

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE G. S. AHLUWALIA
ON THE 30th OF JULY, 2024
WRIT PETITION No. 1356 of 2006
PREMLAL
Versus
THE STATE OF MADHYA PRADESH AND OTHERS**

Appearance:

Shri Ram Shanker Khare- Advocate for petitioner.

Shri G.P. Singh- Government Advocate for respondents/State.

Shri Pravesh Naveria- Advocate for respondent No. 4.

ORDER

This petition under Article 226 of Constitution of India has been filed seeking the following reliefs:-

“1. To quash the order of the Commissioner Sagar Division Sagar dated 25-11-2001 (annexure p-2) and also to quash the order of the state Govt. dated 17-10-05 (annexure p-3) by issuance of the writ in the nature of **CERTIORARY**.

2. To declare the order of the Collector dated 22-12-94 is not perverse and he has committed no error of law as therefore deserves to be maintained by issuance a writ in the nature of **MANDAMUS**.

3. And any other relief may be granted as may be found fit and proper in the situation and circumstances of the present case.”

2. It is the case of the petitioner that the petitioner was the owner of Khasra No. 579/2, admeasuring 1.769 hectares of land situated in Village Gopalpura, Tehsil and District Tikamgarh. The petitioner along with one Smt. Sobha Raje filed an application before the Court of Sub Divisional Officer, Tikamgarh for exchange of above mentioned land

with the Government land bearing Khasra No. 605, admeasuring 2.66 hectares situated in Village Alampura, Tehsil and District Tikamgarh.

3. Undisputedly the aforesaid land is situated by the side of the main road and is recorded as a *Pathar* (Hill). The SDO submitted his report to the Collector. A proclamation was issued. No objection was received and even Gram Panchayat Alampura also passed an unanimous resolution recommending exchange of land and accordingly the land of the petitioner was permitted to be exchanged with a government land bearing Khasra No. 605, area 1.769 hectares out of 2.66 hectares.

4. The respondent No. 4 filed an appeal before the Court of Commissioner Sagar thereby challenging the order of exchange dated 22.12.1994 passed by the Collector, Tikamgarh. The Commissioner, Sagar Division Sagar by order dated 25.09.2001 passed in Appeal No. 48/A-59/1999-2000, allowed the appeal and set aside the order of exchange. The revision filed before the State of Madhya Pradesh was dismissed as barred by time.

5. Challenging the orders passed by Commissioner, Sagar Division Sagar as well as the State of Madhya Pradesh, it is submitted by counsel for petitioner that the State of Madhya Pradesh committed a material illegality by rejecting the revision as barred by time. The petitioner had pointed out the sufficient cause for condonation of delay because he was not aware of the order dated 25.09.2001 passed by Commissioner, Sagar Division Sagar. Further, it is submitted that even otherwise the exchange was done after due proclamation.

6. Heard learned counsel for petitioner.

7. It is not the case of the petitioner that the Commissioner, Sagar Division Sagar had decided the appeal in absence of his counsel. On the contrary, it is mentioned in the application filed under Section 5 of

Limitation Act that there was some connivance between Advocate Shri Tiwari and the respondent Mahendra Dheer and that is why the petitioner could not get the information about the order dated 25.09.2001. Not only this application was not supported by an affidavit but the petitioner has also not approached the Bar Council complaining the professional misconduct against his Advocate Shri Tiwari. Furthermore, the revision was filed with a delay of more than 4 years. Admittedly the respondents had filed an appeal in which the petitioner was being represented by his counsel. Therefore, the petitioner was aware of the pendency of appeal. It is always expected from a litigant that he should be vigilant in prosecuting the appeal. Why the petitioner did not try to verify the outcome of the appeal from his counsel or from the Court of Commissioner has not been explained in the application filed under Section 5 of Limitation Act.

8. Under these circumstances, this Court is of considered opinion that the State Government did not commit any mistake by rejecting the application filed under Section 5 of Limitation Act for condonation of delay of more than 4 years.

9. After upholding the order of dismissal of revision as barred by time, it is not expected from the Court to touch the merits of the case. But it was insisted by the counsel for the petitioner that he may also be heard on merits.

10. It appears that the petitioner was the owner of land situated in Village Gopalpura. Whereas he sought exchange of land in another village i.e. Alampura. Furthermore, the land which was sought by the petitioner in exchange is situated by the side of the road and the cost of the same must be very high. Apart from that the land which was sought

to be exchanged in place of the land of the petitioner was recorded as *Pathar* (Hill).

11. As per Khand 13, Clause 24 of Revenue Book Circular more than one hectare of land which is recorded as *Pathar* (Hill) cannot be allotted to an individual independently.

12. Considering the totality of the facts and circumstances of the case, even otherwise, the petitioner could not point out any perversity in the order passed by the Commissioner, Sagar Division Sagar.

13. As a consequence thereof the order dated 25.09.2001 passed by Commissioner, Sagar Division Sagar in Appeal No. 48/A/59/1999-2000 and order dated 17.10.2005 passed by the State of Madhya Pradesh in Revision No. 1/05/Revision are hereby **affirmed**.

14. The petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

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