
(2020) 10 MP CK 0047

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 5156 Of 2019

Sunita W/O Rajesh Bairagi & 29 Others

APPELLANT

Vs

State Of M.P & Others

RESPONDENT

Date of Decision : 01-10-2020

Acts Referred:

M.P Land Revenue Code, 1959 — Section 2(1)(k), 44(2), 129, 146, 165(6), 250, 250(2), 250(1a), 250(b)
M.P Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 50(3)
Constitution Of India, 1950 — Article 227

Citation : (2020) 10 MP CK 0047

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : V.K.Jain, Atul Kumar Gupta, Raj Saxena, Amit Agrawal, Arjun Agrawal

Final Decision : Dismissed

Judgement

1. Petitioners have filed the present petition being aggrieved by the order dated 25.06.2018 passed by the Tahsildar, order dated 04.04.2019 passed by the Sub Divisional Officer and the order dated 08.08.2019 passed by the Additional Commissioner, Indore whereby an application filed under section 250 of the M.P Land Revenue Code, 1959 (hereinafter referred to as 'the MPLRC') for restoration of possession of land bearing survey No.66/2/K, area 0.70 hectare filed by respondent No.3 has been allowed and appeals filed by the petitioners have been dismissed respectively.

Facts of the case are as under:

2. Petitioners are residents of village Khajrana, Tahsil and District Indore and according to them, they are in possession/occupation of the plots, tin sheds and the houses situated in the colony called Krishnabag colony, Sector-C developed on the land part of survey No.66, Gram Khajrana, Tahsil & District Indore. Out of 30 petitioners, only six have registered sale deeds in their favour and some of them have Notarized sale deeds in their favour. The details of the petitioners

No.4, 5, 13, 17, 18 & 27 are as under:

Petitioner No.

Name of the purchaser

Date of sale deed

Plot No.

Vendor

4

Ravi s/o Nandwal

Ashok

01/12/15

44

Rajesh Rathore (Power of Attorney Holder)

5

Tulsidas Malviya s/o Ramlal

05/08/14

47

Rajesh Rathore (Power of Attorney Holder)

13

Smt.Geeta Ramprasad

w/o

28/09/17

848

Rajesh Rathore (Power of Attorney Holder)

17

Ravi s/o Amar Singh Rathore

01/08/13

32/A

Rajesh Rathore (Power of Attorney Holder)

18

Rakesh s/o Ghasiram Karole

10/07/13

31/A

Rajesh Rathore (Power of Attorney Holder)

27

Smt.Rachna Shrawan

w/o

20/03/13

21

Rajesh Rathore (Power of Attorney Holder)

Rest of the petitioners have filed electricity bills issued by the M.P Paschim Kshetra Vidyut Vitaran Company, Adhar Cards, property tax receipts issued by the Municipal Corporation, Indore, photographs etc. in order to establish their possession and construction of houses therein.

3. Respondent No.4 is a registered firm engaged in the business of construction and development of the land. The respondent No.4 vide registered sale deed dated 31.03.2003 purchased the agriculture land measuring 15.039 hectares comprising of 16 different survey numbers from Nyay Vibhag Karmchari Grih Nirman Sahkari Sanstha Maryadit, Indore (hereinafter referred to as 'the Nyay Vibhag'). After execution of the sale-deed, the respondent No.4 applied for mutation in the revenue records in the year 2003-04 and vide order dated 25.05.2006 in Case No.65/A-3/2006-06 the name had been mutated in the revenue record.

4. Respondent No.4 filed an application for demarcation of the land bearing survey No.66/2/a, 73/4/2, 74, 75/3, 83/2 & 84/2 and the Revenue Inspector registered it as case No.13A-12/16 & 17. Vide order dated 06.02.2012 a direction was issued to the Patwari to conduct the demarcation of above survey numbers. The Patwari visited the spot and prepared two Panchnamas dated 15.12.2016 & 28.12.2016. He carried out demarcation of the aforesaid land in part and vide Panchanama dated 15.12.2016 observed that the remaining proceeding would be completed after issuing notice to the neighboring account holders. Thereafter, on 28.12.2016 he observed that on the spot at survey No.66/2/K various houses are constructed and prepared the list of dwellers. After concluding the demarcation of the above lands the Patwari submitted its report mentioning the name of as many as 70 dwellers (Including writ petitioners). Based on the report submitted by the Patwari, the Tahsildar vide order dated 17.01.2017 upheld the demarcation concluded the proceedings.

5. That in the year 2018 the respondent No.3 filed an application under section 250 of the MPLRC before the Tahsildar, Vijaynagar Zone, Indore against 62 occupiers for possession of the land Sr.No. 66/2K. The Tahsildar registered the

application as case No.04/A-70/2017-18. The notices were issued to 62 non-applicants and after hearing them vide order dated 25.06.2018 learned Tehsildar has allowed application by directing the Patwari and Revenue Inspector to remove the illegal construction and hand over vacant possession to the respondent No.4.

