AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1134 of 2019

(Judgment Delivered on 15.11.2019)

- Ashok Kumar Tiwari S/o Late Shri Rajendranath Tiwari Aged About 59 Years R/o Village- Nayapara, Bodri, Tahsil- Belha, District- Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. Mohit Kumar S/o Late Kamal Nayan Tiwari R/o Through M/s Shrishti Infrabuilt, Second Floor, Krishna Sonchhatra Compound, Near Kotak Mahindra Bank, Shiv Talkies Chawk, Tahsil And District- Bilaspur, Chhattisgarh
2. Manish Jain S/o Madan Lal Jain, R/o Through M/s Shrishti Infrabuilt, Second Floor, Krishna Sonchhatra Compound, Near Kotak Mahindra Bank, Shiv Talkies Chawk, Tahsil And District-Bilaspur, Chhattisgarh
3. Tahsildar, Bilha, Tahsil- Bilha, District- Bilaspur, Chhattisgarh
4. Collector, District- Bilaspur, Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Abhijeet Mishra, Advocate
For Respondent No.1 & 2	:	Shri Arvind Shrivastava, Advocate
For Respondents No.3 & 4/State	:	Shri Sudhir Sahu, PL.
For Interveners	:	Shri Prafull N. Bharat, Advocate with Shri Vivek Shrivastava, Advocate

Hon'ble Shri Justice Goutam Bhaduri

CAV Judgment

1. Heard.

2. Challenge in this petition is to the order dated 28.08.2018 (Annexure P-1) passed by the Board of Revenue, Bilaspur, whereby the Board of Revenue has upheld the demarcation report dated 28.03.2017 submitted by revenue

authorities vide communication dated 05.04.2017. Initially in earlier round of litigation, the Board of Revenue vide Annexure P-8 dated 08.01.2016 has directed the Tehsildar to demarcate the land bearing Khasra No. 297 which belongs to the petitioner and other lands bearing Khasra Nos.311/1 and 311/2 and Khasra No.312, which belonged to the respondent be carried out. It was further directed that during such demarcation the permanent boundary mark (Chanda) should be traced out and if necessary, the place may be dug up and thereafter following the procedure to relocate the Chanda (traverse stations)/boundary mark may be placed and thereafter the demarcation be carried out. In compliance to such direction, the boundary mark/Chanda munara were traced on field as shown in revenue map and having not found on the ground the Chanda was reestablished on the basis of field boundaries of various agricultural field and demarcation was carried out. The petitioner objected to it before the Board of Revenue that since physically the Chanda was not existing, therefore, the demarcation and placement of new Chanda was not done according to the guidelines of Bhu Abhilekh Niyamawali which is pari materia to the land record manual which prescribes the procedure to establish the mising Chanda munara by following certain procedure. The said objection having been dismissed by Board of Revenue, the instant petition is filed.

3. Learned counsel for the petitioner would submit that the demarcation which was carried out on 28.03.2017 the placement and establishment of Chanda was on the wrong procedure as the missing Chanda which was in the revenue map was shown to be situated in Khasra No.319 & 444. It is stated that those were established by admeasuring the boundary of the field but actually it should have been vice versa. He would further submit that the boundary of the field keeps on changing, therefore, in any case, to establish a traverse station (Chanda) the

boundary/ (med) of field cannot be the benchmark. He would further submit that the Bhu Abhilekh Niyamawali i.e. the Land Record Manual there are specific instructions are laid down to re-establish a missing Chanda-Munara and as per Chapter V Rule 4 of the Land Records Manual to establish one missing Chanda-Munara, two other existing Chanda-Munara on the ground has to be found out and from that the angle and the perpendicular line has to be carried out so as to find out the missing Chanda according to the revenue map and thereafter the missing Chanda-Munara is to be re-established. It is stated that in this case the Panchnama would reveal that the way adopting the procedure Chanda-Munara as was re-established the boundary map of Khasra Nos. 318, 319, 321 and Khasra No.319, 321 & 322 were considered for measurement and trisections were made. It is stated such procedure are completely wrong as it would shift the position of a original land itself. It is further submitted that in case the entire sub traverse stations are missing, it is to be find out through geographical traverse station by theodolite survey method.

