IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

ON THE 15th OF MAY, 2024

MISC. PETITION No. 4471 of 2019

BETWEEN:-

1. **SMT. NEETU SINGH W/O VIKRAM SINGH OCCUPATION: BUSINESS R/O BANK COLONY BHARHUT NAGAR, SATNA DISTT. SATNA (M.P.) (MADHYA PRADESH)**

2. **I. P SINGH S/O SHRI RUDRA PRATAP SINGH, AGED ABOUT 57 YEARS, OCCUPATION: BUSINESS NEAR GS DAS PETROL PUMP MIG ROAD SATNA TAH. RAGHURAJNAGAR (MADHYA PRADESH)**

......PETITIONERS

(BY SHRI AKHILESH KUMAR JAIN - ADVOCATE)

AND

1. **RAGHUVAR SINGH S/O LATE SHRI JAGDISH SINGH OCCUPATION: SERVICE IN FOREST DEPARTMENT R/O VILLAGE MADNI, TAH. RAGHURAJNAGAR, DISTT. SATNA (M.P.) (MADHYA PRADESH)**

2. **COMMISSIONER REWA LINK COURT AT SATNA DIVISION REWA (M.P)**

............RESPONDENTS

(BY SHRI VARUN KUMAR DUBEY – ADVOCATE FOR RESPONDENT 1, SHRI PRADEEP DWIVEDI - PANEL LAWYER FOR RESPONDENT 2/STATE)

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

ORDER

This misc. petition has been preferred by the petitioners/non-applicants (Smt. Neetu Singh & I.P Singh) challenging the order dated 24.07.2019 passed by Additional Commissioner, Rewa Division, Rewa (Link Court- Satna/Sidhi) in Case No.223/Appeal/2018-19 affirming the order dated 15.04.2019 passed by Sub Divisional Officer, Tahsil Raghurajnagar, District Satna in Revenue Case No. 356/Appeal/2017-18 affirming the order dated 07.06.2018 passed by Tahsildar, Tahsil Raghurajnagar, District Satna, who allowed the application of the respondent 1/applicant filed under Section 250 of the M.P Land Revenue Code, 1959 (in short 'the Code') and passed order of dispossession against the petitioners.

2. Facts in short are that the respondent 1 - Raghuvar Singh filed an application under section 250 of the Code, claiming himself to be bhumiswami of land Khasra No.208/4, 213/4, 214/1, 214/2, 215/1 & 215/2, total number 6, total area 0.349 hectare situated in Mouza Umri, Tahsil Raghurajnagar, District Satna and contended that upon filing application for demarcation, Revenue Inspector and Halka Patwari went

on spot and made demarcation on 18.12.2014 and submitted report on 26.01.2015 which was made final vide case No.7A-12/2014-15, whereby it was reported that the petitioners have encroached upon entire area 0.049 hectare of Survey No.208/4, part area i.e. 0.016 hectare of Survey no. 213/4 and entire area of Survey Nos. 215/1 & 215/2. In view of such demarcation, the respondent 1 requested the petitioners to leave possession, but they did not leave possession, resultantly application was filed with prayer for dispossession of the petitioners namely Smt. Neetu Singh & I.P Singh.

3. Upon service of summons, reply to the application was filed by petitioners denying the averments made in the application and shown ignorance about demarcation of land on 18.12.2014. Disputing the veracity of demarcation, the petitioners contended that no encroachment has been done by them, therefore, there is no question of their dispossession and prayed for dismissal of the application.

4. Record shows that after filing of reply, Tahsildar heard arguments and passed order of dispossession on 07.06.2018 on the application filed under Section 250 of the Code. Upon challenge being made to it, the same was confirmed by Sub Divisional Officer and Addl. Commissioner vide orders dated 15.04.2019 and 24.07.2019.

5. Criticizing the aforesaid three concurrent orders passed by revenue Courts, learned counsel for the petitioners/non-applicants submits that after filing of reply by the petitioners to the application under Section 250 of the Code, it was for the Tahsildar to fix the case for enquiry/evidence of the respondent 1/applicant (Raghuvar Singh) and thereafter for evidence of the petitioners (Smt. Neetu Singh & I.P Singh), but Tahsildar did not even fix the case for evidence of the respondent 1 and heard preliminary arguments on 28.03.2018 and thereafter directly passed impugned final order dated 07.06.2018 allowing the application under Section 250 of the Code.

6. Learned counsel for the petitioners submits that because the proceedings under Section 250 of the Code are judicial in nature**,** therefore, both the parties should have been given due opportunity of hearing, especially in the case where the averments/allegations of dispossession made in the application are denied. He submits that in the light of Section 43 of the Code, the procedure which is applicable in trial of a Civil Suit, is required to be followed, but Tahsildar without taking care of the same, had passed the impugned order placing reliance on the incomplete demarcation report and despite raising the same plea before

appellate Courts, they also did not take care and passed the impugned orders affirming the order of Tahsildar.

