



NEUTRAL CITATION NO. 2026:MPHC-IND:27805

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SANDEEP N. BHATT

WRIT PETITION NO. 5204 of 2012

STATE OF M.P.

Versus

BHERA & OTHERS

Appearance:-

Shri Shrey Raj Saxena, Deputy Advocate General for the petitioner/State.

Shri Ajay Bagadia senior advocate with Shri Aman Khan Advocate for the respondents.

(Reserved on : 28.09.2026)

(Delivered on: 01.10.2026)

Whether Reportable or not? Yes/No

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ORDER

Heard counsel for the parties.

2. By way of this writ petition, the petitioner has prayed for following reliefs:-

(i) It is humbly prayed that the petition may kindly be allowed by issuing appropriate writ, order or direction setting aside the impugned orders Annexure P/1 dated 17.03.2011.

(ii) Be pleased to call for the record of the Board of Revenue in Revision Petition No. 748-PBR/2007.

(iii) To award cost of the petition.



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(iv) To grant any other relief as may be deemed proper by this Hon'ble Court, in the facts and circumstances of the case, to the petitioner.

3. Counsel for the petitioner has submitted that petitioner is the State Government who is the Bhumiswami on behalf of the Deity. The Collector is the Vyavashapak and holds the land on behalf of Deity as its Vyavasthapak. He has submitted that the respondents are the persons who are claiming title over the land in question on the basis of their possessory title over the land in question. He has submitted that the respondents alleged that they were holding land as Adhipati Krishak and after coming into force of the Madhya Pradesh Land Revenue Code, they have gained title over the land in question and furthermore they have been in possession of the land in question even before coming into force of the M.P. Land Revenue Code, therefore, they have now acquired Bhumiswami rights over the land in question. He has further submitted that the facts which leads to the adjudication of the controversy is that the land in question is situated in village Sarangi Patwari Halka Kramank 16, Tehsil Petlawad, District Jhabua. The land comprising of Khata No. 601, 602 and 603 are the lands, which are of the ownership and exclusive title of Shri Laxmi Narayan Temply, wherein collector has been recorded as Vyavasthapak of land in question. He has submitted that the dispute is with respect to the land of Khata No. 602 comprising of survey No. 878, 879 and 1134 admeasuring 5.79.22 and 0.74 hectares, totaling to an area of 6.78 hectares. He has submitted that these lands were since time immemorial before coming into force of MP Land Revenue Code and the Bandobast was held in name of Deity Shri Laxmi Naryan Temple as Bhumiswami in the revenue record. He has submitted that the land however, was in the possession of Chunnilal who was the father of Bhera and



Mangila. He has submitted that in year 1959-60, the land was held in name of Shri Laxmi Narayan Temple Pujari Omkarlal where Chunnilal was shown as Adhipati Krishak. This land was of Khata No. 225 which comprised of many survey Nos. totaling 36 bigha 7 biswa again in the year 1974-75 as per Adhikar Abhilekh the land was held in the name of Bhumiswami Shri Laxmi Narayan Mandir Pujari Omkarlal Vyavasthapak Collector, this land comprised of khata No. 258 and 259, totaling to 5.89 hectare. He has submitted that in the missal bandobast year 1992-93, the land was again shown to be held in the name of Bhumiswami Shri Laxmi Narayan Mandir Pujari Omkarlal Vyavasthapak Collector. He has further submitted that Khata No. 462 and the survey number shown in this khata number were 877, 879, 1134 and 1646 area of 6.78 hectares, thereafter, again in year 2006-07, the khasra B-I was made there also the land was held in the name of Bhumiswami Shri Laxmi Narayan Mandir Pujari Omkarlal Vyavasthapak Collector therefore, it is suffice to say that straight from 1959 and 1960 till the date land is held by the Deity Shri Laxmi Narayan Mandir as Bhumiswami with different Pujaris and the name of Chunnilal alongwith other persons is mentioned in the capacity of a Krishak which on enquiry was found to be wrongly mentioned and same was deleted from the revenue records by order dated 15.7.2008. He has submitted that respondents were not holding the possession on the basis of any title of any nature whatsoever. He has submitted that the respondents were holding possession against a disabled person i.e. Deity, therefore, the possession against Deity always remained a possession without title and could not by any way would have been perfected into Bhumiswami rights even after coming into force of MP Land Revenue Code only on the basis of possession for a long duration of time. He has submitted that cardinal principle of law that long possession



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cannot be perfected into title in case of land of Deity, which is disabled person as per as the provisions of Section 168(2) of MP Land Revenue Code. He has submitted that respondents preferred a representation before the Member of Legislative Assembly claiming that their names were mutated in the revenue record, but however, without giving them any opportunity of hearing the name of Shri Laxmi Narayan Mandir was mutated in the land records, therefore, their names may be again mutated in the land record. He has submitted that a complaint was made by residents of the area claiming that the respondents were encroachers on the land of Deity and their possession being without title was unlawful, therefore, their encroachment may be removed from land in question. On the basis of these two complaints, the case was referred to the Revenue Authority, Naib Tehsildar, Tehsil Sarangi, District Jhabua, on the basis of these two complaints, the case was registered as Revenue Case No. 8/3-तीन(अ) 2002-03. Thereafter an enquiry was conducted and on the basis of an enquiry report dated 31.12.2001, it was found that the land bearing survey No. (new) 877, 879, 1134 and 1646 was registered in name of Bhumiswami Shri Laxmi Narayan Mandir Pujari Omkarlal Vyavasthapak Collector and the Krishak was Bhera and Mangilal son of Shri Chunnilal and Dhannibai widow of Chunnilal Kulmi. It was further found that this land was of the temple and the respondents were in possession since 50-60 years on the land of Deity. It was further found that this possession was without any title, therefore, it was necessary that they may be served a notice with a notice under Section 248 of MP Land Revenue Code for eviction and removing encroachment. He has further submitted that it was further found in the enquiry that name of respondents shown has been wrongly mentioned as Adhipati Krishak in the revenue records and it was opined that the proceedings under Section 115 of



