(2026) 08 MP CK 4354

In the Madhya Pradesh High Court

Case No : Writ Petition No. 11051 of 2012

Rambharosi & Ors. APPELLANT

Vs

Board Of Revenue, Gwalior & Ors. RESPONDENT

Date of Decision : 04-08-2026

Acts Referred:

Constitution of India — Article 227
Madhya Pradesh Land Revenue Code, 1969 — Section 109, 110, Rule 22, 24, 32
Transfer of Property Act, 1882 — Section 3, 100

Citation : (2026) 08 MP CK 4354

Hon'ble Judges : Sanjeev S Kalgaonkar, J

Bench : Single Bench

Advocate : Shri R.K. Verma, Shri Bhuvnesh Sharma, Shri Ram Murti Tiwari, Shri Pankaj Dubey, Shri Ajeet Kumar Shukla, Shri Amit Pandey

Judgement

The present petition under Article 227 of the Constitution of India has been filed by the petitioner feeling aggrieved by the order dated 14.05.2012 (Annexure-P/2) passed by the Board of Revenue in Case Revision No.61-1/11 whereby, the order dated 04.01.2011 (Annexure-P/9) passed by the Additional Commissioner, Indore Division, Indore in Case No.74/06-07/Appeal was set aside.

2. **The petitioner has prayed for the following relief :-**

> **"It is therefore, prayed that a writ in the nature of certiorari may please be issued for setting aside the impugned order dated 28/11/2000 Annexure P-1 passed by S.D.O. Tehsil Harsood District Khandwa and order dated 14/5/2012 Annexure P-2 passed by Chairman Board of Revenue, Gwalior (M.P.)."**

3 . The exposition of the facts in brief giving rise to the present petition are as under :-

(1) **One Ramnath Sharma (father of the petitioner no.1 Rambharosi) was Bhumi-swami of survey no.44, 45 and 53, total area 27 acres, situated at Village Khalwa, Tehsil Harsood, District Khandwa. Ramnath Sharma**

expired on 28.10.1998. The petitioner no.1 Rambharosi moved an application for mutation on aforestated lands in place of his deceased father. Rambharosi came to know that the name of respondent Shreeram Dubey was recorded as Bhumi-swami along with his father over the land in question. It was further revealed that the Naib Tahsildar, Khalwa vide order dated 29.09.1998 (Annexure-P/8) had recorded the name of respondent Shreeram Dubey on an application moved by Ramnath Sharma (father of the petitioner no.1 Rambharosi).

(2) **The petitioner no.1 Rambharosi preferred an appeal before the Sub-Divisional Officer, Harsood assailing the order dated 29.09.1998 (Annexure-P/8). The Sub-Divisional Officer rejected the appeal vide order dated 28.11.2000 (Annexure-P/1).**

(3) **The petitioner no.1 Rambharosi filed an appeal before the Additional Commissioner, Indore Division, Indore assailing the order dated 28.11.2000 passed in Case No. Revenue Appeal No. 25-1/6 1998-99.**

(4) **The Additional Commissioner, Indore Division, Indore vide order dated 04.01.2011 passed in Case No.74/06-07/Appeal (Annexure-P/9) allowed the appeal and set aside the order dated 28.11.2000 of Sub-Divisional Officer and also the order dated 29.09.1998 passed by the Naib Tahsildar.**

(5) **During the pendency of the appeal, the petitioner no.1-Rambharosi sold half of the land in question vide registered sale deed dated 28.08.2002 to the petitioner no.2 - M/s Parul Infrastructures Company.**

(6) **The respondent no.5 filed revision before the Board of Revenue assailing the order dated 04.01.2011 of the Additional Commissioner, Indore Division, Indore. The Board of Revenue passed the impugned order dated 14.05.2012 (Annexure-P/2) and allowed the revision setting aside the order dated 04.01.2011 of the Additional Commissioner, Indore Division, Indore.**

4. **Learned counsel for the petitioner contends that there is no dispute that the land in question was recorded under the Bhumi-swami rights of Ramnath Sharma (father of the petitioner no.1 Rambharosi). The Naib Tahsildar, Khalwa committed an error of law in recording the name of Shreeram Dubey without there being any acquisition of right or interest as amended by Section 109 and 110 of the Madhya Pradesh Land Revenue Code, 1969 (for brevity, hereinafter referred to as 'MPLRC') and the Rules made thereunder, in particular Rule 22 and 32 of the Rules regarding recording of rights notified on 10.06.1965. Learned counsel stressfully contends that mere possession does not create any right or interest in favour of Shreeram Dubey therefore, the orders of Naib Tahsildar and the Sub-Divisional Officer were erroneous. The Additional Commissioner, Indore Division, Indore, in an appeal correctly set aside**

both the orders considering the material on record and the inconsistency made out in the impugned order. Learned counsel submits that the Board of Revenue did not consider these aspects of the matter that only the acquisition of right or interest can be recorded by the Naib Tahsildar in exercise of power under Section 109 and 110 of MPLRC. The Board of Revenue erroneously stated that since the mutation was conducted without any objection, the Additional Commissioner committed an error in setting aside the same.

