Nirnay 217*, in *W.A.*

No.317/2021 dated 20.10.2021 in the case of *Smt. Nandita Singh Vs. Ranjit @ Bhaiyu Mohite & Others* as well as Division Bench judgment of this Court in the case of *Murari and another Vs. State of M.P. and others 2020 (4) M.P.L.J. 139*.

8. Learned counsel for the respondent/State opposed the prayer and prayed for dismissal of petition.

9. Learned counsel for respondent no.1 vehemently opposed the prayer and supported the impugned order. According to him, no illegality has been caused by Commissioner, Vidisha Division. He prayed for dismissal of petition.

10. Heard learned counsel for the parties at length and perused the documents appended thereto.

11. This is a case where petitioners, who are family members of deceased Durgashankar have preferred this petition against the orders passed by the revenue authorities from time to time as referred above.

12. So far as maintainability of mutation proceedings on the basis of a Will is concerned, said legal position has been clarified by the Apex Court, Full Bench of this Court as well as Division Bench of this Court from time to time. The Full Bench of this Court in the cases of *Ramgopal Kanhaiyalal* (supra) and Division Bench in *Hariprasad Bairagi* (supra) have categorically held that question of title is the domain of civil court. Relevant discussion of Full Bench in *Ramgopal Kanhaiyalal* (Supra) is reproduced herein below for ready reference:

"Determination of the question of title is the province of the Civil Court and unless there is any express provision to the

contrary, exclusion of the jurisdiction of the Civil Court cannot be assumed or implied. The scheme of the Code consistently preserves the jurisdiction of the Civil Court to decide questions of title and that jurisdiction is not excluded."

13. The Full Bench of this Court has taken into account sections 250 and 257 of the Code while considering this aspect. Decision of Full Bench of this Court is found to be a good law, By Apex Court in the case of ***Rohini Prasad and others*** (supra).

14. Division Bench of this Court in the cases of ***Hariprasad Bairagi*** (supra), ***Murari and another*** (supra) as well as in the case of ***Smt. Nandita Singh*** (supra) discussed in detail about the scope of revenue courts in mutation proceedings on the basis of Will. In the case of ***Hariprasad Bairagi*** (supra), the Division Bench of this Court has even considered the scope of Rules 24 and 32 of Rules regarding Record of Rights (under M.P. Land Revenue Code) published in M.P. Rajpatra dated 2.7.1965 (amended on 16.4.1968) and concluded that the Tahsildar on his own accord cannot record evidence and decide the title arising out of Will. It is the domain of civil courts only and understandably so because civil courts have all necessary tools of adjudication like proper pleadings, summoning of witnesses, recording of evidence, marshaling and appreciation of evidence and other ancillary mechanism along with trained judicial minds. Therefore, Naib Tahsildar does not have any authority to decide the question of Will in a mutation proceeding. Therefore, on this count alone, the impugned order dated 18.12.2019 deserves to be set aside.

15. On close scrutiny, it appears that the manner in which Naib Tahsildar, Circle III, Mughal Sarai, Sironj, district Vidisha, proceeded appears to be a

case of undue haste and malafide. Respondent no.1 moved an application making State of Madhya Pradesh as party-respondent and that too no authority was referred which had to appear and contest the case. Surprisingly, respondent no.1 did not implead the present petitioners as party-respondents and the Naib Tahsildar ignored this material aspect. It was a case without proper and necessary parties. When Revenue Inspector submitted a report and referred the fact that deceased was resident of Jhalawad, thus the whereabouts of his legal representatives could have been ascertained from Jhalawad only, then the Naib Tahsildar ignored this material fact and proceeded further. No examination of witnesses took place and the whole proceedings carried out in a very slipshod manner. In short, Tehsildar relied on Will as sacrosanct document and caused injustice to the petitioners, in which petitioner No.1 is a widow.

16. Plight of a common man (like the present petitioners) was not ceased to exist at the office of Naib Tahsildar but continued to exist even before the Sub-Divisional Officer, Sironj, and the Collector/Additional Collector, Vidisha. All the authorities were oblivious of the fact that respondent no.1 never impleaded necessary parties and he very cleverly impleaded the State of Madhya Pradesh, without referring any authority. It was an empty formality.

17. It was the duty of the Sub-Divisional Officer, Sironj, and the Collector/Additional Collector, Vidisha, to look into such illegality and arbitrariness meted out by the Naib Tahsildar in conducting such proceedings. Casualness of Revenue Authorities deserve caution and they are expected to be more cautious in future in such types of proceedings. However, looking to the conduct of Naib Tahsildar, who had passed this order, it appears that preliminary enquiry against his conduct deserves to be held so that element of

malafide and carelessness, if any, be ruled out. Collector Vidisha shall have to take care of this aspect as per law.