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MP Land Revenue Code may be initiated for amendments/deletion of their names from the revenue records of the land in question. Therefore, the proceedings under Section 115 of MP Land Revenue Code suo moto were initiated for deleting name of respondents as Adhipati Krishak from land in question and thereafter by order dated 7.4.2003 the Naib Tehsildar found that land is belonging to the temple and respondent's name is Adhipati Krishak was wrongly mentioned in the entries of the revenue records which was necessary to be amended. He has submitted that the respondents, however, submitted Khata entries of year 1916-17 and 1932 and tried to establish that these lands were held by the respondents as Bhumiswami, whereas they did not produce any record to show that the lands mentioned in these revenue documents were infact the land which was in dispute and was the land on which the respondents were claiming their title. He has submitted that on the basis of all these findings, Tehsildar came to the conclusion that the respondent's name was wrongly mutated as Adhipati Krishak in the revenue records and therefore, held that their names should be deleted as per provisions of Section 115 of MP Land Revenue Code. He has submitted that the respondents preferred an appeal before Sub Divisional Officer Petlawad, District Jhabua assailing the order of Tehsildar. The Sub Divisional Officer has remanded back the matter to the Naib Tehsildar with a direction to decide the matter on merits by giving an opportunity of hearing to the respondents by order dated 18.6.2003. The Naib Tehsildar on remand heard the matter and by order dated 15.7.2003 passed a detailed order and adjudicated the right of respondents vis-a-vis land in question. The Tehsildar held that the mutation of the respondent's name in the revenue record of the land in question was as an Adhpati Krishak which was not in consonance with law and was done wrongly which needed to be rectified, and ordered



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for deleting name of respondents from the revenue record pertaining to the land in question. Thereafter the respondents preferred an appeal before the Sub Divisional Officer (Revenue) Petlawad. In this appeal the respondents for the very first time raised the plea that the land was of their ancestors, which was situated adjacent to the government land and during Bandobast the land of their ownership also came to be recorded as government land. This plea was raised without there being any documentary evidence. He has submitted that the Sub Divisional Officer however, passed order dated 9.1.2004 allowing the appeal of respondents and ordered for mutation of the respondent's name in khata no. 509 admeasuring area of 6.78 hectares. He further submits that Lunibai widow of Chunnilal also preferred a revision before the Additional Collector against the order dated 15.7.2003 passed by Naib Tehsildar. The Additional Collector by order dated 30.12.2003 allowed the revision and set aside the order dated 15.7.2003 and remanded the matter back to the Revenue Authority to decide the case afresh by registering it under the provisions of Section 57(2) of MP Land Revenue Code. He has submitted that the case was again reopened in suo moto revision by Commissioner wherein the Commissioner by his letter dated 23.3.2005 directed the Additional Commissioner to enquire into the matter thereafter the Additional Commissioner on 4.5.2005 submitted his report and on the basis of this suo moto revision provisions were initiated. The Commissioner by order dated 7.4.2007 passed a detailed order in the matter wherein the Commissioner held that the land in question always remained in name of Deity Shri Laxmi Naryan Mandir as the collector being the Vyavasthapak. The Commissioner further held that the respondent only submitted khata B-1 entries of the year 1916-17. He has further submitted that the Commissioner has also found that the mutation as Adhipati Krishak do not found in



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consonance with the due process of law and also does not give any right or title in favour of respondent. He has submitted that the Commissioner also found that although the order of deleting name of respondent from revenue record of the land in question under Section 150 of Code was not competent but further Commissioner opined that such a wrong mention of the provisions do not in itself render the order as void or ineffective as the same is protected by the provisions of Section 42 of the Code. Thereafter the respondents have also preferred the civil suit No. 27-A/2008. The said suit was withdrawn on 21.9.2011. The Board of Revenue by impugned order dated 17.3.2011 allowed the revision of respondents by which is ex-facie bad in law. It is further contended by counsel for petitioner that no prayer was made in revision to declare them as bhumiswami by respondents. He has further contended that the revenue court cannot declare title of the property and he has further contended that even if for the sake of argument if it is presumed that suo moto revision was irregular, then also the Board of Revenue at the best could have quashed the order and upheld order of Additional Collector and SDO in their favour but Board of Revenue has apparently exceeded jurisdiction. In support of his submission, he has placed reliance on Coordinate Bench judgment dated 20th June 2025 passed in SA No. 131 of 2006 in the matter of **Babulal and others Vs. Mandir Shitla Mata** by referring to paras 5 and 6 of that judgment. He has placed reliance on judgment dated 16.4.2007 passed by Hon'ble Apex court in the matter of **Suraj Bhan Vs. Financial Commissioner in Appeal (Civil) No. 1971 of 2007** and referred to observation regarding revenue records does not confer title and also the judgment passed by Coordinate Bench of this Hon'ble court in case of **Shiv Kumar Vaishya Vs. Shubkharan Vaishya** dated 11.5.2026 passed in WP no. 504/2013 by referring to para 13 of that order. He has



submitted that the writ petition is required to be allowed by interfering with the order passed by Revenue Commissioner.