4. Referring to the communication of the Tehsildar, Belha (Annexure P-7) dated 28.11.2016 along with Chapter 3, Section 2 Rule 34 of C.G. Bhu Abhilekh Niyamawali it is contended that to find out Chanda initially after the land was dug up and when it was not found, the Tehsildar adviced the Collector, Bilaspur that the Chanda-Munara has to be established by theodolite machine or traversing process and thereafter only the demarcation can be carried out. It is stated such communications & advice were according to the procedure laid down in the Bhu -Abhilekh Niyamawali. He would further submit that the sale deed of purchase of land by petitioner was in the year 1982 and in such sale deed map on the south direction, the Chirchida approach road has been

marked. Whereas the purchase was made by respondent in the year 1996 and was in respect of Khasra No.311/1 & 311/2. In such sale deed on the north side Raipur-Chirchida approach road has been shown and in the initial revenue map shows the existence of road i.e. footpath/Pagdandi. Whereas the document filed by the respondent would show that the road was constructed by the PWD in the year 1984-85 much after purchase of land by the petitioner therefore, existence of pathway was correctly shown earlier in map of sale deed of petitioner. He further referred to the order attached by the respondent for passing of the layout in respect of the said area, which shows of existence of 40 feet wide road. Consequently, it is contended that the anomaly exists about the width of road and in initial revenue map the footpath was shown in the land of respondent. It is contended that the respondent now trying to take over the land of the petitioner on the basis of the faulty demarcation. Further he would submit that if the land itself is measured by the boundaries of field then entire position of the land would change and in order to establish a Chanda the laid down procedures are required to be followed and the Board of Revenue failed to take into account the said anomaly.

5. Per contra, learned counsel for respondents No.1 & 2 would submit that the Panchnama would show that the survey was carried out according to the land record manual i.e. the Chhattisgarh Bhu Abhilekh Niyamawali chapter 5 Rule 4. It is further stated that when the traverse station i.e. the Chanda-Munara is missing then Rule 4 prescribes that how it is to be re-fixed and in the case in hand to establish the missing Chanda munara the procedure as prescribed under land record manual has been followed. Referring to revenue map it is contended that in revenue map too the existence of Chanda was shown at Khasra No.444 and 319 and by assumption of those Chanda the fresh Chanda

was established according to the Panchnama. Referring to the document Annexure P-6 it is further submitted that at the time of measurement with respect to the trisection and quadrisection, no objection was made by the petitioner before the Revenue Inspector and on the basis of it the Chanda munara was established. It is contended as per the averments made in the petition, petitioner himself do not know which is his land as it says that his land might have been disturbed. It is contended that therefore, if other land holders have no objection there is no occasion as to why the petitioner alone would be considered to be disturbed. The reference was further made to Annexure R-6 and would submit that the road is existing in the said area, which would be evident from the letter of the PWD which finds support from the sale deed filed by the petitioner, wherein in the south direction, the description of the property, the road Chirchida has been shown and it is the sale deed of the petitioner. He further referred to the revenue map and submit that in the said revenue map also the existence of the road is shown, therefore, there is no occasion about the confusion as to demarcation of the respective lands. He further submits that the maximum right of the petitioner would be to the extent of 0.50 acres of land and if the petitioner ultimately succeeds in the litigation, he would be restored to its original possession.

6. Learned counsel for the intervener would submit that they are required to be heard in this petition as certain lands have been purchased by them and the houses have also been constructed as such are necessary parties. It is stated for demarcation of petitioner's land the right of the intervener may be affected. Therefore, submit that the order passed by the Board of Revenue is well merited as it has identified the land.

7. I have heard learned counsel for the parties and perused the documents.

This is repeat round of litigation before the High Court.

