

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

**BEFORE**

**HON'BLE SHRI JUSTICE PRANAY VERMA**

**MISC. PETITION No. 7250 of 2023**

**BETWEEN:-**

1. JANKIBAI W/O ATMARAM PATIDAR, AGED ABOUT 56 YEARS, OCCUPATION: AGRICULTURIST, R/O GRAM DESHVALYA, TEHSIL KUKSHI, DISTRICT DHAR (MADHYA PRADESH)
2. SACHIN PATIDAR S/O DEVDAS PATIDAR, AGED ABOUT 38 YEARS, OCCUPATION: AGRICULTURIST, R/O GRAM DESHVALYA, TEHSIL KUKSHI, DISTRICT DHAR (MADHYA PRADESH)
3. MANOJ S/O DEVDAS PATIDAR, AGED ABOUT 44 YEARS, OCCUPATION: AGRICULTURIST, R/O GRAM DESHVALYA TEHSIL KUKSHI DIST. DHAR (MADHYA PRADESH)

**.....PETITIONERS**

***(BY SHRI ASHOK SETHI – SENIOR ADVOCATE WITH SHRI  
AYUSH AGRAWAL- ADVOCATE.)***

**AND**

1. AMBER S/O DEVRAM AJTI PATIDAR JATI KULMI,, AGED ABOUT 28 YEARS, OCCUPATION: AGRICULTURIST, R/O GRAM DESHVALYA, TEHSIL KUKSHI, DISTRICT DHAR (MADHYA PRADESH)
2. COLLECTOR, DISTRICT DHAR (MADHYA PRADESH)
3. SUB DIVISIONAL OFFICER (REVENUE) KUKSHI, DAHI KSHETRA, DISTRICT DHAR (MADHYA PRADESH)

**4. NAIB TEHSILDAR, VRAT NISARPUR,  
TEHSIL KUKSHI DIST. DHAR (MADHYA  
PRADESH)**

**.....RESPONDENTS**

**(BY SHRIPADMNABH SAXENA- ADVOCATE FOR RESPONDENT NO.1  
BY SHRI A.S. PARIHAR- PANEL LAWYER FOR RESOPNDENTS NO.2 TO 4.)**

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*Reserved on : 01.04.2024*

*Pronounced on : 08.05.2024*

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*This petition having been heard and reserved for orders, coming  
on for pronouncement this day, the court passed the following:*

**ORDER**

This petition under Article 227 of the Constitution of India has been preferred by the petitioners being aggrieved by the order dated 24.11.2023 [Annexure P/15] passed by the Collector, District Dhar setting aside the order dated 28.08.2023 (Annexure P/11) passed by the Sub Divisional Officer (Revenue) Kukshi, District Dhar and the order dated 26.09.2022 (Annexure P/7) passed by the Naib Tehsildar, Kukshi, District Dhar and dismissing the application under Section 131 of M.P. Land Revenue Code, 1959 (herein after referred to as 'the Code 1959') filed by the petitioners.

**2.** The facts in brief are that on 21.04.2022 the petitioners filed an application under Section 131 of the Code, 1959 before the Naib Tehsildar submitting that they are the owners of survey No.351/3 area 0.783 hectare, survey No.351/2 area 0.782 hectare and survey No.349/2/2 Gram Deshvalya, Tehsil Kukshi, District Dhar. The first of the two

aforesaid survey numbers were purchased by petitioners from its erstwhile owner Sukhdev Patidar. For going to the land by bullock cart and tractor there is a way over survey No.351/1 held by respondent No.1. The same has been used by the petitioners since a very long time. Respondent No.1 has however obstructed the way by putting stones thereupon and sowing crops over it. The petitioners do not have any alternate way to approach their land. Prayer was hence made by them for opening up of the way obstructed by respondent No.1.

**3.** Respondent No.1 contested the application by filing his reply to the same submitting that in the sale deed produced by the petitioners themselves there is mention of an old way to go to their lands which is available on the spot. The same is public road from which the petitioners can and have been going to their land. The petitioners are trying to open up a new way and the disputed way has not been used by them since a long time and has in fact never been used by them.