4. Per contra, counsel for respondents has opposed the prayer by submitting that the land in question currently khata no. 602, survey Nos. 877, 879, 1134 and 1646 total admeasuring 6.78 hectares (historically corresponding to 6.75 acres of old 16 survey numbers) was situated at village Sarangi. He has submitted that as per the revenue record of year 1920, two separate accounts existed in the village Khata No. 105/1 which was recorded as Muafi Devsthan under the name of Mandir Shri Bhagwanji under the management of priest Onkarlal Brahmin whereas khata No. 105/2 was distinct and independently recorded in name of Chunnilal son of Bhagga Kunbi admittedly, the predecessor in title of the respondents. He has submitted that in year 1932 the land stood recorded in the name of respondent Chunnilalji. After his death, his legal heirs Bhera, Mangilal and Dhannibai were recorded as cultivators (krishak/adhipati krishak) in consecutive revenue settlements i.e. in 1959-60; 1974-75 and 1992-93. He has further submitted that the Naib Tehsildar Petlawad in the year 1999-2000 registered revenue case under Section 115 of Code and by order dated 7.4.2003 has directed deletion of respondent's name from revenue records on the ground that the temple was the recorded Bhumiswami. He has submitted that the appellate Court ie Sub Divisional Officer vide order dated 18.6.2003 has set aside the order dated 7.4.2003 passed by Tehsildar and remanded the matter to the Naib Tehsildar for fresh adjudication. He has submitted that on remand, the Naib Tehsildar passed order dated 15.7.2003 again directing deletion of name of respondents from the revenue records under Section 115 of the MPLRC. He has submitted that against the order dated 15.7.2003, the



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co-heirs preferred revision under Section 50 of MP Land Revenue Code before the Collector Jhabua and by order dated 30.12.2003, the Additional Collector allowed the revision and has set aside the order dated 15.7.2003 passed by Naib Tehsildar and held that entries prepared under Section 108 of MP Land Revenue Code cannot be modified under Section 115 by Naib Tehsildar and remanded the matter back to the SDO for enquiry under Section 57(2) of the MP Land Revenue Code. He has submitted that the SDO by order dated 9.1.2004 passed in revenue appeal No. 2/Appeal/2003-04 preferred by Bhera and Mangilal against the same order dated 15.7.2003 has allowed the appeal and has set aside the order of Naib Tehsildar and directed restoration and maintenance of respondent's name in the revenue records. He has submitted that these orders dated 30.12.2003 and 9.1.2004 were never challenged by State in appeal or revision and consequently attained finality. He has submitted that pursuant to an administrative complaint routed to Chief Secretary, the Divisional Commissioner directed the Additional Commissioner Indore Division to conduct an inquiry culminating in suo moto revisional proceedings under Section 50 of MP Land Revenue Code. The Additional Commissioner by order dated 7.4.2007 has held that subject land to be Bhumiswami property of public temple Deity consequently, has set aside the earlier appellate order of the SDO dated 9.1.2004 and the revisional order of the Additional Collector dated 30.12.2003, the Additional Commissioner upheld the order dated 15.7.2003 passed by Naib Tehsildar under Section 42 of the MP Land Revenue Code and confirmed the deletion of the respondent's name from the revenue record. The respondents have challenged the order dated 7.4.2007 before the Board of Revenue Gwalior by filing revision which was allowed by the Board of Revenue by order dated 17.3.2011 and has quashed the order dated



7.4.2007 passed by Additional Commissioner. By contradicting the grounds of the state that the land in question has consistently been recorded in the revenue records since 1959-60 under the ownership of Shri Laxmi Narayan Mandir with the Collector Jhabua as Manager, pursuant to that the entries depicting the predecessor in title of respondents as Adhipati Krishak or Asami were introduced without an order from a competent revenue officer and are null, void and without jurisdiction.

Against the grounds of the respondents for contesting this petition, counsel has submitted that a bare perusal of the impugned order demonstrates that the learned Board of Revenue had the occasion and benefit of calling for, examining and minutely scrutinizing the original revenue records in their entirety. He has further submitted that it was only after a comprehensive evaluation of the evidentiary record and an objective assessment of its probative credibility that the learned board of Revenue rendered the impugned decision in lawful and sound exercise of its revisional jurisdiction. He has further submitted that the dispute pertains to khata No. 602 prior to 1959 the land formed part of 16 old survey number which were entered in khata no. 105/2 in the year 1920 in the sole name of Chunnilalji, distinct from temple's khata no. 105/1. The lands were never dedicated to nor owned by Laxmi Narayan Temple and the present respondent is holding preexisting independent title. He has submitted that the appellate order of the SDO dated 9.1.2004 and the revisional order of the Additional Collector dated 30.12.2003 set aside the Naib Tehsildar's orders and attained finality as state never preferred any timely appeal or revision within prescribed period of limitation against those orders. He has further submitted that there is statutory bar on belated suo moto revision. The suo



moto revisional power under Section 50 of the MP Land Revenue Code was initiated by the Additional Commissioner on 18.5.2005 approximately one and half years after passing of the underlying orders violating the settled law that suo moto revisional powers must be exercised within a reasonable period. He has submitted that the suo moto proceedings were void ab initio because they were not initiated on an independent formation of opinion, but under the administrative dictation of the Divisional Commissioner pursuant to an external political complaint. He has submitted that the inapplicability of Section 115 to settlement records as an entry incorporated in the record of rights (Adhikar Abhilekh) prepared under Section 108 of the MP Land Revenue Code during settlement cannot be summarily deleted by a Naib Tehsildar under Section 115. In support of his contention, learned counsel has drawn attention of this Court towards Section 54(vii) of Land Revenue and Tenancy Act which was existing at that point of time regarding Pakka tenant. In support of his submission, he has placed reliance upon similar nature case in the matter of Manak Chand Vs State of MP whereby the Board of Revenue has held that in a suo moto revision appellable order not appealed against cannot be entertained under suo moto revisional powers and it cannot be entertained on the direction of State, it is against the principle and spirit of law. Lastly, he has submitted that the jurisdiction under Article 226 & 227 of Constitution is very limited. For that purpose, he has relied on judgment passed by Hon'ble Apex court in case of **Shalini Shyam Shetty Vs. Rajendra Shankar Patil reported in (2010) 8 SCC 329.**

