

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
ON THE 13th OF MARCH, 2024
WRIT PETITION No. 9642 of 2012**

BETWEEN:-

**NARMADA PRASAD SAHU S/O LATE
RAMRATAN SAHU (DIED) DELETED BY
COURT ORDER DATED 11.09.2023.**

1. HEERALAL SAHU S/O SHRI NARMADA PRASAD SAHU, AGED ABOUT 50 YEARS, R/O VILLAGE MAJAHIAKHAR, TEHSIL AND DISTRICT DINDORI (MADHYA PRADESH)
2. SMT. SHYAM BAI W/O SHRI HEERALAL SAHU, AGED ABOUT 44 YEARS, R/O MAJAHIAKHAR, TEHSIL AND DISTRICT DINDORI (MADHYA PRADESH)
3. SHRI DURGESH SAHU S/O SHRI HEERALAL SAHU, AGED ABOUT 17 YEARS, R/O MAJAHIAKHAR, TEHSIL AND DISTRICT DINDORI (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI ASHOK LALWANI - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY MINISTRY OF REVENUE, BHOPAL (MADHYA PRADESH)
2. ADDITIONAL COLLECTOR, COLLECTORATE DINDORI, DISTRICT DINDORI (MADHYA PRADESH)
3. SUB DIVISIONAL OFFICER, TAHSIL AND DISTRICT DINDORI (MADHYA PRADESH)
4. AWADHESH PRATAP SINGH, ADDITIONAL COLLECTOR, DISTRICT

DINDORI (MADHYA PRADESH)

5. **ADESH RAI, SUB DIVISIONAL OFFICER (REVENUE) DISTRICT DINDORI (MADHYA PRADESH)**
6. **SHRI K.L. SONI, PATWARI H.NO. 196 VILLAGE GADASARAI, DISTRICT DINDORI (MADHYA PRADESH)**
7. **AJURAM S/O CHETRAM KOL, AGED ABOUT 40 YEARS, R/O MAJHIAKHAR, TAHSIL BAJAG, DISTRICT DINDORI (MADHYA PRADESH)**
8. **PARASRAM SAHU S/O RAMRATAN SAHU, AGED ABOUT 65 YEARS, SAKKA TAHSIL AND DISTRICT DINDORI (MADHYA PRADESH)**
9. **THE STATE OF MADHYA PRADESH THROUGH COLLECTOR DINDOR, DISTRICT DINDORI (MADHYA PRADESH)**

.....RESPONDENTS

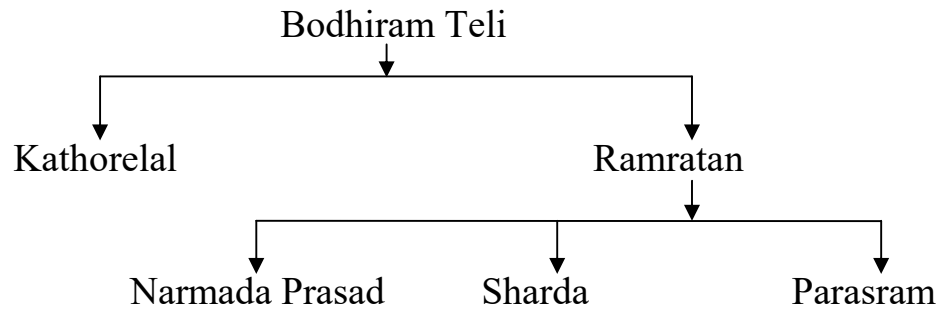
(SHRI HITENDRA KUMAR GOLHANI – PANEL LAWYER FOR RESPONDENTS NO.1, 2, 3 AND 9, NONE FOR OTHER RESPONDENTS)

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This petition coming on for hearing this day, the court passed the following:

ORDER

This Petition under Article 226 of Constitution of India has been filed against order dated 01.12.2010 passed by SDO (Revenue), District Dindori in Revenue Case No.01(A-23) 2010-11 and order dated 22.05.2012 passed by Additional Collector, Dindori, District Dindori in Appeal No.33, 34, 35, 36 (A-23) 2010-11 by which land of petitioners has been directed to be reverted back to respondent No.7 under the provisions of Section 170B of MPLR Code.

