

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

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ON THE 20th OF JULY, 2024

WRIT PETITION No. 17802 of 2024

RAM LAKHAN AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Shri P.C. Chandil - Advocate for the petitioner.

Shri M.S. Jadon - Government Advocate for the State.

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ORDER

The present petition, under Article 226 of the Constitution India has been filed being aggrieved by the order dated 04.03.2024 contained in Annexure P/1 passed by the Tehsildar, City Center Gwalior in Case No.0030/22-23/B/21 whereby the order of its own dated 04.03.2024 contained in Annexure P/16 wherein direction to place the matter before the Collector through Sub-Divisional Officer was made, was recalled and the application for mutation itself was rejected holding that when the original order dated 16.01.2019 passed by the Additional Commissioner, Gwalior Division in Case No.1046/17-18/Appeal has already been reviewed, therefore, the applicant cannot acquire any right and title to maintain the said application, thus, the mutation case itself was dismissed.

2. Learned counsel for the petitioner had vehemently argued that such an act of the Tehsildar amounts to review and since the provisions as provided under Section 51 of the Madhya Pradesh Land Revenue Code, 1959 ("**the Code**" for short) for review has not been followed and even the present petitioner had not been

noticed or heard before passing such an order, the said order is bad in law and therefore deserves to be set aside.

3. While referring to Section 51 of the Code, it has been argued that if any Revenue Officer may, either *suo motu* or on an application of any party interested, wants to review any order passed by it or him, or by any predecessor-in-office and pass such order in reference thereto as it or he may think fit, then he shall obtain sanction from the the Collector or District Survey Officer to review an order, to whom he is immediate subordinate, and only thereafter, he can review the order but herein case, no such sanction has been obtained from the Higher Officials to which he was subordinate thereto and had passed the said order which is *per se* illegal.

4. Further while referring to Section 51(1)(ii) of the Code, it has been argued that no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard in support of such order but herein case, after passing of the final order in absence of the petitioner, the order has been reviewed and at the time of said hearing, only the Patwari alongwith the settlement record was present and after hearing the Patwari, the said order has been passed, therefore, it is *per se* illegal.

5. On the basis of the aforesaid arguments, it was prayed that the present petition be allowed and the order dated 04.03.2024 (Annexure P/1) be set aside/quashed.

6. *Per contra*, Shri Jadon, learned Government Advocate appearing for the State has submitted that it is not a case of review rather on the same day, the order Annexure P/1 has been passed when it was brought to the knowledge of the Tehsildar that the order on which the petitioners have placed reliance has already been reviewed/recalled and discussed by the Commissioner, therefore, no right remained in favour of the present petitioners to have assailed the said application for mutation, thus, no illegality can be said to have been committed by the Tehsildar in

passing the impugned order. Hence, the prayer was made for dismissal of the present petition.

7. Heard counsel for the parties and perused the record.

8. Admittedly, on 04.03.2024, the Teshildar after remand has passed the following order:

विद्वान् भिभाषक के तर्क सुने प्रकरण में संलग्न दस्तावेजों का अवलोकन किया अवलोकन के पश्चात में इस निष्कर्ष पर पहुंचता हूँ कि प्रकरण में संलग्न वरिष्ठ न्यायालयों के आदेशों एवं रिट याचिका क्रमांक 392/2020 में आदेश दिनांक 03.08.2021 में दिये गये निर्देशों के क्रम एवं अनुविभागीय अधिकारी महोदय के प्रकरण क्रमांक 0102/2023-24/अपील आदेश दिनांक 21.12.2023 को पारित आदेश के पालन में प्रार्थीगणों का आवदेन पत्र स्वीकार कर प्रार्थीगण का नाम मृतक वेताल सिंह के स्थान पर उनके वैध वारिसान कपूरी पत्नि वेताल सिंह, अजय सिंह, जयबीर सिंह, सत्यप्रकाश सिंह, पुत्रगण वेताल सिंह भाग 4/15 समान राजवीर सिंह, (फोट) वारिस गुडडी पत्नि राजवीर सिंह कार्तिक ऋषिराज पुत्र राजवीर सिंह, सिवांगी पुत्री राजवीर भाग समान 1/15 इंदरसिंह रामलखन सिंह पुत्रगण शंकरसिंह भाग समान 2/3 जाति गुर्जर निवासी नौगाव तहसील सिटी सेन्टर का नामांतरण स्वीकृत किया जाता है चूंकि वर्तमान कम्प्यूटर खसरा में उक्त भूमि शासकीय दर्ज है शासकीय भूमि से निजी भूमि के रूप में परिवर्तित करने की अधिकार कलेक्टर महोदय को है अतः उक्त प्रकरण कम्प्यूटर खसरे में अमल हेतु श्रीमान अनुविभागीय अधिकारी महोदय के माध्यम से भेजे जाने हेतु अनुशांसा सहित अग्रेषित है।

9. As per the said order, since there was a dispute with regard to conversion of the Government land into a private land and for that, the competent authority was the Collector, therefore, it was deemed proper by the Tehsildar to place the matter before the Collector through the SDO.

10. The aforesaid order was passed in presence of the counsel for the petitioner though the time when the order passed is not mentioned in the order, thereafter at 17.10 hours, the matter was again heard but this time, at the instance of the *Halka Patwari* who was present alongwith the settlement record and upon the statements made by the *Patwari*, it was held that since the Additional

Commissioner, had rejected the mutation of the petitioners, therefore, no right is left with them to get their names mutated in the revenue records and in the later part, it has been held by the Tehsildar that on the basis of certain forged documents, the proceedings were initiated by the petitioners, therefore, if those documents after comparing with the original record were found to be forged then the concerned Revenue Officer shall report the matter to the police for registration of F.I.R. and thereafter, while invoking the provisions of Section 32 of the Code, the concluding paragraph of the order dated 04.03.2024 (Annexure P/16) was declared as null.

11. After perusing the said order, it is very much clear that the said order has been passed while exercising the review jurisdiction under Section 51 of the Code, but the procedure as prescribed under this Section has not been followed. Neither any permission has been sought from the Higher Officials for reviewing the said order nor any notice was given to the parties interested including the petitioner and no opportunity has been granted to be heard in support of such an order. When the legal position with regard to review is very much clear that no order shall be varied or reversed unless the sanction in writing is obtained from the Higher Officials, as in the present case, by a Collector/District Survey Officer and no notice has been given to the petitioners, the order Annexure P/1 dated 04.03.2024 is not sustainable. Accordingly, it is hereby **set aside**.

12. The present petition is **allowed** to the above extent.

(MILIND RAMESH PHADKE)
JUDGE