

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

**BEFORE
HON'BLE SHRI JUSTICE VIVEK RUSIA
ON THE 18th OF JANUARY, 2024
WRIT PETITION No. 10549 of 2022**

BETWEEN:-

- 1. MOIN KHAN S/O SHER KHAN, AGED ABOUT 29 YEARS,
OCCUPATION: FARMER GRAM PARVALIYA, JAORA, RATLAM
(MADHYA PRADESH)**
- 2. SAYEED KHAN S/O BUGDAD KHAN, AGED ABOUT 32 YEARS,
OCCUPATION: FARMER GRAM PARVALIYA JAORA (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI CHETAN JAIN-ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH PRINCIPAL SECRETARY
VALLABH BHAWAN-2, MANTRALAYA, ARERA HILLS, BHOPAL
(MADHYA PRADESH)**
- 2. DISTRICT COLLECTOR OFFICE OF THE DISTRICT COLLECTOR
AND MAGISTRATE SHASHTRI NAGAR (MADHYA PRADESH)**
- 3. SUB DIVISIONAL OFFICER JAORA OFFICE OF COLLECTOR
SHASTRI NAGAR (MADHYA PRADESH)**
- 4. TEHSILDAR OFFICE OF COLLECTOR SHASTRI NAGAR
(MADHYA PRADESH)**

.....RESPONDENTS

**(BY SHRI SUDHANSHU VYAS-GOVERNMENT ADVOCATE).
(BY ANIRUDH SAXENA,-ADVOCATE [INT]).**

WRIT PETITION No. 10545 of 2022

BETWEEN:-

1. **AAZAD KHAN S/O BUGDAD KHAN, AGED ABOUT 47 YEARS, OCCUPATION: FARMER GRAM PARVALIYA, JAORA, RATLAM (MADHYA PRADESH)**
2. **MOIN KHAN S/O SHER KHAN, AGED ABOUT 29 YEARS, OCCUPATION: FARMER GRAM PARVALIYA, JAORA (MADHYA PRADESH)**
3. **ROSHAN KHAN S/O BUGDAD KHAN, AGED ABOUT 48 YEARS, OCCUPATION: FARMER GRAM PARVALIYA, JAORA (MADHYA PRADESH)**
4. **SAYEED KHAN S/O BUGDAD KHAN, AGED ABOUT 32 YEARS, OCCUPATION: FARMER GRAM PARVALIYA, JAORA (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI CHETAN JAIN-ADVOCATE)

AND

1. **REVENUE DEPARTMENT THROUGH PRINCIPAL SECRETARY VALLABH BHAWAN -2 MANTRALAY, ARERA HILLS BHOPAL (MADHYA PRADESH)**
2. **DISTRICT COLLECTOR OFFICE OF THE DISTRICT COLLECTOR AND MAGISTRATE, SHASHTRI NAGAR (MADHYA PRADESH)**
3. **SUB DIVISIONAL OFFICER, JAORA OFFICE OF COLLECTOR, SHASTRI NAGAR (MADHYA PRADESH)**
4. **TEHSILDAR, JAORA OFFICE OF COLLECTOR, SHASTRI NAGAR (MADHYA PRADESH)**

.....RESPONDENTS

**(BY SHRI SUDHANSHU VYAS-GOVERNMENT ADVOCATE).
(BY ANIRUDH SAXENA,-ADVOCATE [INT]).**

WRIT PETITION No. 10567 of 2022

BETWEEN:-

ZAREEN KHAN S/O AADAM KHAN, AGED ABOUT 63 YEARS,
OCCUPATION: FARMER VILLAGE PARVALIYA, TEHSIL JAORA
(MADHYA PRADESH)

....PETITIONER

(BY SHRI CHETAN JAIN-ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH PRINCIPAL SECRETARY
VALLABH BHAWAN-2, MANTRALAYA, ARERA HILLS BHOPAL
(MADHYA PRADESH)
2. DISTRICT COLLECTOR OFFICE OF THE DISTRICT COLLECTOR
AND MAGISTRATE SHASTRI NAGAR RATLAM (MADHYA
PRADESH)
3. SUB DIVISIONAL OFFICER JAORA OFFICE OF COLLECTOR
SHASTRI NAGAR RATLAM (MADHYA PRADESH)
4. TEHSILSAR JAORA OFFICE OF COLLECTOR SHASTRI NAGAR
RATLAM (MADHYA PRADESH)

....RESPONDENTS

(BY SHRI SUDHANSHU VYAS-GOVERNMENT ADVOCATE).
(BY ANIRUDH SAXENA,-ADVOCATE [INT]).

