

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

BEFORE

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

ON THE 25th OF JULY, 2024

MISCELLANEOUS PETITION No. 2551 of 2022

HEMRAJ TOMAR

Versus

RAKESH KUMAR AND OTHERS

Appearance:

Shri Brijendra Swaroop Sahu, Advocate for petitioner.

Shri D.K. Paroha, Advocate for respondents 1 & 2.

ORDER

This miscellaneous petition has been preferred by the petitioner-Hemraj Tomar challenging the order dtd.27.10.2021 passed by Additional Collector, Narsinghpur in Case No.007/Revision/2021-22 affirming the demarcation proceedings conducted and completed by Revenue Inspector vide order dtd.13.03.2016.

2. Facts in short are that the respondents claim themselves to be bhumiswami and in possession of land Khasra No. 179/2, 181/1 area 2970 sq.ft. out of 0.034 hectare and 726 sq. ft. i.e. 0.010 hectare on the basis of two registered sale deeds dtd. 03.09.2014 & 23.05.2015 executed by Brijendra Singh in favour of the respondents. They further claim themselves to be bhumiswami of land khasra no. 211/3 area 0.003 hectare i.e. 297 sq. ft. on the basis of sale deed dtd. 23.05.2015 executed by petitioner-Hemraj from the land khasra no. 211/2 out of area 0.121 hectare. Upon purchase of 297 sq.ft. land, new number was formed as

211/3 area 0.003 hectare i.e. 297 sq.ft. and in the present case there is dispute only in respect of land survey no. 211/3 area 0.003 hectare i.e. 297 sq.ft.

3. On the basis of aforesaid acquisition of bhumiswami rights, the respondents moved an application for demarcation of land survey no. 211/3 area 0.003 hectare (although survey nos. 179/2, 181/1 area 0.034 hectare, were also mentioned in the application) before Revenue Inspector, Gadarwara, on the basis of which, demarcation proceedings were completed vide order dtd. 13.03.2016, against which the petitioner preferred revision before Board of Revenue, which due to amendment in the MPLRC, was sent to the Additional Collector, which has been dismissed by the impugned order dtd. 27.10.2021 by Additional Collector, affirming the demarcation proceedings.

4. Learned counsel for the petitioner submits that while demarcating the land in question i.e. survey no. 211/3 area 0.003 hectare i.e. 297 sq.ft., the petitioner, who is bhumiswami of adjacent land survey no. 211/2, was not given any opportunity of hearing. He submits that neither any demarcation could be done nor in fact any demarcation has been done, because even after sale of land area 0.003 hectare, no batankan has been done in the field map in respect of Khasra No. 211/3 area 0.003 hectare. Criticizing the proceedings of demarcation conducted and completed by the R.I. and affirmed by Additional Collector, learned counsel for the petitioner prays for allowing the instant miscellaneous petition.

5. Learned counsel appearing for the respondents supports the impugned orders passed in respect of demarcation and prays for dismissal of miscellaneous petition with the further contention that the petitioner has no right in respect of the disputed land and he has no land adjacent to

the land Khasra no. 211/3. On inter alia contentions, he prays for dismissal of the miscellaneous petition.

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

7. Just with a view to understand the method and manner in which the demarcation proceedings were conducted and completed by Revenue Inspector, I deem appropriate to reproduce certain documents relating to demarcation proceedings.

8. Following application for demarcation was submitted by the respondents before Revenue Inspector, Gadarwara :-

कार्यालय राजस्व निरीक्षक गाडरवारा

विषय :- भूमि के सीमांकन कराये जाने बावत् आवेदन पत्र।

महोदय जी,

सादर निवेदन है कि मैं ग्राम सांईखेडा तहसील गाडरवारा जिला- नरसिंहपुर का स्थाई निवासी व कास्तकार हूँ।

यह कि मेरी ग्राम सांईखेडा न.व. 434 प.ह.नं. 9/32 में भूमि खसरा नं. 179/2, 181/1, 211/3 जुमला रकवा 0034, 0003 हे. भूमि भूमिस्वामी हक में पटवारी अभिलेखों में दर्ज हैं।

यह कि उपरोक्त भूमि की सीमायें मौके पर साफ साफ ज्ञात नहीं हो पा रही हैं।

अतः मैं अपनी उपरोक्त भूमि का सीमांकन कराना चाहता हूँ एवं मेरे द्वारा सीमांकन शुल्क जमा करा दिया है चालान की प्रति संलग्न है।

अतः श्रीमान् जी से निवेदन है कि मेरी उपरोक्त भूमि का सीमांकन द्वारा कराये जाने की कृपा की जावे।

