

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE G. S. AHLUWALIA
ON THE 22nd OF JULY, 2024
WRIT PETITION No. 14518 of 2017
MANKA DHOBI AND OTHERS
Versus
*THE STATE OF MADHYA PRADESH AND OTHERS***

Appearance:

Shri Devendra Kumar Tripathi- Advocate for petitioners.

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

Shri Anoop Kumar Saxena- Advocate for caveator.

**WITH
WRIT PETITION No. 17086 of 2019
SMT. HIRIYA BAI
Versus
*THE STATE OF MADHYA PRADESH AND OTHERS***

Appearance:

Shri Anoop Kumar Saxena- Advocate for petitioner.

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

Shri D.K. Tripathi- Advocate for caveator.

ORDER

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

- I. to call for entire relevant record.
- II. to quash the impugned letter dated 6.9.2017 (Annexure P-1) passed by the Additional Commissioner, Sagar and further be pleased to direct the respondent not to record the land as allotted to respondent no. 2 & 3 as Govt. land.
- III. Any other relief together cost of the petition which this Hon'ble Court deem fit and proper under the facts and circumstances of this case may also be awarded in favour of the petitioner.

2. By this common order, W.P. No.17086/2019 shall also be decided which has been filed seeking the following reliefs:-

- (i) To set aside the impugned orders dated 15.05.2018 (Annexure P/19) as well as 18.12.2018 (Annexure P/20) by restoring order dated 09.06.2016 (Annexure P/14) in respect of correction of record, revenue map of the land of petitioner in pursuance of lease dated 27.06.2000 (Annexure P/1) and demarcation and Tarmim which was conducted in Year 2002 (Annexure P/2).
- (ii) To call entire record pertaining to case.
- (iii) Any other relief may also be granted to the petitioner in such a case.

3. Although W.P. No. 14518/2017 was not argued but it was also not withdrawn by the petitioners. Since the outcome of W.P. No. 14518/2017 will have same bearing on the outcome of W.P. No. 17086/2019, therefore, this Court thought it appropriate to decide both the writ petitions by common order.

4. It appears that a decision was taken by Revenue Authorities to allot an unoccupied barren land to the members of the Schedule Caste. Accordingly, a proposal from **Gram Sabha** as well as a report from the concerning Patwari was sought. It appears that the **Gram Panchayat** passed a resolution for allotment of land to various persons including Smt. Hiriya Bai. The Patwari also submitted the list who according to him were eligible for allotment of land and accordingly, by order dated 27.06.2000, the Tehsildar Baldeogarh directed for allotment of various lands of different areas to 15 persons including Hiriya Bai. Hiriya Bai was granted *patta* of Khasra No. 237/2, area 1.690 hectares. The correction in the field map was also carried out and the land was also recorded in the name of Hiriya Bai.

5. It is not out of place to mention here that in different proceedings Khasra No. 237/1 situated in the same village was allotted to Lampu Sahu. An appeal was filed challenging the allotment of Khasra No. 237/2 in favour of Hiriya Bai. The appeal was dismissed by SDO, Tikamgarh by order dated 04.01.2002 passed in Case No. 16/Appeal/2001-2002.

6. Being aggrieved by the said order petitioner No.2/Lambu Sahu preferred a Second Appeal before Additional Commissioner, Sagar Division Sagar. The Additional Commissioner, Sagar Division Sagar by order dated 10.07.2007 passed in Case No. 65/A-19/2003-04, set aside the entire proceedings and not only the allotment in favour of Hiriya Bai was cancelled but the allotment in favour of the petitioner No. 2 was also cancelled and the lands were directed to be recorded as a Government land and accordingly, in Khasra Panchsala of the year 2007-08, the correction in the revenue record was carried out and the land was re-recorded as Government land. The order dated 10.07.2007 was assailed by Hiriya Bai by filing W.P. No.2277/2009 and by interim order dated 18.03.2009, the operation of order dated 10.07.2007 was stayed. Later on the order dated 10.07.2007 passed by Additional Commissioner, Sagar Division Sagar was set aside by this Court by order dated 10.03.2015 and the matter was remanded back to the Additional Commissioner, Sagar Division Sagar to decide the matter a fresh. Thereafter, the Additional Commissioner, Sagar Division Sagar by impugned order dated 06th September, 2017 passed in Appeal No. 65/A-19/2003-2004 has dismissed the appeal filed by petitioner No. 1/Manka Dhobi.

7. Challenging the order passed by Additional Commissioner, Sagar Division Sagar, it has been claimed by petitioners that Smt. Hiriya Bai

was not a landless person. The procedure was not adopted. No public proclamation was issued. The resolution was not passed by the Gram Sabha and it was also pleaded that petitioner No. 1 is in possession of Khasra No. 237/2.