5. I have considered the rival submissions made at the bar. I have also considered the fact that there is no dispute that suo moto proceeding is initiated at the behest of some complaint received by Commissioner who has



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directed the Additional Commissioner to conduct the enquiry who has conducted enquiry and thereafter directed to delete name of respondents herein which was challenged before the Board of Revenue. It also transpires that the earlier order passed by the learned Collector as well as SDO in appeal as well as in revision in year 2003-04 were never challenged by way of preferring any appeal and straight way by suo moto revision in year 2007 those orders were indirectly reversed by the authority. For the purpose of consideration of the case, it is relevant to refer to Section 54(vii) Pakka Tenant as:

54(vii) Pakka tenant- means a tenant who has been or whose predecessor in interest had been lawfully recorded in respect of his holding as a “Ryot Pattedar”, ”Mamuli Maurusi”, “Gair Maurusi” and “Pukhta Maurusi” when this Act comes into force or who may in future be duly recognised as such by a competent authority.

6. It is also relevant to refer to the judgment which is cited by counsel for petitioner:

(I) In the matter of **Babulal (supra)**, the Coordinate Bench has held as under:

5. The Trial Court, after framing issues and recording evidence, partially decreed the suit and it was held that the plaintiffs are not the owner of the property in dispute, however, it was found that they are in possession. However, it was declared that the plaintiffs are the Adhipati Krishak and accordingly the defendants were directed to hand over the vacant possession of the property back to the plaintiffs, otherwise, the plaintiffs would be entitled to recover the possession after getting the decree executed. It was further observed that the aforesaid decree would be applicable to the agricultural land only and would not be applicable to Sheetla Mata Temple or other shops and defendant No.10 was directed to make the re-entry in the revenue record which was prevailing prior to Samvat 2033. It was further held that since the plaintiffs are the Adhipati Krishak in the capacity of Pujari, therefore, any order against them can be passed only after following due procedure of law.

6. Being aggrieved by the judgment and decree passed by the Trial Court, plaintiffs preferred an appeal which has been dismissed by judgment and decree dated 12.12.2005 and it has been held that plaintiffs have failed to prove their ownership



over the property in dispute.

(ii) In the matter of **Suraj Bhan (supra)** the Hon'ble Court has held as under:

There is an additional reason as to why we need not interfere with that order under Article 136 of the Constitution. It is well settled that an entry in Revenue Records does not confer title on a person whose name appears in Record of Rights. It is settled law that entries in the Revenue Records or Jamabandi have only 'fiscal purpose' i.e. payment of land-revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent Civil Court (vide Jattu Ram v. Hakam Singh and Ors., AIR 1994 SC 1653). As already noted earlier, Civil Proceedings in regard to genuineness of Will are pending with High Court of Delhi. In the circumstances, we see no reason to interfere with the order passed by the High Court in the writ petition.

(iii) In the matter of **Shiv Kumar Vaishya (supra)**, it has been referred as under:-

13. From reading of aforesaid orders passed by the Court, it is discernible that in first case, it is held that when disputed question of facts are to be adjudicated then matter should be referred to the Civil Court and in present case, it is found that joint holding was admitted by the parties, therefore, the Court had opined that one of the holder was having permission for all co-tenure holders.

7. It is also relevant to refer to the judgment of Board of Revenue in case of **Manak Chand Vs. State of MP reported in 2002 RN 156** though it is not having any binding effect in this case but the observation made by the Board of Revenue in para 2 to 6 are relevant to note here:

"2. मैंने आवेदक के विद्वान अभिभाषक की बहस सुनी। शासन की ओर से लिखित बहस की गई है। आवेदक के विद्वान अभिभाषक ने अपनी बहस निगरानी आधारों पर केंद्रित करते हुए यह तर्क दिए कि कई वर्षों की अवधि के उपरांत स्वमेव निगरानी में प्रकरण नहीं लिया जा सकता और इस संबंध में उन्होंने 1990 रा नि 407 (उच्च न्यायालय), 1990 रा नि 77, 1991 रा नि 42 एवं 1998 म.प्र. वीक्ली नोट्स (भाग-1) नोट 26 (उच्चतम न्या.) का उल्लेख किया।

3. उनका यह भी तर्क है कि तथ्यात्मक विषय पर पुनरीक्षण पोषणीय नहीं है इस महत्वपूर्ण स्थिति को आयुक्त ने दुरुलक्षित किया है, विद्वान आयुक्त की यह मान्यता कि बिना पर्याप्त साक्ष्य के सक्षम अधिकारी ने निर्णय दिया है, तथ्यों से परे हैं।

उनका यह भी तर्क है कि मई 1958 में पंजीकृत विभाजन के दौरान



यह भूमि धारक को प्राप्त हुई थी जिससे स्पष्ट है कि वह पैतृक भूमि है और उसमें उनकी माँ का अधिकार है। इस संबंध में उन्होंने 1978 रा नि 212, 84 रा नि 77, 83 रा नि 161 और 77 रा नि 396 का उद्धरण प्रस्तुत किया। उनका यह भी तर्क है कि दीवानी न्यायालय के निर्णय के फलस्वरूप सक्षम अधिकारी ने 49.11 एकड़ भूमि मोतीलाल डोडा की सही रूप से मान्य की है क्योंकि सीलिंग अधिनियम की धारा 11 में स्पष्ट प्रावधान है कि व्यवहार न्यायालय का निर्णय सक्षम प्राधिकारी पर बंधनकारी है। उनका यह भी तर्क है कि सक्षम अधिकारी द्वारा अंतरण के संबंध में पारित आदेश के विरुद्ध आयुक्त को विचार करने का कोई अधिकार नहीं है और केवल राजस्व मंडल ही इस संबंध में विचार कर सकता है। अधिनियम की धारा 42 के आदेश के विरुद्ध संहिता की धारा 50 के अधीन पुनरीक्षण होगा इस संबंध में उन्होंने 72 रा नि 502 (उच्च न्यायालय मूर्णपीठ) तथा 69 रा नि 629 (उच्च न्यायालय) का उल्लेख किया। शासन द्वारा अपील न करने से स्वमेव पुनरीक्षण शक्ति का उपयोग वर्जित है यह तर्क देते हुए उन्होंने 1988 रा नि 235 का उल्लेख किया।

