IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

ON THE 2nd OF FEBRUARY, 2024

WRIT PETITION No. 11214 of 2020

BETWEEN:-

BIRAZBAI W/O NARAYAN PATIDAR, AGED ABOUT 45 YEARS, OCCUPATION: AGRICULTURE, R/O. GRAM SARANGI TEH PETLAWAD DISTRICT JHABUA (MADHYA PRADESH)

.....PETITIONER

(BY SHRI YASH PAL RATHORE - ADVOCATE)

AND

1. **STATE OF M.P. PRINCIPAL SECRETARY DEPARTMENT OF REVENUE PRINCIPAL VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**

2. **COLLECTOR JHABUA (MADHYA PRADESH)**

3. **TEHSILDAR TEHSILDAR SARANGI DISTRICT JHABUA (MADHYA PRADESH)**

4. **JEEVANLAL S/O KALURAM RATHORE OCCUPATION: AGRICULTURE R/O. GRAM SARANGI TEHSIL PETLAWAD, DISTT JHABUA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI ANENDRA SINGH PARIHAR - P.L. FOR STATE)
(NONE FOR RESPONDENT NO.4, THOUGH SERVED AND REPRESENTED)

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

ORDER

1. By this petition preferred under Article 227 of the Constitution of India, the petitioner has challenged the order dated 17.3.2020 passed by the

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Collector District Jhabua whereby he has set aside the order dated 15/11/2018 passed by Nayab Tehsildar, Sub Tehsil Sarangi, Tehsil Petlawad, District Jhabua and has allowed the application under Order 7 Rule 11 of the CPC filed by respondent No.4 as a consequence of which the application under Section 250 of the M.P. Land Revenue Code, 1959 filed by the petitioner has been rejected.

2. In his application under Section 250 of the Code, 1959 the petitioner has averred that on 13/6/2018 he had got the disputed land demarcated in which encroachment of respondent No.4 was found and upon request he refused to remove the encroachment. Thereafter he also fought with the petitioner. For claiming possession from respondent No.4 terming the same to be unauthorized the application was filed by petitioner. Before Nayab Tehsildar respondent No.4 filed an application under Order 7 Rule 11 of the CPC for rejection of the application under Section 250 of the Code, 1959 which was rejected by him but has been allowed by the Collector.

3. A perusal of the impugned order shows that the Collector has taken into consideration the reply filed by respondent No.4 on merits and the documents filed by him and by travelling beyond the application filed by the petitioner and the documents annexed therewith has rejected the application. It is trite law that while considering an application under Order 7 Rule 11 of the CPC it is only the plaint which would be the application under Section 250 of the Code, 1959 in the present case and the documents filed along with it which alone can be taken into consideration and the reply of non-applicant , respondent No.4 in the present case, and the documents filed by him cannot be taken into consideration.

4. A perusal of the application under Section 250 of the Code, 1959 filed

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by the petitioner and the documents annexed therein does not show that the same is barred by any law or any of the grounds specified under Order 7 Rule 11 of the CPC. The Collector has gone in merits and in detail of the matter and has also considered the validity of the Patta issued in favour of the petitioner which was wholly impermissible while considering an application under Order 7 Rule 11 of the CPC. The impugned order passed by him thus is apparently beyond jurisdiction.

5 . As a result the impugned order dated 17/3/2020 passed by the Collector cannot be sustained and is hereby set aside and the matter is remanded back to the Nayab Tehsildar for decision of the application filed by the petitioner on merits.

6. The petition is accordingly allowed and disposed off.

C.c. as per rules.

(PRANAY VERMA)
JUDGE

SS/-

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