

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 3<sup>rd</sup> OF OCTOBER, 2023**

**MISC. PETITION No. 3679 of 2021**

**BETWEEN:-**

**DINESH KUMAR S/O LAKSHMICHANDRA JAIN,  
AGED ABOUT 55 YEARS, OCCUPATION:  
BUSINESS MU. NO. 77/1, NEW ROAD, RATLAM  
(MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI SANDEEP KOCHATTA WITH SHRI PARTH KOCHATTA,  
ADVOCATE)***

**AND**

**THE STATE OF MADHYA PRADESH  
1. COLLECTOR / DISTRICT MAGISTRATE RATLAM  
(MADHYA PRADESH)**

**DEEPAK S/O LATE RAMLALJI MAIDA, AGED  
ABOUT 34 YEARS, OCCUPATION: AGRICULTURE  
2. MU. NO. 38, GOSHALA ROAD (MADHYA  
PRADESH)**

**MANOJ S/O LATE RAMLALJI MAIDA, AGED  
ABOUT 32 YEARS, OCCUPATION: AGRICULTURE  
3. MU. NO. 38, GOSHALA ROAD (MADHYA  
PRADESH)**

**MS. SANDHYA D/O LATE RAMLALJI MAIDA,  
AGED ABOUT 36 YEARS, OCCUPATION:  
4. AGRICULTURE MU. NO. 38, GOSHALA ROAD  
(MADHYA PRADESH)**

**MS. DIPALI D/O LATE RAMLALJI MAIDA, AGED  
ABOUT 36 YEARS, OCCUPATION: AGRICULTURE  
5. MU. NO. 38, GOSHALA ROAD (MADHYA  
PRADESH)**

**.....RESPONDENTS**

***(BY SHRI VAIBHAV BHAGWAT, G.A.)***

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**Reserved on** : 03.08.2023  
**Pronounced on** : 03.10.2023

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*This petition coming on for final hearing this day, the court passed the following:*

**ORDER**

1] This misc. petition has been filed by the petitioner under Article 227 of the Constitution of India against the order dated 14/09/2021, passed in Case No.42(0021)/Revision/2020-21 by the Commissioner, Ujjain Division, Ujjain (M.P.) whereby the Commissioner while exercising his *suo motu* revisional power under Section 50 and Section 32 of the M.P. Land Revenue Code, 1959 (hereinafter referred to as 'Code of 1959'), has set aside the order passed by the Additional Collector, Ratlam dated 21/03/2018, by which, the permission under Section 165(6) of the Code of 1959 for sale of the land of respondents No.2 to 5 was granted and subsequently the registered sale deed was also executed on 26/03/2018.

2] In brief, the facts of the case are that the petitioner is a resident of Ratlam and had purchased the land bearing survey No.47/8, 47/9, 47/12, 47/14, 47/19 and 47/2 admeasuring 4.440 hectare, situated at village Bhatibhadodia, Tehsil and District Ratlam, through a registered sale deed dated 26.03.2018. The aforesaid lands were purchased by the petitioner from respondents No.2 to 5 who belong to aboriginal tribe of the area. The sale deed was executed after taking permission as provided under Section 165(6)(a) of the Code of

1959, and subsequently the sale deed has been executed on 26/03/2018, however, the aforesaid matter came to be opened initially by the Collector vide its order passed in the month of October, 2018, observing that there appears to be some lapses on the part of the Additional Collector in following the procedure as provided under Section 165(6) of the Code of 1959, and it is also mentioned that no reasons have been assigned for allowing the execution of the sale deed in favour of the petitioner, thus, the matter was recommended to the Commissioner to initiate *suo motu* revision of the matter under Section 50(b) of the Code of 1959. Thereafter, before the Commissioner, the matter came up for hearing on 20/11/2018, and after giving notice to the petitioner, the Commissioner has passed the order on 14/09/2020, in which, he has found that the land was sold by respondents No.2 to 5 for a consideration of Rs.45 Lakhs, and also observing that on perusal of the record, on the application filed by the respondent no.2 to 5, u/s 5(6), the first order was passed on 26/02/2018 by Tehsildar in which there is no mention of issuing any publication of proclamation, however, the proclamation which has been issued, there appears to be some interpolation in the date, and in the aforesaid order, it was also directed that the report from Patwari be called, and the next date was fixed on 16/03/2018, however, in the next proceeding, there is no date mentioned. It is also found that the Tehsildar and the SDO have not mentioned the date in their proceedings, and thus, the Commissioner concluded that the aforesaid proceeding was erroneous and held that the grant of permission to sell the land could

