

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

**BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 13<sup>th</sup> OF DECEMBER, 2023**

**WRIT PETITION No. 14939 of 2023**

**BETWEEN:-**

**SANTOSH S/O LATE SHRI RAMPRASADJI  
PATIDAR, AGED ABOUT 45 YEARS, OCCUPATION:  
AGRICULTURIST VILLAGE SINDODA TEHSIL RAU  
DISTRICT INDORE (MADHYA PRADESH)**

**....PETITIONER**

**(BY SHRI GOPAL KRISHNA PATIDAR, ADVOCATE)**

**AND**

- 1. THE STATE OF MADHYA PRADESH  
REVENUE DEPARTMENT THROUGH  
PRINCIPAL SECRETARY VALLBH BHAWAN  
DISTRICT BHOPAL (MADHYA PRADESH)**
- 2. TEHSILDAR RAU, DIST. INDORE PRASHANIK  
SANKUL, MOTI TABELA, INDORE (MADHYA  
PRADESH)**
- 3. ADDITIONAL TEHSILDAR RAU, DIST.  
INDORE PRASHANIK SANKUL, MOTI  
TABELA, INDORE (MADHYA PRADESH)**
- 4. GHANSHYAM S/O RAMNATHJI PATIDAR,  
AGED ABOUT 50 YEARS, OCCUPATION:  
AGRICULTURIST SINDODA, TEH. RAU, DIST.  
INDORE (MADHYA PRADESH)**
- 5. BHERULAL S/O KANHAIYALAL PATIDAR,  
AGED ABOUT 52 YEARS, OCCUPATION:  
AGRICULTURIST SINDODA, TEH. RAU, DIST.**

**INDORE (MADHYA PRADESH)**

6. **RADHESHYAM S/O LATE JAGANNATH, AGED ABOUT 70 YEARS, OCCUPATION: AGRICULTURIST SINDODA, TEH. RAU DIST. INDORE (MADHYA PRADESH)**
7. **RAJESH S/O GANESH PATIDAR, AGED ABOUT 55 YEARS, OCCUPATION: AGRICULTURIST SINDODA, TEH. RAU DIST. INDORE (MADHYA PRADESH)**
8. **ASHARAM S/O AMBARAMJI PATIDAR, AGED ABOUT 50 YEARS, OCCUPATION: AGRICULTURIST SINDODA, TEH. RAU DIST. INDORE (MADHYA PRADESH)**
9. **DINESH S/O MOTIRAMJI PATIDAR, AGED ABOUT 50 YEARS, OCCUPATION: AGRICULTURIST SINDODA, TEH. RAU DIST. INDORE (MADHYA PRADESH)**
10. **SUNIL S/O SHIVNARAYANJI PATIDAR, AGED ABOUT 45 YEARS, OCCUPATION: AGRICULTURIST SINDODA, TEH. RAU DIST. INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY SHRI AMAY BAJAJ, P.L./G.A. FOR STATE AND SHRI NILESH AGRAWAL, ADVOCATE FOR RESPONDENT NOS.4, 5, 7, 8, 9 AND 10)**

.....

*This petition coming on for admission this day, the court passed*

*the following:*

**ORDER**

Heard finally, with the consent of the parties.

2] This petition has been filed by the petitioner under Article 226 of the Constitution of India against the order dated 07.09.2022, passed in Case No.4/A-13/2022-23 by the Additional Tehsildar, Rau,

District Indore whereby, in the proceedings under Section 131 of the M.P. Land Revenue Code (hereinafter referred to as 'the Code') on an application filed under Section 131(2) of the Code for right of way through the land of the petitioner has been allowed and it is directed that the petitioner shall allow the respondents to pass through his field to Survey No.131.

3] The order has been challenged by the petitioner on the ground that in the garb of Section 131(2) of the Code, the petitioner cannot be compelled to accommodate the respondents to use the way from his field.

4] The petition is opposed by the respondents raising a preliminary objection stating that the petition itself is not maintainable as the order has been passed by invoking Section 131(2) of the Code and such interim order can be challenged by way of a revision under Section 50 of the Code, as has been held by this Court in various decisions.

5] Counsel for the petitioner in rebuttal, has opposed the prayer and it is submitted that the petition is maintainable as the order is interim in nature and this Court, in the case of *Major Singh and Others Vs. State of M.P. and Others* reported as **2015 RN 625**, has held that the powers under Section 132 have been erroneously invoked by the Tehsildar.

6] In rebuttal, counsel for the respondent has submitted that the aforesaid decision would not be applicable in the present case as Section 132 has already been repealed on 25.09.2018 whereas, the date of the aforesaid decision is 24.09.2015. Thus, it is submitted

that the petition itself is liable to be dismissed.

7] Heard counsel for the parties and perused the record.

8] The preliminary objection raised by the respondent in the present case is that the petition itself is not maintainable as the petitioner has an alternative statutory remedy in the form of revision under Section 50 of the Code, as the impugned order is an interim order, which can certainly be challenged under the revisional power as provided under the Code whereas, the respondent has relied upon a decision rendered by this Court in the case of **Major Singh (Supra)**, in the aforesaid case, an interim order passed by the Tehsildar was indeed challenged in revision before the Commissioner, Gwalior Division, Gwalior whereas, on account of the non-compliance of the order passed by the Tehsildar, another application was filed before the Tehsildar, who has imposed the penalty under Section 132 of the Code (s.132 referred to penalty for obstruction of road etc.), which came to be challenged in the aforesaid case of **Major Singh in W.P. No.5074/2015**, thus, the facts are clearly distinguishable and it cannot be said that a petition would be maintainable before this Court directly against an interim order passed by the Tehsildar while exercising the powers under Section 131 of the Code whereas, Section 132 has already been deleted on 25.09.2018.

9] In such circumstances, this Court is not inclined to exercise its extraordinary writ jurisdiction and, accordingly, the petition being misconceived, is hereby *dismissed*. However, with liberty to the petitioner to take recourse of the remedy as is available to him

under the Code.

**10]** It is made clear that the time spent by the petitioner in prosecuting this petition shall be excluded from the period of limitation.

**11]** It is also made clear that this Court has not reflected upon the merits of the case.

**(SUBODH ABHYANKAR)**  
**JUDGE**

**Bahar**