7. Learned counsel for the respondent 1, supports the impugned orders passed by revenue Courts and submits that the respondent 1 being owner/bhumiswami of the lands in question and there being no claim of ownership of the petitioners over the land in question, the revenue Courts have not committed any illegality in passing the impugned orders, especially in absence of any challenge to the demarcation report.

8. Heard learned counsel for the parties and perused the record.

9. Bare reading of provisions contained in section 250 of the Code makes it clear that upon filing application by the applicant, Tahsildar has to issue notice/summons to the non-applicant, who if wishes may file reply. If any reply is filed by the non-applicant denying the claim of applicant, then while holding enquiry, Tahsildar has to frame necessary/requisite issue(s), if any, and fix the case for evidence of applicant and cross examination by the non-applicant. Similarly after recording evidence of the applicant, it has to fix case for evidence of the non-applicant and cross examination by the applicant. At the same time, the documents if any filed by the parties, have to be exhibited as per procedure prescribed therefore so that they may be referred in the order(s)

properly. In the case of Nathu vs. Dilbande Hussain **1964 JLJ 707**, a Division Bench of this Court, had considered the provisions contained in Section 250 of the Code, and held that enquiry contemplated under this section is of a summary nature. Relevant paragraph of which is quoted as under :

> "8. Now regarding the various provisions of section 250 together, it is obvious that they provide a summary and speedy remedy through the medium of revenue Courts for the restoration of possession of land to a dispossessed Bhumiswami, as also to Bhumiswami who complains that some person continues to be in an unauthorised possession of the land even though he is not entitled to retain its possession under any provision of the Code. Such a Bhumiswami can apply to the Tahsildar for restoration of possession of the land within two years from the date of dispossession or from the date on which the possession of the person said to be continuing in unauthorised possession becomes unauthorised. By sub-section (2) of section 250 it is no doubt provided that the Tahsildar shall decide the application of the Bhumiswami for possession after making an enquiry into the respective claims of the parties. The enquiry that is contemplated is of a summary nature. In disposing of an application under section 250, the Tahsildar has no doubt to decide whether the person complaining of dispossession or of continued unauthorised possession on the part of someone is or is not a Bhumiswami and whether he has been dispossessed or whether there has been unauthorised and illegal continuation of possession of the land by the person complained against. But the questions, both as regards title of the Bhumiswami to the land and of possession, are not finally decided by the Tahsildar. Even after the revenue Court makes an order under section 250, the aggrieved party has the remedy of filing a civil suit for establishing his title to the land and for obtaining possession of the same. The decision of the revenue Court cannot operate as res judicata in the civil suit; nor can section 257 (x) of the Code stand in the way of the institution of a suit for possession of a land founded on title. What is excluded from the cognizance of a civil Court under clause (x) of section 257 is a suit of the type of one under section 9 of the Specific Relief Act for restoring possession of land to a dispossessed Bhumiswami."

10. In my considered opinion although the enquiry contemplated under Section 250 of the Code is of a summary nature but objective of summary enquiry is to ensure that justice is delivered swiftly, but without compromising on the principles of natural justice and fair trial.

11. Long back in the case of Ram Singh vs. Hamira and others, **1970 RN 211**, Board of Revenue had also made the position clear about the procedure to be followed by the revenue Court, while deciding the application under section 250 of the Code. Relevant paragraphs of the case of Ram Singh (**supra**) are as under :