संलग्न :-

1. चालान की प्रति,
2. नक्शा नकल,
3. खसरा पांच साला नकल,

आवेदक

.....आ.
निवासी ग्राम

9. Upon consideration of the aforesaid application, Revenue Inspector has drawn the following order sheets:-

फार्म 'अ'

(परिपत्र दो 1 की कंडिका 9 देखिये)

राजस्व आदेश – पत्र (रेवेन्यू आर्डर सीट)

राजस्व निरीक्षक साईखेडा के कार्यालय में मामला क्रमांक 7 सन् 2016 विषय सीमांकन मामले की श्रेणी अ/12 ग्राम साईखेडा बन्दोबस्त क्रमांक 434 पटवारी हल्का क्रमांक 9/32 तहसील गाडरवारा कलेक्टर का क्रमांक सन् 201..... अनुविभागीय अधिकारी का क्रमांक201..... तहसीलदार का क्रमांक सन् 201..... नायब तहसीलदार क्रमांक 201..

आदेश अथवा कार्यवाही की तारीख एवं स्थान	पीठासीन अधिकारी के हस्ताक्षर सहित आदेश अथवा कार्यवाही	जहाँ आवश्यक हो पक्ष अथवा वकीलो के हस्ताक्षर आदेशों का पालन करने वाले लिपिक के संक्षिप्त हस्ताक्षर और ऐसे पालन की तारीख
(1)	(2)	(3)
	<p>आवेदक श्री राकेशकुमार शर्मा</p> <p>आ. श्री नर्मदाप्रसाद निवासी ग्राम साईखेडा द्वारा आवेदन पेश किया है कि ग्राम साईखेडा प.ह.नं. 9/32 की भूमि ख.नं. 179/2, 181/3, 211/3 रकवा 0.034, 0.003 हे. का सीमांकन किया जावे। आवेदक द्वारा चालान क्र. 34 दि. 17/02/2016 द्वारा राशि 100 खजाना दाखिल की गई है आवेदन के साथ नक्शा एवं खसरा नकल संलग्न की गई है।</p> <p>म.प्र. शासन राजस्व विभाग मंत्रालय भोपाल दि. 23 दिस. 2010 द्वारा प्रकाशित सूचना क्र.एफ2-23-2010-सात-शा-6 के द्वारा संहिता की धारा 129 के अधीन तहसीलदार की शक्तियों समस्त राजस्व निरीक्षकों को उनकी अपनी-अपनी अधिकारिता के भीतर प्रदत्त की गई है।</p> <p>अतः प्रकरण दर्ज किया गया। हल्का पटवारी श्री सन्तोष ठाकुर को सीमांकन आदेश जारी किया गया।</p>	

25-2-16	<p>प्रकरण पेश</p> <p>उक्त प्रकरण में सीमांकन हेतु दिनांक 13-3-16 निश्चित की गई हल्का पटवारी को मय अभिलेख उपस्थित रहने एवं आवेदक एवं विक्रेताओं को उपस्थित रहने हेतु सूचना तामीली हेतु निर्देशित किया गया।</p>
13-3-16	<p>आज दिनांक को मौके पर हल्का पटवारी मय अभिलेख उपस्थित आवेदक व विक्रेता व चौहद्दी कास्तकार उपस्थित सीमांकन कार्यवाही शुरू की गई मौके पर जांच पत्थर व मुख्य रोड का मिलान कर व आवेदक की रजिस्ट्री व चौहद्दी अनुसार व विक्रेताओं के बताये अनुसार सीमांकन पूर्ण किया गया एवं खूटियों के निशान लगाये गये आवेदक का कय किये गये खसरा नम्बर पांच डिस्मिल से कम होने के कारण नक्शा में बटांक नहीं डाले गये एवं फील्ड बुक तैयार नहीं की गई। मौके का पंचनामा तैयार किया गया एवं उपस्थितों के हस्ताक्षर करवाये गये।</p>

10. Upon filing revision by the petitioner, the aforesaid order dtd.13.03.2016 has been affirmed by Additional Collector vide impugned order dtd.27.10.2021.