2. It is submitted by counsel for petitioners that earlier Chhutiya Kol was in possession of property in dispute in the year 1929-30. Thereafter, he surrendered his land in favour of the then Malgujar, namely; Bodhiram Teli on account of non-payment of land revenue. According to petitioners, family tree of Bodhiram Teli is as under:



3. It is submitted by counsel for petitioners that Bodhiram Teli partitioned the property during his lifetime between his sons Kathorelal and Ramratan and disputed property went to the share of Ramratan. Ramratan during his lifetime carried out family settlement and disputed property went to the share of Nanhi Bai W/o Ramratan. Nanhi Bai executed a will in favour of Ramratan. In his turn Ramratan executed a Will in favour of Parasram and Parasram in his turn alienated the property by four different sale deeds in favour of petitioners. It is submitted that thereafter, Ajuram Kol filed a civil suit for declaration of title and possession of Khasra No.669 area 3.66 and Araji No.668 area 1.40 hectare against Parasram. The said civil suit was instituted in the year 2003, which was registered as Civil Suit No.71A/2003. The said civil suit was dismissed by judgment and decree dated 16.04.2005 passed by Civil Judge, Class I, District Dindori with a clear finding that Chhutiya Kol had surrendered the land in favour of the then Malgujar on 30.06.1991 and since then name of the then Malgujar, namely Bodhiram

Teli was recorded in the revenue record. It was further held that since Chhutiya Kol had surrendered his land in the year 1931 in favour of the then Malgujar, therefore, right of Chhutiya Kol over the land in dispute came to an end. It was further held that the suit filed by the plaintiff was barred by time. It is submitted that after having lost the civil suit, Ajuram filed an application under Section 170-B of MPLR Code. Although names of petitioners were recorded in the revenue records, in spite of that only Parasram was impleaded as sole respondent and petitioners were not impleaded. Parasram was proceeded *ex parte* and accordingly, SDO (Revenue), District Dindori by order dated 01.12.2010 passed in Revenue Case No.1(A-23) 2010-11 held that the land in dispute is the ancestral land of Ajuram and Parasram, who is the non aboriginal tribe has forcibly taken possession of the same, which is not in accordance with law and accordingly, it was directed that Parasram should revert back the possession of land in dispute to Ajuram. Since Parasram had executed four different sale deeds, accordingly, Smt. Shyama Bai preferred appeal No.34(A-23) 2010/2011, Durgesh Kumar preferred appeal No.36(A-23) 2010/2011, Hiralal preferred appeal No.33(A-23) 2010/2011 and Narmada Prasad preferred appeal No.35(A-23) 2010/2011. By order dated 22.05.2012 passed separately in all four different appeals, it was held that Civil Court had held that initially name of Chhutiya Kol, who is the grandfather of Ajuram was recorded in the revenue record and therefore surrender of the land in favour of the then Malgujar cannot be said to be a valid transfer and thus it was held that the SDO did not commit any mistake by directing the reversion of land back to respondent No.7 Ajuram.

4. Challenging the orders passed by Additional Collector, Dindori, it is submitted by counsel for petitioners that the Civil Court has given a specific finding that Chhutiya Kol had surrendered his land in favour of Bodhiram Teli and therefore, SDO as well as Additional Collector should not have ignored the said finding. Once Chhutiya Kol had already lost his title over the land in dispute in the year 1931 itself, then petitioners were not under obligation to submit an information as required under Section 170-B(1) of MPLR Code. Even otherwise, names of petitioners were recorded in the revenue records, which is evident from the *Rin Pustika* issued in the year 2001-2002 therefore, they were the necessary parties and thus, it is submitted that orders under challenge are bad in law.

5. *Per contra*, counsel for respondents/State has supported the findings recorded by authorities below.

6. None for respondent No.7 though served and represented.

7. Heard the learned counsel for parties.

8. Sections 170-A & 170-B of MPLR Code reads as under:

“170-A. Certain transfers to be set aside.—

(1) Notwithstanding anything contained in the Limitation Act, 1963 (No. 36 of 1963), the Sub-Divisional Officer may, on his own motion or on an application made by a transferer of agricultural land belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6) of Section 165 on or before the 31st December, 1978, enquire into a transfer effected by way of sale, or in pursuance of a decree of a court of such land to a person not belonging to such tribe or transfer effected by way of accrual of right of occupancy tenant under Section 169 or of Bhumiswami under sub-section (2-A) of Section 190 at any time during the period

commencing on the 2nd October, 1959 and ending on the date of commencement of the Madhya Pradesh Land Revenue Code (Third Amendment) Act, 1976 to satisfy himself as to the bonafide nature of such transfer.

(2) If the Sub-Divisional Officer on an enquiry and after giving a reasonable opportunity to the persons owning any interest in such land, is satisfied that such transfer was not bona fide, he may notwithstanding anything contained in this Code or any other enactment for the time being in force,—

- (a) subject to the provisions of clause (b), set aside such transfer if made by a holder belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6) of Section 165 and restore the land to the transferor; or
- (a) subject to the provisions of clause (b), set aside such transfer if made by a holder belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6) of Section 165 and restore the land to the transferor by putting him in possession of the land forthwith; or
- (b) where such land has been diverted for non-agricultural purposes, he shall fix the price of such land which it would have fetched at the time of transfer and order the transferee to pay the difference, if any, between the price so fixed and the price actually paid to the transferor within a period of six months.

