

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

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 17<sup>th</sup> OF FEBRUARY, 2023**

**MISC. PETITION No. 1488 of 2020**

**BETWEEN:-**

1. **GOPILAL JAT S/O SHRI AMRA JI, AGED ABOUT 79 YEARS, OCCUPATION: AGRICULTURIST CASTE JAT R/O BADALIYA BARAMAD TEHSIL ASHTA DISTRICT SEHORE (MADHYA PRADESH)**
  
2. **SUALAL JAT S/O AMRA JI OCCUPATION: AGRICULTURE R/O BADALIYA BARAMAD TEHSIL ASHTA DISTRICT SEHORE (MADHYA PRADESH)**

**.....PETITIONERS**

***(BY MS. JAYALAKSHMI AIYER - ADVOCATE)***

**AND**

1. **DAPU BAI W/O SHRI JAGANNATH JAT R/O VILLAGE BADALIYA BARAMAD TEHSIL ASHTA DISTRICT SEHORE (MADHYA PRADESH)**
  
2. **JHAMU BAI D/O JAGANNATH JAT R/O VILLAGE BADALIYA BARAMAD TEHSIL ASHTA DISTRICT SEHORE (MADHYA PRADESH)**
  
3. **SUB DIVISIONAL OFFICER (REVENUE) ASHTA DSITRICT SEHORE (MADHYA PRADESH)**

**4. NAIB TEHSILDAR TEHSIL ASHTA DISTRICT  
SEHORE (MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY SHRI DEVESH KUMAR JAIN – GOVERNMENT ADVOCATE FOR  
RESPONDENTS NO.3 & 4/STATE )**

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

**ORDER**

This petition under Article 227 of the Constitution India has been filed against the order dated 08.01.2020 passed by S.D.O. (Revenue) Ashta, District Sehore in Revenue Case No.63/Appeal/2019-20 as well as order dated 31.05.2019 passed by Naib Tehsildar Ashta, District Sehore in Case No.12/A-12/2019-20.

2. The facts necessary for disposal of the present petition in short are that the respondents no.1 and 2 filed an application for demarcation of their property. The petitioners are the owner of the adjoining land. It is the case of the petitioners that without giving any notice to the adjoining farmers including the petitioners, the demarcation was done. No notice was given to the petitioners and it was wrongly mentioned that the petitioners have refused to sign the acknowledgement. The demarcation was done behind the back of the petitioners.

3. The Naib Tehsildar by order dated 31.05.2019 mentioned that the demarcation report has been received and no proceeding are pending in the case.

4. Being aggrieved by the said order, the petitioners preferred an application under Section 129(5)(4) of M.P.L.R. Code before the S.D.O. Ashta, District Sehore. The main contention of the petitioners was that

no notice of demarcation was given to the petitioners and the demarcation was done by falsely mentioning that respondent no.1 is the owner of khasra no.81/1. In the demarcation *panchnama* it is mentioned that Gopilal (petitioner no.1), Sualal (petitioner no.2), Hariram and Heeralal have encroached upon 0.015 hectares of khasra no.81/1 by constructing houses, gobar gas plant and washroom. Even the Sarpanch of Gram Panchayat constructed a concrete road. Whereas in the demarcation report it was mentioned that Sualal and Gopilal have encroached upon on 0.075 hectares out of 1.962 hectares of khasra no.81/1. Even the demarcation *panchnama* does not contain the signatures of respondents no.1 and 2.

5. The S.D.O. (Revenue) Ashta, District Sehore by order dated 08.01.2020 dismissed the application filed by the petitioners under Section 129(5)(4) of MPLR Code.

6. From the impugned order, it is clear that the operative part of the order is in one paragraph. It is mentioned by the S.D.O. that the record of the Court below as well as the documents were perused and it was found that the notice to the adjoining farmers and interested parties were given on 29.05.2019 and the Kotwar of the Gram Panchayat has mentioned that the petitioners have refused to sign the *panchnama*.

7. Challenging the order passed by the S.D.O. (Revenue) Ashta, District Sehore, it is submitted by the counsel for the petitioners that it appears that the S.D.O. has decided the application under Section 129(5)(4) of MPLR Code as if the same is an appeal.

8. Heard the learned counsel for the parties.

9. Section 129 of MPLR Code reads as under:

**“129. Demarcation of boundaries of survey number or sub-division of survey number or block number or**

**plot number.** - (1) The Tahsildar may, on application of a party depute a Revenue Inspector or Nagar Sarvekshak to demarcate the boundaries of a survey number or of a sub-division of survey number or of a block number or of a plot number and construct boundary marks thereon.

(2) The Revenue Inspector or Nagar Sarvekshak so deputed shall, after giving notice to parties interested including the neighbouring land holders, demarcate the boundaries of a survey number or of a sub-division of survey number or of a block number or of a plot number, construct boundary marks thereon and submit a demarcation report to the Tahsildar in such manner as may be prescribed. The demarcation report shall also include the particulars of the possession, if any, of any person other than the Bhumiswami on the land demarcated.

(3) For carrying out the demarcation the Revenue Inspector or Nagar Sarvekshak may take the assistance of such agency and in such manner as may be prescribed.

(4) On the receipt of the demarcation report, the Tahsildar may, after giving opportunity of hearing to the parties interested including the neighbouring land holders, confirm the demarcation report or may pass such order as he thinks fit.

(5) A party aggrieved by the confirmation of demarcation report under sub-section (4), may apply to the Sub-Divisional Officer to set it aside on any of the following grounds-

(a) that he was not given notice required under sub-section (2) or opportunity of hearing under sub-section (4); or

(b) any other sufficient ground :

Provided that such application shall not be entertained after the expiry of forty-five days from the date of confirmation the demarcation report by the Tahsildar or the date of knowledge, whichever is later.