WRIT PETITION No. 10572 of 2022

BETWEEN:-

DILAWAR KHAN S/O HASAN KHAN, AGED ABOUT 42 YEARS,
OCCUPATION: FARMER H NO. 22/3, GRAM PARVALIYA, TEHSIL
JAORA (MADHYA PRADESH)

....PETITIONER

(BY SRHI CHETAN JAIN-ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH PRINCIPAL SECRETARY

VALLABH BHAWAN BHOPAL (MADHYA PRADESH)

- 2. DISTRICT COLLECTOR OFFICE OF THE DISTRICT COLLECTOR AND MAGISTRATE SHASTRI NAGAR SHASTRI NAGAR (MADHYA PRADESH)**
- 3. SUB DIVISIONAL OFFICER JAORA OFFICE OF COLLECTOR SHASTRI NAGAR SHASTRI NAGAR (MADHYA PRADESH)**
- 4. TEHSILDAR JAORA OFFICE OF COLLECTOR SHASTRI NAGAR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI SUDHANSHU VYAS-GOVERNMENT ADVOCATE).

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

ORDER

These are connected Writ Petitions. The issue involved in all these Writ Petitions are similar, thus same are being decided by this common order. For the sake of the convenience the facts are being taken from the Writ Petition No.10567/2022.

The petitioner has filed the the present Writ Petition being aggrieved by the order dated 28.04.2022 passed by the Collector, Ratlam whereby direction has been issued to correct revenue record by mutating the name of Ambaram S/o Bhera Bhil for the land survey No.153 and 154.

[2]. According to the petitioners their ancestors were in peaceful possession of the land survey No.153 and 154 since 1964-65. Their names were recorded in the revenue records. After their death the names of the petitioners were mutated in the revenue records and

they are having possession till today. The Collector, Ratlam has issued show cause notice dated 26.10.2021 to the petitioner that in Misal Bandobast of 1957-58, the land survey No.123 was registered in the name of Ambaram and after settlement in the year 1996-97, the land was renumbered as 153 and 154 and mutated in the name Kareem Khan, Jareen Kha and at present in the name of Rajaram and Omprakash and Jareen Kha. The petitioner was called upon to explain on what basis this land was transferred in his name. The petitioner submitted reply to the show cause notice and thereafter final order dated 28.04.2022 has been passed. The learned Collector held that the land was mutated in the name of the petitioners in violation of Section 165(6) of M.P.L.R.C., therefore, the Collector in exercise of power under Section 50 of M.P.L.R.C. has directed for restoring the name of Ambaram in the revenue record. Hence, this Writ Petition before this Court.

[3] Some of the petitioners approached before the Commissioner by way of Appeal but same was dismissed as not maintainable.

[4] After notice, the respondents filed reply by submitting that Ambaram was aboriginal tribe and the land belonging to him was not liable to be transferred without permission of the Collector therefore by virtue Section 165(6) of M.P.L.R.C, the said transfer is void. The similar issue has been decided by Apex Court in case of Ranveer Singh Vs. State of M.P. reported in 2010(4) M.P.L.J. 178 in which it has been held that the limitation to exercise the power under Section 50 of M.P.L.R.C is 180 days from the day when Tehsildar passed the order or from the date of knowledge, hence, no interference is called for, thus Writ Petition is liable to be dismissed.

[5] The brother of Ambaram i.e. Uderam has filed an application seeking intervention in the Writ Petition challenging the order passed by the Collector on the ground that being brother of Ambaram his name is also liable to be mutated alongwith Ambaram as joint owner.

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

[6] The respondents filed copy of letter dated 22.10.2021 (Annexure R/3) written by Office of Tehsildar, Jawra to Sub Divisional Officer, Jawra that in the year 1996-58 survey No.43 area 6 beegha, 12 beeswa was recorded in the name of Ambaram who was Bhil by caste, therefore, necessary action be taken in the matter. As per the reference/subject the aforesaid letter was written on oral order of the Sub Divisional Officer. The Sub Divisional Officer, Jawra vide letter dated 22.10.2021 forwarded the aforesaid report to Collector, Ratlam, who in turn issued show casue notice dated 26.10.2021 to all the petitioners and after calling the reply, the impugned order dated 28.04.2022 has been passed, therefore, it is no a case where the Ambaram or any other claimant submitted any application for cancellation of the mutation in the name of these petitioners. It appears from the aforesaid letter, the Sub Divisional Officer by way of oral direction *suo moto* invited report from the Tehsildar and on the basis of said report, the Collector initiated the proceedings under Section 165 (6) of M.P.L.R.C. As per revenue record, after resettlement, the name of petitioners were mutated in the revenue record, since, the revenue record were in possession of the Revenue Authorities, thus it cannot be said that they had no knowledge about the aforesaid mutation. The name of petitioners were mutated in the revenue record by the order