170-B. Reversion of land of members of aboriginal tribe which was transferred by fraud.— (1) Every person who on the date of

commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 1980 (hereinafter referred to as the Amendment Act of 1980) is in possession of agricultural land which belonged to a member of a tribe which has been declared to be an aboriginal tribe under sub-section (6) of Section 165 between the period commencing on the 2nd October, 1959 and ending on the date of the commencement of Amendment Act, 1980 shall, within two years of such commencement, notify to the Sub-Divisional Officer in such form and in such manner as may be prescribed, all the information as to how he has come in possession of such land.

(2) If any person fails to notify the information as required by sub-section (1) within the period specified therein it shall be presumed that such person has been in possession of the agricultural land without any lawful authority and the agricultural land shall, on the expiration of the period aforesaid revert to the person to whom it originally belonged and if that person be dead, to his legal heirs.

(2-A) If a Gram Sabha in the Scheduled area referred to in clause (1) of Article 244 of the Constitution finds that any person, other than a member of an aboriginal tribe, is in possession of any land of a Bhumiswami belonging to an aboriginal tribe, without any lawful authority, it shall restore the possession of such land to that person to whom it originally belonged and if that person is dead to his legal heirs:

Provided that if the Gram Sabha fails to restore the possession of such land, it shall refer the matter to the Sub-Divisional Officer, who shall restore the possession of such land within three months from the date of receipt of the reference.

(3) On respect of the information under sub-section (1), the Sub-Divisional Officer shall make such enquiry as may be deemed necessary about all such transactions of transfer and if he finds that the member of aboriginal tribe has been defrauded of his legitimate right he shall declare the transaction null and void and pass an order revesting the agricultural land in the transferor and, if he is dead, in his legal heirs.

(3) On receipt of the information under sub-section (1) the Sub-Divisional Officer shall make such enquiry as may be necessary about all such transactions of transfer and if he finds that the member of aboriginal tribe has been defrauded of his legitimate right he shall declare the transaction null and void and —

- (a) Where no building or structure has been erected on the agricultural land prior to such finding pass an order revesting the agricultural land in the transferor and if he be dead, in his legal heirs,
- (b) Where any building or structure has been erected on the agricultural land prior to such finding, he shall fix the price of such land in accordance with the principles laid down for fixation of price of land in the Land Acquisition Act, 1894 (No. 1 of 1894) and order the person referred to in sub-section (1) to pay to the transferor the difference, if any, between the price so fixed and the price actually paid to the transferor:

Provided that where the building or structure has been erected after the 1st day of January, 1984, the provisions of clause (b) above shall not apply:

Provided further that fixation of price under clause (b) shall be with reference to the price on

the date of registration of the case before the Sub-Divisional Officer.”

9. The moot question for consideration is as to whether the provisions of Section 170-B of MPLR Code would apply even in respect of those transactions which took place prior to 02.10.1959 and a person is in possession of land belonging to aboriginal tribe on 02.10.1959 by virtue of said transaction?

10. The validity of provisions of Sections 170-A, 170-B and 257-A of MPLR Code was challenged and by judgment passed by Division Bench of this Court in the case of **Dhirendra Nath Sharma v. State of Madhya Pradesh and another** reported in (1985) 30 MPLJ 786, the validity of aforesaid provision was upheld. It was held by Division Bench of this Court in the case of **Dhirendra Nath Sharma (supra)** that by M.P. Act No.37 of 1973 the original sub-section (7) of Section 165 was amended. The next significant amendment made in the Code was of M.P. Act No.61 of 1976 which came into force w.e.f. 29.11.1976. By this amendment, sub-section (6) of section 165, section 169 and section 170 were amended and section 170A and section 257A were inserted in the Code. Sub-section (6) of section 165 laid down that in areas predominantly inhabited by aboriginal tribes, transfer of land by sale or otherwise by a tribal could not be made to a non-tribal and in the remaining areas the land by a tribal could not be transferred by way of sale or otherwise without the permission in writing of a revenue officer not below the rank of Collector given for reasons to be recorded in writing. Section 169 was also amended to provide that the provisions in the Code laying down the consequences of unauthorised lease resulting in conferral of rights of an occupancy tenant and then a