8. With the respect to the submission of the interveners since the question of legality of demarcation of land is in question, at this juncture it would be futile to appreciate the contentions of interveners. It is after the demarcation when the actual position qua the land of the petitioner is ascertained the right of interveners would be a fact in issue. This petition is not a civil suit to decide the possession of the parties to pass a decree of declaration or ejectment. The issue in this petition as to legality of demarcation made on the basis of new established chanda- munara. It would be astrological to decide the contention of the intervener to hold that the petitioner is claiming the right in respect of the land which are in occupation of the intervener. The intervention application appears to be sponsored at this stage of litigation and therefore deserves to be dismissed.

9. The background of this case is that initially a demarcation was carried out by the Tehsildar on 17.11.2014. The petitioner claimed that his land bearing Khasra No.297/2 was adjoining to the land of respondent No.1 i.e. Khasra No.311/1 & 311/2. The said demarcation report was subject of challenge before the Board of Revenue on the ground that the demarcation has not been carried out according to the Rule framed under the Code and Section 129 of the Land Revenue Code. Initially when the demarcation was challenged, the Board of Revenue had quashed the order of Tehsildar and directed the SDO, Belha to constitute a team of Revenue Inspectors for carrying out the demarcation. Thereafter, the demarcation afresh was carried out. The said order of Board of Revenue was passed on 18.06.2015. Subsequent to it Tehsildar submitted the

demarcation report. The said demarcation report was further subject of challenge that no Chanda (boundary mark) was present, therefore, the demarcation as was carried out was not in accordance with law and again the matter came before the Board of Revenue. The Board of Revenue thereafter vide order dated 08.01.2016 specifically directed that the team of Revenue Inspectors be constituted and to find out the permanent boundary mark (Chanda), if need be, the excavation be carried out to find out the Chanda and in absence thereof, following the procedure, the boundary mark (Chanda) be re-established and then the demarcation may be carried out. The order of the Board of Revenue is filed as Annexure P-8.

10. Thereafter, in compliance of said order of Board of Revenue, the Tehsildar on 28.11.2016 informed to the Collector, Land Records, Bilaspur vide letter dated 28.11.2016 (Annexure P-7) that he went for the demarcation but the Chanda (demarcation) was not found on the spot as it was depicted in the revenue map. The letter purports that in order to find out Chanda, 1 & ½ meter were excavated but no Chanda was found, therefore, the demarcation could not be carried out. It was informed by Annexure P-7 that the Chanda (boundary mark) is to be re-established by method of Theodolite machine or traversing process and thereafter only the demarcation of land can be carried out. Therefore, the Tehsildar requested for providing the team of Revenue Inspectors. Lastly, in compliance of the order of the Board of Revenue, demarcation was carried out March, 2017 by re-establishing Chanda in the map and while re-establishing Chanda, Panchnama was prepared on 02.03.2017. Eventually, on the basis of re-established Chanda the demarcation was carried out on 28.03.2017.

11. The petitioner filed the objection before the Board of Revenue that the

demarcation was not carried out according to the Rules and guidelines prescribed for demarcation. The Board of Revenue vide order dated 01.07.2017 (Annexure P-3) dismissed such objection, therefore, it was a subject of challenge before this Court in WP(227) No.306 of 2018. This Court vide order dated 20.06.2018 (Annexure P-2) after going through the order of the Board of Revenue and the earlier documents, directed the Board of Revenue to give specific finding whether the compliance of subsequent demarcation was made according to the Act and Rules of 121 to 124 of the Land Revenue Code. It is thereafter, the Board of Revenue had passed the order dated 20.08.2018 (Annexure P-1), which is subject of challenge in this petition.