8. *Per contra*, counsel for Smt. Hiriya Bai/respondent No. 6 who has filed W.P. No. 17086/2019 opposed the writ petition while arguing W.P. No. 17086/2019.

9. Heard learned counsel for parties.

10. The petitioners have filed the certified copy of the complete record of Case No. A/19(1)/1999-2000 of the Court of Naib Tehsildar, Khargapur by which the land was allotted to several persons by Tehsildar Baldeogarh including Hiriya Bai. The proceedings of the said case start from order dated 22.05.2000 in which it is mentioned that as per the orders of the Collector, Tikamgarh as well as SDO, Tikamgarh, the government land is to be allotted to the members of the scheduled caste. Further, the Patwari has also submitted its report with regard to the government land which is available for allotment. Accordingly, it was directed that the case be registered in the category of A-19(1) and public proclamation be issued inviting applications from the members of the schedule caste who are interested in allotment of government land. The next order-sheet is 23.06.2002, according to which, applications of 19 persons were received and accordingly, the Tehsildar, Baldeogarh directed the Patwari to submit his report separately in respect of each and every aspirant and a proposal from **Gram Sabha** was also sought and it was also directed that the list of aspirants be also affixed at a public place and the case was fixed for 27.06.2000. On 27.06.2000, it was mentioned that the enquiry with regard to the applications of all the aspirant was conducted. The report of the Patwari was obtained. All the

applications were examined. The resolution of Gram Sabha has also been received and without assigning any reason, it was mentioned that after examination of the documents, total 15 persons were found eligible for allotment of land and the name of Hiriya Bai is at Sr. No. 11 and Khasra No. 237/2 area 1.690 hectare was allotted to her.

11. Now the only question for consideration is as to whether the Patwari had submitted his separate report in relation to each and every aspirant and whether he had verified that whether the aspirants are landless persons or not? and whether the proposal from the **Gram Sabha** was obtained or not?

12. The record also contains a resolution passed by **Gram Panchayat** and not **Gram Sabha**. From this resolution, it appears that a proposal was submitted by Shri Ganesh Ahirwar, Panch for allotment of government land to 24 persons. The name of Hiriya Bai is at Sr.No.19.

13. Chapter 14-A of M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (Adhiniyam, 1993), deals with constitution of Village as well as Gram Sabha and the Powers and Functions of the Gram Sabha.

14. Section 129-A, 129-B and 129-C of Adhiniyam 1993 reads as under:-

[129-A Definitions.- Notwithstanding anything contained in this Act and unless the context otherwise requires in this Chapter:

(a) 'Gram Sabha means a body consisting of persons whose names are included in the electoral rolls relating to the area of a Panchayat at the village level, or part thereof, for which it is constituted.

(b) 'Village means a village in the Scheduled Areas which shall ordinarily consist of a habitation or a

group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.

129-B. Constitution of Village and Gram Sabha.-

(1) The Governor shall by public notification specify a "Village" for the purposes of this Chapter.

(2) Ordinarily, there shall be a Gram Sabha for a "village" as defined in sub-section (1):

Provided that if the member of the Gram Sabha so desired, more than one Gram Sabha may be constituted in a village, in such manner as may be prescribed, and each such Gram Sabha may consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.

[(3) The quorum of every meeting of Gram Sabha shall not be less than one-tenth of the total number of members of the Gram Sabha or five hundred members of the Gram Sabha whichever is less.]

(4) The meeting of "Gram Sabha" shall be presided over by a member of the Gram Sabha belonging to the Scheduled Tribes not being the Sarpanch or the Upsarpanch or any member of the Panchayat, to be elected for the purpose by the majority of the members present in that meeting.

129-C. Powers and Functions of Gram Sabha. In addition to the powers and functions contained in Section-7, the Gram Sabha in Scheduled Areas shall also have the following powers and functions, namely:-

(i) to safeguard and preserve the traditions and customs of the people, their cultural identity and community resources and the customary mode of dispute resolution:

(ii) [x x x]

(iii) to manage natural resources including land, water and forests within the area of the village in accordance with its tradition and in harmony with the provisions of the Constitution and with due regard to the spirit of other relevant laws for the time being in force.

(iv) [x x x]

(v) to manage village markets and melas including cattle fair, by what ever name called, through the Gram Panchayat;

(vi) to control local plans, resources and expenditure for such plans including tribal sub-plans, and;

(vii) to exercise and perform such other powers and functions as the State Government may confer on or entrust under any law for the time being in force.

