

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

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 31st OF JULY, 2024

MISC. PETITION No. 3737 of 2024

SURESH @ KALLU

Versus

DEPUTY COMMISSIONER (DELETED) AND LALIT YADAV

Appearance:

Shri Bharat Deep Singh Bedi – Advocate for petitioner.

Shri Shiv Kumar Sharma – Advocate for Caveator.

ORDER

This petition under Article 227 of the Constitution of India has been filed against the order dated 24/6/2024 passed by the Additional Commissioner, Bhopal Division, Bhopal in Case No.710/Appeal/2023-24.

2. The facts necessary for disposal of the present petition in short are that the respondent filed an application under Section 250 of MP Land Revenue Code claiming that his land bearing Khasra Nos.297/2/2, 297/3, 298/1 and 299/2, total area 2.670 hectares was demarcated by Revenue Inspector on 11/11/2016 with the help of E.T.S. machine. It was found that the petitioner has encroached upon 1.50 acres of land and accordingly, it was prayed that the illegal possession of the petitioner be removed and the vacant possession be handed over to the respondent. The Tahsildar rejected the said application by passing the order in case No.0009/A-70/2016-17 by holding that the petitioner is in possession of

the land in dispute for the last several years. Thereafter, the respondent preferred an appeal and the SDO, Gauharganj, District Raisen by order dated 22/7/2019 passed in case No.0025/Appeal/2017-18 dismissed the appeal and upheld the order passed by the Tahsildar. Thereafter, the Additional Commissioner by order dated 2/3/2020 passed in case No.0315/Appeal/2019-20 set aside the orders passed by the Tahsildar as well as SDO and directed for eviction of the petitioner. The petitioner filed MP No.2276/2020, which was allowed by order dated 31/10/2023 with a direction to the Additional Commissioner, Bhopal Division, Bhopal to decide the appeal afresh. Accordingly, the case was reconsidered by the Additional Commissioner, Bhopal Division, Bhopal and by the impugned order dated 24/6/2024, the appeal filed by the respondent has been allowed and Tahsildar has been directed to evict the petitioner as per the demarcation report dated 11/11/2016.

3. Challenging the order passed by the Additional Commissioner, it is submitted by the counsel for the petitioner that the demarcation was carried out in absence of the petitioner and the entry with regard to the service of notice regarding demarcation was fraudulently made. It is submitted that the application under Section 250 of MP Land Revenue Code was not maintainable, as it was not preferred within the prescribed period of limitation. The petitioner is in possession of the property in dispute for the last 30 years, therefore, he cannot be evicted from the property in question.

4. Heard learned counsel for the petitioner.

5. The counsel for the petitioner was directed to point out his right to retain his possession over the land in dispute. Except mentioning that the petitioner is in possession of the property in dispute for the last more than 30 years, no other documentary evidence was pointed out by the

counsel for the petitioner. Although the petitioner tried to claim that the petitioner and the respondent are brothers and the property in question is a joint Hindu family property, but said submission cannot be accepted for the reason that the name of father of the petitioner is Komal Singh Yadav, whereas the name of the father of the petitioner is Subhash Chandra Yadav. The family tree has not been pointed out by the petitioner. Furthermore, in reply to the application filed under Section 250 of M.P. Land Revenue Code, it was pleaded by the petitioner that earlier Khasra Nos.297 and 298 were recorded in the name of Subhashchandra and Khasra No.299 was recorded in the name of Mahesh. Subhashchandra is the father of the respondent. Although the petitioner had pleaded partition, but has not pointed out the date on which the partition took place. How much of land went to the share of the petitioner or his father has also not been clarified. Furthermore, the petitioner had also not challenged the order of demarcation by filing an application under Section 129(5) of MP Land Revenue Code before the SDO, Revenue, Gauharganj, District Raisen. Except mentioning that the petitioner is in possession of the property in dispute for the last 30 years, no material was placed on record by him to substantiate the said submission. Furthermore, long possession by itself would not result in adverse possession. For pleading adverse possession, it was necessary for the petitioner to plead that he was in continuous and hostile possession of the property in dispute, whereas if the reply to the application filed under Section 250 of MP Land Revenue Code is considered, then it is clear that the petitioner has pleaded his permissive possession.

6. Considering the totality of the facts and circumstances of the case coupled with the fact that the petitioner himself has admitted that the

property in dispute was recorded in the name of the father of the respondent and in absence of any evidence that the said property was the joint Hindu family property or any partition had ever taken place, this Court is of the considered opinion that the Additional Commissioner did not commit any mistake by relying upon the order of demarcation by which the petitioner was found to have encroached upon 1.50 acres of land belonging to the respondent. Accordingly, no jurisdictional error was committed by the Additional Commissioner, Bhopal Division, Bhopal. As a consequence thereof, the order dated 24/6/2024 passed by the Additional Commissioner, Bhopal Division, Bhopal in case No.710/Appeal/2023-24 is hereby affirmed.

7. Accordingly, the petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

Arun*