6. Being aggrieved by the order dated 25.06.2018 an appeal was filed by 62 occupants before the SDO i.e. appeal No.05/Appeal/18-19 mainly on the ground that the proceeding under section 250 of the MPLRC is not maintainable before the Tahsildar because the land survey No.66/2/K is no more a vacant agriculture land. The Tahsildar does not have jurisdiction to direct for handing over the vacant possession by demolishing the constructions of the houses. Vide order dated 04.04.2019 the Sub Divisional Officer has turned down the objections and dismissed the appeal by holding that none of the occupiers had produced the copy of the registered or notarized sale deeds on the spot and as per the definition of 'the land' under the MPLRC the possession of not only "the land" but all the things attached with the land are liable to be handed over to the owner of the land.

7. Being aggrieved by the aforesaid order 62 occupiers filed a second appeal before the Additional Commissioner under section 44(2) of the MLRC and vide order dated 08.08.2019 the Additional Commissioner has dismissed the appeal as well by upholding the order passed by the Tahsildar as well as the SDO.

8. Being aggrieved by the aforesaid orders, out of 62 occupants only 30 petitioners have filed the present petition before this Court inter alia on the ground that the respondent No.4 purchased the land bearing survey No.66/1 (part) whereas the petitioners are in possession over the land bearing survey No.66/2/K. The proceeding under section 250 of the MPLRC can be initiated in respect of the vacant agricultural land and the moments it is discovered that there are constructions on the land, the proceedings are liable to be dropped. In the demarcation proceedings, the petitioners and other occupiers were not given any notice, hence such a demarcation proceeding cannot be made the basis for passing the order under section 250 of the MPLRC. The issue of title cannot be decided in the revenue proceedings. The petitioners have also raised the issue of limitation as under section 250 of the MPLRC a Tahsildar can reinstate the possession of a Bhumiswami who is improperly dispossessed within 2 years from the date of application. The petitioners are in possession since last so many years and admittedly beyond the period of two years, therefore, the proceedings under section 250 MPLRC are not maintainable. At the most, the respondent No.3 is required to file a civil suit before the Civil Court for obtaining the possession from the petitioners.

9. After notice respondents No.1 to 3 have filed the return in support of the orders passed by the revenue authorities by submitting that the land bearing survey No.66 admeasuring 1.842 hectares was initially owned by the Nyay Vibhag and a piece of land area 0.016 hectare is owned by Ali Mohammed, who

filed an application for batankan which was allowed and the land owned by Nyay Vibhag admeasuring 1.842 hectare was renumbered as survey No.66/1 and the land owned by Ali Mohammad was renumbered as 66/2. Out of the total land, Nyay Vibhag sold 0.101 hectares to Vivek Kumar Satyanarayan Jaiswal and retained the remaining land as survey No.66/1. Out of the remaining land i.e. 1.624 hectares, Nyay Vibhag further sold the land measuring 0.720 hectares to the respondent No.4 vide registered sale deed dated 31.03.2003. The respondent No.4 applied for batankan in which the purchased land was renumbered as survey No.66/2 and the name of respondent No.4 was mutated. Since the survey No.66/2 had already been allotted to Ali Mohammad as well as to the respondent No.4 erroneously, therefore, the land purchased by the respondent No.4 was renumbered as a survey No.66/2/k (hereinafter referred to as 'the land in question') and survey no.66/2 area 0.016 hectare continued in the name of Ali Mohammad. It is further submitted that the revenue authorities have followed the principles of natural justice as well as the procedure prescribed under the MPLRC. Despite the issuance of notice to all the occupiers, only few have appeared before the Tahsildar through Advocate and produced the registered or notarized sale deeds. It is further submitted that the seller from whom petitioners said to have purchased various polts in the colony by way of registered or notarized sale deeds were never recorded as owners of the land. It is further submitted that in the sale deeds filed by the petitioners a fact about the diversion of the land vide demand no.15580/A-2/12-13 dated 31.05.2012 passed under section 146 of the MPLRC is written but in the records maintained in the office of Sub Divisional Officer no such case or order exists, therefore, the petitioners have no title over the land in question. The SDO has sought information from the Tahsildar, Juni Indore about the payment of diversion tax with respect to land bearing survey no.66. Vide letter dated 03.12.2019 the Tahsildar, Juni Indore has informed that no case for recovery of diversion tax was found concerning survey No.66. The Superintendent Land Division, Indore vide letter dated 03.12.2019 has also informed that the demand notice goes only through computer, and in the entire digital record there is no such diversion account is there concerning survey No.66. Even the SDO, Kanadia has also informed vide letter dated 04.12.2019 that demand No.15580/A-2/12-13 dated 31.05.2012 was not registered in the Kanadia Sub Division.