उनका यह भी तर्क है कि तालाब में कोई काशत नहीं होती थी इसलिए उसे कम करने के आदेश देने में सक्षम अधिकारी ने कोई गलती नहीं की है। काशत के संबंध में नियत दिनांक 7.3.1974 है और इसका प्रमाणभार शासन पर है कि वह सिद्ध करे कि 7.3.1974 को तालाब में खेती होती थी जो शासन के द्वारा सिद्ध नहीं किया गया है। और किसी भी पक्ष की कमी थे पूरा करने के लिए प्रकरण को प्रत्यावर्तित नहीं किया जा सकता। प्रकरण में जो निर्णय होते हैं यह अभिलेख पर आधारित होते हैं। प्रकरण में उपलब्ध साक्ष्य से यह स्पष्ट है कि तालाब की भूमि में काशत नहीं होती थी और किसी भी स्थिति में किसी भी पक्ष को अपनी कमी को पूरा करने का अवसर देना न्याय की समानता के महत्वपूर्ण सिद्धांतों के विरुद्ध है।

उनका यह भी तर्क है कि बीड के लिए छोड़ी गई भूमि पर काशत नहीं होती और वह चरनोई की भूमि होती है। चरनोई की भूमि और मकान की भूमि को कृषि भूमि नहीं माना जा सकता। उनका यह भी तर्क है कि यदि बीड तथा तालाब की भूमि बाद में काट कर लिखी गई है तो उसके संबंध में अधिनियम की धारा 15 के अधीन अलग से प्रावधान हैं और उसके अंतर्गत नवीन प्रकरण प्रारंभ किया जा सकता है परंतु पुराने प्रकरण को नहीं खोला जा सकता तथा शासन द्वारा सक्षम अधिकारी के आदेश के विरुद्ध अपील न करने के कारण अपील योग्य आदेश को स्वमेव पुनरीक्षण में नहीं लिया जा सकता। इस संबंध में उन्होंने 79 रा नि 561, 17 पूर्णपीठ, 80 रा नि 130 एवं 72 रा नि 476 (उच्च न्यायालय) का संदर्भ दिया।

उन्होंने यह तर्क भी दिया कि स्वमेव पुनरीक्षण न्यायालय द्वारा स्वप्रेरणा जाँच के संबंध में होती है ना कि किसी वरिष्ठ न्यायालय अथवा किसी चरिष्ठ अधिकारी द्वारा दिए गए आदेश पर और इस प्रकरण में चूंकि शासन के निर्देश पर प्रकरण स्वप्रेरणा से पुनरीक्षण में लिया गया है जो विधि की दृष्टि से ना तो उचित है और ना ही न्यायिक इस प्रकार उनके द्वारा निगरानी निरस्त किए जाने का निवेदन किया गया है।



4. शासन की ओर से प्रस्तुत लिखित बहस में मुख्यतः यह तर्क दिए गए हैं कि भूमि पैतृक थी इसका कोई ठोस आधार नहीं है। इसके अतिरिक्त उनका यह भी कहना है कि बीड व घास की भूमि विशेष रूप से कृषि के उद्देश्यों की पूर्ति के लिए ही होती है इस कारण उसे कृषि योग्य नहीं माना जाएगा क्योंकि यह भूमि पशुओं के रख-रखाव पूर्व खलिहान आदि के निर्माण में उपयोग में लाई जाती है। उन्होंने सक्षम अधिकारी द्वारा दी गई मकान एवं तालाब की छूट की भूमि को भी सही नहीं बताया। उनका यह भी तर्क है कि बगैर किसी दस्तवेजी साक्ष्य की मौजूदगी तथा पर्याप्त साक्ष्य के अभाव में जो आदेश है वह स्थिर रखे जाने योग्य नहीं है।

5. मैंने उभयपक्षों द्वारा प्रस्तुत तर्क बिंदुओं पर मनन किया एवं रिकार्ड का अवलोकन किया। रिकार्ड के अवलोकन से स्पष्ट होता है कि यह प्रकरण शासन के निर्देश पर स्वमेव निगरानी में लिया गया है और शासन के पत्र की प्रति आयुक्त के अभिलेख के पृष्ठ 1 पर लगी हुई है। स्वमेव पुनरीक्षण, न्यायालय स्वयं या प्राप्त जानकारी के आधार पर प्रारंभ कर सकता है किंतु किसी के निर्देश पर स्वमेव कार्यवाही नहीं की जा सकती और यह विधि की भावना के विपरीत है। इस प्रकरण में दिनांक 20.5.1958 का रजिस्टर्ड बटवारा इस बात का प्रमाण है कि यह पैतृक संपत्ति है और इस कारण आवेदक की माँ को 30 एकड़ भूमि की पात्रता है और उनको जो 30 एकड़ भूमि दी गई है वह विधि की दृष्टि से उचित है।

