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**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE**

HON'BLE SHRI JUSTICE RAJENDRA KUMAR-IV

ON THE 9th OF JANUARY, 2024

MISC. PETITION No. 2548 of 2020

BETWEEN:-

**PREMBAI D/O LATE SHRI NIRBHAY SINGH W/O LATE
SHRI UDHAM SINGH KUSHWAH, AGED ABOUT 70
YEARS, GALI NO. 2, POORANPURA, VIDISHA, DISTRICT
VIDISHA (MADHYA PRADESH)**

.....PETITIONER

***(SHRI AMIT LAHOTI - ADVOCATE WITH SHRI FAIZ AHMAD QURESHI -
ADVOCATE FOR PETITIONER)***

AND

- 1. KANHAIYALAL S/O LATE SHRI NIRBHAY SINGH
KUSHWAH**
- 2. NARAYAN SINGH S/O LATE SHRI NIRBHAY SINGH
KUSHWAH**
- 3. GHANSHYAM S/O LATE SHRI SHANKAR SINGH
KUSHWAH,
ALL R/O BEHIND HARIJAN CHHATRAVAS,
LUHANGIPURA, VIDISHA, DISTRICT VIDISHA
(MADHYA PRADESH)**
- 4. RAJKUMAR KUSHWAH S/O NIRBHAY KUSHWAH,
R/O KHARE KUA KE PAS, BARAIPURA, VIDISHA
DISTRICT VIDISHA (MADHYA PRADESH)
(DELETED) THROUGH LRS.
4(A). BHURIBAI W/O RAJKUMAR KUSHWAH,
AGED 45 YEARS,

4(B) SOURABH S/O RAJKUMAR KUCHWAH, AGED
23 YEARS,

4(C) GOURAV S/O RAJKUMAR KUSHWAH, AGED
21 YEARS,

4(D) MOHIT S/O RAJKUMAR KUSHWAH, AGED 18**

YEARS,
ALL ARE R/O KHARE KUA KE PASS, BARAIPURA,
VIDISHA, DISTRICT VIDISHA (MADHYA
PRADESH)

5. SHANTIBAI D/O LATE NIRBHAY SINGH W/O
HUKUM SINGH MUBARAKPUR BHONDAR
BARKHEDA-KALA, POST OFFICE BERAGARH,
TEHSIL HUZOOR, DISTRICT BHOPAL (MADHYA
PRADESH)
6. BHATWATIBAI D/O LATE SHRI NIRBHAY SINGH
W/O BRAJLAL KUSHWAH, BARETH ROAD,
SANJAY GANDHI COLLEGE KE PEECHE,
PANCHMUKHI MANDIR KE PAS, GANJBASODA,
DISTRICT VIDISHA (MADHYA PRADESH)
7. KAMLABAI W/O LATE SHRI SHANKAR SINGH
KUSHWAH
8. NEETA D/O LATE SHRI SHANKAR SINGH
KUSHWAH
9. KU VARSHA D/O LATE SHRI SHANKAR SINGH
KUSHWAH
10. KU USHA D/O LATE SHRI SHANKAR SINGH
KUSHWAH,
ALL R/O HARIJAN CHHATRAVAS KE PEECHE,
LUHANGIPURA, VIDISHA (MADHYA PRADESH)
11. ANGURIBAI D/O LATE SHRI NIRBHAY SINGH W/O
UTTAM SINGH KUSHWAH, FREEGANJ, SAI
MANDIR KE PAS, MAKSI ROAD, UJJAIN,
DISTRICT UJJAIN (MADHYA PRADESH)

.....RESPONDENTS

(SHRI ROHIT BANSAL - ADVOCATE FOR RESPONDENT NOS.4 (A) TO 4(D).

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

ORDER

Challenging the judgment and order dated 28.8.2020 passed by
Additional Commissioner, Bhopal Division, Bhopal in Case
No.992/Appeal/2019-20, petitioner filed this petition. By the impugned order,

Additional Commissioner, Bhopal Division, Bhopal allowed the revision.

2. Heard learned counsel for the parties at length and perused the record.

3. From the perusal of the impugned order itself, it is clear that this revision has been heard and decided in absence of petitioner. No notice to the petitioner was served. Publication was ordered to be made and service was presumed through publication. Revision was ex parte allowed.

4. Learned counsel for the petitioner mainly submits that petitioner was not served. Order-sheet of Trial Court is not in continuation. Publication was made against the petitioner and order was passed ex parte. It is further submitted by learned counsel for the petitioner that against the order passed in revision by the Additional Collector, appeal cannot be filed before the Additional Commissioner, Bhopal Division, Bhopal and he could not have a right to raise this objection before the Additional Commissioner, Bhopal Division, Bhopal due to non-availability of petitioner.

5. Learned counsel for the respondents has opposed the petition and submits that petitioner had full knowledge of the case. Publication was made in the daily newspaper and after exhausting all the process, Court proceeded the case ex parte and passed the impugned order.

6. Considering the rival submissions advanced by learned counsel for the parties and the fact that notice to the petitioner/respondents therein was not served and order was passed ex parte, the petition deserves to be allowed. Petitioner should have been afforded an opportunity of hearing to raise his grievances.

7. In view of above, petition is **allowed**. Order passed by the Additional Commissioner, Bhopal Division, Bhopal is hereby set aside and quashed. Matter is remitted back to the Court of Additional Commissioner, Bhopal

Division, Bhopal to provide an opportunity of hearing to both the parties and pass a fresh order in the matter within a period of four months from the date of production of certified copy of this order before him.

8. Commissioner, Bhopal Division, Bhopal shall be at liberty to decide the matter himself or to transfer to any other Additional Commissioner, Bhopal Division, Bhopal having jurisdiction to decide the matter.

**(RAJENDRA KUMAR-IV)
JUDGE**

(alok)

