

HIGH COURT OF MADHYA PRADESH**Misc. Petition No. 916/2018**

(M/s Jagran Social Welfare Society Vs. Ratan Lalchandani)

Jabalpur, Dated :28.02.2019

Shri Ram Gulam Mahajan, learned counsel for the petitioner.

Shri Siddharth Gulatee, learned counsel for the respondent.

With the consent of learned counsel for the parties, heard finally.

This petition under Article 227 of the Constitution of India is directed against the order dated 27.12.2017 passed by Board of Revenue in Revision No. PBR/Revision/Bhopal/L.R./2017/6369, whereby the revision filed by the petitioner was dismissed.

Brief facts leading to the present petition are that on 21.09.2015, respondent filed an application under Section 250 of the M.P. Land Revenue Code against the petitioner/society stating that he is the owner of Survey No. 78/1-Ga, area 18 acres. He had earlier filed an application for demarcation in which notices were issued to all the neighbouring cultivators including the petitioner. Petitioner/Society, however, refused to receive the notice, whereas the

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Forest Department despite receipt of notice, did not appear for demarcation proceedings. Subsequently on 13.07.2015, the demarcation was conducted and panchnama was prepared in which it was found that the petitioner was in illegal possession of 6.75 acres of Khasra No.78/1-Ga situated at village Chandanpura, Bhopal towards east side and has raised a wall.

The petitioner/society on receiving the notice filed its written statement before the Tehsildar on 19.11.2015 contending interalia that it has no knowledge of the demarcation and panchnama. The alleged encroachment by illegally constructing a wall was also denied. It was further contended that the petitioner/society had filed a civil suit with regard to original Khasra No.78, appeal against the order passed by the Trial Court in said civil suit is pending before the High Court.

After completion of evidence of both the parties on 14.07.2017, the matter was finally heard and posted for orders on 22.08.2017. However, the Tehsildar on

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12.09.2017 realizing that none of the parties had asked for calling the original record nor for taking evidence of the concerned Revenue Inspector, directed for recording of evidence of Revenue Inspector invoking the provisions under Section 32 of the M.P. Land Revenue Code. Pursuant to which the evidence of Shri Rakesh Pippal, Revenue Inspector was recorded on 26.10.2017. Thereafter, the petitioner filed an application on 07.11.2017 to call the Process Server as witness, which was opposed by the respondent. The Tehsildar, however, after hearing the parties dismissed the application by order dated 28.11.2017.

The interim order dated 28.11.2017 by the Tehsildar was challenged by the petitioner before the Board of Revenue. The same was dismissed by the impugned order holding that after closing of evidence by both the parties, the petitioner cannot be allowed to reopen the evidence.

It is submitted by Shri R.G. Mahajan, learned counsel appearing for the petitioner that the Tehsildar in order to give benefit to respondent has called the Revenue Inspector,

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without there being any application in this regard even after both the parties have closed their evidence and final arguments were heard. It is argued that as the Revenue Inspector in his evidence has admitted that the notices were served through a Class IV employee, hence in rebuttal, it is necessary to give equal opportunity to the petitioner to call that Process Server for examination to elucidate the truth. However, the Board of Revenue without considering this aspect dismissed the revision in a mechanical way. Reliance has been placed on **(2010) 1 MPWN 94 Usha Sharma (Smt.) Vs. Maharaj Kishan Raina and another** and the case of **Bansilal Vs. Dakhibai 1988 (1) MPWN 116**, wherein the Division Bench of this Court has held that equal opportunity to lead evidence should be given to both the parties.

Countering the contention of the petitioner, Shri Siddharth Gulatee, learned counsel appearing for the respondent has submitted that the Revenue Inspector was called for evidence invoking the power under Section 32 of the M.P. Land Revenue Code and a fair and equal

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opportunity to cross-examine the witness was given equally to both the parties. It is urged that the respondent has filed an application before the Tehsildar with specific pleading that notice was refused by the petitioner and filed all the relevant documents alongwith the application itself. The petitioner/society has not denied the said fact in his written statement nor filed any application at that time to call the Process Server. The petitioner has closed his evidence on 14.07.2017 and the matter was fixed for final hearing. Under these circumstances, the petitioner cannot be permitted to reopen the evidence to fill up the lacuna.

Heard the learned counsel for the parties at length and perused the record.

The Board of Revenue has dismissed the revision on the reason that the evidence of the parties have been closed on 14.07.2017 and the case was fixed for final hearing on 25.10.2017. At this stage, reopening of evidence by the petitioner is not proper.

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It is settled position of law that the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India is limited to see that the inferior Court or the Tribunal functions within its limit of the authority provided to it. However, if from the order of the inferior Court/Tribunal, it appears that the Court has not exercised its authority properly, then of course the hands of Courts are not tied.

In the present case, the respondent in para No.2 of his application has stated that proper notices were issued to the petitioner/Society, who refused to receive it. As he did not appear on the date of notice. Panchnama was prepared and demarcation was done. All these documents were filed alongwith the application. From the written statement filed by the petitioner, it is clear that there is no specific denial of the said fact. The petitioner/society has only pleaded ignorance about the demarcation and the panchnama. It is also evident from the record that the petitioner closed his evidence on 14.07.2017, thereafter final arguments were also heard. The Tehsildar while going through the record

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realized that evidence of Revenue Inspector is necessary for the just decision of the case as none of the parties had called for record or for summoning Revenue Inspector as witness. The Tehsildar therefore, exercising the inherent power under Section 32 of the M.P. Land Revenue Code called Revenue Inspector Rakesh Pippal, as witness and both the parties were given equal opportunity to cross-examine the witness. It is thus clear that this is not a case where opportunity of leading evidence was given to one party and denied to the other. Hence, the case laws cited by the learned counsel for the petitioner are not applicable to the facts of the present case.

In the considered opinion of this Court, the Tehsildar as well as the Board of Revenue has not committed any illegality or perversity in rejecting the application of the petitioner. The petition being devoid of merits is accordingly dismissed.

(Nandita Dubey)
Judge

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