6. जहाँ तक व्यवहार न्यायालय के जयपत्र तथा रजिस्टर्ड विक्रयपत्र सीलिंग अधिनियम के नियत दिनांक के पूर्व के होने से उनकी जाँच का प्रश्न है, उनके संबंध में जाँच का अधिकार ना तो सक्षम न्यायालय को है और ना ही किसी भी अन्य न्यायालय को और इस कारण उक्त भूमि सीलिंग अधिनियम के प्रावधानों से परे होकर गणना के योग्य नहीं है इस कारण उसके संबंध में कोई हस्तक्षेप करने का कोई अधिकार आयुक्त को नहीं है।"

8. It is also relevant to refer to the judgment for the scope of jurisdiction under Article 226 & 227 of Constitution of India. In the matter of **Shalini Shyam Shetty (supra)**, the Hon'ble Apex court in paras 37 to 43, 48 & 49 has held as under:

37 The Constitution Bench in Nagendra Nath (supra), unanimously speaking through Justice B.P. Sinha, (as his Lordship then was) pointed out that High Court's power of interference under Article 227 is not greater than its power under Article 226 and the power of interference under Article 227 of the Constitution is limited to ensure that the tribunals function within the limits of its authority.

(emphasis supplied)

38. The subsequent Constitution Bench decision of this Court on Article 227 of the Constitution, rendered in the case of State of Gujarat etc. vs. Vakhatsinghji Vajesinghji Vaghela (dead) his legal representatives and others reported in AIR 1968 SC 1481 also expressed identical views. Justice Bachawat speaking for the



unanimous Constitution Bench opined that the power under Article 227 cannot be fettered by State Legislature but this supervisory jurisdiction is meant to keep the subordinate tribunal within the limits of their authority and to ensure that they obey law.

39. So the same expression namely to keep the Courts and Tribunals subordinate to the High Court 'within the bounds of their authority' used in Manmatha Nath Biswas (supra), to indicate the ambit of High Court's power of superintendence has been repeated over again and again by this Court in its Constitution Bench decisions.

40. Same principles have been followed by this Court in the case of Mani Nariman Daruwala @ Bharucha (deceased) through Lrs. & others vs. Phiroz N. Bhatena and others etc. reported in (1991) 3 SCC 141, wherein it has been held that in exercise of its jurisdiction under Article 227, the High Court can set aside or reverse finding of an inferior Court or tribunal only in a case where there is no evidence or where no reasonable person could possibly have come to the conclusion which the Court or tribunal has come to. This Court made it clear that except to this 'limited extent' the High Court has no jurisdiction to interfere with the findings of fact (see para 18, page 149-150). In coming to the above finding, this Court relied on its previous decision rendered in the case of Chandavarkar Sita Ratna Rao vs. Ashalata S. Guram reported in (1986) 4 SCC 447. The decision in Chandavarkar (supra) is based on the principle of the Constitution Bench judgments in Waryam Singh (supra) and Nagendra Nath (supra) discussed above.

41. To the same effect is the judgment rendered in the case of Laxmikant Revchand Bhojwani and another vs. Pratapsingh Mohansingh Pardeshi reported in (1995) 6 SCC 576. In paragraph 9, page 579 of the report, this Court clearly reminded the High Court that under Article 227 that it cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. Its exercise must be restricted to grave dereliction of duty and flagrant abuse of fundamental principle of law and justice (see page 579-580 of the report).

42. Same views have been taken by this Court in respect of the ambit of High Court's power under Article 227 in the case of Sarpanch, Lonand Grampanchayat vs. Ramgiri Gosavi and another, reported in AIR 1968 SC 222, (see para 5 page 222-234 of the report) and the decision of this Court in Jijabai Vithalrao Gajre vs. Pathankhan and others reported in (1970) 2 SCC 717. The Constitution Bench ratio in Waryam Singh (supra) about the scope of Article 227 was again followed in Ahmedabad Manufacturing & Calico Ptg. Co. Ltd. vs. Ram Tahel Ramnand and others reported in (1972) 1 SCC 898.

43. In a rather recent decision of the Supreme Court in case of Surya Dev Rai vs. Ram Chander Rai and others, reported in (2003) 6 SCC 675, a two judge Bench of this Court discussed the principles of interference by High Court under Article 227. Of course in Surya Dev Rai (supra) this Court held that a writ of Certiorari is maintainable against the order of a civil Court, subordinate to the High Court (para 19, page 668 of the report). The correctness of that ratio was doubted by another Division Bench of this Court in Radhey Shyam and another vs. Chhabhi Nath and



others [(2009) 5 SCC 616] and a request to the Hon'ble Chief Justice for a reference to a larger Bench is pending. But in so far as the formulation of the principles on the scope of interference by the High Court under Article 227 is concerned, there is no divergence of views.

48. The jurisdiction under Article 226 normally is exercised where a party is affected but power under Article 227 can be exercised by the High Court suo motu as a custodian of justice. In fact, the power under Article 226 is exercised in favour of persons or citizens for vindication of their fundamental rights or other statutory rights. Jurisdiction under Article 227 is exercised by the High Court for vindication of its position as the highest judicial authority in the State. In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed ex-debito justitia or as a matter of right. But in cases where the High Court exercises its jurisdiction under Article 227, such exercise is entirely discretionary and no person can claim it as a matter of right. From an order of a Single Judge passed under Article 226, a Letters Patent Appeal or an intra Court Appeal is maintainable. But no such appeal is maintainable from an order passed by a Single Judge of a High Court in exercise of power under Article 227. In almost all High Courts, rules have been framed for regulating the exercise of jurisdiction under Article 226. No such rule appears to have been framed for exercise of High Court's power under Article 227 possibly to keep such exercise entirely in the domain of the discretion of High Court.

49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh (supra) and the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.



(e) According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar vs. Union of India & others, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of



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public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.

