

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: Hon. Mr. S. C. Sharma, J

WRIT PETITION NO. 5670 / 2010

Ghanshyam Patel s/o Jairam Patel

Vs.

State of MP & Others

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**[ O R D E R ]**

( 30/11/2010)

The petitioner before this Court has filed this present petition being aggrieved by the order dt. 29/4/10 passed by the Sub Divisional Officer, Sanwer, Distt. Indore. The contention of the petitioner is that he is owner of land bearing Survey No. 113/1 admeasuring 0.518, No.242/2 admeasuring area 0.010, No.269 area 0.223, No. 271/2 area 0.176 and Survey No. 392 admeasuring area 2.246, totaling to 3.17 hectares. The contention of the petitioner is that a Bhu Adhikar and a Rin Pustika was issued by the State Government and the same is enclosed as Annexure P/2 and his name is reflected as Bhumiswami in the aforesaid documents. It has also been stated that the petitioner contested for the post of Sarpanch in the month of January 2010 and he defeated one Kailash and 9 other persons and thereafter an election petition was preferred as

provided under the provisions of M.P. Panchayat Raj Evam Gram Swaram Adhiniyam, 1993. It has been further stated that the election petition was registered as 8/8/89/09-10 and the petitioner did submit a reply in the matter. The election petition was finally dismissed on 26/4/10. Petitioner has further stated that in the election petition a ground was raised by the election petitioner that the present petitioner who was a respondent in the election petition has encroached upon Government land and could not have been elected as Sarpanch and has also filed a false declaration while contesting the election for the post of Sarpanch. The election petition was dismissed by the Sub Divisional Officer. Petitioner has further stated that the same Sub Divisional Officer, has passed the impugned order as contained in Annexure P/1 dt. 29/4/10 by which it has been held that on account of some fraud committed by the Tehsildar, Revenue Inspector and Patwari, government land ie., Government Charnoi Bhumi Survey No. 113 was transferred in the name of the petitioner and the petitioner has thereafter sold the aforesaid land to M/s. Sanghi Autotak Pvt. Ltd., and to one Ms. Nalini. The contention of the petitioner is that the Sub Divisional Officer, has passed the impugned order without

furnishing copy of the complaint and the report of the Patwari in the matter. The petitioner has prayed for quashing of the aforesaid order. Learned counsel for the petitioner has argued before this court that the Sub Divisional Officer, is the prescribed authority under the provisions of MP Panchayat Raj Evam Gram Swaraj Adhiniyam and the prescribed authority is defined u/S. 2 sub-sec. (21). It has also been argued that the prescribed authority is empowered to discharge certain functions as notified by the State Government from time to time. He has drawn attention of this court towards notification dt. 12/1/98 and the notification dt. 15/12/94 and his contention is that the aforesaid notifications does not empower the prescribed authority to decide the question of encroachment. He has prayed for quashing of the impugned order dt. 29/4/10. A reply has been filed on behalf of the respondents / State and the contention of the respondents / State is that the petitioner in connivance with certain revenue officials got certain entry done in his favour and later on has also sold the Government land which was exclusively reserved for charnoi purposes. In the return it has also been stated that since 1970 – 1971 the land was in the name of the State Government and the Khasra Entries have also been

filed as Annexure R/1. It has also been stated that in the year 1987 – 88, in column No. 18 of the Khasra entry, the name of the petitioner was fraudulently entered by the then Patwari without there being any order of any authority in the matter and on the basis of the fraudulent entry, the petitioner has subsequently sold the land belonging to the State Government. The respondents have also stated that a detailed and exhaustive enquiry was held in the matter and a show cause notice was issued to the petitioner and the petitioner did submit a reply to the show cause notice. Respondents have further stated that after hearing the petitioner at length and after granting opportunity of hearing, order impugned has been passed. The respondents have prayed for dismissal of the writ petition.

Heard learned counsel for the parties at length and perused the record and the matter is being disposed of at the admission stage with the consent of the parties.

In the present case it is an admitted fact that the petitioner was declared elected on the post of Sarpanch and an Election Petition was preferred by respondent No.3 challenging the election of the petitioner. The aforesaid election petition was dismissed on 26/4/10. It is true that a ground was raised by the

election petitioner in the election petition that the petitioner has encroached the Government land and has also submitted a false affidavit that he has not encroached any Government land while contesting the election for the post of Sarpanch. However, the fact remains that the election petition was dismissed by the election tribunal. A show cause notice was issued to the petitioner as contained in Annexure P/5 on 2/3/10 based upon some complaint of respondent No.3 and the petitioner was granted time to file reply to the show cause notice. In the aforesaid show cause notice it was categorically mentioned that the name of the petitioner has been mutated illegally in respect of Survey No. 113/1 admeasuring area 0.518 hectares in spite of the fact that the land belongs to the State Government. The petitioner did submit a reply to the aforesaid show cause notice and participated in the proceedings before the Sub Divisional Officer. The petitioner did submit a reply and the reply of the petitioner reveals and he has stated that the land in question was transferred legally in the year 1962 – 63 in favour of the petitioner and mutation was also done in his favour. The petitioner in his reply before the Sub Divisional Officer has admitted that he has transferred the land in favour of

respondents No.4 and 5. In the reply which was filed before the Sub Divisional Officer, it is nowhere stated that the copy of the complaint was not served to the petitioner nor the petitioner at any point of time has demanded copy of the complaint or the report submitted by the revenue authorities in the matter. The petitioner for the first time is raising an issue in the present writ petition that a copy of complaint and report of Patwari was not furnished to him. The petitioner before this court while filing this present writ petition has also not demonstrated as to how his name was entered in the revenue records in respect of the government land. This Court has carefully gone through the order passed by the Sub Divisional Officer, which is based upon the revenue records and also based upon the report submitted by the revenue authorities in the matter. The order reveals that valuable government land was mutated in the name of the petitioner by the Patwari and a fraud has been placed by the then Patwari in connivance of the petitioner. Respondent State has enclosed extracts of revenue records and the same has not been denied by the petitioner by filing a rejoinder. The revenue records enclosed along with the writ petition establishes the ownership of the State Government in respect of the land in

question. Name of the State Government is reflected in the revenue records right from 1970 – 1971 and it is recorded as a Charnoi land. For the first time the name of the petitioner was mutated in the year 1987 – 88 at Column No.18. The aforesaid entry is on account of fraud practised by the then Patwari / Revenue Inspector / Tehsildar.

Sec. 32 of the MP Land Revenue Code reads as under :

32. Inherent power of Revenue Courts.- Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Revenue Court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Court.

This court is of the considered opinion that in the present case the Sub Divisional Officer, was well within his domain to exercise inherent powers as provided under the aforesaid Section as the same was necessary for the ends of justice and to prevent the abuse of the process of the court. Valuable prime government land was mutated in favour of the petitioner in connivance with the revenue officials and therefore this court is of the considered opinion that the Sub Divisional Officer, has also rightly directed registration of criminal case against the then Tehsildar, Revenue Inspector, Patwari as well as the present

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petitioner. This court does not find any reason to interfere with the order dt. 29/4/10.

Resultantly this writ petition fails and is accordingly dismissed.

(S. C. SHARMA)  
J U D G E

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