



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 30th OF APRIL, 2025

WRIT PETITION No. 8789 of 2025

HAR PRASAD JATAV THR LRS (1) SMT. BAIJANTI BAI AND OTHERS

Versus

ANIL KUMAR DUBEY

Appearance:

Shri Gaurav Mishra, Advocate for the petitioners.

None for the respondent.

ORDER

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:

“The petitioner, therefore, most humbly prays that this Hon'ble Court may kindly be pleased to allow this petition thereby issuing a writ of mandamus and/or certiorari against the respondents thereby granting the following reliefs to the petitioner :-

i) That the orders annexure P/1 and P/2 may kindly be set aside,
ii) any other relief deemed fit in the facts and circumstances of the case doing justice in the matter including costs be also awarded.”

2. It is the case of the petitioners that petitioner No.1 Harprasad (since dead) was the owner of 0.61 hectares of land out of total 2.03 hectares of land of survey numbers 226, 254, and 227. The aforesaid land was sold by



Harprasad to one Vasudev by a registered sale deed dated 2/8/2000. Similarly, half share in survey number 123 situated in village Piprauli, i.e. 0.418 hectare, was sold by Harprasad to Ramsanehi by registered sale deed dated 7.8.1991 and after the aforesaid land was sold by Harprasad, he became a landless person. The State Government by circular dated 2.3.2002 decided to allot *Charnoi* land to landless persons of Scheduled Castes and Scheduled Tribes, and accordingly, by order dated 27.5.2002 passed by Tahsildar Gohad in Case No. 19/2001-02/अ-19, 1.04 hectares of land forming part of Khasra number 1568 situated in village Piprauli was allotted to the petitioner. One Hargovind S/o Dhansu preferred an appeal before SDO Gohad, District Bhind, which was registered as Case No. 33/2002-03/Appeal and was dismissed by order dated 24.12.2003, and the allotment of land in favour of Harprasad was upheld on the ground that Hargovind was Brahmin by caste, whereas as per circular dated 2.3.2002 *Charnoi* land was to be allotted to members of Scheduled Castes and Scheduled Tribes. The aforesaid order attained finality and was never challenged. It is submitted that although the petitioners were under an impression that the dispute has suffered a decent burial, but one Anil Kumar Dubey preferred an appeal against the order of allotment dated 27.5.2002. By order dated 9.4.2012 passed in Case No. 53/11-12/अ0मा0, SDO (Revenue), District Bhind allowed the appeal and set aside the allotment order passed in favour of petitioner. The revision filed by petitioners against the order dated 9.4.2012 was dismissed by Commissioner, Chambal Division, Morena, by order dated 9.10.2012 in Case No. 52/2011-12/revision.

3. Challenging the orders passed by the Revenue courts, it is submitted by counsel for petitioners that once the appeal preferred by Hargovind was already rejected and the order of allotment of land in favour of petitioners was already approved, then without challenging the said order, the appeal filed by



Anil Kumar Dubey was not maintainable and, thus, it is claimed that the revenue Authorities have exceeded their jurisdiction.

4. *Per contra*, counsel for State has supported the findings recorded by the Revenue Court. It is submitted that Harprasad (petitioner No. 1, who has died during the pendency of this petition and is being represented by his legal representatives), was not a landless person. He alienated his property and thereafter moved an application for allotment of land in the capacity of landless person. Allotment of *Charnoi* land to landless persons belonging to Scheduled Castes and Scheduled Tribes was with a solitary intention to provide source of livelihood to the persons who are having no land. But as petitioner No. 1 Harprasad was having land and voluntarily alienated the same, it cannot be said that he was a landless person. Therefore, he was not entitled for allotment as per circular dated 2.3.2002.

5. None appeared for the respondent although SPC was already served.

6. The moot question for consideration is as to whether allotment of land in favour of petitioner No. 1 in the light of circular dated 2.3.2002 was in accordance with law or not?