9. It is also relevant to refer to relevant Sections of Madhya Pradesh Land Revenue Code. Sections 115, 50, 114, 32, 44, and 248 are reproduced as under:

115. [Correction of wrong or incorrect entry in land record. [Substituted by M.P. Act No. 23 of 2018]

(1)A Sub-Divisional Officer may, on his own motion or on application of an aggrieved person, after making such enquiry as he deems fit, correct any wrong or incorrect entry including an unauthorised entry in the land records prepared under section 114 other than Bhoo-Adhikar Pustika and record of rights, and such corrections shall be authenticated by him :Provided that no action shall be initiated for correction of any entry pertaining to a period prior to five years without the sanction in writing of the Collector.

(2)No order shall be passed under sub-section (1) without-

- (a)getting a written report from the Tahsildar concerned; and
- (b)giving an opportunity of hearing to all parties.interested :

Provided that where interest of Government is involved, the Sub-Divisional Officer shall submit the case to the Collector.

(3)On receipt of a case under sub-section (2), the Collector shall make such enquiry and pass such order as he deems fit.]

50. Revision. [Substituted by M.P. Act No. 23 of 2018]

(1)Subject to the provisions of sub-sections (2), (3), (4) and (5), -

(a)the Board may, at any time on its own motion or on an application made by any party, call for the record of any case which has been decided or proceedings in which an order has been passed under this Code by the Commissioner;

(b)the Commissioner may, at any time on his own motion or on an application made by any party, call for the record of any case which has been decided or proceedings in which an order has been passed under this Code by the Collector or the District Survey Officer;

(c)the Collector or the District Survey Officer may, at any time on his own motion or on an application of any party, call for the record of any case which has been decided or proceedings in which an order has been passed under this Code by a Revenue Officer subordinate to him;



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and if it appears that the subordinate Revenue Officer -

(1)has exercised a jurisdiction not vested in him by this Code; or
(ii)has failed to exercise a jurisdiction so vested; or
(iii)has acted in the exercise of his jurisdiction illegally or with material irregularity,
the Board or the Commissioner or the Collector or the District Survey Officer may
make such order in the case as it or he thinks fit.

(2)No application for revision shall be entertained -

(a)against an order appealable under this Code;
(b)against any order passed in second appeal under this Code;
(c)against an order passed in revision;
(d)against an order of the Commissioner under section 210;
(e)unless presented within forty-five days from the date of order or its
communication to the party, whichever is later :

Provided that where an order, against which an application for revision is being
preferred, was made before the coming into force of the Madhya Pradesh Land
Revenue Code (Amendment) Act, 2018 the period of limitation for presenting the
application for revision shall be as provided in the Code prior to the said
Amendment Act.

(3)The Board or the Commissioner or Collector or the District Survey Officer shall
not, under this section, vary or reverse any order made or any order deciding an
issue, in the course of proceeding, except where -

(a)the order, if it had been made in favour of the party applying for revision, would
have finally disposed of the proceedings; or

(b)the order, if allowed to stand, would occasion a failure of justice or cause
irreparable injury to the party against whom it was made.

(4)A revision shall not operate as a stay of proceeding before the Revenue Officer,
except where such proceeding is stayed by the Board or the Commissioner or the
Collector or the District Survey Officer, as the case may be.

(5)No order shall be varied or reversed in revision unless notice has been served on
the parties interested and opportunity given to them of being heard.Explanation. -
For the purpose of this section all Revenue Officers shall be deemed to be
subordinate to the Board.]

114. [Land records. [Substituted by M.P. Act No. 23 of 2018]

(1)Following land records shall be prepared for every village, namely :-

(a)village map, abadi map and block map under section 107;
(b)record of rights under section 108;
(c)village khasra or village field book in such Form as may be prescribed;



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- (d) Bhoo-Adhikar Pustika under section 114-A;
 - (e)(i) details of all unoccupied land under section 233;
 - (ii) Nistar Patrak under section 234;
 - (iii) Wajib-ul-arz, if any, under section 242;
 - (f) details of diverted land; and
 - (g) any other record as may be prescribed.
- (2) Following land records shall be prepared for each sector in every urban area, namely :
- (a) sector map under section 107;
 - (b) record of rights under section 108;
 - (c) sector khasra or sector field book in such Form as may be prescribed;
 - (d) Bhoo-Adhikar Pustika under section 114-A;
 - (e)(i) details of all unoccupied land under section 233;
 - (ii) land reserved for public purposes under section 233-A;
 - (f) details of diverted land; and
 - (g) any other record as may be prescribed.

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.

44. Appeal and appellate authorities. [Substituted by M.P. Act No. 23 of 2018]

(1) Save where it has been otherwise provided, an appeal shall lie from every original order of a Revenue Officer competent to pass such order under this Code or the rules made thereunder-

- (a) if such order is passed by any Revenue Officer subordinate to the Sub-Divisional Officer - to the Sub-Divisional Officer;
- (b) if such order is passed by any Revenue Officer subordinate to the Deputy Survey Officer - to the Deputy Survey Officer;
- (c) if such order is passed by the Sub-Divisional Officer - to the Collector;
- (d) if such order is passed by the Deputy Survey Officer - to the District Survey Officer;
- (e) if such order is passed by any Assistant Collector, Joint Collector or Deputy Collector to whom the powers have been conferred under-section 24-to the Collector;
- (f) if such order is passed by any Revenue Officer in respect of whom a direction has been issued under sub-section (3) of section 12 - to such Revenue Officer as the



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State Government may direct;

(g)if such order is passed by a Collector or District Survey Officer -to the Commissioner;

(h)if such order is passed by the Commissioner - to the Board.

(2)Save as otherwise provided, a second appeal shall lie against every order passed in first appeal under this Code or the rules made thereunder -

(a)by the Sub-Divisional Officer or the Deputy Survey Officer or the Collector or the District Survey Officer - to the Commissioner;

(b)by the Commissioner - to the Board.