passed by the Revenue Authorities, therefore, the Revenue Authorities had knowledge about the said mutation the name of ancestor of the petitioner but no action was taken under Section 165(6) of M.P.L.R.C.

Section 165 of M.P.L.R.C. is reproduced below:-

165. Rights of transfer. - (1) Subject to the other provisions of this section and the provision of Section 168 a bhumiswami may transfer [***] any interest in his land.

(2) Notwithstanding anything contained in sub-section (1) -

(a) no mortgage of any land by a bhumiswami shall hereafter be valid unless atleast five acres of irrigated or ten acres of unirrigated land is left with him free from any encumbrance or charge;

(b) subject to the provisions of clause (a), no usufructuary mortgage of any land by a bhumiswami shall hereafter be valid if it is for a period exceeding six years and unless it is a condition of the mortgage that on the expiry of the period mentioned in the mortgage deed, the mortgage shall be deemed, without any payment whatsoever by the bhumiswami to have been redeemed in full and the mortgagee shall forthwith re-deliver possession of the mortgaged land to the bhumiswami;

(c) if any mortgagee in possession of the land mortgaged does not hand over possession of land after the expiry of the period of the mortgage or six years whichever expires first the mortgagee shall be liable to ejection by the orders of the Tahsildar as trespasser and the mortgagor shall be placed in possession of the land by the Tahsildar :

[Provided that nothing in this sub-section shall apply in the case of a mortgage of any land held by a bhumiswami for non-agricultural purpose.]

(3) Where a bhumiswami effects a mortgage other than a usufructuary mortgage of his land in pursuance of the provisions of sub-section (2), then notwithstanding anything contained in the mortgage deed, the total amount of interest accruing under the mortgage shall not exceed half the sum of the principal amount advanced by the mortgagee.

(4) Notwithstanding anything contained in sub-section (1), no bhumiswami shall have the right to transfer any land-

(a) in favour of any person who shall as a result of the transfer become entitled to land which together with the land, if any, held by himself or by his family will in the aggregate exceed such ceiling limits as may be prescribed;

(b) [***]

[Provided that-

(i) nothing in this sub-section shall apply-

(a) (i) in the case of transfer in favour of an institution established for a public, religious or charitable purpose or a transfer for industrial purpose or a transfer by way of mortgage;

(ii) in the case of transfer in favour of Co-operative Society for industrial purpose or a transfer by way of mortgage subject, however, to the condition that no mortgage for agricultural purposes shall authorise sale for recovery of an advance in contravention of clause (b) of Section 147;(b) in the case of a transfer of land held for non-agricultural purposes] :

[Provided further that in case of the transfer of land under sub-clause (a) of clause (i) of the preceding proviso for industrial purpose, the land shall be diverted under section 59 prior to such transfer.]

Explanation.-For the purposes of this sub-section, a person's family shall consist of the person himself, the minor children and the spouse of such person living jointly with him and if such person is a minor then his parents living jointly with him.

(5) Notwithstanding anything to the contrary in any other enactment for the time being in force, no land of a bhumiswami shall, in execution of a decree or order of a Court, be sold to any person who as a result of such sale shall become entitled to land which together with the land, if any, held by himself or by his family will in the aggregate exceed such ceiling limits as may be prescribed :

[Provided that nothing in this sub-section shall apply in the case of a co-operative society where any land is to be sold in execution of a decree or order passed in favour of such society after exhausting the procedure prescribed in Section 154-A.]

Explanation. - For the purposes of this sub-section , the expression "a person's family" shall have the same meaning as assigned to it in sub-section (4).

[(6) Notwithstanding anything contained in sub-section (1) the right of bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe by the State Government by a notification in that behalf, for the whole or part of the area to which this Code applies shall-

(i) in such areas as are predominately inhabited by aboriginal tribes and from such date as the State Government may, by notification, specify, not be transferred nor it shall be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe in the area specified in the notification;

(ii) in areas other than those specified in the notification under clause (i), not to be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe without the permission of a Revenue Officer not below the rank of Collector, given for reasons to be recorded in writing.

