

(2025) 10 MP CK 1379

In the Madhya Pradesh High Court, Gwalior Bench

Case No : Writ Petition No. 42059 Of 2025

Dharmendra Dhakad And Others

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 30-10-2025

Acts Referred:

Constitution Of India, 1950 — Article 226

Madhya Pradesh Land Revenue Code Act, 1959 — Section 44, 248(1)

Citation : (2025) 10 MP CK 1379

Hon'ble Judges : Amit Seth, J

Bench : Single Bench

Advocate : Sunil Kumar Jain, Padam Shri Agrawal Panal

Final Decision : Dismissed

Judgement

Amit Set, J

1. Heard on the question of admission.
2. The instant writ petition under Article 226 of Constitution of India has been filed by the petitioners seeking following reliefs :-
"1. It is, therefore, prayed that Writ petition may kindly be allowed.
2. That, notices issued to Petitioners (Vide annexure P-1 in series) may kindly be quash,
3. That, Respondents may kindly be directed to not to take law in their hands and demolish legal construction of Petitioners to maintain Khaliyan for harvesting and threshing.
4. That, any other relief that Hon'ble Court deems fit in the facts and circumstances of the case may also kindly be allowed.
5. Respondents No.1 may kindly be directed to hold legal enquiry and pass detail and speaking order prior of passing of any order and sufficient opportunity of

hearing may kindly be allowed.

6. Respondents may kindly be directed to keep available record of land from 1940 onward prior to holding enquiry.

7. Cost of the petition may kindly be granted."

3. It is the case of the petitioners that land bearing survey Nos. 272 & 107 situated at village Sonkhara , Tehsil Bamori, District Guna have been earmarked as Khaliyan and, therefore, it is meant for common use by all the villagers. However, the respondent No. 5 is illegally trying to raise construction of a school building on the land in question. Learned counsel for the petitioners submits that Division Bench of this Court in the case of Gangaram Loniya vs. State of M.P. & Ors. (W.P. No. 7707/2012 vide judgment dated 17/11/2025) has been pleased to hold that the land earmarked for Khaliyan cannot be diverted for any other purpose. He further submits that ignoring the aforesaid preposition of law, the Tehsildar / respondent No. 4 had issued impugned notice to the petitioners under section 248 (1) of MPLRC, 1959 calling upon to show cause as to why petitioners be not evicted from the Government Land. He further submits that on the land earmarked for Khaliyan only temporary walls have been raised by the petitioners, which cannot be treated to be encroachment and, therefore, notice issued by the Tehsildar deserves to be quashed.

4. On the other hand, learned State counsel objects to the admission of the writ petition and submits that primarily the petitioners are aggrieved by the notice issued to them under section 248(1) of MPLRC, 1959. The writ petition filed against the notice is itself not maintainable. It is for the petitioners to submit their reply before the Tehsildar and establish their claim. He further submits that even otherwise, in case, any adverse order is passed against the petitioners that would be further amenable to the statutory remedy of first appeal and second appeal as provided under section 44 of MPLRC, 1959. The petitioners by way of filing instant writ petition are trying to circumvent his statutory remedy which may not be permissible. He further submits that not a single document has been filed by the petitioners to establish their story as regards alleged change of use of the land earmarked for khaliyan. Accordingly, he submits that the petition deserves to be dismissed.

5. No other point has been pressed by learned counsel for the parties.

6. Heard learned counsel for the rival parties and perused the material available on record.

7. Specific query was put to the learned counsel for the petitioners as to whether he intends to file his reply to the impugned show cause notice and avail the statutory remedy of appeal as provided under the provision of MPLRC, 1959, but learned counsel for the petitioners insisted that his submissions be considered. Accordingly, this Court proceeded to consider the submissions advanced on behalf of the petitioners.

8. Perusal of the relief clause made in the petition itself indicate that the petitioners are seeking protection of the constructions raised by them on land earmarked as Khaliyan. It is an admitted position that the Khaliyan of the village is a common land meant for use by all the villagers. The petitioners have not shown any authority under which, they could have constructed the wall on the land earmarked for Khaliyan. Since, the petitioners have constructed walls on the land earmarked as Khaliyan, notices under section 248 (1) of MPLRC have been issued to them by the Tehsildar concerned. The aforesaid notices in the considered opinion of this Court cannot be said to be without jurisdiction or violating any statutory provision of law.

9. No document whatsoever has been filed by the petitioners alongwith the writ petition to substantiate that the land earmarked for Khaliyan is sought to be diverted or altered. There is nothing on record to suggest that any school building is proposed to be constructed on the land earmarked for Khaliyan. It, therefore, clearly transpires that the petitioners are trying to avoid proceedings initiated against them for removal of their encroachment from the land earmarked for Khaliyan.

10. The Division Bench judgment in the case of Gangaram Loniya (supra) relied upon by the petitioners may not be applicable in the given facts and circumstances of the case as the petitioners are seeking protection of their encroachment on the Government land by filing the instant writ petition.

11. The notices impugned in the present writ petition fixed returnable for filing reply/objection as on 03/07/2025 & 09/03/2025. The petitioners had all opportunities to submit their reply to the said show cause notices. However, it appears that without submitting reply to the said show cause notices, now this writ petition has been filed which cannot be countenanced in the eye of law.

12. In view of above consideration and discussion, this Court does not find any illegality or infirmity in the impugned notices under section 248 (1) of MPLRC, 1959 issued by the Tehsildar to the petitioners.

13. The instant writ petition being bereft of merit and substance deserves to be and is hereby dismissed.

14. All interlocutory applications, if any, stand disposed of.