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

**BEFORE
HON'BLE SHRI JUSTICE VIVEK RUSIA**

ON THE 19th OF OCTOBER, 2023

MISC. PETITION No. 3857 of 2022

BETWEEN:-

**HIRALAL S/O LATE BHUWANISINGH, AGE: 47 YEARS,
OCCUPATION: AGRICULTURE, R/O: VILLAGE BELAM
BUJURG, TEHSIL, BARWAHA, DISTRICT KHARGONE
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI ARPIT SINGH - ADVOCATE.)

AND

- 1. LAKSHMIBAI W/O LATE BHUWANISINGH, AGE:
ADULT, OCCUPATION: HOUSEWIFE, R/O: VILLAGE
PUNJARPURA, TEHSIL BAGLI, DISTRICT DEWAS
(MADHYA PRADESH)**
- 2. RAGHUNATH SINGH S/O LATE BHUWANISINGH,
AGE: ADULT, OCCUPATION: AGRICULTURE, R/O:
VILLAGE PUNJARPURA, TEHSIL BAGLI, DISTRICT
DEWAS (MADHYA PRADESH)**
- 3. DILEEP S/O LATE BHUWANISINGH, AGE: ADULT,
OCCUPATION: AGRICULTURE, R/O: VILLAGE
SULGAON, TEHSIL MAHESHWAR, DISTRICT
KHARGONE (MADHYA PRADESH)**

.....RESPONDENTS

(RESPONDENTS NO.1 AND 2 BY SMT. SWATI UKHALE - ADVOCATE.)

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

ORDER

This petition under Article 227 of Constitution of India is filed by
petitioner being aggrieved by order dated 03.06.2022 (Annexure P/19) passed

by the Collector, District Khargone (M.P.) in Case No.0001/Revision/2022-23, whereby order dated 14.10.2019 (Annexure P/5) passed by Sub Divisional Officer (Revenue), Barwaha in case No.0011/Appeal/2019-20 has been upheld. Tehsildar, Barwaha, District Khargone in Case No.0001/A-13/2017018 vide order dated 30.05.2019 allowed an application filed under Section 131 of the Madhya Pradesh Land Revenue Code, 1959 (herein after referred to as the Code) by the present petitioner.

2. The Petitioner has filed this petition under Article 227 of the Constitution of India challenging the orders passed by the Revenue Authorities under the Code, namely Collector, Sub Divisional Officer (Revenue) as well as Tehsildar, but none of them have been impleaded as respondent in this petition.

3. Learned counsel for the petitioner submits that these authorities are not supposed to file a reply in this petition to defend their impugned orders hence they are not to be impleaded as respondents. Even otherwise, this is a petition under Article 227 of the Constitution of India in which subordinate courts and Tribunals are not liable to file a reply or return.

4. In support of his contention, Shri Arpit Singh placed reliance on a judgment passed by the Apex Court in case of **Jogendra Sinhji Vijay Singhji v. State of Gujarat & others** reported in (2015) 9 Supreme Court Cases 1 (para 43) and a judgment of Full Bench of Bombay High Court in case of **Motilal S/o Khamdeo Rokde & others v. Balkrushna Baliram Lokhande (since deceased) through L.Rs. Rokde and others** reported in 2020 (1) Maharashtra Law Journal 110 [paras 14, 15, 17, 18, 20 and 22 (4)].

5. The above submission is liable to be rejected by the Authorities established under the M.P. Land Revenue Code, 1959 neither the Court nor the Tribunal. They are only a quasi judicial statutory authority and sometimes they

are called upon to file a reply in a writ petition to justify their action. They are also liable to be impleaded for the purpose of summoning of record, issuance of appropriate direction, for spot inspection etc. In the case of **Jogendra Sinhji Vijay Singhji v. State of Gujarat & others** (supra), it is observed that every adjudicating authority may be nomenclature as a tribunal but the said authority(ies) are different than pure and simple adjudicating authorities and that is why they are called the authorities. An Income Tax Commissioner, whatever rank he may be holding, when he adjudicates, has to be made a party, for he can defend his order. Therefore, the proposition that can safely be culled out is that the authorities or the tribunals, who in law are entitled to defend the orders passed by them, are necessary parties and if they are not arrayed as parties, the writ petition can be treated to be not maintainable. The tribunal or authority is required to defend his own order, it is to be made the party, failing which, the proceedings before the High Court would be regarded as not maintainable.

6. Similar issue came up for consideration before Five Judges bench of this Court in case of **Manoj Kumar v. Board of Revenue, Writ Appeal No.395 of 2007** decided on **02.11.2007**, reported as **AIR 2008 MP 22 = 2007 (4) MPHT 545** and Five Judges Bench have drawn a conclusion that the power to issue the writ is original and the jurisdiction exercised is original jurisdiction. The proceedings under Article 226 of the Constitution are in exercise of original jurisdiction of the High Court whereas the proceedings initiated under Article 227 of the Constitution are supervisory in nature. When under Article 226, a writ is issued, it is issued in the exercise of original jurisdiction whether against a Tribunal or Inferior Courts or Administrative Authorities. On scrutiny of Article 227 of the Constitution of India, it would be crystal clear that the power of

superintendence conferred on the High Court is a power that is restricted to the Court and Tribunal in relation to which it exercises jurisdiction.

7. The Revenue Authorities are not subordinate Court or Tribunal to the High Court. Therefore, orders passed under the provisions of M.P. Land Revenue Code, 1959 are liable to be challenged only by writ petition filed under Article 226 of the Constitution of India not by way of Miscellaneous Petitioner under Article 227 of the Constitution of India.

8. High Court of Madhya Pradesh Rules, 2008 also mandates registration of a writ petition filed under Article 226 of the Constitution of India and registration of a miscellaneous petition when the petition is filed under Article 227 of the Constitution of India i.e. Rule 30 and 30-B respectively of Chapter II. Therefore, in view of the above, the present petition under Article 227 of the Constitution of India is not maintainable.

9. The petition also suffers from a defect of non-joinder of necessary parties. The petitioner is claiming relief of remand of the matter to the Tehsildar to conduct a fresh spot inspection. The said order can be issued only under Article 226 of the Constitution of India because the Tehsildar is not a subordinate Court or a Tribunal and also not presided over by the Judicial Officer.

10. Therefore, instead of carrying out the amendment and converting this petition M.P. into a W.P., the same is hereby dismissed. However, the petitioner shall be at liberty to file a Writ Petition. Certified copy, if any, filed with this miscellaneous petition be returned to the petitioner.

11. Accordingly, Miscellaneous Petition No.3857 of 2022 is dismissed with the above liberty.

Pending interlocutory application, if any, stands disposed off.

**(VIVEK RUSIA)
JUDGE**

rcp