Bhumiswami or the lessee were not to apply to a land comprised in the holding of a *Bhumiswami* belonging to a tribe which had been declared to be an aboriginal tribe under sub-section (6) of section 165. Section 170A was inserted for setting aside certain transfer. According to this section, Sub-Divisional Officer may on his own motion or on an application made by a transferor of agricultural land belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6) of section 165 on or before the 31st December, 1978, enquire into a transfer effected by way of sale, or in pursuance of a decree of a court of such land to a person not belonging to such tribe or transfer effected by way of accrual of right of occupancy tenant under section 169 or of *Bhumiswami* under sub-section (2A) of section 190 at any time during the period commencing on the 2nd October, 1959 and ending on the date of commencement of MPLR Code (Third Amendment) Act, 1976 to satisfy himself as to the *bona fide* nature of such transfer. Section 257A of MPLR Code provided for burden of proof and bar on legal practitioners in certain proceedings. According to Section 257A(1), the burden of proving the validity of transfer notwithstanding anything contained in this Code or in any other law for the time being in force, lie on the person who claims such transfer to be valid. The next significant amendment in the Code was made by M.P. Act No.15 of 1980 w.e.f. 24.10.1980 which inserted section 170-B. Thereafter, the period of one year prescribed in section 170-B was increased by Ordinance No.12 of 1981 to one and half years and then to two years by M.P. Act No.19 of 1982 which was brought into force retrospectively with effect from 23.10.1981 i.e. before the expiry of the period of one year from the date of enforcement of M.P. Act No.15 of 1980 which inserted section 170-

B. The challenge to validity of section 70-A and section 257-A of MPLR Code was rejected by a Division Bench of this Court in **Gandibai vs. Chief Secretary, Government of M.P.** reported in **1981 RN 382**. After considering the history of legislation which resulted in enactment of provisions of section 170-A and section 170-B of MPLR Code, it was observed by Division Bench of this Court in the case of **Dhirendra Nath Sharma (supra)** that section 170-B was inserted later for the same purpose with a view to cover the remaining transfers. It was observed that in short, section 170-A was enacted to enable S.D.O. to enquire into the *bona fide* nature of all transfers made of agricultural land belonging to a tribal during the period commencing on the 2nd October, 1959 when the Code came into force and ending on the date on which the amendment of 1976 came into force, on his own motion or on an application made by the transferor upto 31st December, 1978. Section 170-B was inserted later for the same purpose with a view to cover the remaining transfers of agricultural land belonging to tribals under which they had been exploited resulting from their unequal bargaining capacity at the time of the transaction. It was further held that by enacting section 170-B, a duty was cast on every person in possession of agricultural land, which belonged to a tribal at any time between 2nd October, 1959 and the date of commencement of the Amendment Act of 1980 to notify the S.D.O. within the period specified in the prescribed manner and all the information as to how he had come in possession of such land.

11. Thus, it is clear that where a transaction took place during the period commencing on 2nd October, 1959 when Code came into force and ending on the date on which the amendment of 1976 came into force thereby inserting section 170-A of MPLR Code, the said

transaction was subject to verification as per the provisions of section 170-A of MPLR Code. However, since the said provision was not found satisfactory, therefore, for the remaining transactions section 170-B of M.P.L.R. Code was inserted. From plain reading of this section, it is clear that word 'possession' has been used and not 'transaction'. Any person who is in possession of the land belonging to aboriginal tribe on the date of between period commencing on 2nd October, 1959 and ending on the date of the commencement of Amendment Act of 1980 was required to notify to S.D.O. in such form and in such manner as may be prescribed, all the information as to how he has come in possession of such land. Therefore, the date of transaction becomes immaterial and material aspect is as to whether the person is/was in possession of land belonging to aboriginal tribe between period commencing on 2nd October, 1959 and ending on the date of commencement of Amendment Act, 1980.

12. Since the question of validity of transaction was already covered by Section 170-A of MPLR Code, therefore, if it is held that for invoking provisions of section 170-B of MPLR Code, the date of transaction must be between period commencing on 2nd October, 1959 and ending on the date of commencement of Amendment Act of 1980, then such an interpretation would make the provision redundant.

13. The use of word "possession" has been consciously used by legislature specifically when provision of section 170-A of MPLR Code was already in the statute book.

14. It is well established principle of law that word used in a statute must be given literal meaning in case if the same has not been defined in a definition clause. In case if the word "possession" is read as "the date

of transaction” then as already held it would make the provision of section 170-B of MPLR Code as a redundant provision.

15. Thus, it is clear that in order to invoke the provision of section 170-B of MPLR Code, the only requirement is as to whether a person is in possession of land belonging to an aboriginal tribe between period commencing on 2nd October, 1959 and ending on the date of commencement of Amendment Act, 1980.

