

HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT
AT JABALPUR

Miscellaneous Petition No.	2743/2020
Parties Name:	R. D. SINGH VS. SMT. SHEELA VERMA AND OTHERS
Bench Constituted	Single Bench
Judgment delivered By	HON'BLE SHRI JUSTICE VISHAL DHAGAT
Whether approved for reporting	YES
Name of counsel for parties	For petitioner: Shri Ankit Saxena, Advocate For Respondents: Shri Shashank Verma, Advocate.
Law laid down	High Court in exercise of power of superintendence cannot interfere to correct mere errors of law or fact just because another view than the one taken by tribunals or courts subordinate to it. Jurisdiction under Article 227 of Constitution of India has to be exercised very sparingly.
Significant paragraph number	Paragraph 11, 09

**IN THE HIGH COURT OF MADHYA PRADESH:JABALPUR
(R.D SINGH VS. SMT. SHEELA VERMA AND OTHERS)**

JABALPUR: DATED 19.10.2020

Shri Ankit Saxena, learned counsel for the petitioner.

Shri Shashank Verma, learned counsel for the respondents.

Petitioner has filed this miscellaneous petition calling in question order dated 28.09.2020 passed in Revision No. 96/revision/2019-2020. By said order, Upper Collector (south), Bhopal has dismissed revision against interlocutory order of vacating stay.

2. Brief facts of the case are that Tehsildar vide its order dated 30.11.2012 has partly allowed the application under Sections 115 and 116 of Madhya Pradesh Land Revenue code, 1959 for correction of revenue records filed by Sheela Verma (R-1) and Pushp Mayur Grih Nirman Sahkari Samiti Maryadit (R-5). Tehsildar, Capital projects, Tehsil Huzur, Bhopal has relied on judgement and decree dated 29.10.2010 passed by Fifth Additional District Judge in Civil Suit No. 399-A/2006. Learned Additional District Judge held registered sale deed dated 28.03.2000 to be valid and effective. First Appeal is filed against order of Fifth Additional District Judge which is pending for consideration and there is no stay in it. Tehsildar examined registered sale deed dated 28.03.2000 which was Registry Nos. 5051/ 28.03.2000, 5052/28.03.2000 and 5125/ 29.03.2000. After

examination of records, Tehsildar passed an order to correct revenue entries on basis of registered sale deed dated 28.03.2000 and 08.12.1980.

3. Petitioner has challenged the order passed by the Tehsildar before SDO, T.T Nagar, Bhopal. Said Appeal No. 09/2012-2013 is pending before SDO. During pendency of appeal, learned Sub Divisional Officer T.T. Nagar Bhopal vacated stay order granted in favour of petitioner vide order dated 18.02.2020. Learned Sub Divisional Officer revenue held that stay was granted vide order dated 30.11.2012 till next date of hearing. Said order is not as per law and, therefore, the same was vacated after hearing the parties.

4. Petitioner filed revision before Upper Collector challenging the order passed by learned Sub Divisional Officer. Learned Upper Collector vide order dated 28.09.2020 dismissed the revision on ground that stay order was operating since 11.12.2012 for last seven years and as per amendment introduced on 27.07.2018, proviso to Section 52(2) of M.P Land Revenue Code 1959, execution of orders shall not be stayed for more than three months at a time or until the date of next hearing, which ever is earlier.

5. Learned counsel appearing for the petitioner argued that proviso to Section 52(2) of M.P land Revenue Code, 1959, was wrongly interpreted by Commissioner. It was wrongly held that stay will only operate for three months. However in proviso to Section 52(2) of M.P Land Revenue Code, 1959 lays

down that stay can be granted for three months at a time or until next date of hearing whichever is earlier. This means that stay can continue for more than three months, if stay is extended on the next date fixed. Petitioner raised second ground that he was not heard while passing the impugned order. No other ground was raised by the counsel appearing for the petitioner.