10. The respondent No.4 has filed a return by submitting that the land bearing survey No.66/2 along with other survey numbers were purchased vide registered sale-deed dated 31.03.2003 from the registered society i.e Nyay Vibhag after permission granted by the Registrar, Co-operative Societies vide order dated 28.02.2003. After the aforesaid purchase the respondent No.4 came to know that the land survey No.66/2 had been included in the Scheme No.132 framed by the Indore Development Authority and the land was sought to be acquired by the State Government by issuing a notification under the provisions of the Land Acquisition Act. The respondent No.4 challenged the aforesaid notification before the High Court by way of Writ petition No.14065/2006 and vide order dated

14.08.2007 the Single Bench of this Court had quashed the notification. Thereafter, the Indore Development Authority preferred W.A.No.1455/2007 but that too was dismissed by the Full Bench vide order dated 24.04.2009. Despite the quashing of the entire notification the land in question was again sought to be included by the Indore Development Authority in Scheme No.171 which was challenged by the respondent No.4 by way of filing revision under section 50(3) of the M.P Nagar Tatha Gram Nivesh Adhiniyam, 1973. Vide order dated 08.04.2015 the land in question was excluded from the Scheme No.171. Despite the aforesaid order when the Indore Development Authority did not release the land in question, hence the answering respondent approached the State Government whereupon a direction was issued to the Indore Development Authority under section 52 for issuing NOC to the answering respondent. Despite the direction issued by the State Government, when the NOC was not issued to the respondent No.4 by Indore Development Authority a Writ Petition No.6829/2019 was filed in which vide order dated 09.05.2019 the writ petition was disposed of by directing the IDA to issue the NOC. In compliance with the aforesaid order, the IDA issued the NOC dated 20.09.2019 for the private development of the land. Hence there is no delay in approaching the Tehsildar for obtaining the vacant possession of the lands.

11. It is further submitted that the answering respondent No. 4 did apply before the Revenue Inspector under section 129 of the MPLRC for demarcation of the land. The demarcation was conducted and the revenue authorities found that the petitioners and others have encroached upon the land bearing survey No.66/2/K and concluded the demarcation proceeding which has not been challenged by the petitioners so far. During the demarcation proceeding, the respondent No.4 came to know about the encroachments by the petitioners and others on the land in question, hence the application filed under section 250 cannot said to be beyond the limitation.

12. The answering respondent thereupon filed an application under section 250 of the MPLRC before the Tahsildar for restoration of the possession. The Tahsildar issued notice to the petitioners and granted them full opportunity to lead evidence and thereafter passed the order dated 25.06.2018. The petitioners and others have unsuccessfully challenged the aforesaid order before the Sub Divisional Officer as well as the Additional Commissioner. Hence prayed for dismissal of the petition being devoid of merit and substance.

13. Shri V K Jain learned sr counsel submitted that the land in question is within the Municipal limits i.e. in an urban area since 1976 and also within the planning area since 1975 and is having its designated land use as Residential. The predecessors -in-title of the Petitioners and also of the Respondent No. 4 never ever carried any agricultural operation on the land in question. The predecessor-in-title of the Respondent No. 4 being a housing co-operative society had acquired the said land for development of a residential colony and the Respondent No. 4 being a builder/colonizer has also acquired the said land for

being used for residential development and none of them ever intended to use the said land for agriculture in future hence provisos of section 250 could not have been invoked merely because land in question is recorded as Agriculture land in revenue records .

14. It is further submitted that petitioners along with others have been in possession of their plots/houses situated in "Krishna Bagh Sector-C" comprised in survey No. 66 village Khajrana, Tehsil & District Indore since long, however, from 2010 on-wards by sale deeds have been executed in their favour. The Petitioners have constructed houses, sheds, etc. and they have got electricity connections, water connections and the Indore Municipal Corporation is charging from them since 2000-01. Even some of the illegal water connections were regularized by the Municipal Corporation. Since the land in question has not been expressly diverted therefore, it is still recorded in the revenue records as "agriculture land." It is further submitted that in such circumstances whether the land in question can be held to be an agricultural land to attract the provisions of section 250 of MPLRC. To buttress his submission Shri Jain learned senior counsel has placed reliance over the judgment passed by the Supreme Court of India in the case of Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer In-charge, (Court of Wards) Paigah reported in AIR 1977 SC-113, in which it has been held that whether a land upon which no agricultural operations are carried out nor are intended to be carried out, can not be held to be an agricultural land merely because it is recorded in the revenue record. It is further submitted that the proceedings U/s 250 of the Code are summary proceedings intended for the benefit of the agriculturist, however the act of Respondent No. 4, resorting to these summary proceedings, with intent to develop the land in question into residential colony, is impermissible.

