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**IN THE HIGH COURT OF MADHYA
PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE JAI KUMAR PILLAI**

WRIT PETITION No. 7146 of 2026

***MASJID SADAR ANJUMAN ISLA-UL-MUSLIMEEN
THROUGH ITS EXECUTIVE OFFICER SHRI SABIR
HASHMI***

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Ajay Bagadia –Senior Advocate with Shri Rizwan Khan
for the petitioner.

Shri Sudeep Bhargav –Dy.A.G for the respondent/State.

Shri Rishi Shrivastava -Advocate for the respondent.

Reserved on 26.02.2026

Post on 27.02.2026



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ORDER

This writ petition, instituted under Article 226 of the Constitution of India, mounts a challenge to the impugned order dated 10.02.2026 passed by the Respondent No. 4 (Tehsildar) in Revenue Case No.-0007/A-68/2025-26. By the said impugned order, the Respondent No. 4 has recorded the subject property as Nazul land under Section 57 of the Madhya Pradesh Land Revenue Code, 1959 (hereinafter referred to as "MPLRC") and, in the exercise of powers under Section 248 of the MPLRC, has declared the petitioner to be an unauthorised occupant. Consequently, a direction has been issued to the petitioner to evict the subject land and remove the alleged encroachment within a period of three days, failing which the respondent department shall forcibly remove the same and submit a compliance report.

2. The petitioner is a registered Committee constituted for the management of Waqf property situated at Residency Area, Indore, and approaches this Court through its Executive Officer. The petitioner Committee is duly registered under the Waqf Act, 1995. It is the case of the petitioner that the land bearing Survey No. 12, admeasuring 30,400 sq. ft. situated at C.R.P. Line, Indore, is



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registered as Waqf property in the Auqaf register. The petitioner asserts that the revenue records and the trace map of the year 1986 reflect the name of the petitioner as the Bhumiswami of the said property.

3. The petitioner further states that various authorities have historically recognized their possession and right to construct upon the said land. The Urban Land Ceiling Authority issued a No Objection Certificate (NOC) on 06.05.1981 for the construction of a Musafirkhana. Subsequently, respondent No. 2 issued an NOC on 17.06.1994, stating that the construction of a Masjid and Musafirkhana does not affect the police or district administration. Building permissions were also granted by the Municipal Corporation on 31.03.1997 and later on 11.11.2003 for the said construction, subject to certain conditions regarding parking and religious usage. Furthermore, the Central Waqf Council sanctioned a loan of Rs. 80,00,000/- to the petitioner for this construction, thereby recognizing the property as a Waqf asset.

4. The genesis of the present dispute lies in a report submitted by the Halka Patwari, Indore, under Section 248 of the MPLRC, alleging encroachment upon Block No. 12, admeasuring 0.70



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hectares (30,000 sq. ft.) situated at C.R.P. Line, Residency Area, Indore, which the report classified as Nazul land. Based on this report, a show-cause notice was issued on 13.10.2025. Despite the petitioner filing a detailed reply accompanied by documents asserting long-standing religious use and Waqf registration, the impugned order dated 10.02.2026 was passed directing eviction.

5. Learned counsel for the petitioner has vehemently argued that the impugned order suffers from a patent lack of jurisdiction. It is submitted that the administration of a Waqf property is strictly governed by the special legislation, i.e., the Waqf Act, 1995, and therefore, no authority other than the Waqf Tribunal has the jurisdiction to pass such orders regarding Waqf property.

6. It is further contended that the Tehsildar has erroneously traversed into the domain of title adjudication under the summary proceedings of Section 248 of the MPLRC. The petitioner emphasizes that the continuous possession since 1967, coupled with various NOCs and building permissions issued by the respondents themselves, unequivocally establishes the lawful existence of the Masjid and Musafirkhana.



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7. Lastly, the petitioner contends that the impugned order deliberately cites incorrect survey numbers (Survey Nos. 6 and 11) to obfuscate the issue, as the Waqf Board's ownership pertains strictly to Survey No. 12. Left with no other efficacious remedy, the petitioner has approached this Court.

8. Per contra, the learned counsel appearing for the State authorities has vehemently opposed the petition, relying upon the findings recorded in the impugned order dated 10.02.2026. It is the categorical stand of the respondents that the property in question encompasses Block Nos. 6, 11, and 12 at C.R.P. Line, spanning a total area of 40,000 sq. ft., which is distinctly recorded as Government Nazul Land in the revenue records.

9. The respondents submit that mere long-standing possession since 1967 or registration with the Indore Waqf Board does not automatically confer Bhumiswami rights upon the petitioner under Section 158 of the MPLRC. An encroacher, irrespective of the duration of their unauthorized occupation, cannot transform into a lawful owner.

10. The respondents further urge that the petitioner has failed to produce any foundational document establishing absolute title. The



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NOC dated 17.06.1994 was a mere administrative clearance from the police perspective, and the Municipal permission dated 11.11.2003 was granted solely on the basis of an affidavit, lacking specific sanction for a "Musafirkhana," and was valid only until 06.10.2006.

11. Heard the rival contentions advanced by the counsel for the parties and carefully perused the record appended to the petition.