> "**2.** A preliminary objection was raised by the applicant that entire proceedings of the case in tahsil Court were illegal and seriously irregular as they were not initiated on any written application or plaint by the non- applicants (plaintiffs). Section 250 of the Code clearly lays down that the aggrieved Bhumiswami has to apply to the Tahsildar for restoration of possession and the Tahsildar is required to decide the application after making an inquiry into the respective claims of the parties. This clearly shows that the proceedings under section 250 are of purely judicial nature and the normal procedure for initiating such proceedings has to be followed. This procedure is that the plaintiff has to submit a properly written application or plaint duly stamped giving facts of the case and the relief asked for. A copy of such application is given to the defendants to enable them to submit their reply. On the basis of the facts given in the application and the written reply of the defendants, the Court has to draw issues on which inquiry has to be made and decide onus of proof for each issue. The witnesses required to be produced by the parties are summoned and examined in presence of the opposite party who is given full opportunity to cross-examine the witnesses. Similarly, if any documentary evidence is produced, the opposite party is given opportunity to submit evidence in rebuttal, if any. This normal procedure as laid down in C.P.C., is applicable to the cases under the Code which are of judicial nature and it is incumbent on a revenue officer to follow the same in interest of justice.
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> **3.** From the facts given in para (1) above, I am surprised that the Tahsildar has totally ignored the elementary rules of procedure to be followed in revenue cases. It is still more deplorable that the Sub-Divisional Officer and the Commissioner also have not paid any attention to the serious lapse in this case.
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> **4.** From the Tahsildar's order, it is clear that he has decided the case merely on the ground that the applicant (Defendant) was unable to show how he obtained possession of the land after the injunction was granted by the Civil Court, although the defendant has said that he took possession of the land after the injunction of the Civil Court was vacated. It is well established that under section 250 of the Code, the plaintiff Bhumiswami has to establish by his evidence that he was in actual possession of the suit land immediately before the date of cause of action and was dispossessed by the defendant otherwise than through due process of law. As will be clear from the statements of the plaintiffs and the witnesses, these important ingredients have been clearly established. In fact, the suit land was held jointly by all the non-applicants and the proceedings under section 250 were started merely on the oral complaint of two of them i.e. Banshi and Tulasiya. This itself was against law."

12. At the same time it is relevant to consider here the scope of powers of Tahsildar for passing interim order under section 250 of the Code. In the case of Kamarlal and others v. Omkar Singh **1975 RN 351**, Board of Revenue, had already held as under :

> "३. मेरे विचार से यह तर्क मानने योग्य नहीं है। ऐसा कोई प्रावधान कोड की धारा २५० में नहीं किया गया है कि अंतरिम आदेश के लिए कोई साक्ष्य लेना आवश्यक है। धारा २५० (३) में यह स्पष्ट उल्लेख किया गया है कि सम्बन्धित अधिकारी जाँच के किसी भी स्टेज पर यह आदेश पारित कर सकता है और जाँच का उल्लेख धारा २५० (२) में किया गया है। जाँच से सम्बन्ध उस साक्ष्य प्रति-साक्ष्य का है जो धारा २५० (२) के अन्तर्गत की जाना होती है अर्थात अंतरिम आदेश के लिए इस प्रकार की साक्ष्य प्रतिसाक्ष्य की प्रक्रिया के किसी भी स्टेज पर अंतरिम आदेश पारित किया जा सकता है। इसका अर्थ यही निकाला गया है कि यदि तहसीलदार न्याय हेतु आवश्यक समझे तो अपने विवेक अनुसार शिकायतकर्ता द्वारा जो भी तथ्य उनके समक्ष रखे गए हों और यदि उनसे उनकी तुष्टि हो सकती है तो उसी आधार पर अंतरिम आदेश पारित कर सकते हैं।"

As such, while passing interim order, the Tahsildar is not required to record evidence of the parties. Meaning thereby, for passing final order, Tahsildar has to record evidence necessarily.

13. Perusal of impugned order dtd. 07.06.2018 passed by Tahsildar (affirmed by SDO and Additional Commissioner) shows that while deciding the application under section 250 of the Code and while passing the order thereon, Tahsildar has considered only the application, reply (written statement), demarcation report dtd. 26.01.2015, notice of demarcation and spot panchnama. Demarcation report says that the

petitioners have encroached upon entire area 0.049 hectare of Survey No.208/4, part area i.e. 0.016 hectare of Survey no. 213/4 and entire area of Survey Nos. 215/1 & 215/2 owned by the respondent 1. Report also says that while developing a colony, bhumiswami of adjacent land has developed a park on the land of survey no. 208/4 and 213/4 and included the land of survey no. 215 in her land by raising construction of boundary wall. Apparently, mainly on the basis of demarcation report, Tahsildar has passed order of dispossession of the petitioners from the land of the respondent 1 bearing in survey nos. 208/4, 213/4, 214/1, 214/2, 215/1 & 215/2, total number 6, total area 0.349 hectare situated in Mouza Umri. At the same time and by the same demarcation report, part of survey nos. 214/1 and 214/2 was found in possession of one Rajesh Yadav and Kandhi Yadav.

14. It is pertinent to mention here that neither in reply the petitioners have shown any survey number of their ownership nor in the documents of demarcation, the Revenue Officers have shown any adjoining survey number under the ownership of petitioners. Undoubtedly before completing demarcation process, the revenue officer has to issue notice to owner of adjoining survey number. Unless adjoining survey number of such owner is mentioned in the report/panchnama, how can it be gathered

that encroacher is owner of adjoining survey number or is a person having no ownership on adjoining survey number.