12. To find out the particular position of land, the reference point is boundary mark- popularly known as Chanda are required to be found out. Admittedly, to ascertain the position of land bearing Khasra No.297, 311 & 312 the permanent boundary marks as shown in the revenue map was not found. The same is evident from the letter letter of Tehsildar dated 28.11.2016 (Annexure P-7). The Tehsildar therefore, asked for establishment of Chanda afresh by constituting a team of Revenue Inspectors. Subsequent document would show that in due passage of time the missing Chanda was re-established by adopting certain procedure. The petitioner has questioned the fact that the very establishment of missing Chanda is not according to the procedure established by the directions given in the land record manual. Naturally, therefore, when a missing Chanda is re-established, if the position of the Chanda is changed then the entire subsequent position of the land would also be changed.

13. The C.G. Land Revenue Code, 1959, Section 124, Chapter X deals with boundaries and boundary marks, survey marks. For sake of brevity the Section

124 is reproduced herein below:-

124. Construction of boundary marks of villages and survey numbers or plot numbers.

.(1) Boundaries of all villages shall be fixed and demarcated by permanent boundary marks.

(2) The State Government may, in respect of any village by notification, order that the boundaries of all survey numbers or plot numbers shall also be fixed and demarcated by boundary marks.

(3) Such boundary marks shall, subject to the provisions hereinafter contained, be of such specification and shall be constructed and maintained in such manner as may be prescribed.

(4) Where the rules prescribed boundary marks of a specification different from that prevailing in any village, the new specification shall not be enforced in such village except upon application to a [Tahsildar], made by not less than half the number of holders of land in the village. When such application is made, the [Tahsildar] shall have new boundary marks constructed throughout the village and shall distribute the cost thereof proportionally among the holders of land in the village in accordance with rules made under this Code. The share of each holder shall be recoverable as an arrear of land revenue.

(5) Every holder of land shall be responsible for the maintenance and repair of the permanent boundary and survey marks erected thereon.

14. The Rules have also been framed regarding boundaries and boundary mark & survey marks. The relevant rule for the purpose of this lis as far as applicable are reproduced hereunder:-

2. The boundaries of all villages and boundaries of survey numbers or plot numbers in villages notified number sub-section (2) of Section 124 shall be demarcated by -

(a) an unploughed strip 1.50 metre in width; or

(b) a dhura 0.50 metre high, 1.50 metre wide at the base and 1.00 metre at the top; or

(c) a strong fence or wall, or

(d) boundary stones.

(3) Near each corner of a survey number or plot number shall be erected two mounds or teelas pointing along the field boundaries. The dimension of such teelas shall be-

	Meter	
Length	2.00	To be distributed equally on both the sides of a field boundary :
Breadth at base	0.50	
breadth at top	0.25	
Height	1.00	

Provided that it shall not be necessary to erect such teelas if a wall is constructed right up to a corner of a field.

4. When the length of a boundary exceeds 250 meters or such shorter distance, not being less than 60 metres, as the State Government may by order fix in this behalf for any particular tract or villages, one intermediate stone or teela shall be erected on such boundary, unless the boundary is clearly defined by a hedge, fence or wall.

5. At each bend of more than 2.50 metres in the boundary of a survey number or plot number shall be erected a stone less than 0.15 metre square and 0.75 metre in length of which at least 0.60 metre shall be sunk in the ground.

6. When the corner of a survey number or plot number falls near a nalla where mounds should be liable to be washed away, stones of the dimensions specified in Rule 1 may be used instead of teelas to demarcate the boundary. In that case, one stone shall be fixed at the corner and another stone or a teela on each boundary line at a distance of 5.00 metres from the corner.

7. In villages where not less than half the number of holders of lands desire it, a system of single boundary marks may be introduced in place of those specified in Rules 3 to 6. Such single boundary marks may be of the following descriptions : -

(1) Stones not less than 1.00 metre long and 0.15 metre square embedded in rubble and mortar with not more than 0.30 metre above the ground level.

(2) Masonry pillars of cement, mortar or burnt brick

in cement mortar 0.30 metre square and 1.00 metre high of which 0.60 metre must be embedded in the ground with the foundations stepped down.