15. Shri Jain learned Senior Counsel further submitted that Respondent No. 4 is alleged to have purchased the land comprised in Survey No. 66/1 (part) admeasuring 0.720 Hect. from the Nyay Vibhag by means of a registered sale deed dated 31/03/2003 and after purchasing the land in 2003, the first time in 2016 applied for demarcation of land bearing Survey No. 66/2K along with other lands. The application was made after 13 long years. The explanation given for such inordinate delay is not at all convincing. On receipt of application for demarcation, the R.I. is said to have noticed the adjacent owners, however, the Panchnamas dated 15/12/2016 and 28/12/2016 record that no such notices were ever issued to the petitioners. The petitioners who are in possession by way of their dwelling houses and the non- issuance of notice before demarcation makes entire proceedings void and inadmissible. In the matter of Sendhwa Club & Another Vs. State of M.P. & Others 1998 RN 106 (High Court), it has been held that demarcation U/s 129 has to be conducted in the presence of and under notice to all interested parties. The petitioners thus are interested and affected parties, hence a notice of demarcation ought to have been issued to them individually.

16. It is further submitted that the present proceeding under Section 250 of the MPLRC is barred by limitation because Sub-Section (1-a) (b) of Section 250 prescribed a period of 2 years for the initiation of proceeding from the date of dispossession. The Respondent No. 4 in order to take illegal advantage of the second portion of the said sub- section, applied for demarcation after 13 years from the date of purchase of land and thereafter applied for restoration of possession of land in question. The delay in applying demarcation is unexplained.

17. Shri Jain learned senior counsel further submitted that the Tehsildar, Vijay Nagar (Respondent No. 2) vide order dated 25/06/2018, directed restoration of possession of land in question in favour of Respondent No.4 after the removal of alleged illegal construction. The Petitioners have sale deeds of the subject land in their favour and the Respondent No.4 has a sale deed (though with dispute of survey numbers) in his favour. In such circumstances, since the Revenue Authorities are not empowered to decide the question of title and directing to demolish the construction and give vacant possession of the land instead the respondent No.4 ought to have been relegated to the Civil Court. The Revenue Authorities by overlooking the settled position of law and by exceeding the powers U/s 250 of MPLRC have wrongly directed for handing over of vacant possession of land to Respondent No. 4 after demolishing residential houses of the Petitioners. It is further submitted that the appellate authorities have heavily relied on the definition of term 2 (k) "land ". However in the matter of Asgar Ali Vs. Amna Bi 2011 (3) MPHT 98 : it has been held that the purpose of the Code is to provide a speedy and summary remedy to a Bhumiswami dispossessed of his land. That the Sub Divisional Officer & the Additional Commissioner challenging have mechanically dismissed both appeals. None of the issues as raised by the petitioners regarding the authority and power of revenue authorities? U/s 250 of MPLRC were considered and decided by the authorities hence both the orders are bad in law and liable to be set aside. Shri Jain learned senior counsel has proposed the following question of law in this writ petition for adjudication.

1. Whether the provisions of section 250 of MPLRC, which are indisputably applicable to agricultural land only and to provide speedy & summary remedy to actual farmers, can be applied to all lands having permanent and pucca constructions situated in urban area, planning area having residential land use, never used or intended to be used for agricultural purpose and held for development of colony?

2. In a case where both parties claiming the title based on registered sale deeds and where one party claiming title without possession and other party claiming title with possession, whether a Revenue Authority (Tehsildar) can inquire or adjudicate the title, legality of respective registered sale deeds and also the title of the predecessors in title of the parties?

3. Whether an application for demarcation made after 13 of purchase of land and thereafter filing of an application u/s 250 of MPLRC, without stating that the applicant came to know about the alleged encroachment only upon demarcation,

can be held to be within the prescribed period of limitation i.e. two years from the date of dispossession or when the possession becomes unauthorised?

18. Shri Shreyas Raj Saxena learned Dy.A.G. appearing for the State in support of the revenue authorities humbly submitted that sale deeds (Annexure P/1) filed by the some of the Petitioners are doubtful documents because clause (11) recites about subject land being diverted based on diversion tax demand no. 15580/A-2/2012-13 dated 31/05/2012 and subject land being covered by layout development permission vide memo no. 1167/MEAP/2012 dated 18/07/2012. These two recitals are insincere as the Sub Divisional Officer has gotit verified from the concerned offices. It is further submitted that the alleged diversion tax demand no. 15580/A-2/2012-13 was never issued by the concerned Revenue Sub-division. That information has also been given by the Joint Director, Town and Country Planning, that under memo no. 1167/MEAP/2012 dated 18/07/2012, the layout permission has never been granted by the T&C department.

19. It is further submitted that the petitioners and their vendors have never been recorded as Bhumiswamis of the land in question or part thereof at any point of time. On the contrary, Respondent no. 4 purchased the land on 31/03/2003 vide registered sale deed and their names were duly recorded in Revenue Records by order dated 25/04/2006 in case no. 65/A-3/2005-06. It is further submitted that learned authorities have rightly passed orders within the four corners of law and they did not exceded their jurisdictions. The petitioners and others who did not file writ petition also have no title of the land in question and despite that, they constructed their houses/ tin sheds without the permission from the Municipal Corporation. The land in question has never been diverted so far and still recorded as an "agriculture land", hence the Tehsildar is competent to entertain the application filed under section 250 of MPLRC. The definition of the 'land' given in the Code does include everything attached to the land. The petitioners have challenged the demarcation proceedings despite having knowledge of mutation in favour of respondent No.4, hence now they cannot resist the proceedings initiated under section 250 of the code. The writ petition has no substance in absence of any legal right in favour of the petitioners, hence the same is liable to be dismissed.