(3)The second appeal shall lie only -

(a)if the original order has in the first appeal been varied or reversed otherwise than in a matter of cost; or

(b)on any of the following grounds and no other, namely :-

(i)that the order is contrary to law or, usage having the force of law; or

(ii)that the order has failed to determine some material issue of law, or usage having force of law; or

(iii)that there has been a substantial error or defect in the procedure as prescribed by this Code, which may have produced error or defect in the decision of the case upon merits.

(4)An order passed in review varying or reversing any order shall be appealable in like manner as the original order.

248. [Penalty for unauthorisedly taking possession of land. [Substituted by M.P. Act No. 15 of 1971.]

(1)Any person who unauthorisedly takes or remains in possession of any unoccupied land, abadi, service land or any other which has been set apart for any special purpose under Section 237 [or upon any land which is the property of Government, or any authority, body corporate, or institution constituted or established under any State enactment,] may be summarily ejected by order of the Tahsildar and any crop which may be standing on the land and any building or other work which he may have constructed thereon, if not removed by him within such time as the Tahsildar may fix shall be liable to forfeiture. Any property so forfeited shall be disposed of as the Tahsildar may direct and the cost of removal of any crop, building or other work and of all works necessary, to restore the land to its original condition shall be recoverable as an arrear of land revenue from him. Such person shall also be liable at the discretion of the Tahsildar [to a fine with may extend to one lakh rupees] [Substituted 'to pay the rent of the land for the period of unauthorised occupation at twice the rate admissible for such land in locality and to a fine which may extend to [five thousand] rupees' by M.P. Act No. 23 of 2018] and to a further fine which may extend to twenty rupees for every day on which such unauthorised occupation or possession continues after the date of



first ejectment. The Tahsildar may apply the whole or any part of the fine to compensate persons, who may in his opinion have suffered loss or injury from the encroachment :]Provided that the Tahsildar shall not exercise the powers conferred by this sub-section in regard to encroachment made by buildings or works constructed-

(i)in the Mahakoshal region-

(a)in areas other than the merged States before the first day of September, 1917;

(b)in the merged States, before the third day of April, 1950;

(ii)in the Madhya Bharat region, before the fifteenth day of August, 1950;

(iii)in the Vindhya Pradesh region, before the first day of April, 1955;

(iv)in the Bhopal region, before the eighth day of November, 1933; and

(v)in the Sironj region, before the first day of July, 1958.

Explanation.-For the purposes of this sub-section "Merged States" shall have the meaning assigned to it in the Madhya Pradesh Merged States Laws (State) Act, 1950 (XII of 1950).[(1-A) On a resolution duly passed by the Gram Panchayat in respect of any unauthorised possession, the Tahsildar shall start and complete the proceedings under this section within thirty days from the date of receipt of the information of such resolution and shall communicate the action taken by him to the Gram Panchayat.] [Inserted by M.P. Act No. 7 of 2000 (w.e.f. 15-3-2000).]

(2)It shall not be competent to the Thhsildar to impose a fine of amount exceeding [one thousand five hundred] [Substituted by M.P. Act No. 44 of 1974.] rupees but if in any case he considers that circumstances of the case warrant imposition of a higher fine, he may refer the case to the Sub-Divisional Officer who shall, then, after giving the party concerned an opportunity of being heard, pass such orders in respect of line as he may deem fit.[(2-A) If any person continues in unauthorised occupation or possession of land for more than seven days after the date of order of ejectment under sub-section (1), then without prejudice to the fine that may be imposed thereunder the Sub-Divisional Officer shall cause him to be apprehended and shall send him with a warrant to be confined in a civil prison for a period of fifteen days in case of first ejectment and three months in case of second or subsequent ejectment :Provided that no action under this sub-section shall be taken-

(i)unless a notice is issued calling upon such person to appear before the Sub-Divisional Officer on a day to be specified in the notice and to show cause why he should not be committed to the civil prison;

(ii)in respect of encroachments on Government and Nazul lands for the settlement of which the Government have issued orders from time-to-time :

Provided further that the Sub-Divisional Officer may order the release of such person from detention before the expiry of the period mentioned in the warrant if he is satisfied that the unauthorised possession has been vacated :Provided also that no woman shall be arrested or detained under this sub-section.(2-B) The State Government may make rules for the purpose of carrying into effect the provisions



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of sub-section (2-A).] [Inserted by M.P. Act No. 12 of 1976.]

(3)[***] [Omitted by M.P. Act No. 7 of 2000 (w.e.f. 15-3-2000).]

(4)[***] [Omitted by M.P. Act No. 12 of 1976.]

10. Considering all material and considering the submission made at the bar and on perusal of the order passed by the revenue authority which is impugned and under challenge in this petition, I found that the Revenue Board has considered all relevant aspect. The Board of Revenue has considered the title of the parties after considering the material available on record and has come to the conclusion that the order passed by way of suo moto inquiry in absence of filing any appeal or revision by challenging the impugned order passed by appellate Authority is not maintainable in eye of law more particularly under Section 50 of the MP Land Revenue Code. This finding is absolutely correct and in accordance with law. Moreover from the record it transpires that there are two different khata Nos 105/1 and 105/2. Petitioner is probably connected with khata no. 105/1 and the respondent is connected with the land mentioned in khata no. 105/2 and therefore, on that count also, the order passed by Additional Commissioner in suo moto enquiry is found improper by the Board of Revenue, therefore, that is also in consonance with the law and the material available on record.

11. In view of the above discussion, I find that no illegality has been committed by the Board of Revenue while passing the impugned order warranting any interference by this court by exercising jurisdiction under Article 226 & 227 of the Constitution of India. The writ petition is accordingly dismissed.

(SANDEEP N. BHATT)
JUDGE

BDJ