At the very outset, a bare perusal of the pleadings reveals a profound and irreconcilable dispute regarding the foundational facts of this case. The core controversy revolves around the title and ownership of the subject property. While the petitioner asserts absolute ownership by virtue of it being a registered Waqf property backed by historical possession and administrative NOCs, the State categorically claims the land to be Government Nazul Land, asserting that the petitioner is a mere encroacher under Section 248 of the MPLRC.

12. Furthermore, there exists a material discrepancy regarding the physical identity and demarcation of the land itself. The petitioner claims rights over Survey No. 12 admeasuring 30,400 sq.



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ft. (or 987.44 square meters), whereas the respondents allege unauthorized occupation over a larger parcel of 40,000 sq. ft. encompassing Block Nos. 6, 11, and 12.

13. It is a well-settled proposition of law that a writ Court exercising extraordinary and discretionary jurisdiction under Article 226 of the Constitution of India is not a fact-finding Authority. The adjudication of title, ownership, and exact physical boundaries necessitates a full-fledged trial comprising the leading of oral and documentary evidence, examination of voluminous revenue records, and cross-examination of witnesses. Such an exhaustive factual inquiry cannot be undertaken in summary proceedings based merely on affidavits, NOCs, and municipal permissions.

14. The Hon'ble Supreme Court has consistently deprecated the practice of High Courts entertaining writ petitions where the foundational facts regarding title are heavily disputed, especially when an alternative statutory remedy is available. In the instant case, the impugned order passed by the Tehsildar is an appealable order under the provisions of the MPLRC, thereby providing the petitioner with an efficacious statutory forum to agitate these factual disputes.



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15. In this regard, it is profitable to refer to the authoritative pronouncement of the Hon'ble Supreme Court in the case of **City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwala, (2009) 1 SCC 168**, wherein the parameters for declining writ jurisdiction were succinctly laid down as under:

“30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a



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matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law.”

16. Further, regarding the specific prohibition against adjudicating title disputes under Article 226, the Hon’ble Supreme Court in **State of Rajasthan v. Bhawani Singh, 1993 Supp (1) SCC 306**, held as under:-

“7. Having heard the counsel for the parties, we are of the opinion, that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition.

8. We must, however, say that the land comprised in the plot concerned herein did not vest in the State under the provisions of the Rajasthan Act of 1963 (Act 11 of 1964) for more than one reason: (a) if the said land was or had become the property of the then Ruler of Jaipur and/or Maharaja Bhawani Singhji, it could not vest in the State for the simple reason that on September 1, 1964 it was not an agricultural land. The



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definition of “Land” in clause (f) of Section 2 expressly excludes “Forts, old buildings and building plots specified in the inventory” from the ambit of “land”. We may point out the judgments of the High Court do contain acceptable material to show that on September 1, 1964 the area included in the plot purchased by the writ petitioner was no longer an agricultural land but had become an abadi land. (b) If the said extent did not become the property of the then Ruler, then the Act itself does not apply to it; there could have been no question of the same vesting in the State.

9. We make it clear that we express no opinion on the question of title put forward either by writ petitioner or his predecessor-in-interest Maharaja Bhawani Singhji, either in respect of the Plot No. A-9 or with respect to the said extent of 14.3 bighas (covered by Khasra Nos. 5, 6, 7, 93, 95, 92, 8 and 94 and delineated in red in Annexures B-4 and B-5 or for that matter, with respect to the total extent of 134.4 bighas. That question will have to be agitated and adjudicated in an appropriate forum if and when the occasion arises.

10. So far as the application filed by the writ petitioner for grant of permission to make certain constructions on Plot No. A-9, submitted before the Municipal Commissioner (Secretary, Urban Improvement Trust, Jaipur) is concerned, all that we can and do hereby direct that it shall be considered in accordance with law. If such consideration involves examination of the applicant's title, it is for the



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Municipal Commissioner or the other appropriate/competent authority, as the case may be, to go into the said question for the limited purpose of disposing of said application. Any person aggrieved by such decision shall be free to establish his claims and contentions in an appropriate court of law or forum as the case may be. The appeal is accordingly allowed in the above terms.”

17. Applying the aforesaid crystallized legal principles to the factual matrix of the present case, this Court is of the considered opinion that the complex and disputed questions of fact relating to the title, Waqf character, and precise demarcation of the property cannot be satisfactorily resolved in the present writ proceedings. The petitioner is attempting to seek what is essentially a declaration of title cloaked as a challenge to an eviction order, bypassing the statutory appellate machinery provided under the MPLRC and/or the Waqf Tribunal/Civil Court.

18. Thus, for the reasons adumbrated hereinabove, this Court declines to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India.

19. The writ petition is accordingly **dismissed**.

20. However, liberty is reserved to the petitioner to approach the



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appropriate statutory appellate forum or the competent court of civil jurisdiction/Tribunal, in accordance with the law, to vindicate its rights. It is made clear that this Court has not expressed any opinion on the merits of the rival claims regarding title or possession.

21. The petition stands disposed of in the aforesaid terms.
22. Pending applications, if any, shall be **disposed off** accordingly.

(Jai Kumar Pillai)
Judge

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