16. In the present case, undisputedly, the predecessors of the petitioners were in possession of land belonging to Chhutiya Kol on 2nd October 1959. Thus, in the light of judgement passed by Division Bench of this Court in the case of **Dhirendra Nath Sharma (supra)**, it is held that case in hand is duly covered by provisions of Section 170-B of MPLR Code.

17. It is submitted by counsel for petitioner that coordinate Bench of this Court in the case of **Roopchand vs. Board of Revenue, M.P. Gwalior and others**, reported in **1985 RN 184** has held that since transaction took place prior to 02.10.1959, therefore, provisions are not attracted.

18. Considered the submissions made by counsel for petitioner.

19. In the case of **Roopchand (supra)** the coordinate Bench of this Court had relied upon the judgment passed by a Division Bench of this Court in the case of **Balvant Rai vs. Collector, Jhabua and others** reported in **1988 RN 169**. However, the said judgment was in relation to provisions of section 170-A of MPLR Code and not in respect of section 170-B of MPLR Code. As already pointed out by this Court, so far as date of transaction is concerned, it is material only for the provisions of section 170-A of MPLR Code.

20. Furthermore, in the case of **Roopchand (supra)** the coordinate Bench of this Court has not considered the law laid down by Division Bench of this Court in the case of **Dhirendra Nath Sharma (supra)**.

21. The next question for consideration is as to whether the Civil Court had jurisdiction to decide the controversy which falls within the exclusive domain of S.D.O. under Section 170-B of MPLR Code.

22. The coordinate Bench of this Court had passed the following order on 23.11.2023:

“Petitioners' case is that the petitioners are subsequent purchasers of certain piece of land as contained in New Khasra Nos.669 & 668 measuring 3.66 Hectare and 1.40 Hectare, which have been purchased by them vide different sale deeds starting from 6.4.1999 to 15.4.2009. Respondent No.7 Ajuram S/o.Shri Chetram Kol filed an application before the Sub Divisional Officer, which was registered as Case R.C No.01 (A-23) 2010-2011 and thereafter Appeal Nos.33,34,35,36 (A-23) 2010-2011 was also filed before Additional Collector, Dindori whereby exercising authority under Section 170-B of the Madhya Pradesh Land Revenue Code, 1959 (for short "M.P.L.R.Code"), the impugned orders have been passed.

Learned counsel for the petitioners submits that for exercising authority under Section 170-B of the Madhya Pradesh Land Revenue Code, 1959, certain requirements are to be fulfilled, namely, agriculture land was in possession of a member of a tribe, which has been declared to be an aboriginal tribe under Sub-Section (6) of Section 165 of M.P.L.R.Code and that possession should be between the period commencing from 2.10.1959 and ending on the date of commencement of the Amendment Act i.e.24.10.1980 and a person in possession is required to inform within two years of commencement of the Amendment Act of 1980 to the Sub Divisional Officer that in what manner, he is in possession of a land, which belonged to the erstwhile aboriginal tribe.

Learned counsel for the petitioners also submits that the original owner of the land in question was Bodhiram Teli (Malgujar). It is true that the land was given to Shimla and Chhutaiya for a while and there is revenue entry in their favour for the year 1929-1930 and thereafter the land was reverted back in favour of Bodhiram Teli (Malguzar). In 1954, Bodhiram Teli (Malguzar) made a partition between two of his sons, namely, Kathorelal and Ramratan. This Court is concerned with the Tree of Ramratan. It is pointed out that the land had come from Ramratan to Nanhibai and then on the basis of the Will of Ramratan, which was recorded in the year 1987, the land had come to Parasram, who had sold the land in favour of the petitioners between 1999 to 2009. A civil suit was filed by Respondent No.7 Ajuram and that suit was dismissed as is evident from order as contained in Annexure P/16. Once a civil suit was dismissed at the instance of Respondent No.7 Ajuram then it was not open to Respondent No.7 Ajuram to have filed an application under Section 170-B of the M.P.L.R.Code on 15.10.2009. The Sub Divisional Officer, without recording a finding that the person making an application is an aboriginal tribe and was enjoying the land between 1959 to 1980, could not have passed the impugned order of reversion. The Patwari Report Annexure P/27 supports the case of the Petitioners wherein it is mentioned that after 1930, the names of Chhutaiya and Shimla were never recorded in the revenue entry. As per Madhya Pradesh Malguzari Act, 1917 Annexure P/8, the name of Bodhiram Teli was mentioned as Khurd Kashtkar and to support this, there are letters of surrender as contained in Annexures P/3 to P/7 written by Chhutaiya and Shimla, therefore, the provisions of Section 170-B of the M.P.L.R Code will not be applicable.