Explanation. - For the purposes of this sub-section the expression "otherwise" shall not include lease.]

[(6-a) Notwithstanding anything contained in sub-section (1), [the right of a bhumiswami other than a bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6), in the land excluding the agricultural land] shall not be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to aboriginal tribe without the permission of the Collector given for reasons to be recorded in writing :

Provided that every such transfer effected [after the 9th day of June, 1980

but before the 20th April, 1981] which is not in accordance with the provisions herein contained shall, unless such transfer if ratified by the Collector in accordance with the provisions hereinafter contained, be void and shall be of no effect whatsoever, notwithstanding anything contained in this Code or any other law for the time being in force.

(6-b) Notwithstanding anything contained in the Limitation Act, 1963 (No. 36 of 1963), the Collector may on his own motion at any time or on an application made in this behalf within three years of such transaction in such form as may be prescribed, make an enquiry as he may deem fit, and may, after giving a reasonable opportunity of being heard to the persons affected by the transfer, pass an order ratifying the transfer or refusing to ratify the transfer.

(6-c) The Collector shall in passing an order under sub-section (6-a) granting or refusing to grant permission or under sub-section (6-b) ratifying or refusing to ratify the transaction shall have due regard to the following :

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(i) whether or not the person to whom land is being transferred is a resident of the Scheduled Area;

(ii) the purpose to which land shall be or is likely to be used after the transfer;

(iii) whether the transfer serves, or is likely to serve or prejudice the social, cultural and economic interest of the residents of the Scheduled Area;

(iv) whether the consideration paid is adequate;

(v) whether the transaction is spurious or benami; and

(vi) such other matters as may be prescribed.

The decision of the Collector granting or refusing to grant the permission under sub-section (6-a) or ratifying or refusing to ratify the transaction of transfer under sub-section (6-b), shall be final, notwithstanding anything to the contrary contained in this Code.

Explanation.-For the purpose of this sub-section,-

(a) "*Scheduled Area*" means any area declared to be a Scheduled Area within the State of Madhya Pradesh under paragraph 6 of the Fifth Schedule to the Constitution of India;

(b) the burden of proving that the transfer was not spurious, fictitious or benami shall lie on the person who claims such transfer to be valid.

(6-d) On refusal to grant the permission under sub-section (6-a) or ratification under sub-section (6-b), the transferee, if in possession of the land shall vacate the possession forthwith and restore the possession thereof to the original bhumiswami.

(6-e) If the bhumiswami for any reason whatsoever fails or is unable to take possession of the land of which the right of possession stands restored to him under sub-section (6-d), the Collector shall cause the possession of land to be taken and cause the land to be managed on behalf of the bhumiswami subject to such terms and conditions as may be prescribed till such time as the original bhumiswami enters upon his land :

Provided that if any resistance is offered in restoring possession, the Collector shall use or cause to be used such force as may be necessary.

[(6-ee) The agricultural land transferred by the bhumiswami other than a bhumiswami belonging to an aboriginal tribe declared under sub-section (6) to a person not belonging to an aboriginal tribe shall not be diverted for any other purpose before the expiry of period of ten years from the date of transfer;]

(6-f) The provisions of sub-section (6-a) to [(6-ee)] shall have effect, notwithstanding anything to the contrary contained in this Code or any other law for the time being in force.]

(7) Notwithstanding anything contained in sub-section (1) or in any other law for the time being in force-

(a) where the area of land comprised in a holding or if there be more than one holding the aggregate area of all holdings of a bhumiswami is in excess of five acres of irrigated or ten acres of unirrigated land, then only so much area of land in his holding or holdings shall be liable to attachment or sale in execution of any decree or order as is in excess of five acres of irrigated or ten acres of unirrigated land;]

(b) no land comprised in a holding of a bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6) shall be liable to be attached or sold in execution of any decree or order;

(c) no receiver shall be appointed to manage the land of a bhumiswami under Section 51 of the Code of Civil Procedure, 1908 (V of 1908) nor shall any such land vest in the Court or any receiver under the Provincial Insolvency Act, 1920 (V of 1920), contrary to the provisions of clause (a) or clause (b) :

Provided that nothing in this sub-section shall apply where a charge has been created on the land by a mortgage.