(6) The Sub-Divisional Officer may, if he admits the application made under sub-section (5), after giving opportunity of hearing to the parties interested including the neighbouring land holders and making such enquiries as he may think fit, either confirm the demarcation report submitted under sub-section (2) or depute a team consisting of such persons as may be prescribed to carry out the demarcation once again.

(7) The team deputed under sub-section (6) shall, after giving notice to parties interested including the neighbouring land holders, demarcate the boundaries of a survey number or of a sub-division of survey number or of a block number or of a plot number, construct boundary marks thereon and submit report to the Sub-Divisional Officer in such manner as may be prescribed and the Sub-Divisional Officer may pass such orders on it as he thinks fit.

(8) Notwithstanding anything contained in sections 44 and 50. No appeal or application for revision shall lie

against any order passed or proceedings taken under this section.

(9) The State Government may make rules for regulating the procedure to be followed by the Tahsildar in demarcating the boundaries of a survey number or of a subdivision of survey number or of a block number or of a plot number prescribing the nature of the boundary marks to be used, and authorizing the levy of fees from the holders of land in demarcated survey number or subdivision or block number or plot number.”

**10.** Sub-sections 6 and 7 of Section 129 of M.P.L.R. Code make it specifically clear that after receiving an application under sub-section 5 of Section 125 of MPLR Code, the SDO may either confirm the demarcation report submitted under sub-section 4 or depute a team consisting of such persons as may be prescribed to carry out demarcation once again.

**11.** In the present petition, the petitioners have claimed that they were not noticed before the demarcation. From the order dated 31.05.2019 passed by Naib Tehsildar, it is clear that the Chowkidar, who had mentioned that the petitioner no.1 has refused to accept notice of demarcation. However the affidavit of such Chowkidar was not taken. Even the S.D.O. (Revenue) Ashta, District Sehore did not record the statement of Chowkidar to affirm the endorsement that the petitioners had refused to accept notice of demarcation. If an application under Section 129(5)(4) of M.P.L.R. Code is filed, then the same is not to be decided as an appeal but the S.D.O. can either confirm the demarcation or can depute a team consisting of such persons as may be prescribed to carry out the demarcation once again. Except an endorsement by the

Chowkidar that the petitioner no.1 had refused to accept notice of demarcation, there is nothing on record to suggest that the notice of demarcation was given to the petitioners. In the demarcation *panchnama*, there appears to be a manipulation. The entire *panchnama* is in one paragraph and the second paragraph is with regard to a declaration that the *panchnama* was prepared, it was read over and was signed with consensus of the parties. However, just after the last line of first paragraph and before the declaration of reading over the words "अतिक्रमण करताओं द्वारा हस्ताक्षर करने से मना किया गया।" were inserted. The size of handwritten font of the *panchnama* is same whereas the aforesaid words have been inserted in a smaller font. It is clear that the aforesaid line was not written in continuity but was inserted at a belated stage. Whether this insertion was made at the time of preparation of *panchnama* or it was done at a later stage was a question which should have been decided by the S.D.O. Similarly, the notice dated 29.05.2019 appears to be doubtful. The said notice was purportedly issued to Premnarayana, Heeralal, Gopi, Sualal, Hariram, Bhagirath and Kaniram. The notice contains signature of Premnarayana in front of his name, signature of one Mukesh in front of the name of Bhagirath and signature of Kaniram in front of his name. Whereas in front of name of petitioner no.1 it is mentioned that he has refused to sign and the said endorsement was signed by Village Kotwar Jaisingh. However, there is no endorsement in front of the names of petitioner no.2 Sualal as well as Heeralal and Hariram. Since Jaisingh, Village Kotwar was not examined by Naib Tehsildar or by the S.D.O., therefore, it is clear that the endorsement made by Jaisingh, Village Kotwar in front of the name of Gopi regarding refusal to sign remains uncorroborated. Even otherwise there is no endorsement in front of the names of petitioner no.2 as well

as in front of the names of Heeralal and Hariram. Thus, the documents which were relied upon by the respondents were of suspicious in nature and were not inspiring confidence to proceed *ex parte* against the petitioners.

**12.** Under these circumstances, the S.D.O. (Revenue) Ashta, District Sehore should have exercised its jurisdiction under Section 129(5) of M.P.L.R. Code and should have constituted a team to conduct demarcation afresh. Since the S.D.O. (Revenue) Ashta, District Sehore has miserably failed in exercising power vested in him, accordingly, the order dated 08.01.2020 passed by S.D.O. (Revenue) Ashta District Sehore in Revenue Case No.63/Appeal/2019-20 is hereby **set aside**.

**13.** The matter is remanded back to the S.D.O. (Revenue) Ashta, District Sehore to depute a team to carry out the demarcation once again.

**14.** The petitioners are directed to appear before the SDO (Revenue) Ashta, District Sehore on 13<sup>th</sup> April 2023.

**15.** If required the S.D.O. (Revenue) Ashta, District Sehore shall issue notices to the respondents. The S.D.O. shall issue notices to the respondents as well as to other neighboring farmers by himself. If the petitioners fail to appear before the S.D.O. (Revenue) Ashta District Sehore, then this order shall automatically loose its effect and the order dated 08.01.2020 passed by S.D.O. (Revenue) Ashta, District Sehore shall automatically stand revived.

**16.** With aforesaid observations, the petition is finally **disposed of**.

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