15. The functions of Gram Panchayat have been defined under Section 129-D of Adhiniyam 1993 which reads as under:-

“129-D. Functions of Gram Panchayat. Without prejudice to the generality of powers conferred by this Act. the Gram Panchayat in Scheduled Areas, under the general superintendence, control and direction of the Gram Sabha shall also have the following powers, namely:-

(i)[x x x]

(ii) to manage village markets and melas including cattle fairs by whatever name called;

(iii) to (vi) [x x x]

(vii) to exercise control local plans, resources and expenditure for such plans including tribal sub-plans; and

(viii) to exercise and perform such other powers and functions as the State Government may confer on or entrust under any law for the time being in force.

16. From the plain reading of the aforementioned sections, it is clear that there can be a Gram Sabha for a village defined in Sub Section (1). The 'Gram Sabha' means a body consisting of persons whose names are included in the electoral rolls relating to the area of a Panchayat at the village level, or part thereof, for which it is constituted and 'Village' means a village in the Scheduled Areas which shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs. Whereas Gram Panchayat is a body of elected and representatives. Thus, there is vast difference between a Gram Sabha and a Gram Panchayat. From the copy issued by the Assistant Public Information Officer under the Right to Information Act, it is clear that the Tehsildar Baldeogarh had received a resolution from Gram Panchayat and not Gram Sabha, whereas; the Tehsildar, Baldeogarh had directed for summoning a resolution from Gram Sabha. Had it been a case that the matter was placed before Gram Sabha and a decision was taken by the Villagers, then there would not have been any discrepancy in the proceedings under taken by the Tehsildar Baldeogarh but in the present case, the resolution of Gram Sabha was not obtained but a resolution of Gram Panchayat was obtained.

17. Furthermore, by order dated 23.06.2000, the Tehsildar Baldeogarh had directed the Patwari to submit a separate report with regard to each and every aspirant. The copy of the enquiry report submitted by the Patwari is also a part of the record. The Patwari had submitted a combined report by mentioning that the applications of the persons

mentioned in said report have been received and each of the aspirant or his family members do not have any land in excess of one hectare. This combine report was not in accordance with the direction given by the Tehsildar, Baldeogarh on 23.06.2000. It is nowhere mentioned that Hiriya Bai or his family members are the landless persons.

18. In RBC Chapter 4 Number 3 Part-I(E), the word landless person has been defined, which reads as under:

“(ड) भूमिहीन व्यक्ति के दो वर्ग होंगे—

(1) **भूमिहीन व्यक्ति (वर्ग 1)**— भूमिहीन व्यक्ति वर्ग 1 से तात्पर्य ऐसे वास्तविक कृषक व कृषक मजदूर से है जो इस राज्य में कम से कम 12 वर्ष से निवासी हो तथा जिसके स्वयं के पास अथवा अपने कुटुम्ब के सदस्य के साथ संयुक्त रूप से कोई भूमि नहीं हो।

स्पष्टीकरण:— भूमिहीन व्यक्ति: वर्ग-1 के प्रयोजनों के लिए भूमिहीन व्यक्ति के कुटुम्ब में वह स्वयं, उसकी पत्नी या पति, पुत्र, अविवाहित पुत्रियाँ, माता व पिता तथा सगे और सौतेले भाई सम्मिलित माने जाएँगे।

(2) **भूमिहीन व्यक्ति (वर्ग 2)**— भूमिहीन व्यक्ति: वर्ग-2 से तात्पर्य ऐसे वास्तविक कृषक व कृषक मजदूर से है जो कि इस राज्य में कम से कम 12 वर्षों से निवासी हो तथा जिसके पास—

(एक) कोई भूमि न हो, अथवा

(दो) पहाड़ी अथवा पथरीली भूमि में एक हैक्टर या उससे कम असिंचित भूमि हो, अथवा

(तीन) अन्य प्रकार की भूमि में 1/2 हैक्टेयर या उससे कम असिंचित भूमि हो, अथवा

(चार) अपने परिवार के सदस्य के साथ संयुक्त रूप से उपर्युक्त (दो) अथवा (तीन) जैसी स्थिति हो के अंतर्गत निर्धारित रकबे से कम भूमि हो, अथवा

(पाँच) अपने परिवार के सदस्यों को छोड़कर अन्य व्यक्ति के साथ संयुक्त रूप से ऐसी भूमि, जिसमें उसका व्यक्तिगत हिस्सा उपर्युक्त (दो) अथवा (तीन) जैसी स्थिति हो, के अंतर्गत निर्धारित रकबे से कम हो।

स्पष्टीकरण— एक भूमिहीन व्यक्ति: वर्ग-2 के उपबंध के प्रयोजनों के लिए एक हैक्टेयर सिंचित भूमि 2 हैक्टेयर असिंचित भूमि के बराबर मानी जाएगी,

दो व्यक्ति के परिवार में उसकी पत्नी या पति, अवयस्क बच्चे और ऐसे माता-पिता जो उसके साथ रहते हैं और उस पर आश्रित हो, शामिल हैं।