Shri Anubhav Jain, learned Government Advocate for the State submits that the Trial Court has not accepted the title of Parasram from whom the petitioners are claiming their title. The Issue No.6 in Annexure P/16 has been decided against Parasram and there is no challenge to that finding.

When Shri Anubhav Jain, learned Government Advocate for the State is asked as to how the Sub Divisional Officer could have exercised authority under Section 170-B of the M.P.L.R.Code superseding the judgment and decree of the Trial Court as contained in Annexure P/16, he prays for time to prepare and arguing this case.

List on 29.11.2023 under the same heading.”

23. Section 257 of M.P.L.R. Code reads as under:-

"257. Exclusive jurisdiction of revenue authorities.— Except as otherwise provided in this Code, or in any other enactment for the time being in force, no Civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the State Government, the Board, or any Revenue Officer is by this Code, empowered to determine, decide or dispose of, and in particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the following matters : —

(a) any decision regarding any right under sub-section (1) of Section 57 between the State Government and any person;

(a-1) any decision regarding the purpose to which land is appropriated under Section 59;

(b) any question as to the validity or affect of the notification of a land survey;

(c) any claim to modify a decision determining abadi made by a District Survey Officer or Collector;

(d) any claim against the State Government to hold land free of land revenue, or at less than the fair assessment, or to be assigned in whole or in part the land revenue assessed on any land;

(e) the amount of land revenue assessed or reassessed under this Code or any other enactment for the time being in force;

- (f) any claim against the State Government to have any entry made in any land records or to have any such entry omitted or amended.
- (g) any question regarding the demarcation of boundaries or fixing of boundary marks under Chapter X;
- (h) any claim against the State Government connected with or arising out of, the collection of land revenue or the recovery of any sum which is recoverable as land revenue under this Code or any other enactment;
- (i) any claim against the State Government or against a Revenue Officer for remission or suspension of land revenue, or for a declaration that crops have failed in any year;
- (j) any decision regarding forfeiture in cases of certain transfers under Section 166;
- (k) ejectment of a lesser of a Bhumiswami under sub-section (4) of Section 168;
- (l) any claim to set aside transfer by a Bhumiswarni under sub-section (1) of Section 170 and clauses (a) and (b) of sub-section (2) of Section 170-A;
- (l-1) any matter covered under Section 170-B.
- (m) ejectment of a Government lessee under Section 182;
- (n) xxx
- (o) xxx
- (p) xxx
- (q) xxx
- (r) xxx
- (s) xxx
- (t) xxx
- (u) xxx
- (v) amount payable as compensation under sub-section (3) of Section 209, confirmation of the scheme for consolidation of holdings under Section 210, transfers of rights in carrying out the scheme under Section 213 and assessment and apportionment of costs of consolidation of holdings under Section 215;

- (w) any claim to modify any entry in the Nistar Patrak;
- (w-1) any decision regarding penalty under Section 248, for unauthorisedly taking possession of land;
- (x) any decision regarding reinstatement of a Bhumiswami improperly dispossessed and confinement in civil prison under Section 250;
- (x-i) xxx
- (x-ii) any decision regarding delivery of actual possession of land to the Bhumiswami or the Government Lessee under Section 250-B.
- (y) any decision regarding vesting of tanks in State Government under Section 251 and any claim against the State Government arising thereunder;
- (z) any claim against the State Government to set aside or modify any premium, penalty, cess or rate imposed or assessed under the provisions of this Code or any other enactment for the time being in force;
- (z-1) xxx
- (z-2) any claim to compel the performance of any duty imposed by this Code on any Revenue officer or other officer appointed under this Code."

24. Thus, it is clear that the subject matter which is duly covered by provisions of M.P.L.R. Code cannot be agitated before the Civil Court. The only exception to this is law laid down by Supreme Court in the case of **Dhulabhai & Ors. Vs. State of Madhya Pradesh and another** reported in **AIR 1969 SC 78**.

25. The Supreme Court in the case of **Dhulabhai (supra)** has held as under:-

“32. Neither of the two cases of Firm of Illuri Subayya, 1964-1 SCR 752 = (AIR 1964 SC 322) or Kamla Mills, 1966 1 SCR 64 = (AIR 1965 SC 1942) can be said to run counter to the series of

cases earlier noticed. The result of this inquiry into the diverse views expressed in this Court may be stated as follows :-

(1) Where the statute gives a finality to the orders of the special tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A

writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.”

26. Therefore, it is clear that where the statute bars the jurisdiction of Civil Court, then although the Civil Suit would be maintainable but it would be on very limited grounds and merits of the case cannot be agitated before the Civil Court.