not have been allowed. The Commissioner also found that in their application, the respondents No.2 to 5 mentioned that the land is of no use to them, which does not appear to be correct as the land would still remain in the same village, and in their affidavits, they have mentioned the land to be unirrigated, whereas, as per the report of the Patwari annexed with the record, the land is stated to be irrigated, having a well and tube-well, and thus, came to a conclusion that the applicant had filed a false affidavit. The Commissioner also found that the revenue record also revealed that the plaintiffs are cultivating the land since last many years and there was no reason for them to sell the land, and the Additional Collector has wrongly accepted their application. The commissioner also concluded that there was no justification for respondents No.2 to 5 to sell the land to further develop the remaining land held by them. The Commissioner also found that in the work distribution memo dated 19/05/2017, issued by the Collector, the Additional Collector Shri Kailash Bundela was assigned the work in respect of the land revenue, and to exercise the powers of Collector, however, there was no reference of the powers to be exercised by him under Section 165(6)(7) of the Code of 1959 for which a specific order is required. Thus, the Commissioner concluded that the powers exercised by the Additional Collector runs contrary to the provisions of Section 165(6) of the Code of 1959, and the land has been allowed to be sold in violation of the interest of the aboriginal tribes, hence the land was again directed to be restored to the original status vide order dated 21/03/2018. The aforesaid order dated 14/09/2021 passed by the Commissioner is under challenge in

this petition.

3] Learned counsel for the petitioner has submitted that no illegality has been committed by the Additional Collector in allowing the respondents No.2 to 5 to sell the land to the petitioner. So far as the power of Additional Collector under the work distribution memo dated 19/05/2017 is concerned, counsel has drawn the attention of this Court to Annx.P/5 page 46, to submit that all the powers of the Collector under the M.P. Land Revenue Code, 1959 have been assigned to the Additional Collector. It is submitted that once such a work distribution order is passed, assigning all the powers vested in the Collector under the Land Revenue Code to the Additional Collector, there was no specific requirement to pass a separate order that the provisions of Section 165(6) and (7) shall also be exercised by the Additional Collector. Counsel has also submitted that after the aforesaid work distribution memo dated 19/05/2017, vide fresh work distribution memo dated 19/04/2018, the powers to be exercised under the Land Revenue Code have been reassigned and now powers under Section 165(6)(a)(b)(c) have been delegated to the Additional Collector Shri Kailash Bundela. Thus, it is submitted that the Commissioner has erred in holding that the Additional Collector had no power to pass the order under Section 165 of the Code of 1959. It is submitted that so far as the adequacy of the consideration is concerned, the petitioner has purchased the land for a consideration of Rs.45 Lakhs, and the entire amount has been paid through account payee cheques, thus, it cannot be said that it is a sham transaction as

the amount has been received by the respondents No.2 to 5 in their respective bank accounts, and this fact has also not been disputed by the respondents. So far as the land being irrigated or unirrigated is concerned, counsel has submitted that in the application filed by respondents No.2 to 5 under Section 165(6) of the Code of 1959, the respondents have clearly stated that the land is irrigated and the reasons assigned for selling the aforesaid land is that they require the money to further develop their remaining land, and also to pay the loan obtained from the market. Counsel has drawn the attention of this Court to Annx.P/2 that even as per the report of the Patwari submitted on 13/03/2018, the Patwari has also mentioned that the land is irrigated and the Additional Collector vide its order dated 21/03/2018 (Annx.P/9 page 71) has also mentioned in para 7 that the land is irrigated, and the Collector has also come to a conclusion that respondents No.2 to 5 are getting the value of the property more than the market rate.

4] Counsel has also submitted that the petitioner had paid a huge amount even going by the standards of 2018, which is Rs.45 Lakhs, coupled with the stamp duty of Rs.2,92,500/- and registration charges of Rs.36,000/-, and after spending huge amount, there was no reason for the petitioner to enter into such transaction in violation of law. It is also submitted that subsequently, the name of the petitioner has already been entered into the revenue records. Counsel has further submitted that respondents No.2 to 5 had their constitutional right under Article 300-A, and were well within their rights to sell their

land. In support of his submissions, counsel for the petitioner has relied upon the decision rendered by the Full Bench of this court in the case of *Ranveer Singh since dead through LRs Kishori Singh and others vs. State of M.P. reported as 2010 (4) MPLJ 178*, in which it is held that the suo motu powers can be exercised by the revisional authority within a period of 180 days from the date of the knowledge of illegality, impropriety and irregularity of the proceedings committed by any revenue officer subordinate to it even if the immovable property is government land or having some public interest.

