



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE G. S. AHLUWALIA
ON THE 4th OF SEPTEMBER, 2024
WRIT PETITION No. 22390 of 2024
KAMMU KHAN
Versus
*THE STATE OF MADHYA PRADESH AND OTHERS***

Appearance:

Shri Ajit Singh Jatav- Advocate for petitioner.

Shri Vijendra Singh Choudhary- Government Advocate for respondent/State.

ORDER

This petition under Article 226 of Constitution of India has been filed against the order dated 15.02.2024 passed by SDO, Tehsil Sehore, District Sehore in Revenue Appeal No. 88/Appeal/2023-24 by which order dated 09.12.2022 passed by Tehsildar, Sehore in Case No. 13/A-13/2021-22 under Section 131 of MPLR Code, has been affirmed and the appeal has been dismissed.

2. It is the case of the petitioner that petitioner is the owner of Khasra Nos. 53, 54 , 59/3 and 5/41, total area 60.78 acres having purchased the same from Laxminarayan by a registered sale-deed. It is submitted that the respondents were illegally claiming a customary way through his land and accordingly they moved an application under Section 131 of MPLR Code. The application under Section 131 of MPLR Code was vehemently opposed by counsel for petitioner, however, the Tehsildar, Sehore, District Sehore by order dated



09.12.2022 passed in Case No. 13/A-13/2021-22 allowed the application and directed for opening of the customary way through the land of the petitioner.

3. Being aggrieved by the said order, the petitioner preferred an appeal before SDO (Revenue) Sehore which was registered as Appeal No. 88/Appeal/2023-24. Initially the interim order was passed on 21.07.2023 but later on by order dated 15.02.2024, the said appeal has been dismissed.

4. It is submitted by counsel for petitioner that in the meanwhile, the respondents also filed an application under Section 250 of MPLR Code which was challenged by petitioner by filing W.P. No. 130/2023 which was dismissed by order dated 9th of January, 2023 on the ground of alternative remedy. It is further submitted that the petitioner had also filed a writ petition against an order passed by Tehisldar, Tehsil Sehore under Section 131 of MPLR Code which was dismissed by a Coordinate Bench of this Court by order dated 13th of October, 2023 on the ground that since the appeal is pending before the SDO (Revenue), Sehore, therefore, no indulgence is required. It is submitted that in fact there was no customary way and the SDO (Revenue) has decided the appeal by ignoring the directions given by Co-ordinate Bench of this Court. It is further submitted that the alternative route is available which has not been taken note of. Furthermore, the land in question was never recorded as in Wajib-ul-arz. No order under Section 131 of MPLR Code could have been passed.

5. Heard learned counsel for parties.

6. So far as non compliance of orders passed by Co-ordinate



Benches of this Court in W.P. No. 130/2023 and W.P. No. 25064/2023 is concerned, it is suffice to mention here that the writ petition No.25064/2023 was dismissed on the ground that an appeal has already been preferred by the petitioner before SDO (Revenue), Sehore which is pending, therefore, no case is made out. Accordingly, the Co-ordinate Bench of this Court had directed the Appellate Authority to decide the appeal.

7. Similarly, in W.P. No. 130/2023, petitioner had challenged the proceedings under Section 250 of MPLR Code which was dismissed on the ground of availability of alternative remedy. No rights were adjudicated by the Co-ordinate Benches of this Court in W.P. No. 130/2023 and W.P. No. 25064/2023. Therefore, the contention of the counsel for the petitioner that the orders passed by the Co-ordinate Bench of this Court on 09th of January, 2023 in W.P. No. 130/2023 and on 13th of October, 2023 in W.P. No. 25064/2023 were not followed is misconceived and it is hereby rejected.

8. So far as the question of availability of alternative route is concerned, it is a disputed question of fact which cannot be considered by this Court unless and until the findings of fact recorded by the Revenue Courts are shown to be perverse. No perversity could be pointed out by the petitioner.

9. So far as the contention of the petitioner that unless and until the road and paths are recorded in the Village Wajib-ul-arz prepared under Section 242 of MPLR Code, any other land cannot be treated as a customary way is concerned, it is also misconceived.

10. Section 131 of MPLR Code reads as under:-



“131. Rights of way and other private easements.-(1)

In the event of a dispute arising as to the route by which a cultivator shall have access to his fields or to the unoccupied lands or pasture lands of the village, otherwise than by the recognised roads, paths or common land, including those road and paths recorded in the village Wajib-ul- arz prepared under Section 242 or as to the source from or course by which he may avail himself of water or as to the course by which he may drain water from his fields, a Tahsildar may, after local enquiry, decide the matter with reference to the previous custom in each case and with due regard to the conveniences of all the parties concerned.

(2) The Tahsildar may, at any stage of the enquiry, pass an interim order to grant immediate relief in respect of any matter under dispute in sub-section (1) if he is of the opinion that grant of such relief is necessary in the facts and circumstances of the case:

Provided that such interim order shall stand vacated on the expiry of ninety days from the date of the order unless vacated earlier.]”

11. The dispute arising as to the route by which a cultivator shall have access to his fields or to the unoccupied lands or pasture lands of the village, otherwise than by the recognized roads, paths or common land, including those road and paths recorded in the village Wajib-ul-arz prepared under Section 242 can be decided under Section 131 of MPLR Code and for deciding this dispute, the Tehisldar after local enquiry shall consider the previous custom in each case and will also give due regard to the convenience of all the parties concerned, therefore, recording of road in Village Wajib-ul-arz is not *sine qua non* for exercising the powers under Section 131 of MPLR Code.



12. No other ground is raised by counsel for petitioner,.
13. As no jurisdictional error was committed by Tehsildar, Tehsil Sehore while passing order dated 09.12.2022 in Case No. 13/A-13/2021-22 and order dated 15.02.2024 passed by SDO (Revenue), Tehsil Sehore, District Sehore in Revenue Appeal No. 88/Appeal/2023-24, no case is made out warranting interference.
14. The petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

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