18. Sub-Divisional Officer, Sironj ignored the cardinal legal principle that the **Procedures are handmaid to Justice and are not the Master of it**. The Supreme Court in the case of **Sangram Singh Vs. Election Tribunal Kotah and another, AIR 1955 SC 425** has given guidance in following words :-

"**16.** Now a code of procedure must be regarded as such. It is 'procedure', something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to 'both' sides) lest the very means designed for the furtherance of justice be used to frustrate it.

17. Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle."

19. Thus, authorities must remind themselves that **Law should lead to Justice**. In the present case, the S.D.O., Sironj ought to have considered the

sufficiency of cause while considering the application for condonation of delay filed by the petitioners alongwith their appeal but he failed to do so. Similarly, Additional Collector did not consider the case holistically and passed the impugned order in a slipshod manner.

20. All authorities must remind themselves that **"Every "F I L E" with same alphabets, contains a "L I F E". (See : In Re State of Madhya Pradesh Vs. Pankaj Mishra, 2021 SCC OnLine MP 5480).** In other words, all authorities discharging public duties or performing judicial/quasi-judicial functions must be sensitive to the cause of Justice as Supreme Virtue and must harbour the thought that every **"FILE"** carries a **"LIFE"**, therefore they must be sensitive to Heal a Life rather than counting numbers of disposals only.

21. Resultantly, the petitioners succeed and the petition deserves to be allowed. Consequently, the order dated 18.12.2019 passed by the Naib Tahsildar, Sironj, order dated 12.7.2021 passed by the Sub-Divisional Officer, Sironj, and the order dated 21.12.2021 passed by the Additional Collector, Vidisha, are hereby set aside and the mutation proceedings held in favour of respondent no.1 also pale into oblivion and is hereby set aside. In fact, it is the duty of revenue authorities to ensure the possession of actual claimants over the land in question. However parties are at liberty to undertake consequential proceedings if advised so.

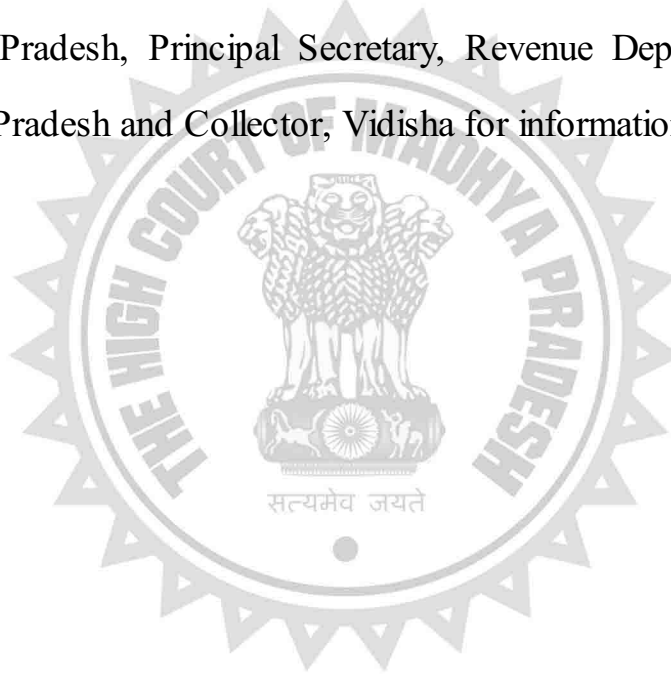
22. Before parting, this court intends to raise expectation from the Chief Secretary, Government of Madhya Pradesh, about the prevailing conditions in respect of mutation proceedings undertaken by revenue authorities on the strength of a Will which, at times, is disputed and even fabricated. Therefore revenue authorities must desist from entering into the arena, which is otherwise

earmarked for Civil Courts. Therefore, the Chief Secretary, Government of Madhya Pradesh, may issue an appropriate circular/guideline in this regard based upon the different judgments passed by Hon'ble the Supreme Court, Full Bench and Division Bench of this Court from time to time so that clarity may prevail in the minds of revenue authorities. This way, mischief, if any, may be avoided in future. It is expected that Chief Secretary shall instil good sense to his subordinate revenue authorities.

23. Petition stands allowed and disposed of in above terms.

24. Copy of this order be sent to the Chief Secretary, Government of Madhya Pradesh, Principal Secretary, Revenue Department, Government of Madhya Pradesh and Collector, Vidisha for information and compliance.

ps



**(ANAND PATHAK)
JUDGE**