5] On the other hand, shri Vaibhav Bhagavat, learned Government Advocate for the respondents/State has vehemently opposed the prayer and it is submitted that no interference is called for as the Additional Collector has misused his powers while allowing the application of the respondents No.2 to 5 to sell their land under Section 165 (6) of the Code of 1959.

6] It is further submitted that the concerned Additional Collector had issued as many as 63 permissions during his tenure as Additional Collector, and regarding which, a departmental inquiry has also been initiated against him, the documents regarding which have also been placed on record.

7] It is also submitted that the Commissioner has rightly arrived at the conclusion that the transaction was a sham transaction as respondents No.2 to 5, in their affidavits have falsely stated that the land is unirrigated land and that the same is of no use to them. Shri

Bhagwat has also drawn the attention of this Court to the affidavits of respondents No.2 to 5 who have stated that the land is unirrigated. Thus, it is submitted that on one hand, in their application, they have stated that the land is irrigated, whereas in the affidavits to support the aforesaid application, they have clearly stated that the land is unirrigated only, this is only with a view to complete the transaction. Counsel has also submitted that no documents regarding loan having taken by respondents No.2 to 5 from market have also been placed on record. It is also submitted that the entire proceeding appears rather doubtful with the reason that it has taken place within a day's time only i.e., on 26/02/2018, whereas on 16/03/2018, the case was fixed for 16/04/2018 for appearance of applicant and non-applicants and also for the Patwari report, whereas there was no proclamation, and despite that no proclamation was issued, the respondents appeared on the same day itself as on 26/02/2018, whereas the next date was given as 16/03/2018, and on that day, parties appeared, the statements were recorded and thereafter the report was prepared by Tehsildar and submitted to the SDO, and SDO also on the same day i.e., on 26/02/2018, prepared his report and submitted both the reports to the Collector. Thus, it is submitted that there was clear irregularity committed by the officers of the Collectorate in performing their duties.

8] Heard learned counsel for the parties and perused the record.

9] From the record it is found that the agreement to sell the disputed land was executed by respondents No.2 to 5 in the month of



February, 2018, and on 22/02/2018, the application under Section 165(6) of the Code of 1959 was filed, seeking permission to sell the land before the competent authority. On 13/03/2018, a report was prepared by the Patwari pursuant to the application filed by the respondents under Section 165(6) of the Code of 1959. The advertisement was issued on the report of the Naib Tehsildar by the Sub Divisional Officer on 26/02/2018. The Additional Collector passed the final order on 24/02/2018 and 21/03/2018 filed as Annexure P/9, and the registered sale deed was executed subsequently on 26/03/2018, between the petitioner and respondents No.2 to 5. In the month of October, 2018, the Collector made a representation to the Commissioner, Ujjain Division alleging procedural irregularities in granting permission for sale of land in question, and to take cognizance in the matter in Revision under Section 50 (2) of the Code.

10] Learned counsel for the petitioner has raised a legal ground that the Commissioner could not have taken the cognizance under Section 50 of the Code of 1959 after more than 180 days/6 months, as admittedly the order was passed by the Additional Collector on 21/03/2018, whereas the cognizance has been taken by the Commissioner on 20/11/2018, and the order has been passed by the Commissioner on 14/09/2021.

11] At this juncture, it would apt to refer to the decision rendered by the Full Bench in the case of *Ranveer Singh (supra)* in which the following question was referred for its consideration:-

“Whether in the case wherein an individual is not put to suffer any irreparable loss, exercise of suo motu powers after any length of period is justifiable in Law, more so, for protection of Government land or public interest.”

12] This question has been answered by the Full Bench in the following manner :-

“38. *Ab judicatio* for the reasons stated hereinabove we hereby answer the question referred to us as under :-

“The *suo motu* powers can be exercised by the revisional authority envisaged under section 50 of the Code within a period of 180 days from the date of the knowledge of illegality, impropriety and irregularity of the proceedings committed by any revenue officer subordinate to it even if the immovable property is Government land or having some public interest. What should be the irreparable loss, it should be considered on the facts, and circumstances of each case as no definite yardstick in that regard can be drawn.”