(3) Of such other description as may be approved from time to time by the State Government.

8 xxx xxx xxx

9. xxx xxx xxx

10. After the 1st March, the Patel and patwari shall make a second inspection of all fields entered in the list to ascertain whether the defective boundary or survey marks have been repaired or not. The second inspection shall be completed by the 31st March, and the patwari shall thereon send to the Tahsildar the statement in Form A, signed by himself and the patel, giving the details of boundary marks or survey marks still defective or missing and an estimate of the cost of repairs or replacement.

A separate report shall be sent by the patwari regarding each case of encroachment or ploughing of a boundary strip or dhura together with an estimate of the cost of repairs.

11. The Tahsildar shall then, after such enquiry as he may consider necessary, order the patel to have the boundary marks repaired or replaced by hired labour, and recover the cost together with penalty in accordance with sub-section (2) of Section 128.

12. Where boundary strip or dhura has been encroached upon and ploughed up, the Tahsildar shall issue a notice to the person responsible, requiring him by a certain date to erect on that portion of the boundary strip which has been encroached on or ploughed up, a ridge of each (dhura) 0.50 metre high, 1.50 metres wide at the base and 1.25 metres wide at the top or a strong fence or wall, and should he fail to do so, the Tahsildar shall order a dhura of the aforesaid dimensions to be constructed by hired labour and recover the cost together with penalty in accordance with sub-section (2) of Section 128.

13. The construction and maintenance of boundary marks in all villages shall be regulated as follows:-

(a) Where Government forest adjoins or is included in such village, half the boundary marks shall be constructed and maintained by Forest Department and the other half shall be constructed and maintained-

(i) if the forest adjoins occupied land, by holders of such land;

(ii) if the forest adjoins unoccupied land set apart for any of the purposes specified in sub-section (1) of Section 237, by the Revenue Department;

(b) the boundary marks between survey numbers or plot numbers of unoccupied land set apart for any of the purposes specified in sub-section (1) of Section 237, shall be constructed and maintained by the Revenue Department;

(c) a holder of land shall be responsible for the construction and maintenance of -

(i) half the boundary marks on the boundaries between his land and other occupied land;

(ii) all the boundary marks between his land and unoccupied land of any of the categories specified in sub-section (1) of Section 237, and village waste or unoccupied land available for disposal referred to in clause (b) of Section 233:

Provided that between a village, in which the system of single boundary marks has been introduced under Rule 6 and one in which it has not, the holder of land in the former shall be responsible for the construction and maintenance of all such marks that fall on the common boundary.

Form A

(See Rules 9 and 10)

Statement of defective or missing boundary and survey marks

in...........village........tahsil..........district..........for the year19............

Survey No. or plot No.	Name of holder and actual cultivator	Number of defective or missing boundary or survey marks at the first inspection							
		Stones				Mounds			
		E.	N.	W.	S.	E.	N.	W.	S.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)

Number of defective or missing boundary or survey marks at the first inspection				Survey Marks	Results of second inspection			
Boundary strips or dhuras (length in metres)					Stones			
E.	N.	W.	S.		E.	N.	W.	S.
(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)

Result of second inspection								Survey marks	Estimated cost of repairs	Re-marks
Mounds				Boundary strips or dhuras (length in metres)						
E.	N.	W.	S.	E.	N.	W.	S.			
(20)	(21)	(22)	(23)	(24)	(25)	(26)	(27)	(28)	(29)	(30)

EXPLANATION

(I) Column 1 – Enter only survey numbers in which marks are out of repairs.

(ii) Column 3 to 15 –Enter results of first inspection made between the 1st November and the 15th December (Rule 9)

(iii) Columns 16 to 28 - Enter results of second inspection made between the 1st March and the 31st March (Rule 9).

(iv) - Details regarding the nature and location of survey marks shown in Columns 15 to 28 should be given in the remarks (column 30)

FORM B

(see Rule 9)

Notice requiring holders of land to repair or replace their boundary marks/survey marks

From

The Patel of Village ……………………… Tahsil………….

