

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR
ON THE 5th OF FEBRUARY, 2024
WRIT PETITION No. 21413 of 2023**

BETWEEN:-

**PARASRAM S/O ANANDRAM GURJAR
OCCUPATION: AGRICULTURE R/O BADIYASURTA
TEHSIL MAHESHWAR DISTT. KHARGONE
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI NITIN PHADKE, ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
PRINCIPAL SECRETARY VALLABH BHAWAN
BHOPAL (MADHYA PRADESH)**
- 2. THE SUB DIVISIONAL OFFICER (REVENUE)
MANDLESHWAR, DIST. KHARGONE
(MADHYA PRADESH)**
- 3. NARAYAN S/O NAHARU MUKATI
OCCUPATION: AGRICULTURIST
BADIYASURTA, TEH. MAHESHWAR DIST.
KHARGONE (MADHYA PRADESH)**
- 4. SUSHILABAI D/O MANOHAR MUKATI
OCCUPATION: HOUSEHOLD BADIYASURTA,
TEH. MAHESHWAR DIST. KHARGONE
(MADHYA PRADESH)**

.....RESPONDENTS

***(BY MS. GEETANJALI CHAURASI, P.L./G.A. FOR STATE AND SHRI
VINAY GANDHI, ADVOCATE FOR RESPONDENT NOS.3 AND 4.)***

.....

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 involves the interpretation of Section 49(3) of the Land Revenue Code, 1959.

3] The petition has been filed by the petitioner under Article 226 of the Constitution of India against the order dated 19.07.2023, passed by the SDO, Mandleshwar, District Khargone whereby, while allowing the appeal preferred by the petitioner, the SDO has reversed the order passed by the Tehsildar and has also invoked its powers under Section 49(3) of the M.P. Land Revenue Code, 1959 (hereinafter referred to as 'the Code of 1959') and has proceeded further to cure the defects which have been pointed out by the SDO in the order of Tehsildar.

4] Counsel for the petitioner has submitted that the petitioner is only aggrieved by the aforesaid portion of the order in which the SDO has taken upon himself to carry out the procedure, which according to him was not carried out by the Tehsildar. It is submitted that the provisions of Section 49(3) of the Code of 1959 cannot be applied to cure such defects which were procedural in nature, and the only power which is provided under Section 49(3) is to confirm, vary or reverse the order appealed against or take such additional evidence as it may consider necessary for passing such orders. Shri Phadke has submitted that after setting aside the order passed by the Tehsildar, the SDO had no power to again hold that proper procedure shall be followed by him only, and it is directed that a proclamation be issued and after

inviting objections, the matter be fixed for evidence again bef.

5] In support of his submissions, counsel has also relied upon the decision rendered by the Co-ordinate Bench of this Court in the case of *Bundu Vs. Parsadi & Another* passed in *M.P. No.2559 of 2020* on 07.06.2021.

6] Counsel for the respondent, on the other hand, has opposed the prayer and it is submitted that no case for interference is made out, as not only that the SDO has passed just and proper order which is also in accordance with law, but otherwise also, the equity is not with the petitioner, who has, after executing a sale deed in favour of the respondent and after giving his consent for the mutation of the property has filed an objection that he has sold only the house portion and not the adjoining land. It is also submitted that the power which has been vested in the appellate authority as per Section 49(3) cannot be said to be confined to leading of evidence only and if the contention of the petitioner is accepted, it would frustrate the very purpose for which the aforesaid provision is enshrined.

7] Counsel has also submitted that earlier, before the amendment of the Code in the year 2011, the powers of remand were given to the appellate authority, and subsequent to that, after 30.12.2011, such powers were completely taken away. However, it has again been amended on 25.09.2018, whereby, the power of remand has been made in such words that the appellate authority shall not ordinarily remand the case for disposal of any Revenue Officer subordinate to it meaning thereby, that the SDO has the power to decide the case after calling such other evidence and after passing such ancillary orders,

which are necessary for doing complete justice and deciding the appeals.

8] So far as the decision relied upon by the counsel for the petitioner is concerned, it is submitted that the same is distinguishable. Counsel for the respondent has also relied upon Section 43.

9] Heard counsel for the parties and perused the record. The only question that falls for the consideration before this court is the interpretation of Section 49(3) of the Code of 1959, i.e., the language used in it is restricted to leading evidence only or more than that.

10] So far as the relevant provisions *viz.*, Sections 43 and 49 of Code of 1959 are concerned, it would be relevant to refer to them, which read as under:-

43. Code of Civil Procedure to apply when no express provision made in this Code. - Unless otherwise expressly provided in this Code, the procedure laid down in the Code of Civil Procedure, 1908 (V of 1908) shall, so far as may be, be followed in all proceedings under this Code.

XXXXX

49. Power of appellate authority. - (1) The appellate authority may either admit the appeal or, after calling for the record and giving the appellant an opportunity to be heard, may summarily reject it :

Provided that the appellate authority shall not be bound to call for the record where the appeal is time-barred or does not lie.

(2) If the appeal is admitted date shall be fixed for hearing and notice shall be served on the respondent.

(3) After hearing the parties, the appellate authority may confirm, vary or reverse the order appealed against; or may take such additional evidence as it may consider necessary for passing its order :

[Provided that the appellate authority shall not ordinarily remand the case for disposal to any Revenue Officer subordinate to it.]

(Emphasis Supplied)

11] A perusal of Section 43 and 49 of the Code clearly reveals that

Section 43 provides that unless otherwise expressly provided in this Code, the procedure laid down in the Civil Procedure so far as may be followed in all proceedings under this Code. Whereas, Sub-Section (3) of Section 49 provides that after hearing the parties, the appellate authority may confirm, vary or reverse the order appealed against; or may take such additional evidence as it may consider necessary for passing its order, provided that the appellate authority shall not ordinarily remand the case for disposal to any Revenue Officer subordinate to it.

12] Thus, it is expected from the Appellate Authority that it shall not ordinarily remand the case for disposal to any Revenue Officer subordinate to it and instead, it shall take such additional evidence as it may consider necessary for passing its orders.

13] In the considered opinion of this Court, 'shall not ordinarily' would mean that only in exceptional cases where the appellate authority believes that the order passed by the Revenue Officer is so riddled with infirmities that it has to be sent back for its decision afresh, otherwise, if the appellate authority is of the opinion that the matter can be disposed of at the appellate stage only without any difficulty, either by leading evidence only or by adopting the such procedure which is necessary to do complete justice.

14] Thus, if the contention of Shri Phadke, is accepted that the Appellate Authority can only record the evidence and cannot follow any procedural requirement of the Code, which was required to be performed by the Subordinate Officer, then it would lead to an anomalous situation, as it would be difficult to come to a conclusion

by the Appellate Authority whether it should record the evidence or not because it is also required to perform some other procedural formalities also and if the power to perform procedural requirement is not vested in it which is also the part and parcel of the process of recording the evidence as is also provided in CPC, it would render the powers of the appellate authority futile and frustrate the very purpose of s.49(3) of the Code. Thus, if a proclamation is issued by the Appellate Authority inviting objections, no fault can be found in the said procedure.

15] So far as the decision relied upon by Shri Phadke in the case of *Bundu (Supra)* is concerned, it is distinguishable. In the aforesaid case, the Appellate Authority had framed four issues for the Collector (Revenue) to adjudicate upon and pass a fresh order after annulling the earlier order passed by the Collector, and in that case also, the writ petition was dismissed.

16] Resultantly, the petition being devoid of merits, is hereby *dismissed*.

(SUBODH ABHYANKAR)
JUDGE

Bahar