IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

ON THE 2nd OF FEBRUARY, 2024

WRIT PETITION No. 22392 of 2023

BETWEEN:-

BAGDIRAM S/O SHRI MANGILAL, AGED ABOUT 60 YEARS, OCCUPATION: AGRICULTURALIST, R/O VILLAGE NANDNI, TEHSIL KALAPIPAL, DISTRICT SHAJAPUR (MADHYA PRADESH)

.....PETITIONER

(SHRI JANMEJAY RANJAN SAHU, ADVOCATE)

AND

1. **UPPER COLLECTOR, MANDSAUR (MADHYA PRADESH)**

2. **SUB-DIVISIONAL OFFICER, DISTRICT MANDSAUR (MADHYA PRADESH)**

3. **NAIB TEHSILDAR, TEHSIL TAPPA DHUNDAKKAR, DISTRICT MANDSAUR (MADHYA PRADESH)**

4. **VINOD GAUD D/O AWANTIPRASAD GAUD, AGED ABOUT 35 YEARS, OCCUPATION: AGRICULTURIST, R/O TEHSIL DHAMNAR, DISTRICT MANDSAUR (MADHYA PRADESH)**

5. **CHANDRAPRAKASH GAUD D/O AWANTIPRASAD GAUD, AGED ABOUT 38 YEARS, OCCUPATION: AGRICULTURALIST, TEHSIL DHAMNAR DISTRICT MANDSAUR (MADHYA PRADESH)**

6. **SHAKTIPAL SINGH GAUD D/O AWANTIPRASAD GAUD, AGED ABOUT 42 YEARS, OCCUPATION: AGRICULTURALIST, TEHSIL DHAMNAR, DISTRICT MANDSAUR (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI BHUWAN DESHMUKH, GOVT. ADVOCATE)

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

ORDER

Heard on the question of admission and interim relief.

2. Looking to the nature of order this Court is inclined to pass, notice to the respondents is not necessary, since, barely legal question of law is involved.

3. In this petition filed under Article 226 of the Constitution of India, the petitioner has assailed the order dated 13.09.2022 passed by Additional Collector in case No. 47/Revision/2022-23 whereby the revision has been rejected on the ground of maintainability.

4. The brief facts of the case, the petitioner is the owner of the land situated at Survey No.1789, 1788, 1780,1787 situated at Tehsil Tappa Dhundakka, District Mandsaur (M.P.). The respondent No.4, 5 and 6 are the owner of the land situated at Survey No.1781, 1779/1,1779/2, 1779/3, 1779/4 and 1778 situated at Tehsil- Tappa Dhundakka, District Mandsaur. The land of the petitioner and respondent Nos. 4,5 and 6 are adjacent to each other. On 19.09.2019, the respondent filed an application under Section 131 of the M.P. Land Revenue Code,1959 before Naib Tehsildar seeking relief to use the boundary of the petitioner as the way to their land. Vide order dated 02.03.2022, the application was allowed directing the petitioner to remove obstacles from the way and not interrupt the respondent in future.

5. Being aggrieved, the petitioner challenged the order dated 02.03.2022 in appeal No. 009/Appeal/2022-23 before the Sub-Divisional Officer. The Sub-Divisional Officer rejected the appeal filed by the petitioner, vide order dated 11.07.2022. Against the said order, the petitioner filed a revision under Section 50 of the M.P. Land Revenue Code, 1959 before the Collector, Mandsaur.

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Vide the impugned order dated 13.09.2022, the Additional Collector rejected the revision filed by the petitioner on the ground that instead of availing the remedy under Section 44(2) of the MPLRC, the petitioner has filed a revision under Section 50, which is not maintainable.

6 . Learned counsel for the petitioner contended that there is a bar of filing Second Appeal under Section 46 (b) of the MPLRC, therefore, the Addition Collector has misinterpreted the provisions and passed a wrong order. In fact, the revision lies before the Collector, therefore, it is prayed that the impugned order deserves to be set aside and the matter needs to be remanded back to the Collector for fresh adjudication in accordance with law.

7. Heard learned counsel for the petitioner.

8. Section 46 of the MP Land Revenue Code reads as under:

> *'**46. No appeal against certain orders**.-Notwithstanding anything contained in Section 44,-*
>
> *(a) no appeal shall lie from an order,-*
>
> *(i) allowing or rejecting an application for condonation of delay on the grounds specified in Section 5 of the Limitation Act, 1963 (No. 36 of 1963); or*
>
> *(ii) rejecting an application for revision; or*
>
> *(iii) allowing or rejecting an application for stay; or*
>
> *(iv) of an interim nature; or*
>
> *(v) passed under the provisions of Sections 29, 30, 104, 106, 114A, 127, 146, 147, 150, 152, 161, 207, 208, 210, 212, 213, 215, 220 and 243; and*
>
> *(b) no second appeal shall lie from an order passed in first appeal against an order passed under the provisions of sub-section (1) of Section 131, Section 134, Section 173, Section 234, Section 239, Section 240, Section 241, Section 242, Section 244 and Section 248.]'*

9 . On perusal of the Section 46(b), no second appeal lies against the order passed under sub-section (1) of Section 131 of the MPLRC, therefore, the findings of the Collector is perverse and liable to be set aside.

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10. Accordingly, the impugned order dated 13.09.2022 passed in 47/Revision/2023-24 by the Additional Collector, Mandsaur is hereby set aside and the Collector, Mandsaur is directed to decide the revision in accordance with law as expeditiously as possible preferably within a period of two months from the date of receipt of certified copy of this order, after affording opportunity of hearing to all concerned and pass a well reasoned and speaking order.

With the aforesaid, the petition stands disposed of.

(S. A. DHARMADHIKARI)
JUDGE

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