



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

**BEFORE**

**HON'BLE SHRI JUSTICE G. S. AHLUWALIA**

**ON THE 14<sup>th</sup> OF OCTOBER, 2024**

**MISC. PETITION No. 2838 of 2024**

***SMT KALYANI DEVI AND OTHERS***

*Versus*

***THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance:**

*Shri Sanjay Agrawal – Senior Advocate with Ms. Ankita Singh Parihar – Advocate for the petitioners.*

*Shri Abhishek Singh – Government Advocate for respondent no.1 / State.*

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**ORDER**

This Petition under Article 227 of Constitution of India has been filed seeking following reliefs :-

- (i) The entire record of Civil Suit No. 03/2022 (Smt. Kalyani Devi and another Vs. State of M.P. and another) be called for from the Court of learned 3<sup>rd</sup> Additional District Judge, Panna.
- (ii) This Hon'ble Court be pleased to quash and set aside the impugned order dated 20.4.2024 contained in Annexure-P/5 passed by 3<sup>rd</sup> District Judge, Panna in Civil Suit No.03/2022 (Smt. Kalyani Devi and another Vs. State of M.P. and another) and revenue commissioner in respect of land be directed for conducting a survey through Total Station Machine (TSM).



- (iii) Any other relief, to which the petitioners are found, entitled to, be also granted.
- (iv). Cost of the petition.

2. Respondent no. 2 was served on 8.6.2024 but none appears for respondent no.2. Thereafter, on 29.8.2024 and 23.9.2024 also none appeared for respondent no. 2. Accordingly, it is proceeded *ex-parte*.

3. It is the case of the petitioners that they have filed a suit for declaration and permanent injunction alleging that the canal in question is situated in Khasra Nos. 387, 388 and 389 in Village Panna, Tehsil and District Panna. Whereas contention of the defendants is that the canal is not situated on the said Khasra numbers. An application under Order 39 Rule 1 and 2 C.P.C. was also filed which was dismissed and ultimately, petitioners preferred a Misc. Appeal No. 1495/2022 before this Court. The said Misc. Appeal was finally decided by order dated 13.7.2022 with an observation that it is always open to the appellants to obtain demarcation or produce documentary evidence during trial and if they are able to demonstrate that any encroachment is being made by the Municipality on their land, then the consequence can follow even at the time of passing of the final decree.

4. It is submitted that thereafter, petitioners privately obtained a demarcation report, according to which, the canal is situated on the disputed land. Petitioners also filed an application under Order 26 Rule 9 C.P.C. for demarcation of land by Court appointed Commissioner. However, by the impugned order the said application has been rejected only on the ground that petitioners have already



privately obtained demarcation report and since the suit has been filed against the State Government and the Municipal Council, therefore, in case if the demarcation is directed to be done by the revenue authorities, then it is possible that petitioners may not agree with the said demarcation report which would unnecessarily result in delay.

5. Challenging the order passed by the court below, it is submitted by counsel for petitioners that the Supreme Court in the case of **Shreepat Vs. Rajendra Prasad and others**, reported in **2000 (6) Supreme 389**, **Haryana Waqf Board Vs. Shanti Sarup and others**, reported in **(2008) 8 SCC 671** and this Court in the case of **Kamal Singh and another Vs. Roop Singh and another**, reported in **2011 (3) MPLJ 333** and a Division Bench of this Court in the case of **Durga Prasad Vs. Mst. Praveen Foujdar and others**, reported in **1975 JIJ 440**, have held that in case of a boundary dispute, demarcation is only solution.

6. It is submitted that there was no reason for the Court to draw an adverse inference against the bona fide of the Revenue authorities merely because the suit has been primarily filed against respondent no.

2.

7. Per contra, counsel for the State has supported the reasoning assigned by the Trial Court and submitted that it is not a boundary dispute but primary dispute is that whether the canal in question is situated in Khasra nos. 387, 388 and 389 or not.

8. Heard learned counsel for the parties.



9. It is not the case of the respondents / defendants that they are the owner of Khasra nos. 387, 388 and 389. Thus, the defendants have not claimed any title over the land in dispute. If petitioners claim that the defendants have constructed a canal over Khasra nos. 387, 388 and 389, then the defendants are required to show their bona fide of constructing a canal over Khasra nos. 387, 388 and 389. Therefore, the question of boundary dispute may not be strictly involved in the present case but ultimately if it is found that the canal has been constructed over Khasra nos. 387, 388 and 389 and respondents / defendants are not the owner of the said land, then the defendants / respondents cannot also encroach upon the land belonging to a private person. Petitioners have already filed a private demarcation report and if they are ready to take a risk of getting the land demarcated by the revenue authorities, then without any basis for expressing mala fide on the part of the Revenue authorities, the Trial Court should not have rejected the said application. Merely because the State or Municipal Council is the party to the suit, it cannot be presumed that the Revenue authorities would act mala fidely. Bona fide action is to be presumed and not otherwise. It is another aspect that in case if the demarcation report goes against the petitioners and if the petitioners take a defense that it has been done mala fidely by the Revenue authorities, then it is for the Court to give a conclusive finding as to whether the demarcation was done mala fidely or it was in accordance with law.



10. However, at this stage the Trial Court was not right in drawing an adverse inference against the Revenue authorities or possibility of a defense which the petitioners may take in case if demarcation report goes against the petitioners.

11. Under these circumstances, this Court is of considered opinion that Trial Court committed a material illegality by rejecting application under Order 26 Rule 9 C.P.C.

12. *Ex-consequenti*, impugned order dated 20.4.2024 passed by 2nd District Judge, Panna, District Panna in Civil Suit No.3/2022 is hereby **set-aside**. Application filed under Order 26 Rule 9 C.P.C. by the petitioners is hereby **allowed**.

13. Trial Court is directed to proceed in accordance with law.

14. With aforesaid, petition is **disposed of**.

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

JP