5. **Learned counsel further referring to the judgment in the case of Govind Vallabh Pant Grah Nirman Co-operative Society, Gwalior vs. Ramjanki Mandir Gangaram (Gangadas) Ki Badi Shala Public Trust, Gwalior and others reported in (2002) 4 MPLJ 116 contends that where no right is acquired, mutation in field book and other revenue records cannot be directed by the Tahsildar.**

6. **Per contra, learned counsel for the respondents referring to Explanation II to the Section 3 of the Transfer of Property Act, 1882 contends that the actual possession is deemed to be notice of the title therefore, the Tahsildar committed no error in recording interest acquired by Shreeram Dubey by way of possessory title on the application of the Bhumi-swami Ramnath Sharma. Learned counsel further submits that Ramnath Sharma did not assail the mutation during his lifetime. There is no allegation that the application under section 110 of the MPLRC or the mutation proceedings suffers from fraud or collusion. Therefore, the Board of Revenue correctly concluded that the Naib Tahsildar and the Sub-Divisional Officer committed no error in granting mutation in favour of Shreeram Dubey on application of Ramnath Sharma. Learned counsel, further referring to the judgment in the case of Swaraj Kishore vs. Indian Bank reported in 2016 SCC OnLine Del 2870, submits that the possession is recognized as substantive right and interest and continued possession of a person is recognized by law as sufficient interest capable of being protected by the Court therefore, the orders of Naib Tahsildar and the Sub-Divisional Officer were correctly upheld by the Board of Revenue. The petition is meritless and deserves to be dismissed.**

7. **Heard learned counsel for both the parties and perused the record.**

8 . The Additional Commissioner, Indore Division, Indore, in order dated 04.01.2011, pointed out various anomalies in conduct of mutation proceedings by the Tahsildar. It was further held that there was not acquisition of valid title (right or interest) in favour of Shreeram Dubey. The revenue records did not record the joint possession of Shreeram Dubey with Bhumi-swami Ramnath Sharma at the time or before the mutation proceedings, therefore, the order of Naib Tahsildar, Khalwa was not inconsonance with Section 109 and 110 of MPLRC. The Board of

Revenue, v i d e impugned order dated 14.02.2012 observed that Bhumi-swami Ramnath Sharma has consented to add name of Shreeram Dubey as joint holder. Ramnath Sharma never assailed the mutation order in favour of Shreeram Dubey during his lifetime. The petitioner had executed sale deed of half of the land during the pendency of appeal before Additional Commissioner, therefore, he has no right to assail the mutation proceedings in absence of any title remaining in his favour. Ramnath Sharma has admitted that Shreeram Dubey was cultivating the land for last 25 years. On these grounds, the Board of revenue has set aside the order dated 04.01.2011 of the Additional Commissioner, Indore Division, Indore.

9. **Section 109 and 110 of Madhya Pradesh Land Revenue Code, 1959 reads as under :-**

> **"Section 109. Acquisition of rights to be reported. -**
>
> (1) **Any person lawfully acquiring any right or interest in land shall report orally or in writing his acquisition of such right to the patwari within six months from the date of such acquisition, and the patwari shall at once give a written acknowledgment for such report to the person making it in the prescribed form:**
>
> **Provided that when the person acquiring the right is a minor or is otherwise disqualified, his guardian or other person having charge of his property shall make the report to the patwari.**
>
> **Explanation I.-The right mentioned above does not include an easement or a charge, not amounting to a mortgage, of the kind specified in section 100 of the Transfer of Property Act, 1882 (IV of 1882)].**
>
> **Explanation II.-A person, in whose favour a mortgage is redeemed or paid off or a lease is determined, acquires a right within the meaning of this section.**
>
> **Explanation III.-For the purpose of this chapter, the term "patwari" includes any person appointed to perform the duties of a Patwari under this Chapter.**
>
> **Explanation IV.-Intimation in writing required to be given to the patwari under this section may be given either through a messenger or handed over in person or may be sent by registered post.**
>
> (2) **Any such person as is referred to in sub-section (1) may also report in writing his acquisition of such rights to the Tahsildar within six months from the date of such acquisition."**
>
> **"Section 110. Mutation of acquisition of right in Field**
>
> **Book and other relevant land records.-**
>
> (1) **The Patwari shall enter into a register prescribed for the purpose every acquisition of right reported to him under section 109 or which comes to his notice from intimation from Gram Panchayat or any other source.**
>
> (2) **The Patwari shall intimate all the reports regarding acquisition of right received by him under sub-section (1) to the Tahsildar within thirty days of the receipt thereof by him.**
>
> (3) **On receipt of the intimation from patwari under sub-section (2), the Tahsildar shall have it published in the village in the prescribed manner and**

shall also give written intimation thereof to all person appearing to him to be interested in the mutation and also to such other person and authorities as may be prescribed.

