

HIGH COURT OF MADHYA PRADESH BENCH AT

GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE HIRDESH

ON 04th September, 2024

Writ Appeal No.1929/2024

Mohd. Haneef and Another

VS.

State of M.P. and Others

Appearances:-

Shri Arvind Dudawat – learned Senior Advocate with Shri Arun Dudawat – Advocate for the appellants.

Shri Vijay Sundaram – Government Advocate for respondents No.1,2 & 3-State.

Shri Prashant Sharma – Advocate for respondents No.4,5,6 & 7.

JUDGMENT

With consent heard finally.

1. Heard on I.A. No.8337/2024, an application under Section 5 of the Limitation Act for condonation of delay.
2. As per office note, the appeal is barred by 290 days.
3. On due consideration and for the reasons stated in the application, I.A. is allowed. Delay in filing the appeal is hereby condoned.

4. I.A. is closed.

5. This writ appeal under Section 2(1) of the Madhya Pradesh Uchcha Nyalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 is filed against the order dated 11th August, 2023 passed in Writ Petition No.18690/2023 by the learned Single Judge, whereby writ petition filed by respondents No.4,5,6 and 7 have been allowed.

6. Precisely stated facts of the case are that the land in question was purchased by father of the respondents No.4 to 7 (hereinafter referred as “respondents”) from Abdus Shami Khan in the year 1962 and mutation proceedings were finalized in the year 1996 and name of mother of respondents -Jaitun Bee was recorded in the revenue record and since then respondents remained in possession of the land in question. In the year 2002, a complaint was filed by father of appellants alleging that there was some interpolation in the revenue record and correction in the revenue entry has not been carried out by the revenue officials. On the basis of said complaint, under the aegis of Collector, Vidisha, an enquiry was conducted by Tehsildar Sironj to the effect that appellants wanted to get the mutation entries corrected with regard to Survey No.1906 admeasuring 5.956 hectare. Based upon the said enquiry, the SDO, Sironj District Vidisha registered a case bearing No.B-121-2022-23 and notices were issued to respondents and reply was solicited. Respondents submitted reply and denied the allegations thoroughly. After framing issues, the SDO

on the basis of documentary evidence available on record found that names of respondents No.4 to 7 were wrongly mutated in the revenue record, instead name of present appellants have to be mutated and passed the order dated 17-07-2023. Being aggrieved by the said order, respondents approached the learned Writ Court.

7. After hearing learned counsel for the parties and duly vetting the evidence available on record, learned Single Judge found that on the direction issued by the Collector, a *suo motu* case was registered by the SDO, Sironj District-Vidisha and an enquiry was conducted wherein though reply was received on behalf of respondents but no opportunity to lead evidence was afforded to either party and only on the basis of documentary material available on record, it was held by the SDO, Sironj, District-Vidisha that name of respondents No.4 to 7 have wrongly been mutated in the revenue records, therefore, such approach of the authority was not in accordance with the legal procedure as prescribed. Therefore, the learned Writ Court, remanded the matter back to the SDO, Sironj District-Vidisha to pass a fresh order in accordance with law after affording due opportunity of hearing to both the parties within a period of six months from the date of receipt of certified copy of the order.

8. Learned counsel for the appellants submits that respondents have already filed a civil suit bearing No.RCSA 60/2023 challenging the order of the SDO and the said civil suit is pending therefore, no

fruitful purpose would be served by remanding the matter back to the SDO as rights of both the parties will finally be adjudicated by the Civil Court and finding thereof shall be binding upon both the parties, therefore, the impugned order passed the learned Writ Court deserved to be set aside.

9. Learned counsel for the respondents/ State opposes the prayer and supported the impugned order by submitting that the learned Writ Court after due appreciation of record, has passed the impugned order of remand and therefore, prays for dismissal of the petition.

10. Learned counsel for respondents No.4 to 7 also opposes the prayer and supported the impugned order of the Writ Court.

11. Heard the learned counsel for the parties and perused the documents appended thereto.

12. From perusal of the record, it appears that the entry in the revenue record in the favour of respondents No.4 to 7 was made in the year 1996 and since then respondents remained in possession of the suit property. On the basis of complaint made by father of appellants, the Collector issued direction to the SDO to conduct an enquiry and pursuant to the aforesaid direction, the SDO registered a case and conducted an enquiry, in which no opportunity to lead evidence was provided to either party and only on the basis of documentary material available on record, order dated 17-07-2023

was passed directing the revenue authorities to mutate the name of present appellants in the revenue record. A long drawn revenue entries after one year of date of such entry could not have been made without addressing the question of limitation. The learned Writ Court rightly considered this aspect and thereafter remanded the matter back to the SDO, Sironj District-Vidisha with a direction to pass a fresh order in accordance with law after giving due opportunity of hearing to both the parties. Against the said order of remand, scope of writ appeal constricts because it does not affect the right of appellants in any manner. Appellants have opportunity to contest the case before the SDO by adducing evidence and submissions, which are being advanced before this Court and the learned Writ Court. There is no illegality, infirmity or perversity caused in passing the impugned order by the learned Writ Court. Thus, the impugned order dated 11th August, 2023 passed in Writ Petition No.18690/2023 by the learned Single Judge stands affirmed.

13. Both the parties are directed to appear before the SDO, Sironj District-Vidisha and comply with the order passed by the learned Writ Court dated 11th August, 2023.

14. The appeal is *dismissed* accordingly.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE