



IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE DUPPALA VENKATA RAMANA
MISC. PETITION No.6065 of 2024

PRADYUMNA GANDERIWAL S/O SHRI RANCHHORDAS
GANDERIWAL THROUGH HIS POWER OF ATTORNEY
VEDANT GANDERIWAL AND ANOTHER

...Petitioners

and

THE STATE OF MADHYA PRADESH AND OTHERS

...Respondents

Reserved on 30.04.2025

Pronounced on 02.05.2025

Appearance:

Shri Vijay Kumar Asudani, learned counsel for the petitioners.

*Shri Jayesh Yadav, learned Panel Lawyer for respondents No.1 to 3 /
State.*

ORDER

This is a petition under Article 227 of the Constitution of India being aggrieved by the order of Additional Commissioner dated 06.11.2023 in 08/Revision/2022-23 and the notice dated 25.04.2022 issued by Collector, Ratlam in File No.41/B-121/2022-23 seeking to set aside the order of the respondent No.1 / sub-ordinate Court of Collector, District Ratlam dated 15.07.2022 (Annexure P-6) and modify the order of Additional



Commissioner dated 06.11.2023 (Annexure P-12) and the present petition is filed.

02. On 25.04.2022, report received from the Sub-Divisional Officer (Revenue), Jaora dated 22.10.2021 that on construction of 106 shops including the Janta Complex located in survey No.958 (previous surveys No.544 and 545) in Village Dhodhar, Tehsil Jaora, District Ratlam without obtaining permission, the encroachments were removed by Gram Panchayat with the Police force on 10.10.2021. In the records of year 1957-58, surveys No.544 and 545 are registered in the names of Murlidhar and Laxminarayan. The current surveys No.544 and 545 of the year 1957-58 are made from previous surveys No.259, 255, 257 and 260 and in the record of the Samvat 2005 in survey No.255 the name of the owner was Himmat Singh and Murlidhar, Laxminarayan and Vasudev S/o Ramnarayan Das were recorded as non-*maurasi* agriculturists, in the same coloum of Khasra the word lease is recorded for 7 to 11 years, the coloum No.28 is called residential area and the lease No.15 recorded in coloum No.30 of Samvat 2003 dated 23.01.1947 is recorded as *maurasi* and *Patta* No.1/1994 is recorded. Further observed that in the event of lease period of the said land having already been expired, it would be appropriate to declare the said land belongs to the Government land, further observed that a show-cause notice shall be issued asking the lease holders that why should the said land not to be declared as Government land in the interest of Government.

03. On receipt of notice, the Tehsil Jaora submitted a report dated 27.04.2022 in compliace to the letter dated 25.04.2022 he stated that on 10.10.2021 in the presence of Police force, the encroachment of 106 shops including Janta Complex was removed by Gram Panchayat, apart from this, in survey No.958, 36 shops have been built and shop-keepers are doing business and 71 houses have been built and families are residing. The said



construction is about 30 to 40 years old and also a Jain Temple is located, he submitted investigation report enclosing Patwari report for appropriate action.

04. The petitioners filed revision petition in case No.08/Revision/2022-23 dated 19.07.2022 before Additional Commissioner, Ujjain stated that the ancestors of petitioners, Murlidar, Laxminarayan and Vasudev S/o Narayandas Mahajan were given agricultural land in surveys No.259 and 260 as *Maurasi* agriculturists by the Department of Land Records and Settlement (Section Settlement), Gwalior in the Samvat 1995, which is the current survey No.958. The said survey number is made from pre-settlement surveys No.544 and 545. In the year 1957-58, the surveys No.544 and 545 were recorded in the name of above-said persons, resident of Mandsaur, Khasra Coloum 22 is recorded as 'Ginning Factory Noiyyat'. Survey Nos.544 and 545 arise out of surveys No.259, 255, 257 and 260 and in the record of the Samvat 2005, the survey No.255 is registered in the names of owner Himmat Singh and Murlidhar, Laxminarayan and Vasudev S/o Ramnarayan Das were recorded as non-*maurasi* agriculturists, in the same coloum of Khasra, the word lease is recorded for 7 to 11 years, the coloum No.28 is called residential area and the lease No.15 is recorded as *maurasi* in coloum No.30 of Samvat 2003 dated 23.01.1947 and *Patta* No.1/1994 is recorded and issued notice that the lease period of the said land having already been expired, it would be appropriate to declare the said land as Government land, show-cause notice asking the lease holders that why the said land should not to be declared as Government land. Further stated that the petitioners submitted an application on 26.06.2022 before the sub-ordinate Court and sought copy of documents in order to file proper reply along with an application, he seeks to add necessary parties, which was rejected by sub-ordinate Court *vide* order dated 15.07.2022



without considering it on merits. Further stated that the said land was sold 40 years ago by duly registered sale deeds. Further, 36 shop-keepers and 71 house-owners are currently in possession of the land were also not made as parties and without giving them an opportunity of hearing, it is not possible to resolve the issue and he seeks relief that the order of the sub-ordinate Court of Collector, District Ratlam dated 15.07.2022 passed in case No.41/B-121/2022-23 should be dismissed / rejected.

