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WA-659-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJEEV SACHDEVA,
ACTING CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 27th OF JUNE, 2025

WRIT APPEAL No. 659 of 2025

*KUMARI SHAGUN DUBEY AGED ABOUT 10YEARS MINOR
THROUGH GUARDIAN FATHER SHRI LAXMIKANT DUBEY AND
OTHERS*

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

.....
Appearance:

Shri Vivek Agrawal - Advocate for appellant.

Shri Anubhav Jain - Government Advocate for respondents/State.

Shri Ravendra Shukla - Advocate for respondent No.5.
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ORDER

Per. Sanjeev Sachdeva, Acting Chief Justice

IA No.4481 of 2025

1. This is an application for condonation of delay of one day in filing the appeal.
2. It is contended that appellants were not made parties to the writ petition and as such were unaware of passing of impugned order.
3. We are satisfied that appellants have duly explained the reason for not approaching the Court within the period of limitation. In view of the fact that appellants were unaware of passing of order and the appeal



was filed as soon as they became aware of the impugned order, there is no delay in filing the appeal.

4. The application is accordingly disposed of.

WA No.659 of 2025

1. Appellants impugn order dated 04.12.2024 whereby the writ petition filed by respondent No.5 has been allowed and a direction issued to the Tehsildar to implement order dated 28.02.2023 of the Tehsildar whereby proceedings under Section 248 of the M.P. Land Revenue Code, 1959 were directed to be taken.
2. A complaint was filed on 10.08.2022 by respondent No.5 with regard to alleged illegal encroachment of public land by construction of a shop. On the complaint, proceedings under Section 248 of the M.P. Land Revenue Code, 1959 were initiated and an ex-parte order was passed on 28.02.2023. Thereafter, despite the order being passed, as per respondent No.5, no action was taken. Subject writ petition being WP No.37206/2024 was filed contending that though an order has been passed, no action was being taken in respect of said property. Writ petition was disposed of by the impugned order dated 04.12.2024 directing the authorities to implement the order dated 28.02.2023 and remove the encroachment.
3. Subject writ appeal has been filed by one- Ku. Shagun Dubey contending that she is a minor of 10 years of age and order dated 28.02.2023 has been passed against her ex-parte. It is contended that



she is not the encroacher of the subject property and the order has been passed without even impleading the minor through the natural guardian. It is further contended that no notice was issued to the minor before the order was passed by the Tehsildar.

4. Perusal of the complaint dated 10.08.2022, shows that the complaint was filed by respondent No.5 against alleging encroachment by Laxmikant Dubey, Tarunendra Dubey and Sachin Dubey. There was no complaint against Ku. Shagun Dubey. Though in the complaint, it was contending that business activity being carried out was in the name of Shagun Mobile Shop. The complaint discloses that alleged encroachment was by three individuals and not by the appellant herein.
5. Order of Tehsildar dated 28.02.2023 records that Patwari had filed a report stating that encroachment was done by Ku. Shagun D/o Laxmikant Dubey. It appears that a proper enquiry was not conducted by Patwari before submitting the report as it is impossible for the appellant No.1 Ku. Shagun to be an encroacher on the subject property, particularly, in view of the fact that no complaint was filed against appellant No.1. Complaint was filed against appellant No.2 - Sachin Dubey, however, no proceedings were initiated by the Tehsildar against appellant No.1 or other alleged encroachers.
6. Even in the writ petition, appellants were not impleaded as parties and order was passed without giving an opportunity of hearing to the appellants. Since no opportunity of hearing was given to the appellants, impugned order is not sustainable. Though, it is a fit case for



remit to the learned Single Judge to hear the writ petition afresh after impleading the appellants, we are not passing the said order for the reason that even before the Tehsildar alleged encroachers i.e. Laxmikant Dubey, Tarunendra Dubey and Sachin Dubey were not parties and they were not even put to notice by the Tehsildar. Even order of Tehsildar dated 28.02.2023 is in violation of the principles of Natural Justice.

7. Consequently, we set aside the impugned order dated 04.12.2024 of the learned Single Judge as also order dated 28.02.2023 of the Tehsildar. The matter is accordingly, remitted to the Tehsildar to dispose of proceedings under Section 248 of the M.P. Land Revenue Code in accordance with law, after following the due procedure as prescribed in the Code and after giving an opportunity of hearing to the alleged encroachers.
8. The appeal is disposed of in the above terms.

(SANJEEV SACHDEVA)
ACTING CHIEF JUSTICE

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(VINAY SARAF)
JUDGE