

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

WRIT PETITION No. 11071 of 2020

JITENDRA AND OTHERS

Versus

STATE OF M.P. THROUGH REVENUE DEPARTMENT AND OTHERS

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Appearance:

Shri Manoj Manav, learned counsel for the petitioners.

Shri Tarun Kushwah, Government Advocate for the State.

Shri Yash Pal Rathore, learned counsel for the respondent No.4.

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Reserved on :- 26.07.2024

Pronounced on :- 20.09.2024

ORDER

By this petition preferred under Article 226 of the Constitution of India, the petitioners have challenged the order dated 20.02.2023 (Annexure P/1) passed by the Board of Revenue whereby the order dated 13.04.2017 (Annexure P/4) passed by the Additional Commissioner, Ujjain Division, Ujjain has been set aside.

02. The facts of the case in brief are that on 21.01.2013, respondents No.2 to 4 filed an application before the Superintendent, Land Records, District Shajapur for correction of the mistake occurred in the revenue records with respect to the disputed lands. It was submitted that their father, Devi Singh was recorded over the disputed lands in Samvat 1982 i.e. 1925 A.D. and thereafter continued to be so recorded upto the year 1973.

However, on and from 1974, the petitioners have got themselves recorded over the disputed lands without any right or authority. Their father has expired in the year 1991 and they being his legal representatives are entitled for getting the revenue entries corrected.

03. Upon filing of the application, notices were issued to the petitioners, who filed their reply to the same. Thereafter, by order dated 25.06.2013, the application preferred by respondents No.2 to 4 was allowed by the Superintendent, Land Records, District Shajapur. The appeal preferred by petitioners under Section 44(1) of M.P. Land Revenue Code, 1959 (hereinafter referred to as the 'Code') against that order was dismissed by order dated 02.08.2016 by the Sub Divisional Officer, Shaujalpur, District Shajapur. Being aggrieved, Second Appeal under Section 44(2) of the Code was preferred by petitioners before the Additional Commissioner, Ujjain Division, Ujjain, which was allowed by him by order dated 13.04.2017 by holding that the application preferred by respondents No.2 to 4 would fall within the purview of Section 116 of the Code which prescribes a period of limitation of one year for correcting the entry and since the application was preferred by respondents No.2 to 4 after a period of 21 years from the date of death of their father, the same was barred by time. However, in revision preferred by respondents No.2 to 4, the said order has been set aside by the Board of Revenue restoring the orders passed by the Superintendent, Land Records and the Sub Divisional Officer.

04. Learned counsel for the petitioners has submitted that the application submitted by respondents No.2 to 4 was and could have been

only under Section 116 of the Code as it then stood which prescribed a period of limitation of one year from the date of entry. The application having been made beyond the said period was barred by time and was hence rightly dismissed by the Additional Commissioner. Section 115 of the Code would not be applicable since the proceedings were instituted on the basis on an application and not by the Tehsildar on his own motion. It is thus submitted that the impugned order deserves to be set aside.

05. Per contra, learned counsel for respondents No.2 to 4 has submitted that the entry as was made by the Patwari in the revenue records in the year 1974 was a void entry without any right or authority and since the same was illegal to begin with, there would not be any period of limitation for getting the same corrected. The Superintendent of Land Records, who was well authorized to decide the application, upon coming to know of the fact of such a void entry has not committed any error in allowing the application. The provisions of Section 116 of the Code would be inapplicable to the facts and circumstances of the case in view of which the petition deserves to be dismissed.

06. I have considered the rival submissions and have perused the record.

07. For the purpose of proper appreciation of the dispute between the parties, it would be apt to refer to the provisions of Section 115 and Section 116 of the Code as they stood at the relevant time i.e. prior to their amendment by way of M.P. Amendment Act No.23 of 2018 with effect from 25.09.2018. They were as under:-

"115. Correction of wrong entry in khasra and any other land records by superior officers.-

If any Tahsildar finds that a wrong or incorrect entry has been made in the land records prepared under section 114 by an officer sub-ordinate to him, he shall direct necessary changes to be made therein in red ink after making such enquiry from the person concerned as he may deem fit after due written notice.

116. Disputes regarding entry in khasra or in any other land records.-(1) If any person is aggrieved by an entry made in the land records prepared under section 114 in respect of matters other than those referred to in section 108, he shall apply to the Tahsildar for its correction within one year of the date of such entry.

