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(2015) 03 MP CK 0051

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4240 of 2009

Ram Harsh APPELLANT

Vs

Biharilal Patel RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Constitution of India, 1950 — Article 227
Madhya Pradesh Land Revenue Code, 1959 — Section 110, 110(4), 113, 32

Citation : (2015) 03 MP CK 0051

Hon'ble Judges : K.K. Trivedi, J.

Bench : Single Bench

Advocate : R.L. Ariha, Learned Counsel, for the Appellant; J.L. Mishra, Learned Counsel, Advocates for the Respondent

Final Decision : Disposed off

Judgement

K.K. Trivedi, J.—This petition under Article 227 of the Constitution of India is directed against the order passed by the Board of Revenue in a Revision filed by the petitioners, affirming the order passed by the Additional Commissioner, Rewa in an appeal of the respondents. The petitioners got their names mutated in respect of the land in dispute in the revenue records. The respondents when came to know about such fact, filed an application before the Sub Divisional Officer, Mauganj, District Rewa for correction in the said entries. The objection was raised by the petitioners about maintainability of such application before the said authority on the ground that the application was not to be made under the provisions of Section 113 of the M.P. Land Revenue Code 1959, (hereinafter referred to as "Code") as there was no clerical error pointed out in the said entry yet such an application was allowed by the Sub Divisional officer.

2. The petitioners preferred an appeal before the Additional Collector, Rewa, who passed an order on 7.5.2007 and set aside the order passed by the Sub Divisional Officer. Against this order, the respondents preferred an appeal before the Additional Commissioner and said appeal was allowed, therefore the revision

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was filed by the petitioners before the Board of Revenue, which has been dismissed, hence this writ petition.

3. It is contended by the learned counsel for the petitioner that the application made by the respondents was not maintainable under Section 113 of the Code as specific provision under Section 110(4) of the Code is made prescribing that the Tahsildar can make such correction after affording an opportunity of hearing to the concerned. Inherent powers given under Section 32 of the Code are not to be exercised in such circumstances, where a specific provision is already made in the Code. The Collector was right in holding that the order was wrongly passed by the Sub Divisional Officer and the said order of Additional Collector was not to be interfered in appeal by the Additional Commissioner but erroneously the same was set aside. These aspects were not properly considered by the Board of Revenue, therefore, the order impugned are bad in law.

4. Per contra, it is contended by the learned counsel for the respondents that Additional Collector had not looked into the facts of the case in appropriate manner. The names of the respondents were recorded in the disputed land for a long period and the revenue entries in that respect remained continue. In fact the land was ancestral land of the respondents. However, by mischief, the Patwari of the circle has made change in the revenue records without notice to the respondents, therefore, such a change was brought to the notice of the Sub Divisional Officer by making an appropriate application for correction of the revenue entries. The said application was rightly considered by the Sub Divisional Officer and in exercise of inherent powers given under the Code, the justice was done to the respondents. This order was not required to be interfered by the Additional Collector in appeal However, erroneously the appeal filed by the petitioners was allowed by the Additional Collector, therefore, the respondents were required to approach the Additional Commissioner. The order passed by the Additional Commissioner indicates that power was rightly exercised by the Sub Divisional officer and, therefore, the order passed by the first appellate authority was rightly set aside. This being the situation, the order passed by the Board of Revenue is just and proper and need no interference in this writ petition under Article 227 of the Constitution of India.

5. After hearing learned counsel for the parties at length and after perusing the provisions of the Code, it is clear that the jurisdiction was not available to the Sub Divisional Officer to direct the change of the entries in exercise of powers under Section 113, r/w Section 32 of the Code. When the specific provisions are made under Section 110(4) of the Code for making any change in the revenue entries by the Tahsildar and when the specific rules are framed in that respect by the State Government, the powers under Section 113 of the Code was not available for such correction to the Sub Divisional Officer. Apparently the change in the entries by the Patwari can not be termed as clerical error. It is also settled position of law that inherent powers are to be exercised by the Court where specific provisions are not made under the law for doing of any such acts. This

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being so, the application filed by he respondents before the Sub Divisional Officer under Section 113 of the Code was ex facie not maintainable and was liable to be dismissed on that account alone. The Sub Divisional Officer was having no jurisdiction to entertain such an application in the given circumstances.

6. These aspects were rightly considered by the Additional Collector while passing the order in appeal filed by the petitioners and such order passed by the first appellate authority was not required to be interfered with by the second appellate authority or the revisional authority, i.e. the Additional Commissioner and the Board of Revenue. However, both the authorities have not properly scrutinized the Code and the specific provisions made under the Code and have erroneously passed the orders against the petitioners. That being so, the order passed by the Revisional authority and the second appellate authority can not be sustained.

7. As a result, the writ petition is allowed. The order passed by the Board of Revenue dated 22nd of April 2009 as also the order passed by the Additional Commissioner, Rewa Division, Rewa in appeal filed by the respondents dated 23.4.2008 are hereby set aside. The order passed by the Additional Collector, Rewa in appeal of the petitioners is hereby affirmed.

8. The first appellate authority, i.e. the Additional Collector, Rewa while deciding the appeal of the petitioners should have remitted back the matter to competent authority as if the application was made though under wrong provisions before the Tahsildar, who was competent to look into the complaint of the respondents. Infact, the Collector should have directed the Tahsildar to decide the application of the respondents treating it a complaint under Section 110(4) of the Code. Since this was not done, a liberty is to be granted to the respondents to resort to that remedy. Consequently, if an application is filed by the respondents under the aforesaid provisions before the Tahsildar in respect to change of the revenue entries, the Tahsildar will conduct an enquiry in terms of the provisions made under Section 110, Sub Section (4) of the Code and in terms of the rules made thereunder expeditiously and will decide the same without being influenced by the order passed by the Sub Divisional Officer, Additional Collector or by this court in this writ petition, on merits of the said application.

9. Let the aforesaid exercise be completed within a period of six months from the date of making of application by the respondents.

10. The writ petition is finally disposed of.

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