

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

**BEFORE**

**HON'BLE SHRI JUSTICE G.S. AHLUWALIA**

**ON THE 30<sup>th</sup> OF JULY, 2024**

**WRIT PETITION No. 6019 of 2006**

***SUNIL KUMAR KHARE***

*Versus*

***THE STATE OF MADHYA PRADESH AND OTHERS***

.....  
**Appearance:**

***Shri Ram Shankar Khare – Advocate for the petitioner.***

***Shri G.P. Singh – Government Advocate for respondents No.1 to 4/State.***

***None for respondent No.5 though served.***  
.....

**ORDER**

This petition under Article 227 of Constitution of India has been filed seeking following relief(s):-

- (i) That, this Hon'ble Court may kindly be pleased to quash the orders impugned dated 9-9-2001 vide Annexure P-4, order dt. 18-5-2004 Annexure P-6 and order dt. 1-7-2005 Annexure P-7, by issuance a writ in the nature of certiorari.
- (ii) The Hon'ble Court may be pleased to call for the entire record pertaining to subject matter of the petition for kind perusal of this Hon'ble Court.
- (iii) That, the Hon'ble Court may be pleased to declare that the petitioner has been legally allotted patta in accordance with the Act 1984.
- (iv) Any other relief, as this Hon'ble Court deems fit and proper in the facts and circumstances of the case may kindly be granted.

2. The facts necessary for disposal of present petition in short are that araji No.163 area 0.405 hectare and araji No.164 area 0.170 hectare was recorded in revenue records as *Dakhal Rahit Bhumi*. By order dated 05/12/1987 passed by Tehsildar, Tikamgarh in case No.38/A-19(4)/87-88, petitioner was awarded *bhumiswami* rights under the *Madhya Pradesh Krishi Prayojan Ke Liye Upayog Ki Ja Rahi Dakhal Rahit Bhoomi Par Bhoomiswami Adhikaron Ka Pradan Kiya Jana (Vishesh Upabandh) Adhiniyam, 1984* (in short 'Adhiniyam, 1984').

3. Against the said order, respondent No.5 preferred a Revision before Collector, Tikamgarh, which was allowed by order dated 09/09/2001 passed in case No.16/Revision/2000-2001 by holding that petitioner is the son of Patwari Shri Rajeshwari Prasad who in order to gave undue advantage to his own son had wrongly mentioned the possession of petitioner in the year 1984 and on the basis of said entry, *bhumiswami* rights were conferred on the petitioner and accordingly, order passed by Tehsildar was set aside.

4. Being aggrieved by the order passed by Collector, Tikamgarh, petitioner preferred a Revision which was registered as Revision Case No.278/A-19(4)/2001-2002 and by order dated 18/05/2004, Commissioner, Sagar Division, Sagar dismissed the Revision.

5. It is submitted by counsel for petitioner that respondent No.5 was not the aggrieved person because he was already having more than five acres of agricultural land. It is further submitted that there is nothing in the Adhiniyam, 1984 to show that possession of a minor cannot be recorded in revenue records.

6. Considered the submissions made by counsel for petitioner.

7. Sections 2(a) and 3 of Adhiniyam, 1984 read as under:-

**“2. Definitions-** In this Act, unless the context otherwise requires,-

(a) "agricultural labourer" means a person who does not hold any land and whose principal means of livelihood is manual labour on land and any member of his family of which he is member does not hold any land;

(b) xxx

(c) xxx

**3. Conferral of Bhoomiswami rights on agricultural labourer-** (1) All unoccupied land in a village in possession of an agricultural labourer on the 2<sup>nd</sup> October 1984 shall, notwithstanding anything contained in the Code, or the rules made thereunder shall be held by such person as from the said date in Bhoomiswami rights and he shall be a Bhoomiswami of the said land for all purposes of the Code and any other enactment for the time being in force :

Provided that such conferral of Bhoomiswami rights shall not be for such land exceeding two hectares :

Provided further that nothing contained in this section shall apply in respect of land-

(a) set apart under Section 237 of the code for the following purposes :-

(i) for burial ground and cremation ground;

(ii) for gaothan;

(iii) for threshing floor;

(iv) for skinning ground;

(v) for bazar;

(vi) for public purpose such as schools, playgrounds, parks, roads, lanes and drains;

(vii) for the Pasture, grass, bir or fodder;

(b) hold or reserved by the Central Government or the State Government for any specific purpose;

(c) which stands allotted to any person other than the person in possession of the land on the said date.

(2) Nothing contained in sub-section (1) shall apply unless the agricultural labourer is in possession of the land in the village in which he resides and none of the members of his family holds any land.

*Explanation.-* For purposes of sub-section (2) the family shall be deemed to consist of the spouse, issues, parents and any other person dependent on him.”

**8.** For taking the benefit of provisions of Adhiniyam, 1984, the aspirant must prove that he is an agricultural labourer on 02/10/1984 and is in possession of an unoccupied land in a village.

**9.** Undisputedly, petitioner was minor in the year 1984. Father of the petitioner was Patwari and this fact has not been disputed by the petitioner.

**10.** How a son of Patwari who is minor can be said to be an agricultural labourer unless and until it is proved that the principal means of livelihood of such person is manual labour or land and any member of his family of which he is member does not hold any land.

**11.** When father of petitioner is an earning member of the family and petitioner was dependent on his father, then in absence of any findings that the principle means of livelihood of petitioner was manual labour or land, it cannot be said that he was an agricultural labourer on 02/10/1984.

**12.** Furthermore, both the revenue Courts had come to a conclusion that since father of petitioner was in possession of revenue records, therefore with an intention to take advantage of the provisions of Act, 1984, an incorrect entry was made by his father.

**13.** From the cause-title, it is clear that petitioner was 34 years of age in the year 2006 i.e. on the date of filing of Writ Petition. If age of the petitioner in the year 1984 is calculated in the light of age disclosed by petitioner in the cause-title of this petition, then it is clear that petitioner was 12 years of age in the year 1984. Furthermore, this Court by order dated 30/08/2006 had granted liberty to the petitioner to place the documents on record to show the age of petitioner on 02/10/1984. Petitioner has filed a copy of mark-sheet alleging that date of birth of petitioner is 30/06/1969. If that date of birth is taken to be correct, still it is clear that petitioner was only 15 years of age on 02/10/1984. Thus, it is clear that the petitioner was minor.

**14.** Thus, the conclusion drawn by revenue Courts that the father of petitioner had made a forged entry in the revenue records in order to provide undue advantage to his minor son aged about 12/15 years, cannot be said to be based on whims and wishes of the revenue Authorities, but in fact aforesaid conclusion is based on proper appreciation of material available on record.

**15.** Considering the totality of facts and circumstances of the case, this Court is of considered opinion that order dated 09/09/2001 passed by Collector, Tikamgarh in case No.16/Revision/2000-2001 and order dated 18/05/2004 passed by Commissioner, Sagar Division Sagar in Revision Case No.278/A-19(4)/2001-2002, do not suffer from any infirmity. Accordingly, they are **affirmed**.

**16.** Petition fails and is hereby **dismissed**.

**17.** Furthermore, there is no stay by the High Court, therefore, it appears that respondents must have recovered the possession of the property in dispute. However, it is made clear that in case if land in

dispute is still in possession of petitioner, then competent Authority shall immediately initiate proceedings for eviction of petitioner.

**(G.S. AHLUWALIA)**  
**JUDGE**

S.M.