27. A Co-ordinate Bench of this Court in the case of **Dhumaniya Vs. Hari Singh and Others** decided on 14/10/2000 in **Second Appeal No.293/1999 (Gwalior Bench)** has held that Civil Suit against the order passed under Section 170-B of M.P.L.R. Code is not maintainable and Court cannot go into the questions which are required to be decided by the revenue Authorities. The matters which are required to be decided by the SDO are not final as against the order of SDO, further appeal and revision is provided. The orders passed under Section 170-B(2) of M.P.L.R. Code are final and jurisdiction of Civil Court is barred under Section 257(1-1) of M.P.L.R. Code. Thus, it was held that the Courts

below could have seen only to the extent whether basic fundamental principles of the judicial process have been followed or not by the competent Authority who passed the order and the jurisdiction of the Civil Court is limited as laid down in the case of **Dhulabhai (supra)** and case must fall within the parameter of the tests mentioned in Para 19 of the order passed in this case.

28. It is the contention of counsel for the petitioner that Chhutiya Kol had filed a Civil Suit for permanent injunction which was dismissed with a finding that the original owner of the land in dispute is Chhutiya Kol and on account of failure to pay the land revenue, it was surrendered in favour of the then Jagirdar Bodhiram Teli in the year 1931 and therefore, name of Bodhiram Teli was also recorded in the revenue records. However, the Trial Court held that execution of sale-deed by Parasram in favour of petitioner was not proved.

29. Now the only question for consideration is as to whether aforesaid judgment and decree is hit by Section 257 of M.P.L.R. Code or not?

30. Petitioner has filed a copy of judgment and decree dated 16/04/2005 and the facts of the case are mentioned in paragraph 2 of the said judgment and decree which reads as under:-

“2- दावे के तथ्य संक्षेप में इस प्रकार है कि ग्राम मझियाखार प.ह. नं०37/97 तहसील व जिला डिण्डोरी में स्थित विवादित आराजी जिसके पुराने ख.नं० 247 248 तथा नये ख.नं०-669 रकबा 3.66 है० इस खसरा नं० 668 रकबा 1.40 है० की भूमि वादी की पैत्रिक खानदानी भूमि है, जो कि वादी के बाबा छुटइया एवं उसके भाई शिमला कोल के नाम दर्ज थी। बादी का बाबा छुटइया एवं उसका भाई शिमला कोल उक्त विवादित आराजियात को कभी भी किसी भी व्यक्ति को किसी भी प्रकार से विक्रय एवं अन्तरण नहीं किया है। किन्तु मालगुजार ग्राम मझियाखार बोधी तेली ने विवादित आराजियात को बिना किसी आधार के राजस्व

दस्तावेजों में अपने नाम दर्ज करवा लिया है। जबकि विवादित आराजियात में बोधी तेली का किसी भी प्रकार से कोई भी स्वत्व अधिकार नहीं है। तथा बोधी तेली की मृत्यु हो जाने के बाद उसके वारिसान प्रति०क्र०। परसराम पिता रामरतन तेली का नाम राजस्व दस्तावेजों में अंकित कर दिया गया है। जबकि उक्त विवादित आराजियात का वास्तविक वारिश वादी है। क्योंकि वादी के पिता चेताराम एवं उसके बबा छुटईया तथा छुटईया के भाई शिमला की मृत्यु हो चुकी है वादी ने जब हल्का पटवारी से सम्पर्क करके विवादित आराजियात के सम्बंध में जानकारी ली और जब उसने दिनांक 23/12/2002 एवं दिनांक 10/2/2003 को राजस्व दस्तावेजों की नकले ली तब उसे मालूम हुआ कि उसकी पैत्रिक जमीनों को प्रतिवादी क्र०। ने अपने नाम दर्जकराया लिया है। पिछले वर्ष इसके सूने में प्रतिवादी क्र०। ने कब्जा भी कर लिया है। तथा उसके द्वारा कब्जा मांगने पर प्रतिवादी क्र०। लड़ाई-झगड़ा करने पर अमादा होता है। जिसके कारण उसके स्वत्व पर संकट के बादल घिर आए हैं। इसलिए वादी ने मध्यप्रदेश शासन प्रति०क्र०-2 को औपचारिक पक्षकार बनाते हुए विवादित आराजियात के स्वत्व घोषणा एवं कब्जा वापसी हेतु यह दावा प्रतिवादी क्र०। के विरुद्ध प्रस्तुत किया है।”