To,

………………………

………………………

Whereas the boundary marks/survey marks of your field detailed below are defective or missing, you are hereby directed to put them into proper repair or replace them before the 1st day of March next:-

Survey No. or Plot number	Details of defective or missing boundary marks /survey marks
(1)	(2)

15. The Rules supra would suggest the importance of boundary marks. It also suggest if the boundary marks have been disturbed it has to be restored. Even the statutory duty have been cast to the revenue officers & patwari to make inspection twice a year and thereafter keep the boundary mark alive. Even the duty have been cast upon the land holders to maintain the boundary marks and their timely restoration. The object of the Code that once the boundary mark in the land is established then it has to be maintained and Revenue Officers/Patwaris are duty bound to maintain/restore such marks before they diminish. The Code and Rules are however, silent as to what would happen when boundary mark if destroyed how to be re-established. In order to restore the boundary mark the Revenue Book Circular lays down the procedure named Bhu Abhilekh Niyamawali. Such Bhu Abhilekh Niyamawali is pari materia to land record manual of Central province.

16. The Bhu Abhilekh Niyamawali are the executive instructions which can be termed as special directions as has been reiterated by the Supreme Court in the case of ***Joint Action Committee of Air Line Pilots' Association of India***

(ALPAI) and Others Vs. Director General of Civil Aviation and others {(2011) 5 SCC 435} wherein the Supreme Court has relied in the case of ***State of M.P. Vs. G.S. Dall & Flour Mills {1992 Supp (1) SCC 150}***. So the the executive instruction can supplement a statute or cover areas to which the statute does not extend, but it cannot run contrary to the statutory provisions or whittle down their effect. The Court in para 22 of the said judgment has held as under:-

> 22. Thus, it is evident from the above that executive instructions which are issued for guidance and to implement the scheme of the Act and do not have the force of law, can be issued by the competent authority and altered, replaced and substituted at any time. The law merely prohibits the issuance of a direction, which is not in consonance with the Act or the statutory rules applicable thereunder.

17. Since the statute Land Revenue Code do not speak as to how the Chanda are to be re-established, therefore, the guidelines as has been provided in the revenue book circular, which contains the instructions which are not inconsistent with the land revenue code, would be binding for the reason that the said executive instructions have been made with the required competence. Furthermore, it would be effective for the reason that the statute and the rules framed under Section 124 of the Chhattisgarh Land Revenue Code are silent on the particular point with respect to re-establishment of the Chanda. Therefore, the government can fill up the gaps and supplement the rules and issue instructions. The said preposition is laid down in the case of ***Sant Ram Sharma Vs. State of Rajasthan {AIR 1967 SC 1910}.*** The Revenue Book Circular would show that the order of execution of work has been laid down so as to re-establish the missing permanent boundary mark/Chanda.

18. The question therefore, falls for consideration whether in the instant case, while

restablishing the boundary mark, laid down procedure were adopted or deviation was followed whereby the boundary marks were wrongly established consequently resulted in wrong demarcation of different lands.

19. In the instant case the demarcation of land was carried out by establishing two missing Chanda on the basis of the boundary of the field from Khasra Nos.318, 319, 321 & 322 and Chanda was established by taking the boundary marks on Khasra Nos. 319 & 444. The said action would be evident from the Panchnama dated 02.03.2017, whereby on the basis of topographical features i.e. the boundary of the field, the new Chanda was established. The instructions which is prevailing for demarcation and establishment of Chanda (boundary mark), Central Province Land Record Manual and the M.P./C.G. Land Record Manual prescribed that in surveying a village or correcting maps, the permanent fixed points i.e. the traverse and sub-traverse stations are necessary, since for survey of contiguous fields in block, in absence of permanent fixed point (Chanda) cannot be accurate. In Chapter 4 of Chhattisgarh Bhu Abhilekh Niyamawali Rule 9 purport that to find out the location of a land, the traverse and sub-traverse station would be required. It further purports by way of example that it is possible and easy to survey a single field quite accurately by fixing flags at certain corners of the field or outside it and taking lines connecting those flags as base lines on which to build up the survey of the field boundaries by means of off sets. It says however, this does not give the position of the field in the village. Thereby the permanent boundary marks which existing, therefrom only the demarcation can be carried out further. The boundaries of the field made are set out on the basis of demarcation carried out from the permanent marks. Therefore, the boundaries of the field are susceptible to the geographical changes due to erosion, wear & tear and further