6. Counsel appearing for respondent nos. 1, 2 and 3 submitted that though he had filed a reply, but this is a petition under Article 227 of the Constitution of India and he is ready to argue the petition on the basis of record filed by petitioner. It is submitted by the counsel appearing for respondents that Upper Commissioner has rightly vacated interim stay order which was granted in the year 2012. Operation of order of Tehsildar was stayed by Appellate Court since 2012 and Upper Collector has rightly exercised his jurisdiction in vacating the stay order. Upper Collector has acted within his jurisdiction and powers as provided to him under the said section. There is no error of jurisdiction in order passed by Upper Collector and order passed by Sub Divisional Officer. Counsel for respondents relied on judgement reported in **2013 SCC online page 9779-Smt. Munni Sharma Vs. Babu Lal**. In this case, Board of Revenue allowed revision with aid of proviso of Section 52(2) of M.P. Land Revenue Code, 1959 without opportunity of hearing to other side. This Court dismissed the petition filed under Article 227 of the Constitution of

India holding that stay cannot be granted for indefinite period. On basis of same, counsel appearing for respondents also prayed for dismissal of writ petition.

7. Counsel appearing for petitioner made submission that aforesaid order is not applicable in present case. In that case, interim order was passed by S.D.O for indefinite period, therefore, this Court has rightly dismissed miscellaneous petition. This case is distinguishable from case of **Smt. Munni Sharma** (supra).

8. Heard the counsel for petitioner as well as respondents.

9. Petitioner has not raised any ground regarding interpretation of proviso to Section 52(2) of M.P Land Revenue Code, 1959 in miscellaneous petition. Said ground was raised for first time in the Court. As ground raised relates to pure question of law, therefore, said ground is taken into consideration. Looking at proviso of Section 52(2) of the M.P. Land Revenue Code, 1959, it is distinctly perceptible that there is cap to grant stay more than three months at one time or until next date of hearing whichever is earlier. This means at one time stay can be granted for a period of three months only or for a shorter period i.e till next date of hearing. Stay order can be intermittently extended for a period more than 3 months. Neither Court of SDO nor Appellate Court held that stay order can not operate for more than three months. SDO vacated the order of stay which was

granted till next date of hearing. Petitioner has not filed any order sheets to show how stay order was extended from time to time and what order was passed on subsequent dates. Upper Collector has held that Execution of order shall not be stayed for more than three months at a time or until the date of next hearing whichever is earlier. In view of same, it cannot be said that Tehsildar or Upper Collector misinterpreted proviso to Section 52(2) of M.P Land Revenue Code.

10. Counsel for the petitioner appeared before the court of SDO as well as before the Court of Upper Collector, therefore, there is no violation of rights in passing orders dated 18.02.2020 and 28.09.2020. SDO while passing order dated 30.11.2012 has also given opportunity of hearing to petitioner. Petitioner filed separate objection in respect of Khasra No. 7/4/6, measuring 1 acre. Said objection was dealt with by SDO, therefore, it cannot be said that opportunity of hearing was not given to him.

11. Sub Divisional Officer revenue as well as Upper Collector were within their jurisdiction to vacate the stay order. In case of ***Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil, reported in (2010) 8 SCC 329***, it was held in para 49 that high courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this

power, act as a court of appeal over the orders of the court or tribunal subordinate to it. High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep tribunals or courts subordinate to it "within the bonds of their authority". In exercise of its power of superintendence, High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

12. Petitioner was given opportunity of hearing while vacating stay order. No irreparable injury will be caused to petitioner by vacation of stay order.

13. In view of the aforesaid facts and circumstances of the case, this Court refuse to exercise its jurisdiction under Article 227 of the Constitution of India and to interfere in the order passed by Revenue Authorities and **dismiss** miscellaneous petition filed by the petitioner. However Appellate Authority is directed to expedite the hearing of appeal and same may be decided by it preferably within period of two months.

(VISHAL DHAGAT)
JUDGE

DUBEY/