05. On the basis of the revision filed by the petitioners, the learned Additional Commissioner disposed of the revision dated 06.11.2023, wherein it was observed that the order dated 15.07.2022 passed in case No.41/B-121/2022-23 by sub-ordinate Court of Collector, District Ratlam is quashed and directed him to dispose of the case by giving reasonable opportunity of hearing and taking evidence of shop-keepers and house-owners occupying the land in question.

06. Being aggrieved by and dis-satisfied with the order of Additional Commissioner dated 06.11.2023, the present Misc. Petition is being filed by the petitioners.

07. The facts in brief as stated in the petition are that the petitioners claimed that their forefathers Shri Murlidhar Ganderiwal, Shri Laxminarayan Ganderiwal and Vasudev (son of Shri Narayandas Ganderiwal) were *Maurasi agriculturists* as regard the land comprised in survey Nos.255, 257, 259 and 260 in Village Dhodhar, Tehsil Jaora, District Ratlam. The said fact is evident from revenue records. Further averred that the said land was never granted to the forefathers of the petitioners on lease. In Samvat 1995 i.e. Calendar Year 1916-17 in revenue records reflected their names as *Pukhta Maurusi* for survey Nos.259 and 260 and *Mamuli Maurusi* for survey Nos.255 and 257. Though the land was never formally leased to them, they conducted agricultural activities and temporarily



operated a 'ginning factory' on a part of it. As per the provisions of Section 54(vii) of the Madhya Bharat Land Revenue and Tenancy Act Samvat 2007, they became *Pakka tenants* of the said land. Further pleaded that when Madhya Pradesh Land Revenue Code, 1959 came into force on 02.10.1959, all *pakka* tenants were conferred with *Bhumi-swami* rights and became *Bhumi-swami* under Section 158(1)(b) of the Madhya Pradesh Land Revenue Code, 1959.

08. Further pleaded that on 10.10.2021, Collector / respondent No.1 demolished certain shops and houses allegedly owned by members of a minority community on the ground that the land belongs to the Government. On 21.10.2021, the Naib Tehsildar, Jaora, Ratlam submitted report to the Sub-Divisional Officer (Revenue), Jaora, submitted that the land comprised in survey No.958 admeasuring 2.220 hectares was registered in the names of the petitioner Pradyumna Kumar S/o Ranchhordas in coloum No.12 in revenue records noted as "ginning factory", it is also mentioned that the said land is affected by the M.P. Ceiling on Agricultural Holdings Act.

09. Further averred that the report was submitted by Naib Tehsildar dated 22.10.2021 mentioning that the period of lease is over and said land is to be declared as Government land. Further averred that on the basis of reports dated 21.10.2021 and 22.10.2021, Collector, Ratlam issued a show-cause notice to the petitioners on 25.04.2022 that as to why the said land could not declared as Government land. The order of the Collector dated 15.07.2022 was challenged by the petitioners filing revision under Section 50 of the Code, 1959 before the Additional Commissioner, Ujjain in which the petitioners have raised two pleas: (i). Show-cause notice issued by the Collector is without the jurisdiction under Section 57(2) of the Code of 1959; and (ii). That the interested party to whom the land have been



sold should be made as the party to the proceedings before the Collector.”

10. The Commissioner did not decide the first issue and directed the Collector to make them as party to the proceedings and by giving them reasonable opportunity of hearing and evidence to the shop-keepers and house-owners occupying the land in question. Further submitted that the Madhya Pradesh Land Revenue Code, 1959 brought into force with effect from 02.10.1959 and all *Pakka* tenants under the Madhya Bharat Land Revenue and Tenancy Act Samvat 2007 were conferred with the *Bhu-swami* rights as per the provisions of Section 158(1)(b) of the Code, 1959 and he produced Annexures P-1 to P-11 and seeks relief to quash and set aside the order dated 25.04.2022 passed by respondent No.1 / Collector, Ratlam (Annexure P-6), further seeks relief to modify the order dated 06.11.2023 (Annexure P-12) passed by respondent No.2 / Additional Commissioner, Ujjain directing the petitioners have perfected *Bhu-swami* rights as per Section 158(1)(b) of the Madhya Pradesh Land Revenue Code, 1959.