20. Shri Amit Agrawal learned Senior Counsel appearing for respondent no. 4 has argued that from the aforesaid facts it is evident that the Respondent no.4 is a recorded Bhumiswami of the subject land. Since the year 2006 the subject land was included, firstly, in scheme no.132 and then scheme no.171. That Scheme no. 132 and consequent land acquisition proceedings were quashed in W.P. No.14605/2006 and was affirmed by a Full Bench on 24/04/2009 in W.A. No.1455/2007. Thereafter, SLP of IDA was dismissed by the Supreme Court on 12/03/2013. Thereafter, the land in question was included in Scheme No. 171 and on 08/04/2015 in a revision filed by the Respondent no.4 the revisionary authority directed exclusion of these lands form scheme no, 171. Thereafter on

29/08/2016 conditional permission for private development was granted by IDA by Respondent no. 4. The Respondent no. 4 challenged the conditional permission in W.P. 6829/2019 and on 09/05/2019 vide Annexure-R/6, the Writ Petition was allowed, and pursuant thereto on 20/09/2019 permission has been granted by IDA to Respondent no. 4 for private development of subject land with other lands. In this background of facts, it is clear that the case of Respondent no. 4 is covered by section 250 (1-a) (b).

21. It is further submitted that as per the existing section 250 which stood amended on 27/07/2018 before the order was rightly passed by Tehsildar on 25/06/2018 as per the provision of section 250 (1-a)(b). That merely the land in question is situated within the "municipal limits" but facts reveal that still it is un-diverted land. The purpose of the development plan and the zonal plan have been highlighted by the Apex Court in the case of Rajendra Shankar Shukla vs. State of Chhattisgarh (2015) 10 SCC 400. The said judgement has recently been followed by Supreme Court in the case of Madhya Pradesh Housing and Infrastructure Development Board and another vs. Vijay Bodana and Ors. reported in AIR 2020 SC 2163.

22. Shri Agrawal, learned Senior Counsel further defended that this petition is filed under Article 227 of the Constitution of India by 30 Petitioners out of 62 persons against whom Tahsildar, Vijay Nagar Area, Indore-(M.P.) has passed impugned order in exercising powers under section 250 of the MPLRC for eviction. That all petitioners are in illegal and unauthorized occupation of Survey No. 66/2/A, situated in village Khajarana, having a total area of 0.720 hectares. This order has been affirmed by S.D.O. in an Appeal no.5 of 2018-19 filed under section 44(1) of the Code which has further been affirmed in Second Appeal no.28 of 2019-20 by Additional Commissioner. For example the Petitioner No.18 I.e. Rakesh Karole who is said to have purchased plot no. 31-A vide sale deed dated 10/07/2012 from 8 vendors through power of attorney holder Rajesh Rathore does not have any title because any documents to demonstrate the title of their vendor has not been filed before the Revenue authorities.

23. It is further submitted that the demarcation dated 17/01/2017 establishes that the petitioners and others have encroached upon the portions of survey no.66/2/A, hence application was rightly filed by Respondent no.4 under section 250 within 2 years from 17/01/2017, therefore it is within limitation. That as per section 129 of the Code, during demarcation proceedings, notices are required to be issued only to those persons who are recorded as Bhumiswami and since neither the petitioners nor their vendors were ever recorded as Bhumiswami, no notice was required to be given to them before the demarcation.

24. So far the proceeding initiated under section 250 was barred by limitation and Respondent no.4 was never in possession even this issue is no more res integra and is settled by the Court in Murlidhar & Anr. vs. Board of Revenue 2013 (3) MPLJ 184 that as to what is the starting point for considering the period of limitation as contemplated under section 250(1)(a)(b) of the M.P. Land Revenue

Code, 1959 and held that the date on which the petitioners were found to be in unauthorized possession is the date of the order passed under section 129 and as the application for restoration of possession under section 250 is filed within the period of years from the said date, the second of sub-section (b) section 250(1) is with.

25. Shri Agrawal learned senior counsel further submitted that so far as the dispute relating to the identity of the subject land is concerned, the State has already explained that originally the subject land was survey no. 66 (1.842 hectares) as per revenue records and finally said to have been corrected in revenue records by assigning 66/2/A, area 0.720 hectares belonging to Respondent no.4.

26. So far the ground raised by the petitioners regarding the applicability of the provisions of section 250 of the Code is concerned Shri Agrawal learned Senior Counsel emphasized that the dominant purpose of section 250 is to be seen as held by this Court in the case of Krishna Kumar Das vs. Balramdas 1971 MPLJ 864, that the expression "land" defined in Code may fictionally include a building or structure existing on the land but when the Bhuswami seeks restoration of possession of "land" encroached upon and dominant purpose of the application under section 250 is of restoration of land, then section 250 applies. Similarly, relying upon a judgment of Full Bench in State of M.P. vs Balwinder Singh 2001 (2) MPLJ 644, Shri Agrawal contended that it is the choice of Bhumiswami to Choose the remedy of a regular suit or a proceeding before the Revenue Tribunal under section 250.