11. In respect of correction of field map i.e. batankan, following directions were issued by the Commissioner, Land Record and Bandobast, Madhya Pradesh:-

कार्यालय आयुक्त भू-अभिलेख एवं बन्दोबस्त, मध्य प्रदेश

पत्र क्रमांक 1025/11-भू-अ/2015

ग्वालियर, दिनांक 15.06.2015

प्रति,

कलेक्टर
जिला-समस्त
मध्यप्रदेश।

विषय:- पृथक स्वत्वाधिकार के अधीन धारित सर्वेक्षण संख्यांक के नक्शे पर तरमीम (निर्माण)
बावत्,

1. प्रायः यह देखने में आया है कि खसरा में किए बटांकनों के अनुसार नक्शा तरमीम नहीं किया जा रहा है जिसके फलस्वरूप भूमिधारकों को तरमीमसुदा नक्शे के प्रतिलिपि नहीं मिल रही है। भूमि धारकों को तरमीमसुदा नक्शों की प्रति उपलब्ध हो सके इसके लिये निम्नानुसार कार्यवाही सुनिश्चित की जाए :-

1.1 खसरा में हुए बटांकन के अनुरूप पटवारी नक्शे तरमीम कराया जाए।

1.2 इस तरमीमसुदा नक्शे को कम्प्यूटरीकृत नक्शे में अद्यतन कर लिया जाए।

2. प्रदेश में ग्रामों के नक्शे कृषि प्रयोजन हेतु 1/3600, 1/3860 एवं 1/4000 के मापमान पर तैयार किये गये हैं। म.प्र. भू-राजस्व संहिता 1959 की धारा 73 (अब धारा 70) के अन्तर्गत निर्मित नियमों की कड़िका 1(क) में यह प्रावधान है कि कृषि प्रयोजन हेतु कोई भी सर्वेक्षण संख्यांक जिसका क्षेत्रफल 0.05 एकड़ से कम होने पर, नक्शे में निर्मित नहीं किया जायेगा।

3. उक्त प्रावधान के कम में निर्देशित किया जाता है कि खसरा में हुए बटांकनों के अनुरूप नक्शे तरमीम करते समय केवल ऐसे ही बटांकन नक्शे पर अंकित किया जाये जिसका क्षेत्रफल 0.05 एकड़/2178 वर्गफीट या 200 वर्गमीटर से कम न हो।

4. नक्शे में किये गये तरमीम अनुसार भू-नक्शा सॉफ्टवेयर द्वारा डिजिटल नक्शे में अंकित करने के लिये प्रत्येक जिले के पटवारियों, राजस्व निरीक्षकों एवं डाटाएन्ट्री ऑपरेटरों को प्रशिक्षण दिलाया गया है। वर्ष 2015-16 को कृषि उत्पादन आयुक्त द्वारा भू-अभिलेख वर्ष घोषित किया गया है, तदनुसार कृपया अपने जिलों में उक्त निर्देशों के कम में खसरा नक्शा अद्यतन कराया जाना सुनिश्चित करें।

5. तरमीमसुदा नक्शे के अनुसार डिजिटल नक्शे को अद्यतन करने की प्रत्येक माह की कार्य प्रगति इस कार्यालय को आगामी माह की 10 तारीख तक भिजवाने का कष्ट करें।

आयुक्त
भू-अभिलेख एवं बन्दोबस्त
मध्य प्रदेश

12. Some relevant provisions in the MPLRC, relating to preparation of village map/field map and making batankan in such map, are as under :-

“107, before substitution, as was in force upto 24-9-2018:-

“107. Field map.-(1) There shall be prepared a map showing the boundaries of survey numbers or plot numbers and waste lands called the field map for every village except when otherwise directed by the State Government.

(2) There may be prepared for the abadi of each village a map showing the area occupied by private holders and the area not so occupied and such other particulars as may be prescribed.

(3) If the State Government considers that in the case of any village it is necessary to show separately in the map prepared under sub-section (2) the plots occupied by private holders, it may direct the Collector to get the map so prepared or revised.

(4) If any Gram Panchayat passes a resolution that a map of the village abadi should be prepared showing separately the plots occupied by private holders and is willing to contribute to the cost of survey operations in such proportion as may be prescribed, the State Government may undertake the preparation of such map.

(5) Such map shall be prepared or revised, as the case may be, by the Settlement Officer at revenue survey and by the Collector at all other times and in all other circumstances.”

“107, after amendment w.e.f. 25-9-2018:-

107. Maps of villages, abadi, blocks and sectors.(1) For each village-

(a) a map shall be prepared showing the boundaries of survey numbers and block numbers which shall be called "village map";

(b) a map shall be prepared for abadi showing the area occupied by holders and the area not so occupied, giving separate plot numbers and such other particulars as may be prescribed which shall be called "abadi map";

(c) a map shall be prepared for diverted lands showing the area occupied by holders giving separate plot numbers and such other particulars as may be prescribed, which shall be called "block map".

(2) For each urban area a map shall be prepared of each sector showing the area occupied by holders and area not so occupied, giving separate survey numbers, block numbers and plot numbers and such other particulars as may be prescribed, which shall be called "sector map".

(3) The maps under sub-section (1) and (2) shall be prepared on such scale as may be prescribed.”