11. The learned counsel for the petitioners advanced their arguments submitted that the main contention of the petitioners is that the names of their forefathers were recorded as *maurasi* agriculturists in the revenue record of Samvat 1995 i.e. Calendar Year 1916-17, wherein the forefathers of the petitioners are shown *maurasi* agriculturists, the land comprised in surveys No.255 and 257 as regard the land comprised in surveys No.259 and 260 of the Village Dhodhar, Tehsil Jaora, District Ratlam. Further submitted that as per provisions of Section 54(vii) of the Madhya Bharat Land Revenue and Tenancy Act Samvat 2007, they are classified as *pakka* tenants, further submitted that M.P. Land Revenue Code, 1959 came into the force on 02.10.1959 they have perfected the title over the said land



being *Bhu-swami* as per Section 158(1)(b) of the Code, 1959, consequently, no proceedings for insertion of name of Government as *Bhu-swami* in the place of petitioners could have been initiated by Collector, Jaora, therefore, the order of the Additional Commissioner shall be set aside and quashed the order dated 25.04.2022 passed by respondent No.1 and declared them as *Pakka* tenants entitled for *Bhu-swami* rights.

12. Learned Panel Lawyer for respondents No.1 to 3 / State have contended that the land was given to the petitioners for 11 years on lease for non-agricultural purpose, hence, there is no question that the petitioners becoming a *Bhumi-swami* and they will always remain lessee and deletion of Section 57(2) of MPLR Code is of no consequence and the Collector is competent to take appropriate action and prays to dismiss the petition.

13. After hearing elaborate arguments advanced on behalf of the parties and on perusal of the record, I am of the view that the following points arise for consideration :

- “(i). Whether, the property covered under this petition is leased out to the forefathers of the petitioners and after expiry of lease evicted them by respondents with due process of law ?
- (ii). Whether, the forefathers of the petitioners were in possession of the property in Samvat 1995 i.e. Calendar Year 1916-17 the Madhya Pradesh Land Revenue Code, 1959 came into force on 02.10.1959 and the petitioners are entitled protection under Section 158(1)(b) of MPLR Code and declared to be *Bhu-swami* rights ?”

14. Since both the above points are interrelated to each other and they are dealt together.

15. In the present case, on perusal of the annexures P-6, P-7 and P-12, which are inconsistent. In Annexure P-6, in survey No.225, the name of the owner was Himmat Singh and Murlidhar, Laxminarayan and Vasudev were recorded as non-*maurasi* agriculturists and recorded in the revenue record as lease. Further when the lease has been expired why the said land should not be declared as Government land and in Annexure P-7 mentioned that in



survey No.958, 36 shops have been built and shop-keepers are doing business and 71 houses have been built in which the families are residing, the said construction is about 30 to 40 years. In Annexure P-12, the order of the Commissioner indicates that the encroachments have been removed by Gram Panchayat on 10.10.2021 for construction of total 106 shops including Janta Complex in survey No.958 without obtaining permission, further indicates that 36 shop-keepers are doing business and 71 house-owners are residing in the said land.

16. In view of the inconsistent pleas taken by revenue authority under Annexures P-6, 7 and 12, Government has to file reply to substantiate their pleas, on 25.10.2024 issued notice to the respondents and the matter was posted on 16.12.2024, on which date no reply has been filed by the respondents / State. On 19.02.2025 no reply has been filed by State and again on 22.04.2025 this Court directed the respondents / State to file reply on or before 30.04.2025, failing which, right to file reply will be forfeited. In spite of above directions, the respondents / State did not file reply and the matter was heard finally.

17. Admittedly, the petitioners and other shop-keepers are running 36 shops and 71 house-owners, who are currently in possession of the land, even assuming that land belongs to the Government when they have leased out to the forefathers of the petitioners and when their lease is expired, the respondents used to take steps by issuing notices for eviction and till the light of the day, the respondents neither produced the lease-deed nor specifically stated when they have leased out the land to the forefathers of the petitioners, the purpose in which the land is leased out either for agricultural or non-agricultural or commercial.