27. It is further submitted that the allegation regarding the demarcation proceeding being ex-parte and without notice to petitioners, Shri Agrawal contended that there was no need to issue notice to unauthorized occupants by placing reliance upon Baba Gyandas vs. Tahsildar, Sheopur, and anr. 2016 RN 185 in which it has been held that interested persons are such persons who have the legal right to the land, as per revenue record.

28. Shri Agrawal has concluded his arguments by submitting that the scope under Article 227 is limited as laid down in Shamshad Ahmed vs. Tilak Raj Bajaj 2008 (9) SCC 1 that the power is supervisory in nature and the High Court does not act as a Court of appeal. It can neither review nor re-appreciate the evidence upon which determination of a subordinate Court or inferior Tribunal purports is based. The High Court cannot correct errors of fact or even law and to substitute its own decision for that of the inferior Court or Tribunal. The powers are required to be exercised most sparingly and only in appropriate cases to keep the subordinate Courts and inferior tribunals within the limits of law. Hence in view of the aforesaid, no jurisdictional error has been committed by the Revenue Authorities and the writ petition deserves to be dismissed.

29. Having heard learned Senior Counsels for the parties at length through video conferencing and after perusing the records my considered opinion, in this case,

is under:-

30. There is a serious dispute about the title of the land in question between the petitioners and the respondent No.4. As stated above out of 30 petitioners only six petitioners i.e. petitioners No.4, 5, 13, 17, 18 & 27 have filed the copy of the sale deed executed in their favour. So far the sale deed in favour of Rakesh Karole is concerned he said to have purchased plot No.31/A, Krishnabag colony, Sector-C situated at survey No.66, Tahsil Khajrana from 8 vendors through power of attorney holder Rajesh Rathore. Likewise, Ravi Rathore also purchased plot No.32/A of the same colony from those same 8 vendors through power of attorney holder vide registered sale deed dated 01.08.2013. The remaining four petitioners said to have purchased the plots in the same colony from Ram Krishna s/o Chunnilal vide registered sale deeds. A map describing the boundaries of the plot in sale is attached with the sale-deed, in which it is mentioned that East side- other plots, Westside- road, Northside- other plots & Southside- other plots. From these descriptions, on the map, the exact location of the plot cannot find out. The title of the vendors has also not been mentioned as to whether the acquired the title by way of succession or they had purchased by way of any registered document. In one sale deed of Rakesh Karole there is a mention about the diversion order No.15580 dated 31.05.2012 but as per the return filed by the respondents no 1 & 2 no such demand notice or order exists in the official record, therefore, from all these aforesaid facts all the sale deeds are doubtful. That petitioners have no clear title of the land in question.

So far the title of respondent No.4 is concerned the same is based on the registered sale deed dated 31.03.2003 executed by the Nyay Vibhag whose title is in dispute. By the aforesaid sale deed, the respondent No.4 purchased the 16 survey numbers including survey No.66/1 and thereafter applied for mutation in the year 2004 itself and as per the return filed by the State there is no dispute about the said mutation, therefore, the respondent No.4 has a better and clear title than the petitioners in respect of the land in question i.e. survey no.66/2/K area 0.70 and the title of the petitioners are doubtful especially six petitioners out of 30 others have no title documents.

31. The second controversy between the petitioners and the respondent No. 4 who is in possession of the land in question. The respondent No.3 applied for demarcation before the Revenue Inspector in respect of the land in question and other survey numbers. During the demarcation proceeding, it came to the knowledge of the Revenue authorities that certain constructions have been raised on survey No.66/2/K and he prepared the list of 62 occupants.

Vide order dated 17.01.2017 the Revenue Inspector has concluded the demarcation proceeding by mentioning the possession of the 62 occupants including present petitioners. The aforesaid demarcation proceeding has not been challenged by any of the petitioners, therefore, the petitioners are in possession over the land bearing survey No.66/2/K. Now the issue comes for the consideration of whether the petitioners were required to be heard in the

demarcation proceedings . This issue has also been considered by this High Court in the case of Baba Gyandas Vs Tehsildar Sheorpur reported in 2018 RN 185 ad it has been held that in absence of any legal right to the land or as Bhumiswami , such person cannot be held to be party interested for the purpose of raising objection to the demarcation proceedings , hence there is no substance in the arguments of Shri Jain learned senior counsel that in the demarcation proceedings the petitioners were not heard.