15. If a person, who does not own any adjoining land then the position would be different, but if a person owns some adjoining land and claims the encroached portion to be a part of his own land, then not only his survey number is required to be mentioned in the demarcation report but at the same time just with a view to resolve the dispute forever, his land should also be measured, even if no application is filed by him, and in absence of which it is not possible to determine the extent of boundaries and encroachment.

16. In the case of Gajraj Singh vs. Ram Singh and others **2006 RN 218**, a Division Bench of this Court, has already held as under :

> "**10.** Plaintiff has filed a suit for restoration of possession. In a suit for restoration of possession, it is a trite law that plaintiff can recover the possession only in case he has proved his title to the suit land. The first question which arises for consideration is whether plaintiff has been able to establish his Bhumiswami rights over the disputed land. Precise question is whether it has been established by the plaintiff whether disputed land forms part of Survey No. 644/3. The First Appellate Court has given a clear finding that plaintiff has not been able to establish that suit land forms a part of Survey No. 644/3. We have gone through the evidence. The plaintiff has claimed that the suit land is owned by him on the basis of demarcation done by the Revenue Court. The plaintiff Gajraj Singh has admitted that he was not in possession of the disputed land since 1950, which he has stated in Para-6 of his deposition. The plaintiff has relied upon the field map prepared by Shri Parmanand Shrivastava, Patwari on 5.6.1974 in demarcation proceedings and on field book of the same date prepared by Patwari. Shri Parmanand Shrivastava, Patwari (PW 2) has also been examined. He has stated that on the basis of current sheet he has made the measurement. He has admitted that he has not mentioned the total area of 644/3 in the map and field book. He was unable to state the area of adjoining Survey No. 639/2 and 639/3. He has measured the land with the help of 'Chanda' not with the Scale. He was unable to state whether Survey No. 644/3 is of 14 acres because he has not measured the total area. He was unable to state where are written notices.

He was unable to state even the name of single person, who was present at the time of measurement. He has further admitted in para 3 of his cross-examination that he has shown 1.97 acre ares in Ex. (P-1) Field Map in Survey No. 639/2 whereas in Map it was mentioned as 639/3. He has mentioned it due to his mistake. The Court has marked the aforesaid portion as 'AB'. He has admitted that there was medh in between the portion 'AB'. He was unable to state whether there was any tree on the medh. He has not taken out the measurement of area of 644/3 from field map.

11. In view of the aforesaid statement of the Patwari, it is clear that defendants were not noticed before so called demarcation was made and ***in the absence of measurement of entire survey No. 644/3, and other adjoining Survey numbers of defendants, it was not possible to determine the exact portion of encroachment. Other survey Nos. 639/2 and 639/3 were also required to be measured in toto from atleast three fixed points***. The Patwari has owned that there was mistake in the map itself, which was prepared by him at the time of measurement. He has not shown the existence of the medh also, which he has admitted. He has also admitted in Para 2 that he was unable to state the area of 644/3 on the basis of the map whether it was of 14 acres or not, as he has not measured the area of map. ***In the absence of measurement of the land of the defendants and the plaintiff, it was not possible to determine the extent of boundaries and encroachment,*** thus we are of the considered opinion that on the basis of the so-called demarcation report, field map, field book and statement of Patwari, the plaintiff has utterly failed to prove that disputed land forms part of his Survey No. 644/3. To prove the title on suit land in a suit for ejectment is a sine qua non, which has not been established. Thus the plaintiff has failed to prove that the land in question forms part of his Survey No. 644/3 on the basis of aforesaid evidence, we find that finding recorded by the First Appellate Court is proper. There is no infirmity in the same. It is a finding of fact which we find to be correct, hence we find no case for restoration of possession is made out.”

17. In the present case, upon service of summons/notice, the petitioners filed reply to the application denying the allegations made in the application filed by respondent 1, thereupon Tahsildar was required to hold enquiry, but even without fixing the case for evidence of the respondent 1 and without giving any opportunity of cross-examination to the petitioners on the respondent 1 and further without giving any opportunity to adduce evidence in rebuttal and further without marking exhibit on the document(s), if any, produced by the respondent 1,

Tahsildar on the basis of oral submissions of the rival parties, passed the impugned order, which has also been affirmed by Sub Divisional Officer and Additional Commissioner.

18. Upon perusal of the entire record including the order sheets of Tahsildar, in my considered opinion, all the three revenue Courts have committed illegality in passing the impugned orders allowing the application under Section 250 of the Code. Hence, by setting aside all the three impugned orders, matter is remanded to Tahsildar for passing order afresh on the application under Section 250 of the Code after giving due opportunity of hearing to the parties, as stated above.

19. With the aforesaid, instant misc. petition is **allowed** and disposed off.

20. Misc. application(s), pending if any, shall stand disposed off.

(DWARKA DHISH BANSAL)
JUDGE

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