(4) **The Tahsildar shall after affording reasonable opportunity of being heard to the persons interested and after making such further enquiry, as he may deem necessary, make necessary entry in the Field Book and other relevant land records."**

1 0 . Rules 24 and 32 of the "Rules regarding Records of Rights" notified th vide Notification No.2498-VII-N-dated the 10 June 1965, Published in M.P. Rajpatra dated 2-7-65, as amended by No.1351-VII-N-I, dated 16-4-68 and No.2764-2953-VII-N-I, dated 26-7-1968.

"24. **The Patwari shall maintain a register in Form E in which he shall enter villagewise every change in ownership of land due to transfers by registered deeds, inheritance, surviourship, bequest or lease reported to him under section 109 or which come to his notice from intimations received from Gram Panchayat or from any other source."**

"32. **Disputes shall be decided summarily by the Tahsildar on the basis of title and not possession. Any transfer by a person whose name is not recorded in the Khasra shall not be admitted in mutation by the Tahsildar. The order shall contain the names of the parties and witnesses and a brief summary of the evidence produced by either side together with the Tahsildar findings thereon."**

11. **In case of Gulab Bai vs. Prisident Prathmik Krishi Sakh Sahkari Samiti THR. and others reported in 2025 :MPHC GWL: 18777 , a Co-ordinate Bench of this Court, observed in paragraph-13 as under-**

"13. **The perusal of the Rule 32 stated hereinabove reveals that for deciding the dispute pertaining to mutation entries, the Tehsildar was required to take into consideration the title and not the possession. That apart, any transfer by a person whose name is not recorded in the Khasra shall not be admitted in the mutation by the Tehsildar. In the instant case there is nothing on record to show the name of late Shri Dhan Singh was recorded in the Khasra neither any title document of late Shri Dhan Singh was produced and therefore, the so called transfer by way of gift in favour of the petitioner could not have been admitted in mutation by the Tehsildar."**

12. **In case of Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira, reported in (2012) 5 SCC 370, it was held that-**

"97. **Principles of law which emerge in this case are crystallised as under:**

(1) **No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.**

(2) **Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.**

(3) **The courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time**

either as a friend, relative, caretaker or as a servant.

(4) **The protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or licence agreement in his favour.**

(5) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession. " (emphasis added).

1 3 . In case of Kamakshi Builders v. Ambedkar Educational Society , reported in (2007) 12 SCC 27, it was observed that acquisition of a title is an inference of law arising out of certain set of facts. If in law, a person does not acquire title, the same cannot be vested only by reason of acquiescence or estoppel on the part of other.

14. **The material on record and the impugned order is examined in the light of the aforestated proposition of law. Apparently, there is no legal document regarding transfer of title from Ramnath Sharma in favour of Shreeram Dubey. The Naib Tahsildar, Khalwa directed mutation in favour of Shreeram Dubey merely on the basis of consent of Ramnath Sharma to implead the name of Shreeram Dubey as joint holder. There was no documentary evidence (revenue record) to substantiate the fact that Shreeram Dubey was cultivating the land in dispute as observed by the Board of Revenue. Even if, Shreeram Dubey was cultivating the land in dispute, his possession would be permissive possession which does not create any right, title or interest in the land. Therefore, there was no acquisition of right or interest in the land reported to Naib Tahsildar, Khalwa under Section 109 and 110 of MPLRC. Consequently, the order of mutation in favour of Shreeram Dubey by the Naib Tahsildar, Khalwa dated 29.09.1998 (Annexure-P/8) was erroneous and illegal. The order of Additional Commissioner, Indore Division, Indore dated 04.01.2011 setting aside the order dated 29.09.1998 of Naib Tahsildar, Khalwa was in accordance with law. The Board of Revenue committed error in setting aside the order dated 04.01.2011 of Additional Commissioner, Indore Division, Indore and restoring the illegal order of Naib Tahsildar, Khalwa. The Board of Revenue apparently committed illegality in exercise of jurisdiction, therefore, interference by this Court in exercise of supervisory writ jurisdiction is imperative.**

1 5 . Consequently, the impugned order dated 14.05.2012 (Annexure-P/2) passed by the Board of Revenue in Revision Case No.61-1/11 is hereby set aside. Accordingly, the petition is allowed.