32. The third issue which is under consideration before this Court is in respect of the scope of section 250 of the MPLRC. Shri Jain, learned Senior Counsel appearing for the petitioners has vehemently argued that the land in question is though recorded as agricultural land but no agricultural activities have ever taken place either by the petitioners, respondent no.4 or their predecessor-in-title. The present respondent No.4 is a developer and purchased the land for development and not for agricultural purposes, therefore, section 250 proceeding ought not to have been invoked. For ready reference section 250 MPLRC is reproduced below:

250. Reinstatement of bhumiswami improperly dispossessed.- (1) For the purpose of this section and section 250-A bhumiswami shall include occupancy tenant and Government lessee.]

(1-a) If a bhumiswami is dispossessed of the land otherwise than in due course of law or if any person unauthorisedly continues in possession of any land of the bhumiswami to the use of which such per son has ceased to be entitled under any provision of thi s Code, the bhumi- swami or his successor-in-interest may apply to the Tahsildar for restoration of the possession, -

(a) in case of bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe under sub- section (6) of Section 165 -

(i) before the 1st July, 1978 in cases of unauthorized dispossession prior to the 1st July, 1976; and

(ii) in any other cases within five year s from the date of dispossession or from the date on which the possession of such person becomes unauthorized, as the case may be;

(b) in case of a bhumiswami not covered by clause (a) , within two years from the date of dispossession or from the date on which possession of such person becomes unauthorised, as the case may be.

(1-b) The Tahsildar shall on coming to know that a bhumiswami has been dispossessed of hi s land otherwise than in due course of law, suo motu start proceedings under this section.

(2) The Tahsildar shall, after making an enquiry into the respective claims of the par ties, decide the application and when he order s the restoration of the possession to the bhumiswami, put him in possession of the land.

(2-a) The proceedings started under this section shall after receipt of reply from

the other party, continue from day to day unless for reasons to be recorded in writing a longer adjournment is considered necessary and in that case a copy of the order sheet containing the reasons for such adjournment shall be sent to the Collector .

(3) The Tahsildar may at any stage of the enquiry pass an interim order for handing over the possession of the land to the bhumiswami, occupancy tenant or Government lessee, as the case may be, if he finds that he was dispossessed by the opposite party within six months prior to the submission of the application or commencement of suo motu proceedings under this section. In such case the opposite party shall, if necessary, be ejected under orders of the Tahsildar .]

(4) When an interim order has been passed under sub- section (3) the opposite party may be required by the Tahsildar to execute a bond for such sum as the Tahsildar may deem fit for abstaining from taking possession of land until the final order is passed by the Tahsildar .

(5) If the person executing a bond is found to have entered into or taken possession of the land in contravention of the bond, the Tahsildar may forfeit the bond in whole or in part and may recover such amount as an arrear of land revenue.

(6) If the order passed under sub-section (2) is in favour of the applicant the Tahsildar shall also award compensation to be paid to the applicant by the opposite party which shall be at the prorata rate of two thousand rupees per hectare per year .

(7) The compensation awarded under this section shall be recoverable as an arrear of land revenue.

(8) when an order has been passed under sub-section (2) for the restoration of the possession to the bhumiswami the Tahsildar may require the opposite. Party to execute a bond for such sum as the Tahsildar may deem fit for abstaining from taking possession of the land and contravention of the order .

(9) Where an order has been passed under sub-section (2) for the restoration of the possession of the bhumiswami, the opposite party shall also be liable to fine which may extend to [twenty per centum of the market value of such land] : [Proviso Omitted] Section 250 (1-a) provides that if a Bhumiswami is dispossessed of the land otherwise than in due course of law or if any person unauthorizedly continues in possession of any land of the Bhumiswami to the use of which such person has ceased to be entitled under any provision of this Code, the Bhumiswami or his successor-in-interest may apply to the Tahsildar for restoration of the possession. Section 250 (1-b) gives power to the Tahsildar to initiate suo moto proceeding under this section on coming to know that the Bhumiswami has been dispossessed of his land. After making any enquiry into the respective claims of the parties the Tahsildar under section (2) of section 250 may order for restoration of the possession to the Bhumiswami and put him into

the possession of the land. Section 250 (3) gives power to the Tahsildar to pass an interim order for handing over the possession of the land to the Bhumiswami, occupancy tenant or Govt. lessee, as the case may be. Sub section (9) gives power to the Tahsildar in addition to the order of restoration of possession to impose fine. Learned Revenue authorities have placed reliance over the definition of the 'land' given in section 2(1)(k) of the Code and according to which the land means a portion of the earth's surface whether or not under water, and where land is referred to in this Code it shall be deemed to include all things attached to or permanently fastened to anything attached to such land. In the case of Narayan Vyankatrao vs. Nagubai Balaji and others reported 1977 MPLJ 578 this Court had an occasion to deal with this definition of land and observed that the term refers not only to open land but also to everything permanently fastened to the earth. The provisions of the Code apply equally to agricultural as well as non-agricultural land.