**4.** Thereafter, both the parties led oral as well as documentary evidence in support of their respective contentions and spot inspection was also done by the Naib Tehsildar. By order dated 26.09.2022 the application preferred by the petitioners was allowed by the Naib Tehsildar by holding that on the basis of evidence and the agreement dated 24.02.1996 executed between Jagdish son of Sitaram and Devram son of Sitaram it is proved that there is a way to go to survey No.351/2 and 351/3 of the petitioners from Desvalya - Khandwa main road through survey No.351/1 of respondent No.1 which has been obstructed by him. The said order was maintained in appeal preferred by respondent No.1 before the Sub-Divisional Officer under Section 44(1) of the Code, 1959 by order dated 23.08.2023. In revision preferred by respondent No.1 the

aforesaid orders have been set aside by the Collector by the impugned order by holding that there is an alternate ancient way available to the petitioners to approach their land. In the spot inspection dated 30.04.2021 no way as alleged by petitioners has been found which *prima facie* shows that their contention is incorrect. Since existence of an ancient way was not proved by the petitioners, a new way could not have been directed to be opened for them in exercise of power under Section 131 of the Code 1959.

**5.** Learned senior counsel for the petitioner has submitted that the Collector has exceeded his jurisdiction in passing the impugned order. Findings of facts were recorded in detail by the Naib Tehsildar as well as the Sub Divisional Officer upon consideration of the entire evidence brought on record by both the parties in the form of their statements and documents. These concurrent findings of facts could not have been interfered with by the Collector. The findings were not shown to be grossly illegal or perverse and merely because another view was possible, the orders of the authorities below could not have been set aside. In the agreement dated 24.02.1996 there is a clear mention of availability of the way through land of respondent No.1 to approach the land of the petitioners. In the sale deed dated 21.11.2000 also the said recital has been incorporated which has not been given effect to. The predecessors of the parties had agreed for the right of way through the land presently owned by respondent No.1. Mere change in ownership would not make any difference since in the sale deed itself it has been recited that the right of way shall be continued regardless of change of title. The way has been used by the petitioners for more than two decades which has been obstructed by respondent No.1 and which had rightly been directed to be

opened by the authorities below whose orders have been set aside by the Collector without any justification. It is hence submitted that the impugned order be set aside.

6. *Per contra*, learned counsel for respondent No.1 has submitted that from the evidence available on record it is apparent that the petitioners have never used the alleged way through land of respondent No.1 to go to their lands. An alternate way is available to the petitioners to go to their land. The same is the way to go from Pachpavali to Alibaudi. In the spot inspection which was carried out on 30.04.2021 by the Naib Tehsildar, it was categorically found that no way as projected by petitioners has ever existed. The spot inspection was done in presence of the petitioners and under their signatures which is hence binding upon them and cannot be avoided. The orders passed by the authorities below were completely contrary to the record and could not have been supported or justified in any manner hence have rightly been set aside by the Collector who had ample jurisdiction to do the same. It is hence submitted that the petition deserves to be dismissed.

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

8. At this stage, it would be useful to refer to Section 131 of the Code, 1959, which is as under:

**“131. Rights of way and other private easements. -**

(1) In the event of a dispute arising as to the route by which a cultivator shall have access to his fields or to the unoccupied lands or pasture lands of the village, otherwise than by the recognized roads, paths or common land, including those road and paths recorded in the village Wajib-ul-arz prepared under section 242 or as to the source from or course by which he may avail himself of water or as to the course by which he may drain water from his fields, a Tahsildar may, after

local enquiry, decide, the matter with reference to the previous custom in each case and with due regard to the conveniences of all the parties concerned.

(2) The Tahsildar may, at any stage of the enquiry, pass an interim order to grant immediate relief in respect of any matter under dispute in sub-section (1) if he is of the opinion that grant of such relief is necessary in the facts and circumstances of the case :

Provided that such interim order shall stand vacated on the expiry of ninety days from the date of the order unless vacated earlier.”