We have already mentioned hereinabove certain instances which can be said to be the “irreparable loss.”

(emphasis supplied)

13] It is apparent from the aforesaid decision that the *suo motu* powers can be exercised by the revisional authority under Section 50 of the Code of 1959 within a period of 180 days from the date of the knowledge of illegality or impropriety. In the present case, the Collector has not exercised his power under Section (6-b), however, he has referred the matter to the Commissioner vide his letter sent in the month of October 2018, whereas, the final order has been passed by the Commissioner on 14/09/2021 i.e. after a period of 3 years and 5 months. It is also found that the petitioner and respondents were

issued show cause notice on 04/02/2019 by the Commissioner, and the petitioner filed his detailed reply on 23/09/2019, whereas the respondents No.2 to 5 filed their reply on 24/09/2019, and thereafter it took more than around 2 years to the Commissioner to pass the final order which was passed on 14/09/2021. Thus, the order was clearly passed beyond the period of 180 days, and on this ground only, *the impugned order is liable to be set aside.*

14] Apparently, the sale deed which was executed on 26/03/2018 has been cancelled after a period of 180 days which is surely going to cause irreparable injury and harm not only to the petitioner, but also to respondents No.2 to 5, the sellers, who have already obtained the entire amount to their satisfaction and which must have been utilised by them by now.

15] It is also found that in the registration certificate, it is mentioned that the market value of the property is stated to be Rs.38,31,720/-, whereas the consideration paid is Rs.45,00,000/- which is much more than the market price. The aforesaid amount of Rs.45 Lakh has also been paid by the petitioner through bank transaction only. Thus, it cannot be said that it was a sham transaction, and in such circumstances, the order of sanction under Section 165 (6) of the Code, passed by the Additional Collector could not have been set at naught by the Commissioner only because other departmental inquiries have been initiated against him, and it would not render the entire transaction as null and void.

16] It is also found that so far as the powers of the Additional

Collector to pass any order under the Land Revenue Code are concerned, vide Distribution Memo dated 22.11.2016, Additional Collector Dr. Kailash Bundela has been assigned all the powers under the Code, in relation to all the original applications. And subsequently, vide Memo dated 19.04.2018, the Collector has kept to himself the powers u/ss. 24, 30, 237, 240, 241 and 247(3) & (5) of the Code, whereas has assigned the powers to exercise its jurisdiction u/s.165(6) of the Code to the Additional Collector Dr. Kailash Bundela only. In the impugned order, the Commissioner has held that vide Memo dated 19.05.2017, the Additional Collector was not specifically assigned the powers u/s. 165(6), (7) for which a separate order is required to be passed.

17] In the considered opinion of this court, the said finding that a separate/specific order is required to be passed by the Collector to assign the powers u/s.165 is erroneous as it is not the requirement of law as the reference of word "*Notification*" in S.165(6) & (7) is in respect of the *land and tribe* only, and not the powers of the Collector. It appears that the Commissioner was already prejudiced against the Additional Collector and set aside the order of sanction with that mindset only.

18] So far as the discrepancies which has occurred in the affidavits filed by respondents No.2 to 5 are concerned, the same appears to be trivial in nature and does not affect the transaction. The respondents have stated that they already have other lands bearing survey numbers 122, 138, 456/1, 456/2 admeasuring 1.850 hectare, which is

still left with them after parting with 4.4440 hectare. Thus, it cannot be said that the respondents were left with some small piece of land not enough to provide for their needs. They have also stated that from the amount received by them, they would increase the procurement of the remaining land which also does not appear to be suspicious in any manner. In their application, the respondents No.2 to 5 have also stated that the land which they are selling is an irrigated land, and in such circumstances, if in the subsequent document, it is mentioned that the land is unirrigated, it would not make any difference.

19] In such circumstances, the impugned order dated 14/09/2021 passed by the Commissioner, Ujjain Division, Ujjain cannot be sustained in the eyes of law, firstly on the ground that it has been passed after more than 180 days from the date of the knowledge of illegality, and secondly on its merits, and if any consequential changes have been made in the revenue record, the same shall also stand reversed/cancelled as the land has already been mutated in the name of the petitioner on 18/05/2018.

20] Accordingly, the petition is *allowed*.

Sd/-

**(SUBODH ABHYANKAR)**  
**JUDGE**

krjoshi