It is also not disputed that the land in question is situated within the limits of Municipal Corporation, Indore but still recorded as agricultural land and no order for diversion has ever been passed. Even the land is diverted or used for other than agricultural purpose it is mandatory to maintain the revenue record by the Tahsildar in which the nature of the land is to be mentioned and in the present case same is recorded as agricultural land, therefore, as per the simple and plain definition of section 250 if the Bhumiswami approaches the Tahsildar that the complainant is dispossessed of the land otherwise than in the due course of law then the Tahsildar is bound to entertain the application under section 250 MPLRC, hence the application filed by the respondent No.4 before the Tahsildar is maintainable and the Tahsildar has not committed any error of law while entertaining the said application.

33. Shri V.K. Jain, learned Senior Counsel has raised the issue of limitation and according to him by virtue of section 250 (1-a) (b) the period of limitation is 2 years from the date of dispossession in the case of Bhumiswami who is not covered by clause (a) or from the date on which the possession of such person became unauthorized, as the case may be. As per clause 250 (1-a) if a Bhumiswami is dispossessed of the land otherwise than in due course of law then under clause (b) he has to approach the Tahsildar within a period of 2 years and if any person unauthorizedly continues in possession of the land as Bhumiswami to the use of which such person has ceased to be entitled under any provision of this Code and his possession became authorized then also the limitation is 2 years for the Bhumiswami to approach the Tahsildar. In the present case, the respondent No.4 purchased the land in the year 2003 and got mutated its name in the revenue record. Thereafter, the land in question was included in the Scheme No.132 framed by the Indore Development Authority and the land was sought to be acquired by the State Govt. Only the respondent No.4 being the owner of the land challenged the notification by way of W.P.No.14065/2006 and succeeded up to the Supreme Court and finally got released the land by way of NOC dated 20.09.2016 for private development. This the date when the

possession of the petitioners became unauthorized and they ceased to be entitled not to use the land under the provision of this Code and from this date, the limitation of 2 years would start, hence the respondent No.4 rightly filed an application under section 250 MPLRC before the Tahsildar within two years. After succeeding up to the Supreme Court and getting the land released the respondent No.4 applied for demarcation on 26.12.2016 and vide order dated 17.01.2017 the demarcation proceedings were concluded by disclosing the name of 60 occupants to be in possession of the land in question. The fact of the aforesaid possession by the 62 occupants came to the knowledge of the respondent No.4 during the demarcation proceeding and in view of the law laid down by this Court in the case of Murlidhar vs. Board of Revenue (supra) the starting point for consideration of the period of limitation would be when the person found to be in authorized possession i.e. the date of order passed under section 129 of the Code. In view of the aforesaid, the application filed by the respondent No.4 is not barred by limitation and the learned authorities have not committed any error of law while entertaining the application.

34. Shri V.K. Jain, learned Senior Counsel has raised the issue that the petitioners have been found in possession of the land and without demolishing the construction the vacant possession of the land cannot be handed over to the respondent No.4 which is not within the domain of the Tahsildar to pass the order for removal of the possession for handing over the vacant possession to the Bhumiswami i.e. respondent No.4. This point might have substance and weightage for consideration but non of the petitioners is in a position to place on record the document to establish his clear title or the building permission. Out of 62 petitioners and occupants only 6 petitioners have produced the registered sale deeds and as per the aforesaid discussion, those sale deeds are also under a cloud. The remaining petitioners and other occupants have no title document in their favour despite that they have constructed houses therein without obtaining building permission from the Municipal Corporation, Indore under the Municipal Corporation Act.

Merely paying property tax or obtaining electricity connection therein would not legalize their construction or would not confer any title to them. If the construction is illegal that too on land without title then that cannot come in the way of exercising the statutory power of Tahsildar under section 250 of the MPLRC. In order to defeat the provisions of MPLRC anybody can make illegal construction on the land and stall the proceeding of section 250 MPLRC. This is not the intention of the Legislature. If the Bhumiswami has been dispossessed or the possession of any person has been found unauthorized then such a person is legally bound to hand over the vacant possession to the Bhumiswami under section 250 of MPLRC . With full conscious the legislature has drafted the definition of the 'land' in the MPLRC in which all the things permanently fastened with the land have been fictionally treated as the land, therefore, mere construction on any land by a person who is unauthorisedly in possession cannot resist the proceeding under section 250. Even otherwise, the Municipal

Corporation has ample power under section 299 of the Municipal Corporation Act to demolish the illegal construction at any point of time. Since the petitioners are not title holders of the land and made entire construction without permission hence the such illegal construction cannot be compounded under section 308 of the Municipal Corporation and rules made thereunder. The respondent No.4 cannot be relegated to the civil court to obtain possession or decree of declaration in respect of the construction as void and claim the possession. That out of 62 illegal occupants only one has filed a civil suit before the civil court. Therefore, when all the 3 authorities by way of concurrent finding have held that the petitioners' possession is unauthorized then they are liable to be removed by way of an order under section 250 MPLRC.

The copy of this order be sent to the Commissioner Municipal Corporation Indore also for examining the construction of houses over the land in question and for taking appropriate action in accordance with law.

In the result, I do not find any ground to interfere with the impugned orders, hence the petition is dismissed.