तीन यदि किसी व्यक्ति के पास उसके परिवार के सदस्यों के साथ और ऐसे अन्य व्यक्ति के साथ जोड़ उसके परिवार के सदस्य नहीं हों भले ही उस व्यक्ति का परिवार हो या नहीं हो, संयुक्त रूप से भूमि हो तो ऐसे अन्य व्यक्ति का हिस्सा इस रूप में माना जाएगा मानो कि वह एक अलग व्यक्ति हो।

चार किसी परिवार में एक से अधिक भूमिहीन पात्र होने पर एक से अधिक पात्रों को भूमि प्राप्त करने का तभी अधिकार होगा जबकि उसी ग्राम के भूमिहीन व्यक्ति: वर्ग-1 के व्यक्तियों को भूमि बंटित करने के पश्चात् कोई कृषि भूमि शेष रहे।

पाँच संयुक्त परिवार के मामले में परिवार के वयस्क पुत्र/पुत्री को भी पृथक परिवार मानकर पात्रता के आधार पर भूमि आवंटित की जा सकेगी।

स्पष्टीकरण— इस कंडिका के प्रयोजनों के लिये एक हैक्टेयर सिंचित भूमि 2 हैक्टेयर असिंचित भूमि के बराबर मानी जावेगी."

19. Thus, before mentioning that a person is a landless person, the Patwari should have submitted a report in light of the definition of landless person but that was not done. However that was not the end of the matter.

20. A land was allotted to Hiriya Bai by Tehsildar, Baldeogarh by passing an order on 27.06.2000 mentioned as under:-

"भूमि आबंटन हेतु समस्त आवेदन पत्रों कि जांच करवाई गई, पटवारी हल्का से पात्रता के संबंध में प्रतिवेदन लिया गया। सभी आवेदन पत्रों का परीक्षण किया गया। ग्राम सभा द्वारा प्रस्ताव पारित कर प्रस्ताव की नकल ली गई।

परिक्षणोपरांत निम्न व्यक्ति पात्र पाये गये अतः देरी की शासकीय बंजर भूमि का नियमानुसार भूमि स्वामी स्वयं में बंटन किया जाता है....."

21. Thus, it is clear that even the Tehsildar, Baldeogarh did not consider the case of each and every aspirant independently and did not examine as to whether they fall within the definition of landless person as defined under Revenue Book Circular.

22. Accordingly, this Court is of considered opinion that neither the resolution from Gram Sabha was obtained nor the entitlement of every aspirant was examined in the light of the provisions of RBC, therefore, the order dated 27.06.2000 passed by Tehsildar Baldeogarh is bad.

23. By order dated 27.06.2000 passed in Case No. 12/A-19(1)/1999-2000, the land was allotted to as many as 15 persons but in the present case the land allotted to Hiriya Bai is in question and others are not party. Even their allotment was never challenged, therefore, even after holding that the order dated 27.06.2000 passed by Tehsildar, Baldeogarh is not in accordance with laws, still this Court is not in a position to set aside the allotment of land in favour of remaining 14 persons. But since the question of allotment of Khasra No. 237/2 in favour of Hiriya Bai is involved in the present case, therefore, it is held that the order dated 27.06.2000 passed by Tehsildar, Baldeogarh in Case No. 12/A-19(1)/1999-2000 is hereby **set aside** qua Hiriya Bai.

24. The allotment of Khasra No. 237/2 in favour of Hiriya Bai is hereby **quashed**.

25. As a consequence thereof, the order dated 6th of September, 2017 passed by Additional Commissioner, Sagar Division Sagar in Appeal No. 65/A-19/2003-2004 is also hereby **quashed**.

26. So far as the other allottees are concerned, the revenue authorities shall be free to initiate separate proceedings.

27. The revenue authorities are directed to delete the name of Smt. Hiriya Bai and record the land in the name of State Government.

28. For the reasons mentioned above, W.P. No. 14518/2017 is hereby **allowed**.

W.P. No. 17086/2019

29. By this petition the petitioner Smt. Hiriya Bai has challenged the rejection of her application for rectification of field map which she had sought on the basis of allotment of Khasra No. 237/2.

30. Since, this Court has already set aside the allotment of Khasra No. 237/2 in favour of petitioner Smt. Hiriya Bai, therefore, nothing survives in the present petition.

31. Under these circumstances, the orders dated 15.05.2018 passed by Additional Commissioner, Sagar Division Sagar in Case No. 700/B-121/15-16 and 18.12.2018 passed by Member of Board of Revenue, Gwalior in Case No. Appeal-3944/2016/Tikamgarh/Bhu.Ra. are hereby **affirmed**.

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

(G.S. AHLUWALIA)
JUDGE

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