7. The validity of circular dated 2.3.2002 was challenged in W.P. No. 2496 of 2002 and by order dated 5.8.2002, the aforesaid circular was quashed. The order dated 5.8.2002 passed by coordinate bench of this Court in W.P. No. 2496 of 2002 was subjected to challenge in L.P.A. No. 489 of 2002 (**State of M.P. Vs. Nilendra Pratap Singh** reported in **2003 RN 401**), which was partially allowed by order dated 16.1.2003 and it was held that land reserved under Section 237(3) for allotment to SC/STs should not exceed 50%, and accordingly, it was held that reservation of more than 50% on caste basis is illegal. The order passed by Division Bench was challenged by State of M.P. in the case of **State of M.P. Vs. Nilendra Pratap Singh (Civil Appeal No.**



3511 of 2004), which was disposed of by order dated 5/2/2009. It was held as under:-

“..The appellant State has filed an affidavit on 29.1.2007 to the effect that the charnoi land is not going to be distributed to the landless persons under the Circular issued by the Revenue Department of the State Government earlier. On 13th October, 2008 the State Government has filed another affidavit, para 4 of which is quoted below :

“4. That the State Govt. has received several proposals wherein difficulties have been expressed and requests have been made for allotment of Nistar land including Charnoi for using the same for public utility purposes like construction of roads, State highways, national highways, canals, tanks, hospitals, schools, colleges, Goshalas and Abadi etc. Several villages are included in urban areas governed by M.P.Municipality Act and M.P.Municipal Corporation Act. Land recorded as Nistar including Charnoi land in such villages is not being used as Nistar and that such land is also required for various public utility projects in public interest and often no other appropriate government land is available for such projects. Realizing these difficulties, the State Govt. has reconsidered the matter and the following decisions have been taken -

- (i) Total land reserved for Charnoi will not be reduced below 2% in any village;
- (ii) Land reserved for Charnoi shall not be diverted and allotted to any one for agriculture purpose;
- (iii) The Charnoi land in excess of prescribed 2% and also land recorded under any other head of Nistar Patrak may be allotted in public interest for construction of roads, State highways, national highways, canals, tanks, hospitals, schools, colleges, Goshalas and Abadi and any other public utility projects as may be determined by the State Government.”

In the said affidavit it was stated that the Charnoi land will not be reduced below 2% in any village and such land in excess of 2% and also the land recorded under any other head of Nistar Patrak may be allotted for public interest for construction of roads, State highways, national highways, canals, tanks, hospitals,



schools, colleges, Goshalas and Abadi and any other public utility projects as may be determined by the State Government. Learned counsel appearing for the State Government has submitted that in view of this change, the State would not be in a position to comply with the direction of the High Court. In view of this undertaking/statement and fresh policy decision of the Government, the direction of the High Court about land allotment is modified and the appeals are disposed of accordingly. No costs.”

8. By circular dated 2.3.2002, 100% reservation was made for allotment of land in favour of landless persons belonging to SC/ST. By order dated 16.1.2003 passed in LPA No. 489/2002, the reservation of 100% was declared invalid and it was decided that it should not exceed 50%.

9. From the order dated 24.12.2003 passed by SDO Gohad District Bhind in appeal filed by Hargovind, it is clear that the SDO did not take into consideration the law laid down by Division Bench of this Court in the case of **Nilendra Pratap Singh** (Supra) and knowing fully well, by one stroke of pen, upheld 11 pattas treating the land as reserved exclusively for SC/ST and did not verify whether the allotment exceeded 50% reservation.

10. It appears that Anil Kumar Dubey (respondent) also preferred an appeal against the allotment order and SDO (Revenue) by order dated 9.4.2012 set aside the allotment made in favour of petitioner. The order of SDO (Revenue) was upheld by Commissioner, Chambal Division, Morena, by impugned order dated 9.10.2012.

11. Undisputed fact is that petitioner was not a landless person but had himself alienated his property thereby making himself without any land. The term "landless person" is defined in circular dated 2.3.2002.

“ (1) भूमिहीन व्यक्ति की संशोधित परिभाषा—



राज्य शासन ने राजस्व पुस्तक परिपत्र खंड—चार क्रमांक 3 की कण्डिका 1 के खण्ड (ड) में भूमिहीन व्यक्ति की वर्तमान परिभाषा में संशोधन किया है। संशोधित परिभाषा के अनुसार भूमिहीन व्यक्ति के अब दो वर्ग होंगे, जो निम्नानुसार हैं:—

