IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

ON THE 5th OF FEBRUARY, 2024

WRIT PETITION No. 2233 of 2024

BETWEEN:-

1. **LAKHAN SINGH S/O SHRI BHIM SINGH, AGED ABOUT 58 YEARS, OCCUPATION: AGRICULTURIST.**

2. **AWAD NARAYAN S/O SHRI PRAYAG NARAYAN, AGED ABOUT 60 YEARS,**

3. **SATISH GARG @ SANTOSH S/O SHRI JAIGOPAL GARG, AGED ABOUT 52 YEARS,**

4. **DINESH KUMAR S/O SHRI NARENDRA KUMAR, AGED ABOUT 43 YEARS,**

5. **TARA CHAND S/O SHRI RAMHET, AGED ABOUT 65 YEARS,**

6. **KAMLESH S/O SHRI JAGDEESH KUMAR, AGED ABOUT 45 YEARS,**

7. **MAHAVEER S/O SHRI RAMSWAROOP BASHYA, AGED ABOUT 50 YEARS,**

8. **BHANU PRATAP SINGH RAJAWAT S/O SHRI INDRAPAL SINGH RAJAWAT, AGED ABOUT 50 YEARS,**

9. **SHAMBHUDAYAL S/O SHRI MOHANLAL, AGED ABOUT 45 YEARS,**

10. **PADAM SHARMA S/O SHRI PARAM SUKH SHARMA, AGED ABOUT 55 YEARS.**

11. **BALCHAND S/O SHRI LAKSHMI NARAYAN SHARAM, AGED ABOUT 60 YEARS.**

12. **MURARILAL S/O SHRI KISHAN LAL RATHORE, AGED ABOUT 70 YEARS, R/O VILLAGE DODHAR, TEHSIL AND DISTRICT SHEOPUR (MADHYA**

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PRADESH)

.....PETITIONERS

(BY SHRI S.K.JAIN AND SHRI AKSHAT JAIN - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

2. **COMMISSIONER CHAMBAL DIVISION MORENA (MADHYA PRADESH)**

3. **COLLECTOR SHEOPUR (MADHYA PRADESH)**

4. **SUB DIVISIONAL OFFICER SHEOPUR (MADHYA PRADESH)**

5. **NAIB TEHSILDAR CIRCLE MAANPUR TEHSIL AND DISTRICT SHEOPUR SHEOPUR (MADHYA PRADESH)**

6. **KANCHAN BAI W/O LATE SHRI DULLI ADIVASI R/O VILLAGE DODHAR TEHSIL AND DISTRICT SHEOPUR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI VIVEK KHEDKAR - ADDITIONAL ADVOCATE GENERAL)

This petition coming on for ***admission*** *this day, the court passed the following:*

ORDER

1. The present petition is preferred under Article 226 of the constitution taking exception to the show cause notice dated 18.01.2024 (Annexure P-1) passed by Naib Tehsildar, Manpur Tehsil Sheopur whereby petitioners were in receipt of show cause notice to remove their illegal construction on or before 30.01.2024 else their encroachment shall be removed.

2. It is the submission of counsel for the petitioner that vide order dated 21.07.1999 (Annexure P-3) land has been purchased allegedly by the petitioners

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from one Jagni Bai who happens to be a Tribal woman and SDO Sheopur recorded the said transaction in a manner which indicate that petitioners were given possession of the land in question. Later on, it appears that one Kanchan Bai w/o Dilli Adiwasi preferred an appeal before the Collector Sheopur and vide order dated 03.09.2020, said appeal was allowed and earlier transaction 21.07.1999 was set-aside treating it to be *void ab initio* because no permission has been taken from Collector before taking the property of Tribal in their fold.

3. Against the said order, appeal is pending before Commissioner Chambal Division Morena. Meanwhile, impugned show cause notice has been received.

4. It is the submission of learned counsel for the petitioner that despite pendency of appeal before the Commissioner Chambal Division Morena, impugned show cause notices have been issued to the petitioners. Same is arbitrary and illegal. On a complaint being made by Kanchan Bai this action has been taken but before initiating such action, no opportunity of hearing was provided to the petitioners.

5. Learned counsel for the respondents/State opposed the prayer on the ground that petitioners were encroachers and their case was considered by the Collector District Sheopur and vide order dated 03.09.2020, appeal of Kanchan Bai was allowed and respondents were directed to be evicted. Thereafter, appeal preferred by the petitioners before the Commissioner Chambal Division Morena but same is pending for more than 3 years. Therefore, it appears that petitioners do not want to press the appeal and now intent to thwart proceedings pending before the Tehsildar/Naib Tehsildar impugned notices can be replied by the petitioners so that Tehsildar may proceed as per law.

6. Considering the submissions and the fact that appeal is still pending

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consideration before Commissioner Chambal Division Morena therefore, any consideration or observation by this Court would preempt the said statutory appeal and since facts are mixed therefore, are to be ascertained at the departmental level only. Therefore, this petition is disposed of with direction to the petitioners to approach the appellate authority i.e. Commissioner Chambal Division Morena to make prayer for consideration over application for stay which is still pending and if the said application is still pending then Commissioner Chambal Division Morena shall decide the application for stay on its own merit within three weeks from the date of submission of certified copy of this order so that proceedings pending before Naib-Tehsildar Manpur Tehsil Sheopur may reach to the conclusion at the earliest thereafter.

7. Petition stands disposed of accordingly.

(ANAND PATHAK)
JUDGE

Ashish*

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