18. Admittedly, in annexure P-7, it is stated that the said construction is about 30 to 40 years old and 36 shops have been built and they are doing



business, 71 houses have been built in which families are residing and a Jain Temple is located, the revenue authorities did not raise objections when they were built the shops and raised the constructions of houses when they were in possession for last 30 to 40 years and issued notices under annexures P-6 and P-7 dated 25.04.2022 and 27.04.2022 and stated that the lease is expired and show-cause that why should not be declared as Government land. If the land is belong to the State why should not be declared as Government land that itself shows that the respondents has not definite conclusion that the land is belong to the Government or not, the petitioners denied in the application filed in revision as well as in the petition pleaded that the said land was never granted to the forefathers of the petitioners on lease, therefore, the burden lies on the respondents / State to prove that the subject property leased out to the forefathers of the petitioners in fact there was no record produced by them to substantiate their claim and on perusal of Annexures P-6, P-7 and P-12, all the above documents they have not stated that the date of lease and fact that lease was expired, therefore, the 36 shops / houses have been built and shop-keepers are doing business and 71 houses have been built in which the families are residing and the construction is about 30 to 40 years old and their possession cannot be disturbed since they were constructed more than 40 years, their possession cannot be disturbed by the respondents as they were not encroachers.

19. Learned counsel for the petitioners contended that the M.P. Land Revenue Code came into force on 02.10.1959 they have *Pakka* tenants and they are declared to be *Bhumi-swami* as per Section 158(1)(b) of the Code, 1959 as the forefathers of the petitioners were in possession of the property in Samvat 1995 i.e. Calendar Year 1916-17, consequently, no proceedings for insertion of the name of the Government as a *Bhu-swami* in the place of



petitioners. Further contended that they are in possession for last 40 years and in Annexure P-5, the Sub-Divisional Officer itself stated that the petitioners have *pakka* tenants, further he finds that these are revenue paying agricultural lands as per the revenue records and by virtue of Section 54(vii) of Madhya Bharat Land Revenue and Tenancy Act Samvat 2007 read with Section 158(1)(b) of MPLR Code, 1959, petitioners claiming that they are treated to be *Bhu-swami* rights.

20. In the case of **Vimla Bai Choudhary vs. Board of Revenue and Ors.** reported in **Manu/MP/0860/2008** : Equivalent / Neutral citation **2009 (I) MPJR 321**, no doubt the petitioners' forefathers are in possession of the property in Samvat 1995 i.e. Calendar Year 1916-17 they are in possession of the property as *pakka* tenants as mentioned in Annexure P-5, apart from in survey No.958, 36 shops have been built and 71 houses have been built in which the families are residing and they were in possession of the property, they are not party to the proceedings, the MPLR Code came into force on 02.10.1959, and petitioners claiming protection of Section 158(1)(b) of MPLR Code, it is settled catena of decisions if the status of occupancy tenant / *pakka* tenant as mentioned in Annexure P-5, it can be safely held that the determination of question of *Bhu-swami* rights lies within the province of civil Court except in cases falling under Section 257 of the Code. The section 257 of the Code gives limited jurisdiction to the revenue authorities to decide the claim of occupancy tenants for conferral of *Bhu-swami* rights, therefore, in cases where the status of the petitioners as occupancy tenant / *pakka* tenant, their *Bhu-swami* rights will be lies within the province of civil Court, petitioners have not filed any revenue entries showing that their forefathers or the petitioners were in possession of the properties in Samvat 1995 i.e. Calendar Year 1916-17 till the MPLR Code came into force on 02.10.1959, therefore, the civil Court is competent to



declare *Bhu-swami* rights and this Court cannot step in exercise of its civil Court jurisdiction, therefore, the petitioners are at liberty to approach the civil court to declare them as *Bhu-swami* rights.

21. In the light of the above circumstances, the respondents are directed not to demolish or take over the subject properties in survey No.958, 36 shops have been built and shop-keepers are doing business and 71 houses have been built and families are residing and the said construction is about 30 to 40 years old as mentioned in Annexure P-7, the respondents did not raise the objections while constructed the above shops and houses and the respondents have not specified when the lease has been given and when its expired, the action of the respondents is unwarranted and the proceedings initiated by the Collector in case No.41/B-121/2022-23 is *per se* without jurisdiction and they should not demolish / evicted from the subject properties as stated above.

22. Considering the aforesaid circumstances, I am of the considering opinion that the proceedings under Annexure P-6 dated 25.04.2022 is quashed and set aside and the order of the Additional Commissioner, Ujjain dated 06.11.2023 is not sustainable and set aside.

23. Accordingly, Misc. Petition is allowed and the order dated 25.04.2022 issued by respondent No.1 under Annexure P-6 and the proceedings of Additional Commissioner, Ujjain dated 06.11.2023 are hereby set aside.

24. There shall, however, be no order as to costs.

25. As a sequel the misc. applications, if any, shall stand closed.

(DUPPALA VENKATA RAMANA, J)

Anushree