(1) भूमिहीन व्यक्ति: वर्ग—1:— भूमिहीन व्यक्ति: वर्ग—1 से तात्पर्य ऐसे वास्तविक कृषक व कृषक मजदूर से है जो उस राज्य में कम से कम 12 वर्ष से निवासी हो तथा जिसके स्वयं के पास अथवा अपने कुटुम्ब के सदस्य के साथ संयुक्त रूप से कोई भूमि नहीं हो।

स्पष्टीकरण:— इस कण्डिका के प्रयोजन के लिये भूमिहीन व्यक्ति के कुटुम्ब में वह स्वयं, उसकी पत्नी या पति/पुत्र, अविवाहित पुत्रियाँ, माता व पिता तथा सगे और सौतेले भाई सम्मिलित माने जाएंगे।

(2) भूमिहीन व्यक्ति: वर्ग—2:— भूमिहीन व्यक्ति वर्ग—2 से तात्पर्य ऐसे वास्तविक कृषक व कृषक मजदूर से है जो कि इस राज्य में कम से कम 12 वर्षों से निवासी हो तथा जिसके पास—

(एक) कोई भूमि न हो, अथवा

(दो) पहाड़ी अथवा पथरीली भूमि में एक हैक्टेयर या उससे कम असिंचित भूमि हो, अथवा

(तीन) अन्य प्रकार की भूमि में $1/2$ हैक्टेयर या उससे कम असिंचित भूमि हो, अथवा

(चार) अपने परिवार के सदस्य के साथ संयुक्त रूप से उपर्युक्त (दो) अथवा (तीन) जैसी स्थिति हो, के अन्तर्गत निर्धारित रकबे से कम भूमि हो, अथवा

(पाँच) अपने परिवार के सदस्यों को छोड़कर अन्य व्यक्ति के साथ संयुक्त रूप से ऐसी भूमि, जिसमें उसका व्यक्तिगत हिस्सा उपर्युक्त (दो) अथवा (तीन) जैसी स्थिति हो, के अन्तर्गत निर्धारित रकबे से कम हो।

स्पष्टीकरण:— एक— भूमिहीन व्यक्ति: वर्ग—2 के उपबंधों के प्रयोजनों के लिये एक हैक्टेयर सिंचित भूमि 2 हेक्टेयर असिंचित भूमि के बराबर मानी जाएगी।

दो— व्यक्ति के परिवार में उसकी पत्नी या पति, अवयस्क बच्चे और ऐसे माता—पिता जो उसके साथ रहते हैं और उस पर आश्रित हों, शामिल हैं।

तीन— यदि किसी व्यक्ति के पास उसके परिवार के सदस्यों के साथ और ऐसे अन्य व्यक्ति के साथ जो उसके परिवार के सदस्य नहीं हो भले ही उस अन्य व्यक्ति का परिवार हो या नहीं हो. संयुक्त रूप से भूमि हो तो से अन्य व्यक्ति का हिस्सा इस रूप में माना जाएगा मानों की वह एक अलग व्यक्ति हो।

चार— किसी परिवार में एक से अधिक भूमिहीन पात्र होने पर एक से अधिक पात्रों को भूमि प्राप्त करने का तभी अधिकार होगा जबकि उसी



ग्राम के भूमिहीन व्यक्ति: वर्ग-1 के व्यक्तियों को भूमि वंटित करने के पश्चात् कोई कृषि भूमि शेष रहे।

पाँच – संयुक्त परिवार के मामले में परिवार के वयस्क पुत्र/पुत्री को भी पृथक् परिवार मानकर पात्रता के आधार पर भूमि आवंटित की जा सकेगी।”

12. From a plain reading of this definition, it is clear that only agricultural labourers residing in Madhya Pradesh for last 12 years and not having any land would be considered landless. Undisputedly, petitioner No.1 Harprasad had sold his land to Vasudev by registered sale deed dated 2/8/2000. Therefore, Harprasad (petitioner No. 1) did not fall within the definition of landless person. Furthermore, the circular on which petitioner is placing reliance has lost its effect in the light of order passed by Supreme Court in Civil Appeal No. 3511 of 2004.

13. Under the circumstances, this Court is of considered opinion that the revisional Court did not commit any mistake by dismissing the appeal filed by the petitioners by holding that petitioners were not entitled for allotment of land under circular dated 2.3.2002.

14. Accordingly, petition fails and is, hereby, dismissed.

(G. S. AHLUWALIA)
JUDGE

(and)