force majeure etc. Rule 9 of the instruction book speaks that if the demarcation is carried out on the basis of the topographical feature for the village field, it would be inaccurate unless the permanent boundary marks are found.

20. In light of the such existing procedure, which are codified in the instructions, the demarcation when is examined in the instant case, it shows that during demarcation permanent boundary marks (Chanda) were not found either on Khasra No.319 or 444, which was shown in the revenue map. Therefore, to establish the Chanda, the topographical features, the existence of road was taken into account. So the question again would be whether it would be a correct procedure? The obvious answer would be in negative.

21. The petitioner has filed a document to show that at the time when the layout map was got passed from the Town & Country Planning, Bilaspur by respondent No.1 & 2, a map attached by respondent existence of 40 feet wide road was shown on the northern side of the proposed layout. As against this land the map filed along with the rejoinder i.e. the revenue map filed as Annexure P-19 shows that by dotted line pathway has been shown in the map which is in common parlance known as *Pagdandi.* The revenue map shows the pagdandi passes through Khasra No.311, it does not pass over or through the land bearing Khasra No.297, which is said to be of the petitioner. The revenue map shows that the *Pagdandi* “approach road” or easementry road is situated on the north side of the land of the respondent i.e. Khasra No.311 and the existence of pagdandi is out of land of Khasra No.297. The denomination of dotted line do not establish the existence of permanent road, whereas the respondent has shown on the north side 40 feet of road, while the layout was sanctioned. The revenue map shows the existence of Chanda munara at

Khasra No.319 & 444. The map at the time of demarcation map attached would show over Khasra No.300 & 310 a dotted path way (pagdandi) continues when it enters Khasra Nos. 311 & 312 wherein permanent road is shown. The road also touches the boundary of land Khasra No.297. Therefore, the existence of road, on which Khasra number, the same can be established only when conclusively the boundaries and area of Khasra of respective land are found by admissible demarcation alone.

22. The purchase of the petitioner of the land was in the year 1982, at such point of time no road was prepared by P.W.D. as existence of the road vide Annexure R-6 shows that the initially only approach road was made under relief work in 2003. The communications of PWD records it is shown as *Chirchirchida Pahunch Marg,* that too made under relief work so permanent road was not made. The road shown in revenue map along with the communication of P.W.D. shows a road was made under relief work when are examined along with the map filed by the respondent Nos. 1 & 2 at the time of passing of layout, as against this existence of 40 feet road is shown, therefore, it creates a serious doubt about the identity of land and its individuality. The road therefore, cannot be the benchmark to identify the particular land. Furthermore, whether the Pagdandi was converted into main road or respondents have constructed the road the identity becomes shady. In a result the existence of nature of road cannot be the deciding factor to demarcate a particular land since the roads are man made and are subsequent to the purchase of land by the petitioner in the year 1982. Consequently, the demarcation of the land cannot be made dependent on the existence and the nature of the road as shown by respondents.

23. The further fact is to be considered when any Chanda is physically missing it is to be reestablished as per order of procedure in the Revenue Circular Book. As per the Panchnama, the Chanda was not found either in Khasra No.319 or in 444. The order of the Board of Revenue (Annexure P-1) has affirmed the demarcation on the basis that when no boundary stone was found in the specified place as such, when the boundary stone was established by chain survey method by measuring the land from tri-junction and quad-junction of Khasra Nos.319 & 444 it would be a correct procedure as per the Code, 1959. The Board of Revenue thereby affirmed the issue that the missing boundary stone were correctly established by taking intersection of adjacent plot. This needs to be examined again on the basis of the instructions of the revenue book circular whether such procedure carried out by the Patwari and the Revenue Inspectors was correct or not?

