

IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

WRIT PETITION No. 26410 of 2022

*BHERULAL*

*Versus*

*THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Vishal Lashkari - Advocate for the petitioners.

Shri Shrey Raj Saxena - Deputy Advocate General for the  
respondent/State.

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Reserved on : 12.09.2024

Pronounced on : 14.10.2024  
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ORDER

This petition under Article 226 of the Constitution of India has been preferred by the petitioners being aggrieved by order dated 26.12.2020 passed by the Commissioner, Ujjain Division, Ujjain whereby the order dated 27.06.2018 passed by the Collector, District Ratlam has been taken up in suo moto revision and set aside and the matter has been remanded back to him.

2. The facts of the case in brief are that petitioner No.1 Bherulal made an application under Section 165(6) of M.P. Land Revenue Code, 1959 (herein after referred to as 'the Code') before the Collector for grant of permission to him to sell his land bearing survey No.44/2/2 area 0.044 hectare and survey No.22/5/2 area 0.110 hectare, total area 0.152 in favour of

petitioner No.2 Harivansh for a consideration of Rs.19 Lakhs. He submitted that no one else is ready to purchase the land hence he may be permitted to sell the same in favour of petitioner No.2. By order dated 27.06.2018 the Collector rejected the application by holding that the land is diverted land hence no permission is required for its sale. Thereafter, proceedings were initiated for review of the said order by the Collector himself and report was submitted by him to the Commissioner on 07.12.2018 seeking permission to review the order. The Commissioner registered suo moto revision case by order dated 22.12.2018 and transferred the same to the Additional Commissioner.

3. The petitioners preferred Writ Petition No.28987 of 2018 before this Court against those proceedings which was dismissed vide order dated 02.04.2019. Being aggrieved, the petitioners preferred Writ Appeal No.1094 of 2019 which was disposed off by order dated 28.02.2020 with a direction to the Additional Commissioner to decide the revision on its own merits without being influenced by the order passed in the Writ Petition. The effect of the said order is that initiation of revisional proceedings has been affirmed. It is hence now no more open for the petitioners to raise in this petition the ground that the original order passed by the Collector could not have been taken up in suo moto revisional proceedings.

4. The matter was again transferred to the Commissioner who by the impugned order dated 26.12.2020 has held that even if the land is Abadi land then also as per the provisions of Section 165(6) of the Code, permission is required to be taken from the Collector for its sale.

5. Learned counsel for the petitioners has submitted that no such permission is required since the land is situated within Urban area and is diverted land. The petitioner No.1 belongs to the original tribe as contemplated under Section 165(6) of the Code which provision is applicable only in respect of agricultural land and that too situated outside the urban area. It would further not be applicable in respect of a diverted land which is the case presently. Reliance has been placed by him on the Division Bench decision of this Court in *Ail Das vs Board of Revenue and others, AIR 1973 M.P. 130*.

6. *Per contra*, learned counsel for the respondents has submitted that the land of the petitioners is not situated in urban area and is not an Abadi land nor is diverted hence the provisions of Section 165(6) of the Code would be applicable to it. It is further submitted that even if the same is Abadi or diverted land then also permission would be required to be taken from the Collector under Section 165(6) of the Code. Reliance has been placed by him on the decision of this Court in *Manohar Singh and another vs. Udaraj and others, 1999 R N 404*.

7. I have considered the submission of learned counsel for the parties and have perused the record.

8. In the impugned order dated 26.08.2020 the Commissioner has held that even if land is situated in Abadi area then also permission from the Collector is required hence the Additional Collector ought to have decided the application of the petitioners on merits. In holding so he has placed reliance upon the decision of this Court in *Manohar Singh and another*

*(supra)*. In paragraph 9 of the said decision reference has been made to the Division Bench judgment of this Court in *Ail Das (supra)* and it has been observed that the Division Bench was considering the scope and ambit of Section 165(7) of the Code which is entirely different in scope and content.

9. However, when the facts of *Ail Das (supra)* are examined there is no scintillata of doubt that the provision which was being considered therein was Section 165(6) of the Code specifically. Reference to provision of Section 165(7) of the Code was incidental. After considering Section 165(6) of the Code the Division Bench held that neither Section 165(6) of the Code nor Section 170 would be applicable on Nazul land situated in an urban area. The decision in the case of *Manohar Singh and another (supra)* to that extent is hence apparently per incuriam having been rendered by misreading the decision of the Division Bench of this Court in *Ail Das (supra)*.

10. It is hence clear that the provision of Section 165(6) of the Code would not be applicable in case land is situated within an urban area and is Nazul land. The Commissioner has held that even if the land is Abadi land then also the provision of Section 165(6) would be applicable. However, no finding has been recorded by him whether the disputed land is situated in Urban area, whether it is Abadi land or whether it is Nazul land. The impugned order hence deserves to be and is accordingly set aside.

11. The matter is remanded back to the Additional Commissioner to consider the documents available on record and as may be filed by the petitioners before him and to record a specific finding as to whether the land in dispute is situated within the Urban area and is Nazul land or is an Abadi

land and thereafter to proceed further in accordance with law. The entire exercise be completed by the Commissioner within a period of four months from the date of receipt of certified copy of this order.

12. The petition is accordingly disposed off.

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

jyoti