[(7-a) Notwithstanding anything contained in sub-section (1), no bhumiswami specified in Section 33 of the Madhya Pradesh Bhoodan Yagna Adhiniyam, 1968 (No. 28 of 1968) shall have the right to transfer any interest in his land specified in the said section without the permission of the [Collector].]

[(7-b) Notwithstanding anything contained in sub-section (1), [a person who holds land from the State Government or a person who holds land in bhumiswami rights under sub-section (3) of Section 158] or whom right to occupy land is granted by the State Government or the Collector as a Government lessee and who subsequently becomes bhumiswami of such land, shall not transfer such land without the permission of a Revenue Officer, not below the rank of a Collector, given for reasons to be recorded in writing.]

(8) Nothing in this section shall prevent a bhumiswami from transferring any right in his land to secure payment of, or shall affect the right of the State Government to sell such right for the recovery of an advance made to him under the Land Improvement Loans Act, 1883 (XIX of 1883) or the Agriculturist Loans Act, 1884 (XII of 1884).

[(9) Nothing in this section shall-

(i) prevent a bhumiswami from transferring any right in his land by way of mortgage to secure payment of an advance made to him by co-operative society subject to the condition that the land shall not be sold to secure recovery, without exhausting the procedure prescribed in Section 154-A; or

(ii) affect the right of any such society to secure recovery or an advance made to him, in accordance with the provisions of Section 154-A]

[(9-a) Nothing in this section shall prevent a bhumiswami who is a displaced person from transferring any right in his land to secure payment of an advance made to him by the Dandakaranya Development Authority or shall affect the right of that Authority to sell such right for the recovery of such advance.

Explanation. - In this sub-section "displaced person" means a person displaced from the territories now comprised in East Pakistan who is resettled in Madhya Pradesh on or after the 1st day of April, 1957, under any scheme of resettlement of displaced persons sanctioned by the Central Government or the State Government.]

[(9-b) Nothing in this section shall prevent a bhumiswami from transferring any right in his land to secure payment of an advance made to him by a Commercial Bank for purpose of agriculture or improvement of holding or shall affect the right of any such Bank to sell such right for the recovery of such advance.]

(10) Notwithstanding anything contained in the Indian Registration Act, 1908 (XVI of 1908), no officer empowered to register documents thereunder shall admit to registration any document which purports to contravene the provisions of this section.

(11) Nothing in this section shall-

(a) invalidate any transfer which was validly made; or

(b) validate any transfer which was invalidly made; before the coming into force of this Code.''

[7] Section 165 of M.P.L.R.C. provides limitation of 3 years. The provisions of Sub-section (6) (a) to (f) of Section 165 of M.P.L.R.C. were inserted after Sub section 6 of Section 165 of M.P.L.R.C. by way of Act No.61 of 1976. Section (6-b) provides the limitation for exercising the power by the Collector in his own motion. According to which the Collector may on his motion at any time or on an application made in this behalf within three years of such transaction in such from as may be prescribed, and pass an order rectifying the transfer or refusing to rectify the transfer, therefore, admittedly, in this case the power has been exercised beyond the period of three years. The respondents cannot take plea that the Collector had no knowledge and limitation will start from the date of knowledge. In this case, the names of the petitioners were mutated in

the revenue record by the orders passed by the Revenue Authority, thus the plea that orders were not in the knowledge cannot be accepted for taking *suo moto* action. Admittedly, neither Ambalal or any family members, or legal heirs filed any application for challenging the mutation of the name of the petitioner in revenue record. After multiple mutation, generation to generation, restoration of the names of original tribe that to without any application by him, would not be proper by taking *suo moto* action.

[8] With the above observation, WRIT PETITION No. 10567 of 2022 is allowed. The order dated 28.04.2022 is hereby quashed. Petitioners are directed to establish their title by way of suit as it is settled law that Revenue Authority does not confer any title on them. They are liable to establish that their names were mutated after following due procedure of law or by way of transfer of title from the original owner. All these issues cannot be decided under the provision of M.P.L.R.C. which are summery in nature.

[9] In view of order passed in WRIT PETITION No. 10567 of 2022, the WRIT PETITION No. 10549 of 2022, WRIT PETITION No. 10545 of 2022 and WRIT PETITION No. 10572 of 2022 are also allowed.

Let photocopy be placed in connected Writ Petitions.

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(VIVEK RUSIA)
JUDGE