

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE
Writ Petition No.38535 of 2024
BHUPENDRA DWIVEDI AND OTHERS
Vs.
STATE OF MADHYA PRADESH AND OTHERS

APPEARANCE

*Shri N.K. Gupta - Senior Advocate alongwith Shri Saket Sharma -
Advocate for the petitioner.*

Shri K.S. Tomar - Govt. Advocate for the State.

Shri Rohit Bansal - Advocate for respondent No.3

<i>Reserved on</i>	<i>:</i>	<i>07/04/2025</i>
<i>Delivered on</i>	<i>:</i>	<i>25/4/2025</i>

*This petition having been heard and reserved for orders, coming on for pronouncement this day, the **Hon'ble Shri Justice Milind Ramesh Phadke** pronounced/passed the following:*

ORDER

The present petition under Article 226 of the Constitution of India has been filed by the petitioners being aggrieved by the order dated 03.01.2013 passed by the Board of Revenue in Revision No.155-II/12 whereby the order dated 13.12.2011 passed by the Tahsildar, Ishagarh has been set aside.

2. The petitioner is further aggrieved by the order dated 26.6.2014 passed by Board of Revenue in Review Petition No.682-II/2013

whereby challenge made to the order dated 03.01.2013 by way of review, which has been declined.

3. Short facts of the case are that the petitioners are owners of the land bearing Survey No.1370, ad-measuring 0.857 hectares and Survey No.1382 situated at Village Koharwas, Tehsil Ishagarh District Ashoknagar. The petitioners had filed an application for demarcation of the land bearing Survey No.1370, ad-measuring 0.857 which was registered as Case No.4/A-12/2008-09 and in the said proceedings, an objection was raised by the respondent No.3.

4. After hearing the parties, vide order dated 24.06.2009, the Tahsildar had directed the Revenue Inspector to conduct demarcation of the land bearing Survey No.1370 and submit report accordingly.

5. Being aggrieved by the aforesaid order, the respondent No.3 had preferred a revision before the Additional Collector, District Ashoknagar wherein an interim relief was granted in his favour vide order dated 27.06.2009 and the case was fixed for further hearing on 15.07.2009. The petitioners filed an application for postponement of date of hearing and on the said application, the date was extended for 06.07.2009. Against the change of date of hearing, a revision was filed by the respondent No.3 before the Additional Commissioner, Gwalior Division, Gwalior which was registered as Case No.195/2008-09.

6. Vide order dated 10.07.2009, the said revision was decided directing that demarcation proceedings be stayed till the decision of the proceedings pending for correction in map bearing No.79 /08-09/B-121.

7. Being aggrieved by the aforesaid order, a revision was preferred by the petitioners before Board of Revenue which was registered as Case No.972-II of 2009 and after hearing the parties, the Board of

Revenue held that the order passed by Additional Commissioner being contrary to law was set aside directing the Collector that after giving proper opportunity of hearing to the parties concerned, decide the revision as per law.

8. The respondents thereafter filed an application under Section 107 of M.P. Land Revenue Code, 1959 before the Tehsildar, Ishagarh, District Ashoknagar for correction in the concerned map, which was registered as Case No.79/08-09/B-121 and after calling of the report from the revenue Inspector, the Tahsildar had found that there was no need to correct the map of Survey Nos.1370 and 1371 and accordingly, passed an order dated 13.12.2011.

9. After the order passed by Tehsildar and the earlier order passed by Board of Revenue dated 28.06.2010, the Collector was to decide the application, but the respondents filed a revision before the Board of Revenue against the order dated 03.01.2013 and vide order dated 28.06.2010, the Board of Revenue without considering the fact that with regard to the same subject matter between the same parties, there already existed an earlier order dated 28.06.2010, thus erred in allowing the revision filed by the respondents vide order dated 03.01.2013. Aggrieved by the aforesaid order, the petitioners had preferred a review petition, which was also dismissed by the Board of Revenue vide order dated 26.06.2014. Hence, the present petition.

10. Heard.

11. For the purpose of appreciating the dispute between the parties, it would be appropriate to refer to the provisions of Section 50 of the Code, 1959 which are as under:-

"50. [Revision. (1) Subject to the provisions of sub-sections (2),

(3), (4) and (5), - (a)the Board may, at any time on its own motion or on an application made by any party, call for the record of any case which has been decided or proceedings in which an order has been passed under this Code by the Commissioner; (b)the Commissioner may, at any time on his own motion or on an application made by any party, call for the record of any case which has been decided or proceedings in which an order has been passed under this Code by the Collector or the District Survey Officer; (c)the Collector or the District Survey Officer may, at any time on his own motion or on an application of any party, call for the record of any case which has been decided or proceedings in which an order has been passed under this Code by a Revenue Officer subordinate to him; and if it appears that the subordinate Revenue Officer - (i) has exercised a jurisdiction not vested in him by this Code; or (ii) has failed to exercise a jurisdiction so vested; or (iii) has acted in the exercise of his jurisdiction illegally or with material irregularity, the Board or the Commissioner or the Collector or the District Survey Officer may make such order in the case as it or he thinks fit.

(2) No application for revision shall be entertained - (a)against an order appealable under this Code; (b)against any order passed in second appeal under this Code; (c)against an order passed in revision; (d)against an order of the Commissioner under section 210; (e)unless presented within forty-five days from the date of order or its communication to the party, whichever is later ; (3)The Board or the Commissioner or Collector or the District Survey Officer shall not, under this section, vary or reverse any order made or any order deciding an issue, in the course of proceeding, except where - (a)the order, if it had been made in favour of the party applying for revision, would have

finally disposed of the proceedings; or (b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

12. In light of the rival contentions of the parties and going through the provisions of Section 50 of the Madhya Pradesh Land Revenue Code, 1959, this Court finds that the order dated 03.01.2013 passed by the Board of Revenue in a Revision preferred by the respondents (which was registered as Case No.155-II/12) has been passed only on the basis a report of the Tahsildar, Ishagarh (Annexure P/6), dated 13.12.2011 which was forwarded to the Additional Collector and not on an application made by any party and after calling of the record of any case which has been decided or proceedings in which an order has been passed under the MPRC by the Commissioner, thus, is bad in law, as according to Sub-Section 1(a) of Section 50 of the MPLRC, the Board of Revenue only can hear any revision which is preferred against the order challenging the legality/illegality of the order passed by the Commissioner but herein case, only on the basis a report of the Tahsildar, Ishagarh, District Ashoknagar (Annexure P/6), dated 13.12.2011, the revision was preferred by the respondents before the Board of Revenue, which was not maintainable.

13. Accordingly, the order dated 03.01.2013 passed by the Board of Revenue in Revision No.155-II/12 is hereby **set aside** and as a consequence thereof, the order dated 26.6.2014 passed by Board of Revenue in Review Petition No.682-II/2013 is also **set aside**. The parties would be at liberty to raise their objections in the original proceedings before the Competent Authority, who in turn is directed to decide the same in accordance with law.

14. With the aforesaid observation, the present petition is allowed and disposed of.

(Milind Ramesh Phadke)
Judge

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