31. If the facts of the case as mentioned in paragraph 2 of the judgment and decree dated 16/04/2005 are considered, then it is clear that it was pleaded by plaintiff Chhutiya Kol was claimed to be the owner of the property in dispute and without any information Bodhiram Teli had got his name mutated in the revenue records, whereas Bodhiram Teli had no right or title in his favour. After the death of Bodhiram Teli, his legal representative Parasram has got his name mutated in the revenue record whereas the owner of said property is Chhutiya Kol. When he obtained information about the land in dispute, then he came to know that Parasram has got his name mutated in respect of his ancestral property. It was also pleaded that property in dispute was never alienated to anybody. Thus the crux of the dispute before the

Civil Court was that the property belonging to Chhutiya Kol who is member of aboriginal tribe, is in possession of Parasram. Therefore, from the plain reading of paragraph 2 of the judgment and decree passed by Civil Court, it is clear that averments are duly covered by Section 170-B of M.P.L.R. Code. In view of Section 257 of M.P.L.R. Code, Civil Court had no jurisdiction to decide the controversy which was otherwise to be decided by SDO under Section 170-B of M.P.L.R. Code. Thus, the judgment and decree passed by Civil Court on 16/04/2005 was without jurisdiction and thus, it is a nullity.

32. It is submitted by counsel for petitioner that since the judgment & decree passed by Civil Judge Class-1, Dindori in Civil Suit No.71-A/2003 has attained finality and it was not challenged by respondent No.7 is concerned, it is suffice to mention here that a void order can always be challenged in collateral proceedings.

33. The Supreme Court in the case of **Balvant N. Vishwamitra and Others Vs. Yadav Sadashiv Mule (Dead) Through LRs. And Others** reported in **(2004) 8 SCC 706** has held that main question which arises for consideration is whether the decree passed by Trial Court can be said to be "null" and "void". The distinction between a decree which is void and a decree which is wrong, incorrect, irregular, not in accordance with law, cannot be overlooked or ignored. Where a Court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such Court would be without jurisdiction, *non est* and void *ab initio*. A defect of jurisdiction of the Court goes to the root of the matter and strikes at the very authority of the Court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a Court or an Authority having no

jurisdiction is a nullity. Validity of such decree or order can be challenged at any stage, even in execution of collateral proceedings.

34. It appears that after losing his suit, respondent No.7 filed an application under Section 170-B of M.P.L.R. Code before SDO. SDO after considering the fact that Chhutiya Kol was the owner and in possession of land in dispute and in the year 1931 without there being any order by the competent Authority, the land was mutated in the name of Bodhiram Teli and thus, the petitioner who is not a member of aboriginal tribe is in possession of property belonging to member of aboriginal tribe without any rhyme or reason and therefore by order dated 01/12/2010, directed for reversion of land back to respondent No.7.

35. Being aggrieved by said order, petitioner preferred an appeal which too has been dismissed.

36. It is submitted by counsel for petitioner that it is incorrect to say that the name of Bodhiram Teli was wrongly recorded in the revenue records. It is clear that in case of failure to pay the land revenue, Malgujar was entitled to take the land back. Since Chhutiya Kol had failed to pay the land revenue, therefore land was rightly taken back by Bodhiram Teli.

37. Considered the aforesaid submission made by counsel for the petitioner.

38. One thing is clear that Chhutiya Kol was the owner of land in dispute and thereafter on one fine morning, name of Bodhiram Teli was recorded in the revenue records by deleting the name of Chhutiya Kol. Although it is the contention of of counsel for petitioner that since Chhutiya Kol had failed to pay the land revenue, therefore he

surrendered his land in favour of Bodhiram Teli and has also filed the copies of certain surrender letters but those documents were not proved before the Authorities below. So called surrender letters are private documents and this Court cannot take judicial notice of the same which have been placed on record for the first time without seeking permission under Order 41 Rule 27 CPC. Even in the khasra panchashala, there is no mention of such surrender. On whose order the name of Bodhiram Teli was recorded in the revenue record is also not clear.

39. Thus, it is held that petitioner has failed to prove that on account of failure on the part of Chhutiya Kol to pay the land revenue, he surrendered his land in favour of Bodhiram Teli. Since Chhutiya Kol was the owner of land in dispute and respondent No.7 is legal heir of Chhutiya Kol and petitioner has failed to prove that under what circumstances Bodhiram Teli took possession of the land belonging to the petitioner, therefore, it is clear that Chhutiya Kol who was a member of aboriginal tribe was deprived of his land by Bodhiram Teli in the year 1931.

40. No other argument is advanced by counsel for petitioners.

41. Considering the totality of facts and circumstances of the case, this Court is of considered opinion that authorities below did not commit any mistake by holding that Chhutiya Kol was the owner of the land in dispute and he was wrongly dispossessed and respondents have failed to justify their possession on 2nd October, 1959.

42. Accordingly, the petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE