

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

**HON'BLE SHRI JUSTICE VIVEK RUSIA**

**ON THE 27<sup>th</sup> OF JUNE, 2023**

**WRIT PETITION No. 13204 of 2022**

**BETWEEN:-**

**SMT. ANUBAI W/O NANDKISHOR RATHORE OCCUPATION:  
AGRICULTURIST RAM BAZAAR, SENDHWA (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI NITIN PHADKE, ADVOCATE)***

**AND**

- 1. THE STATE OF MADHYA PRADESH THROUGH SUB DIVISIONAL OFFICER (REVENUE) SENDHWA (MADHYA PRADESH)**
- 2. ANJANABAI W/O PARASRAM R/O SENDHWA (MADHYA PRADESH)**
- 3. GOVIND S/O RAMRATAN R/O SENDHWA (MADHYA PRADESH)**
- 4. HARIPRASAD S/O RAMRATAN R/O SENDHWA (MADHYA PRADESH)**
- 5. RAMRATAN S/O PANNALAL (SINCE DECEASED) NOW LRS. GOVIND S/O RAMRATAN R/O SENDHWA (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI DEVAASHEESH DUBEY, GOVT. ADVOCATE)***

***(BY SHRI PRADYUMNA KIBE, ADVOCATE FOR RESPONDENT NO.4)***

**WRIT PETITION No. 13638 of 2022**

**BETWEEN:-**

**SMT. ANUBAI W/O NANDKISHOR RATHOR OCCUPATION:**

**AGRICULTURIST RAM BAZAAR, SENDHWA (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI NITIN PHADKE, ADVOCATE)***

**AND**

- 1. THE STATE OF MADHYA PRADESH THROUGH THE SUB DIVISIONAL OFFICER (REVENUE) SENDHWA (MADHYA PRADESH)**
- 2. ANJANABAI W/O PARASRAM R/O SENDHWA (MADHYA PRADESH)**
- 3. GOVIND S/O RAMRATAN R/O SENDHWA (MADHYA PRADESH)**
- 4. HARIPRASAD S/O RAMRATAN R/O SENDHWA (MADHYA PRADESH)**
- 5. RAMRATAN S/O PANNALAL (DECEASED) THROUGH LRS. GOVIND S/O RAMRATAN R/O SENDHWA (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI DEVAASHEESH DUBEY, GOVT. ADVOCATE)***

***(BY SHRI PRADYUMNA KIBE, ADVOCATE FOR RESPONDENT NO.5)***

**WRIT PETITION No. 13642 of 2022**

**BETWEEN:-**

**SMT. ANUBAI W/O NANDKISHOR RATHOR OCCUPATION:  
AGRICULTURIST RAM BAZAAR, SENDHWA (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI NITIN PHADKE, ADVOCATE)***

**AND**

- 1. THE STATE OF MADHYA PRADESH THROUGH SUB DIVISIONAL OFFICER (REVENUE) SENDHWA (MADHYA PRADESH)**
- 2. ANJANABAI W/O PARASRAM R/O SENDHWA (MADHYA PRADESH)**
- 3. GOVIND S/O RAMRATAN R/O SENDHWA (MADHYA PRADESH)**
- 4. HARIPRASAD S/O RAMRATAN R/O SENDHWA (MADHYA PRADESH)**
- 5. RAMRATAN S/O PANNALAL (DECEASED) THROUGH LRS. GOVIND S/O RAMRATAN R/O SENDHWA (MADHYA PRADESH)**

.....RESPONDENTS

*(BY SHRI DEVAASHEESH DUBEY, GOVT. ADVOCATE)*

*(BY SHRI PRADYUMNA KIBE, ADVOCATE FOR RESPONDENT NO.5)*

**WRIT PETITION No. 13644 of 2022**

**BETWEEN:-**

**SMT. ANUBAI W/O LATE NANKISHORE RATHORE OCCUPATION:  
AGRICULTURIST RAM BAZAAR SENDHWA (MADHYA PRADESH)**

.....PETITIONER

*(BY SHRI NITIN PHADKE, ADVOCATE)*

**AND**

1. THE STATE OF MADHYA PRADESH THROUGH THE SUB DIVISIONAL OFFICER (REVENUE) SENDHWA. (MADHYA PRADESH)
2. ANJANABAI W/O PARASRAM R/O SENDHWA (MADHYA PRADESH)
3. GOVIND S/O RAMRATAN R/O SENDHWA (MADHYA PRADESH)
4. HARIPRASAD S/O RAMRATAN R/O SENDHWA (MADHYA PRADESH)
5. RAMRATAN S/O PANNALAL (DECEASED) THROUGH LRS. GOVIND S/O RAMRATAN R/O SENDHWA (MADHYA PRADESH)

.....RESPONDENTS

*(BY SHRI DEVAASHEESH DUBEY, GOVT. ADVOCATE)*

*(BY SHRI PRADYUMNA KIBE, ADVOCATE FOR RESPONDENT NO.5)*

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

**ORDER**

As the controversy involved in all these petitions is identical, therefore, they are being decided by this common order. For the sake of convenience, the facts narrated in W.P.No.13204/2022 are being taken

into consideration.

2. The private respondents approached the Tehsildar under Section 129 of the Madhya Pradesh Land Revenue Code, 1959 seeking demarcation of boundaries of their land with an allegation that the present petitioners have encroached their land. The Tehsildar directed for demarcation through Revenue Inspector, who conducted the demarcation and submitted the report to the Tehsildar in favor of the petitioners. The Tehsildar under Sub-Section (4) of section 129 of MPLRC has confirmed the said demarcation report.

3. After nine months, the respondents exercised their right of appeal under Section 129 (5) of the MPLRC by filing an appeal before the SDO. The appeal was taken up on 03.09.2020 by the Sub-Divisional Officer, Sendhwa and on very first date passed an order under Section 129 (5) & (6) of the MPLRC for fresh demarcation. When the petitioners received the notice of the demarcation, they reached to the spot and thereafter submitted an objection before the SDO. Meanwhile, the newly constituted team conducted a demarcation and submitted a report to the SDO. Since, the report was against the present petitioners, therefore, they submitted an objection. The SDO considered the report and objection and held that these petitioners are in possession of the land belonging to the private respondents and directed to the Tehsildar to remove them and possession be handed over to the respondents. Thereafter, the proceeding under Section 250 of the MPLRC has been initiated. The petitioners filed this petition in which this Court has directed to maintain the status-quo.

4. *Inter alia* the petitioners have assailed the impugned order on the

ground that the SDO has not followed the procedure prescribed under sub-section (6) of section 129 of the MPLRC.

5. On the very first day after filing the appeal the order of fresh demarcation has been passed without giving any opportunity of hearing to the petitioners. Thereafter, the SDO affirmed the demarcation under sub-section (7) of section 129 of the MPLRC against which the petitioners have no remedy of appeal or revision by virtue of sub-section (8) of section 129 of the MPLRC, therefore, there is misuse of process of law and the impugned order is liable to be set aside.

6. Shri Kibe, learned counsel appearing for the respondents submits that even if the order of fresh demarcation has been passed by the Sub-Divisional Officer, the petitioners participated in the demarcation proceeding and thereafter submitted the report. The SDO has consider the report and objection in detail and passed the order, therefore, no prejudice has been caused to the petitioners by not giving notice to them before directing for fresh demarcation.

7. Shri Dubey, learned Panel Lawyer appearing for the respondent/State has argued in support of the impugned order by submitting that the petitioners have been found encroached in the land and the order passed by the SDO is not liable to be interfered.

Section 129 of the Madhya Pradesh Land Revenue Code, 1959 is reproduced below:-

**“129. Demarcation of boundaries of survey number or sub-division of survey number or block number or plot number-**

*(1) The Tahsildar may, on application of a party depute a Revenue Inspector or Nagar Sarvekshak to demarcate the boundaries of a survey number or of a sub-division of*

*survey number or of a block number or of a plot number and construct boundary marks thereon.*

*(2) The Revenue Inspector or Nagar Sarvekshak so deputed shall, after giving notice to parties interested including the neighbouring land holders, demarcate the boundaries of a survey number or of a sub-division of survey number or of a block number or of a plot number, construct boundary marks thereon and submit a demarcation report to the Tahsildar in such manner as may be prescribed. The demarcation report shall also include the particulars of the possession, if any, of any person other than the Bhumi swami on the land demarcated.*

*(3) For carrying out the demarcation the Revenue Inspector or Nagar Sarvekshak may take the assistance of such agency and in such manner as may be prescribed.*

*(4) On the receipt of the demarcation report, the Tahsildar may, after giving opportunity of hearing to the parties interested including the neighbouring land holders, confirm the demarcation report or may pass such order as he thinks fit.*

*(5) A party aggrieved by the confirmation of demarcation report under sub-section (4), may apply to the Sub-Divisional Officer to set it aside on any of the following grounds-*

*(a) that he was not given notice required under sub-section (2) or opportunity of hearing under sub-section (4); or*

*(b) any other sufficient ground: Provided that such application shall not be entertained after the expiry of forty-five days from the date of confirmation the demarcation report by the Tahsildar or the date of knowledge, whichever is later.*

*(6) The Sub-Divisional Officer may, if he admits the application made under subsection after giving opportunity of hearing to the parties interested including the neighbouring land holders and making such enquiries as he may think fit, either confirm the demarcation report submitted under sub-section (2) or depute a team consisting of such persons as may be prescribed to carry out the demarcation once again.*

*(7) The team deputed under sub-section (6) shall, after giving notice to parties interested including the neighbouring land holders, demarcate the boundaries of a survey number or of a sub-division of survey number or of a block number or of a plot number, construct boundary marks thereon and submit report to the Sub-Divisional Officer in such manner as may be prescribed and the Sub-Divisional Officer may pass such orders on it as he thinks*

*fit.*

*(8) Notwithstanding anything contained in sections 44 and 50, no appeal or application for revision shall lie against any order passed or proceedings taken under this section.*

*(9) The State Government may make rules for regulating the procedure to be followed by the Tahsildar in demarcating the boundaries of a survey number or of a sub-division of survey number or of a block number or of a plot number prescribing the nature of the boundary marks to be used, and authorizing the levy of fees from the holders of land in demarcated survey number or subdivision or block number or plot number.”*

**8.** The first contention of Shri Phadke is that under sub-section (3) of section 129 of the MPLRC the Revenue Inspector conducted the demarcation and submitted a report to the Tehsildar. Since, that report was against the respondents, therefore, they could have submitted an objection before the Tehsildar. Since, no objection was submitted, therefore, Tehsildar had no option but to confirm the demarcation proceeding.

**9.** Sub-section (5) of section 129 of the MPLRC gives a right to an aggrieved party to file an appeal against the order of confirmation of demarcation report submitted under sub-section (1) of section 129 of the MPLRC. Even if the respondents did not submit any objection but that will not take away their right of appeal provided under sub-section (5) of section 129 of the MPLRC.

**10.** Sub-section (6) of section 129 of the MPLRC says that the Sub-Divisional Officer if he admits the application made under sub-section (1) of section 129 of the MPLRC then he shall give an opportunity of hearing to the parties interested including the neighboring land owners and making such inquiry as he may think fit either confirm the

demarcation report submitted under sub-section (2) of section 129 of the MPLRC or depute a team consisting of such person as may be prescribed to carry out the demarcation once again. Therefore, it is incumbent upon the SDO to first examine the order passed by the Tehsildar under sub-section (4) of section 129 of the MPLRC after giving an opportunity to person in whose favour the order is passed or neighboring the land owners then decide whether to confirm the report submitted under sub-section (2) of section 129 of the MPLRC or depute the team consisting of such persons to carry out the demarcation once again.

**11.** Under sub-section (6) of section 129 of the MPLRC, the procedure is prescribed for conducting a demarcation and after obtaining the fresh demarcation report the Sub-Divisional Officer may pass such order as he thinks fit. Therefore, before issuing direction for fresh demarcation, the sub-section (6) of section 129 of the MPLRC mandates that the SDO should give an opportunity of hearing to the parties interested including the neighboring land owners and after applying its mind either may confirm the report or direct for fresh demarcation. The said procedure has not been followed in this case.

**12.** When law provides for opportunity of hearing and thereafter parity of an order for demarcation, there is no discretion to the SDO to deviate such proceeding. The language of sub-section (6) of section 129 of the MPLRC is plain and simple. Its mandate ought to have been followed in the case of *Sakshi vs. Union of India (2004) 5 Supreme Court Cases 518*, the Hon'ble Apex Court has held as under:-

*“19. It is well settled principle that the intention of*



*the Legislature is primarily to be gathered from the language used, which means that attention should be paid what has been said as also to what has not been said. As a consequence a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. Similarly it is wrong and dangerous to proceed by substituting some other words for words of the statute. It is equally well settled that a statute enacting an offence or imposing a penalty is strictly construed. The fact that an enactment is a penal provision is in itself a reason for hesitating before ascribing to phrases used in it a meaning broader than that they would ordinarily bear.”*

**13.** Thus, the impugned order is set aside and the matter is remitted back to the Sub Divisional Officer.

**14.** The Collector is directed to allocate this case to Sub Divisional, Sendhwa (other than Ms. Tapasya Parihar).

In view of the aforesaid direction, W.P.No.13204/2022 is disposed of.

In terms of order passed in Writ Petition No.13204/2022, the Writ Petition Nos.13638/2022, 13642/2022 & 13644/2022 are also disposed of.

Let a copy of this order be retained in the file of each connected case.

**(VIVEK RUSIA)  
J U D G E**

vs