**9.** A perusal of the aforesaid provision shows that the dispute as regards a route as contemplated thereunder is to be decided with reference to the previous custom and with due regard to convenience of all parties concerned. The same is a twin condition and both of them have to be taken into consideration while deciding the dispute.

**10 .** For proving the customary right of way to go to their lands through the land of respondent No.1, the petitioners have heavily relied upon an agreement dated 24.02.1996 executed between the predecessors of the parties. A perusal of the said agreement shows that thereunder the right of way was given only in respect of survey No.351/2 and not in respect of the other two survey numbers over which such right is being claimed by the petitioners. Even if it is assumed that the right of way as stated in the agreement was given but there is no evidence on record to show that pursuant to the said agreement the said right was actually exercised by persons in whose favour the same was granted or even by the petitioners. The proceedings have been instituted after a period of twenty six years from the date of execution of such agreement and if the same had actually been acted upon there would have been some proof in that regard which is not available.

**11.** The sale deed dated 21.11.2000 which has been relied upon by the petitioners to contend that therein right of way was granted in their favour shows that the same was in respect of an ancient customary way. It states that the said way as is existing would be used by the purchaser. However, there is absolutely no description as to over which land the said way is existing, whether the same is the way which is in dispute in the present case or whether the same is any other different way. There is no description or particulars in the said sale deed from which it can be ascertained and held that reference to the way therein is in respect of the way in dispute in this case itself. Mere recording of fact of existence of way without any particulars thereof in the sale deed does not help the petitioners in any manner. Moreover, there is no proof that pursuant to the said way granted to the petitioners the right over the same was actually exercised by them on and from 2000 up to the date of filing of the application by them in the year 2022.

**12.** In the spot panchnama which was prepared by the Naib Tehsildar in presence of the parties it has been recorded that the way in respect of which relief was sought for by the petitioners does not exist upon the spot. The alternate way as has been contended by respondent No.1 is being used at present for going to the lands of the agriculturists. This is the way from Alibaudi which has been set up by respondent No.1 in his reply. The other spot inspection report dated 06.12.2022 is subsequent to the passing of the final order by the Naib Tehsildar hence nothing much turns up the same for adjudication of the present dispute.

**13.** Another fact which needs mention is that in all the documents which have been brought on record by the parties including the revenue documents there is no document which records that over the land of

respondent No.1 there is a way in existence. If such a way had been in existence and has been used by the petitioners since a long time as has been contended by them, then the same would have certainly found mention in the revenue records. In the various records which are prepared under the provisions of the Code, 1959, such way would have been certainly recorded had the same been in existence. However, there is no document to that effect. It has also not been shown by the petitioners that they ever made any effort for getting such a way recorded over the land of respondent No.1. Thus, the contention of the petitioners that the disputed way is a customary way and is being used by them since a long time is not acceptable. In view of the spot panchnama, it is also evident that an alternate way is available to the petitioners to approach their land which is hence a convenient way for them and for that purpose they need not claim any right to go through land of respondent No.1. The convenience would hence be in petitioners using the alternate way itself for going to their lands.

**14.** The Naib Tehsildar as well as the Sub Divisional Officer had relied only upon the agreement executed between the predecessors of the parties and had cursorily recorded that from the evidence on record the petitioners have proved the right of way as contended by them. The other evidence available on record and the legal principles applicable to the facts of the case as regards the requirements of Section 131 of the Code, 1959 were however not taken into consideration by them. The Collector has considered the entire material available on record and has thereafter recorded findings in favour of respondent No.1. It has given justifiable reasons for the same. Since the orders passed by the Naib Tehsildar and the Sub Divisional Officer suffered from patent illegality and perversity,



the Collector had jurisdiction to set aside the same in exercise of his revisional powers and in his doing so it cannot be said that he has committed any illegality.

**15.** In view of the aforesaid discussion, no error is found in the impugned order passed by the Collector allowing the revision preferred by respondent No.1 and dismissing the application under Section 131 of Code, 1959 preferred by the petitioners. The petition is hence found to be devoid of merits and is hereby dismissed. The record of the authorities below be sent back.

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