68. Power to re-number or sub-divide or amalgamate survey number, block number and plot number.-

(1) The District Survey Officer may either re-number or sub-divide survey numbers into as many sub-divisions as may be required or amalgamate one or more survey numbers into a single survey number in view of the acquisition of rights in land or for any other reason.

(2) The District Survey Officer may either re-number or sub-divide block numbers and plot numbers into as many sub-divisions as may be required or amalgamate one or more block numbers and plot numbers into a single block number or plot number in view of the acquisition of rights in land or for any other reason:

Provided that no division or amalgamation of block number or plot number shall be permissible where such block or plot or any part thereof falls within the boundaries of layout approved under the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (No 23 of 1973).

(3) The division or amalgamation of any survey number, block number or plot number and assessment thereof shall be carried out in accordance with rules made under this Code.

(4) The District Survey Officer may modify a block by removing one or more plot numbers from a block or adding one or more plot numbers from an adjoining block.

(5) Where a holding consists of several survey numbers and plot numbers, the District Survey Officer shall assess the land revenue payable for each survey number or plot number.

(6) Whenever the survey numbers, block numbers or plot numbers are re-numbered, the District Survey Officer shall correct the entries in all records prepared or maintained under this Code."

13. Amended provision in respect of demarcation of land, contained in section 129 of the M.P. Land Revenue Code, 1959 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 sub-division or block number or plot number.”

14. Rule 35 of the Madhya Pradesh Bhu-Rajasva Sanhita (Bhu-Sarvekshan Tatha Bhu-Abhilekh) Niyam, 2020 is also relevant to quote as under:-

“35. Formation of survey numbers during land survey.- (1) During land survey, the District Survey Officer shall assign a separate survey number to every contiguous parcel of land which is-

- (a) held under a separate title and assessed for agricultural purpose under section 59;
- (b) held under a separate lease given by the State Government for agricultural purpose; or
- (c) service land;

and for this purpose may recognize existing survey numbers, reconstitute survey numbers, form new survey numbers, divide or amalgamate existing survey numbers or convert block numbers or part thereof into survey numbers.

(2) The existing survey numbers shall be retained as they stand unless their renumbering is considered necessary, in which case they shall be renumbered afresh.

(3) No new survey number shall be formed with an area of less than 0.02 hectare.

(4) The numbers so retained or altered shall be called survey numbers.”

15. Order sheet drawn by R.I. does not reflect that any demarcation of khasra numbers, as sought by the respondents by filing application, has been done or not. Even order sheet dtd.13.03.2016 mentions that because purchased area of khasra number is less than 5 dismil, therefore, no batankan has been done in the map and field book has not been prepared.

16. Now question arises as to whether any Revenue Inspector or Tahsildar can entertain an application under section 129 of the MPLRC for demarcation of a khasra number which is having area less than 5 dismil and where no batankan has been done in the map and can demarcate such khasra number.

17. During the course of hearing, this Court took help of Govt. Advocate who called concerning Tahsildar and Revenue Inspector and with the help of circular dtd.15.06.2015 and aforesaid provisions explained the correct position and also informed that first of all batankan is required to be done in the field map, which in the light of aforesaid circular is not possible, if the area under purchase is less than 5 dismil **or** 0.05 acre **or** 2178 sq.ft. **or** 200 sq.mtr. or 0.02 hectare. He also submits that unless batankan is done in the field map/village map, there is no question of demarcation of boundaries of survey number or sub-division of survey number.

18. The demarcation report/order dtd.13.03.2016 itself shows that when the Revenue Inspector found himself unable to demarcate the khasra number in question on the basis of available field map, then he beyond the scope and jurisdiction vested in him and on the basis of boundaries mentioned in the sale deed, demarcated the land, however it is not mentioned in the report as to in respect of what survey number, out of three survey numbers, demarcation was done by him.

19. In view of aforesaid discussion it is clear that in fact Revenue Inspector had no jurisdiction to demarcate the khasra number in question, especially when its area was less than requisite area, as is mentioned in Rule 35(3) of the Rules of 2020, that too when no batankan was done in the field map/village map. It is relevant to mention here that batankan in Khasra Panchsala is not sufficient to demarcate the land of a khasra number unless the relevant map is corrected/amended.

20. Resultantly, misc. petition deserves to be and is hereby **allowed** and both the impugned orders are hereby set aside, with the further direction to the Tahsildar/Revenue Inspector to take care of the said

provisions contained in the M.P. Land Revenue Code, 1959 and the Rules made thereunder. However, the respondents would be at liberty to avail alternative remedy available under the law.

21. Miscellaneous application(s), pending if any, shall stand **closed**.

(DWARKA DHISH BANSAL)

JUDGE

KPS