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MP-4914-2022

IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

ON THE 8<sup>th</sup> OF JANUARY, 2025MISC. PETITION No. 4914 of 2022*MANOHAR SINGH AND OTHERS**Versus**COLLECTOR AND OTHERS*

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Appearance:

Shri Rishiraj Trivedi - Advocate for the petitioners.

Shri Anirudh Malpani appearing on behalf of Advocate General.

Shri Brijesh Garg, learned counsel for the respondent [R-3].

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ORDER

This petition under Article 227 of the Constitution of India has been preferred by the petitioners being aggrieved by the order dated 03.10.2022 passed by the Collector, District Ratlam dismissing the revision preferred by them against the order dated 28.02.2022 passed by the Tehsildar, Piploda, District Ratlam.

2. The facts of the case are that respondent No.3 had filed an application under Section 129 of M.P. Land Revenue Code, 1959 (hereinafter referred to as 'the Code') for demarcation of land bearing survey number 397 area 1.570 hectare. In those proceedings notices were issued to the petitioners on 04.10.2021. The demarcation was carried out on 10.07.2021 and report was submitted to the Tehsildar who affirmed the demarcation by order dated 02.08.2021. On strength of the demarcation,



respondent No.3 filed an application under Section 250 of the Code before the Tehsildar for possession of his land which was found in possession of the petitioners. Therein the petitioners appeared and filed an application under Order 7 Rule 11 of the CPC for rejection of the application. By order dated 28.02.2022 the said application was rejected by the Tehsildar which order has been affirmed by the Collector by the impugned order.

3. It is submitted by the learned counsel for the petitioners that the petitioners were never served with any notice of the demarcation proceedings. The panchnama was not prepared in their presence which is hence not binding upon them in the present proceedings. The petitioners had no opportunity of being heard before finalization of demarcation proceedings hence the principles of natural justice have been violated. There has also been violation of the provisions of Section 129 of the Code. The entire proceedings of demarcation are hence vitiated.

4. *Per contra*, learned counsel for the respondents have supported the impugned orders and have submitted that there is no illegality in the same warranting interference.

5. I have heard the learned counsel for the parties and have perused the record.

6. From the record, it is seen that no objection to the demarcation proceedings has ever been taken by the petitioners as provided under Section 129 (5) of the Code by approaching the Sub Divisional Officer for challenging the demarcation and the order confirming the same. If the petitioners felt that the demarcation proceedings are illegal for any reason



whatsoever they ought to have challenged the same in accordance with law before the higher revenue authority. They have however not done so. The demarcation proceedings and the order passed therein have hence become final and their legality cannot be challenged in the present proceedings. This is the view which has been taken by this Court in *Murlidhar and Another vs. Board of revenue MP and others (2013) 3 MPLJ 184* in which it has been held as under:

"15. As far as the second ground is concerned, the proceeding under section 129 for demarcation was conducted by the Tahsildar and had attained finality. If the petitioners had any grievance with regard to the said order they were required to challenge the same in accordance to law by filing an appeal or revision against the said order by invoking the provisions of section 44 or section 50 of M.P. Land Revenue Code. If the petitioners felt that the order passed under section 129 is without notice to them and without hearing them, they should have challenged the said order in accordance to law. Having not done so, the order becomes a final order and based on the same if the possession of the respondents are restored, no error is committed by the Board of Revenue or the Additional Commissioner. That apart, it is a case of the petitioners that in the proceeding held under section 129 notice was not issued to them, however, the finding recorded is contrary and it shows that in spite of notice petitioner No. 1 did not appear and petitioner No. 2 did not receive the notice. Be it as it may be, once the order under section 129 had attained finality and based on the same action is taken, I see no reason to interfere into the matter."

7. In the aforesaid decision it was observed that if the petitioners therein felt that they had any grievance with regard to the demarcation they were required to challenge the same by filing an appeal or revision against



the order by invoking the provisions of Section 44 or Section 50 of the Code. The same was held in view of the fact that at the relevant time an order of demarcation could be challenged by preferring an appeal or revision under Section 44 or 50 of the Code, 1959. After amendment of Section 129 of the Code by way of MP Amendment Act No.23 of 2018 with effect from 25.09.2018 challenge is required to be made by preferring an application under Section 129(5) of the Code before the Sub- Divisional Officer.

8. The principle however remains the same i.e. in case of having any grievance as regards demarcation proceedings and the order passed therein, they are required to be challenged before the higher authority under the provisions of the Code and if the same is not done, they become final and if proceedings are instituted on the basis of those demarcation proceedings by filing an application under Section 250 of the Code their legality cannot be challenged in such proceedings.

9. Thus, in view of the aforesaid discussion, I am of the opinion that the authorities below have not committed any error in rejecting the application under Order 7 Rule 11 of the CPC preferred by the petitioners. The orders are accordingly affirmed as a result of which the petition is dismissed.

**(PRANAY VERMA)**  
**JUDGE**