24. Chapter 5 Rule 4 of the Chhattisgarh Bhu Abhilekh Niymawali lays down the procedure how to fix missing Chandas and fix it by aid of two other Chandas. The instructions as laid down shows that when a traverse station is missing and it is necessary to ascertain its position, for the purpose of correcting the map, it should not generally be fixed by intersection, i.e. a at a point at the apex of a triangle based on two other traverse stations. The proper method is to select two traverse stations, one on each side of the missing point, a line between which would pass close (i.e. within few chains) to the original position of the missing Chanda as found on the map. After ascertaining from the latter at what distance the missing Chanda should be at right angles to the two other stations selected on the ground. It is easy when chaining a corresponding distance to that point to lay off a perpendicular with the optical square and measure out the required distance, where the Chanda can be set up. It further says that it is

necessary, however, to continue the chain-line to the forward station or Chandas, to test the accuracy of the chaining with reference to the map.

25. The reading of the Panchnama to fix a missing Chanda would show that such procedure to establish the missing Chanda was not carried out by finding out the other existing Chanda. Instead the topographical features i.e. the boundary of the field were taken into account to establish the Chanda on Khasra Nos.319 & 444. The procedure therefore shows the boundaries of the field were taken into account to establish the missing boundary mark i.e. Chanda whereas it should have been vice versa. If the existing Chanda on Khasra Nos. 319 & 444 were not found, it should have been established by the other nearby Chanda. The existence of missing Chanda are to be relatively found by the procedure laid down in the Chhattisgarh Bhu Abhilekh Niyamawali. It is also quite obvious that the boundary mark i.e. the Chanda if are shifted then the field also changes its position and the boundary mark itself are disturbed since the filed do not have an embedded number with themselves.

26. The instructions of the Chhattisgarh Bhu Abhilekh Niyamawali, the land record manual, the chapter 6 prescribes that traversing can be done by theodolite or plane table. Theodolite traversing has been said to be more useful because if necessary the missing traverse stations can be refixed or replaced on the ground at any later time with the help of the mathematical traverse data, provided the stations were properly marked and erected originally and their maintenance was satisfactory. Meaning thereby the measures have also been provided that by theodolite traversing the missing Chanda can be accurately established. This was exactly the demand of the Tehsildar vide its letter dated 28.11.2016 (Annexure P-7), wherein the demand was made to the Collector,

Land Records, for constituting a team of Revenue Inspectors to establish the missing Chanda by theodolite machine or traversing method. Therefore, the procedure for demarcation of establishment of missing Chanda was itself defective and was not in accordance with the old procedure and the instructions of the land manual and instead Chanda was re-established on the basis of topographical detail of the boundary of the other Khasras which were wrong.

27. Under these circumstances, the establish of the missing Chanda by the Patwari and Revenue Inspectors on 23.03.2017 has adopted a new procedure as against the age old instructions of Land Record Manual, which provides the procedure for establishment of missing Chanda, which cannot be sustained. In a result, the order of the Board of Revenue is set aside. The respondent No.3 is directed to carryout the demarcation after establishing the Chanda according to the laid down procedure of land record manual instructions and thereafter shall carry out the demarcation. The said demarcation should be carried out strictly following the procedure laid down in Chhattisgarh Bhu Abhilekh Niyamawali under the different chapters and the order in which the demarcation is to be carried out it is also prescribed in the Bhu Abhilekh Niyamawali and the same also be followed by using the method given without applying the individual discretion.

Accordingly, the petition stands allowed with the direction to the extent above.

Sd/-

Goutam Bhaduri
Judge

Ashu