(2) The Tahsildar shall, after making such enquiry as he may deem fit, pass necessary orders in the matter."

08. Since unamended Section 115 and 116 of the Code contained reference to Section 108 and 114 of the Code, they as they stood prior to their amendment being relevant are reproduced below:-

"108. Record of rights.-(1) A record-of-rights shall in accordance with rules made in this behalf be prepared and maintained for every village and such record shall include the following particulars:— (a) the names of all Bhumiswamis together with survey numbers or plot numbers held by them and their area, irrigated or unirrigated; (b) the names of all occupancy tenants and Government lessees together with survey numbers or plot numbers held by them and their area, irrigated or unirrigated; (c) the nature and extent of the respective interests of such persons and the conditions or liabilities, if any, attaching thereto; (d) the rent or land revenue, if any, payable by such persons; and (e) such other particulars as may be prescribed. prepared during a pare he record frients mentioned in ever tient shove ne ment may, by notification, so direct."

114. Land Records.-In addition to the map and Bhoo Adhikar Pustikas, there shall be prepared for each village a khasra or field book and such other land records as may be prescribed."

09. In order to ascertain as to whether the application preferred by respondents No.2 to 4 was under the unamended Section 115 or 116 of the Code, it would be relevant to see the prayer made therein. When the application is perused which is at page No.7 of the record of the Superintendent, Land Record, it is clear that the same was in respect of an incorrect entry made in the *khasra panchshala* of the year 1973. Prayer was made therein for correction of the entry as made in the said *khasra panchshala*.

10. Unamended Section 115 was in respect of a wrong or incorrect entry made in the land records prepared under unamended Section 114.

Unamended Section 116 was in respect of entry made in the land records prepared under unamended Section 114 in respect of matters other than those referred to in unamended Section 108. Section 108 referred to the record of rights which were prepared and maintained for each village. Section 114 specifically dealt with a *khasra*. This was a matter other than that referred to in Section 108. A record under Section 108 would be referable to Section 115 whereas record under Section 114 would correspond to Section 116. Since the application preferred by respondents No.2 to 4 was for correction of the entry made in the *khasra panchshala*, the same was made under unamended Section 116 and not Section 115.

11. Section 115 was in respect of a wrong or incorrect entry found by the Tehsildar in the land records and provided that he shall direct necessary changes to be made therein. However, Section 116 contemplated an application to be made to the Tehsildar by a person aggrieved by an entry made in the land records seeking its correction. If an application is made by an aggrieved person, the same can be considered only to have been made under Section 116 and cannot be regarded to be an application under Section 115. Section 115 gets attracted when power is exercised suo moto by Tehsildar for correction of a revenue entry but where proceedings are initiated on the basis of an application made by an aggrieved person, they can only be treated to be under Section 116. For an application to be made under Section 116, there is a period of limitation of one year which begins to run from the date of alleged incorrect entry.

12. The alleged incorrect entry as per respondents No.2 to 4 was made

in the year 1973, whereas the application for its correction was preferred in the year 2013. The same was hence clearly barred by time under unamended Section 116 and for avoiding the bar of limitation the same cannot be treated to be an application under unamended Section 115 as was rightly held by the Additional Commissioner.

13. The entry made in the *khasra panchshala* in the year 1973 was under an order of a revenue authority. The same may be contended to be erroneous or illegal but shall have to be declared as such in a validly instituted proceedings. Till the same is done it would be a valid entry. The entry cannot be said to be a void entry since the authority making it had the power to do the same. Thus, the contention of learned counsel for respondents No.2 to 4 that the entry was a void entry hence the rigor of limitation would not be applicable cannot be accepted.

14. The Additional Commissioner had rightly held the application preferred by respondents No.2 to 4 to be barred by time and had rightly dismissed the same which order has been illegally set aside by the Board of Revenue on wholly irrelevant grounds.

15. As a result, the petition deserves to be and is accordingly allowed and the order dated 20.02.2020 (Annexure P/1) passed by the Board of Revenue is hereby set aside and the order dated 13.04.2017 (Annexure P/4) passed by the Additional Commissioner, Ujjain Division, Ujjain is hereby restored. There shall however be no order as to cost.

(PRANAY VERMA)
JUDGE

