

Writ Appeal Nos. 398/17, 408/17 & 413/17

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**HIGH COURT OF MADHYA PRADESH**

**BENCH AT GWALIOR**

**DIVISION BENCH**

**PRESENT**

**JUSTICE SHEEL NAGU**

**&**

**JUSTICE ASHOK KUMAR JOSHI**

**(Writ Appeal No.398/2017)**

**Arun Bharti & another**

**Vs.**

**State of Madhya Pradesh & others**

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Shri H.D.Gupta, Sr. Advocate with Shri Santosh Agrawal and  
Shri N.K.Gupta, Sr. Advocate with Shri S.D.Singh Advocate for the  
appellants.

Shri Vishal Mishra, Additional Advocate General for the State.

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**Connected with**

**(Writ Appeal No. 408/2017)**

**Madho Singh Bundela & another**

**Vs.**

**State of Madhya Pradesh & others**

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Shri H.D.Gupta, Sr. Advocate with Shri Santosh Agrawal and  
Shri N.K.Gupta, Sr. Advocate with Shri S.D.Singh, Advocate for the  
appellants.

Shri Vishal Mishra, Additional Advocate General for the State.

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**And**

**(Writ Appeal No. 413/2017)**

**Madhavdas Mahavidhyalaya Krishi Samiti Maryadit**

**Vs.**

**State of Madhya Pradesh & others**

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Shri H.D.Gupta, Sr. Advocate with Shri Santosh Agrawal and  
Shri N.K.Gupta, Sr. Advocate with Shri S.D.Singh, Advocate for the  
appellant.

Shri Vishal Mishra, Additional Advocate General for the State.

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**J U D G M E N T**  
**(Delivered on the 27<sup>th</sup> day of October, 2017)**

**Per Sheel Nagu, J.**

1. The aforesaid Intra Court Appeals filed u/S. 2 (1) of Madhya Pradesh Uchcha Nyayalaya (Khandpeeth Ko Appeal) Adhiniyam, 2005 assail the final common order dated 24/8/2017 passed in W.P.No.3332/17, W.P.No.3478/17 and W.P.No.3543/17 whereby all the petitions in question have been dismissed.
2. The present order shall govern the disposal of above said writ appeals as all these cases are attended with similar facts and circumstances and arising out of the same impugned order passed by the learned single judge in exercise of writ jurisdiction u/Art.226 of the Constitution.
3. Learned counsel for the rival parties are heard.
4. The singular submission of the learned counsel for the petitioners is that the writ court while dismissing the petitions has wrongly held that the order impugned before the writ court of Tehsilar, Datia dated 8/5/2017 passed u/S. 248 of the M.P. Land Revenue Code, 1959 (for brevity the Code) is preceded by affording reasonable opportunity of being heard to the petitioners in the writ petitions. It is submitted that the learned single judge has wrongly taken recourse to the proceedings initially initiated in respect of the lands in question u/Ss. 115/116 and 57(2) of the Code as the basis for rendering a finding that all the affected parties were heard by issuing show-cause notice and accepting their replies to the same and therefore there was no need for the Tehsildar to have again adopted the procedure of affording opportunity to the same affected parties before passing the impugned order of penalty u/S. 248 of the Code for unauthorized possession of the land in question.
5. Learned Additional Advocate General appearing for the State

has produced the original record relating to the proceedings conducted by the SDO, Collector and the State Govt. u/S. 57 of the Code and also the proceedings thereafter conducted u/S. 248 of the Code by Tehsildar, Datia. It is the submission of the State that the order impugned is in accordance with law since no new findings were rendered by the functionaries of the State u/S. 248 of Code, there was no necessity of hearing the affected parties again when passing the order u/S. 248 of the Code.

6. For appropriate adjudication of the controversy involved, the delineation of the facts attending the present case would be relevant.

6.1 Complaint was made that the revenue record qua Survey No. 257 area 142.12 acres (57.514 Hectare) despite being shown in kistabandi of 1943-44 as forest, has been wrongly shown in 2016-17 revenue record in the names of the respondents. Consequently, an enquiry was conducted by Tehsildar, Datia in which the said complaint was *prima facie* found to be true. Accordingly, a case was registered by Tehsildar, Datia and was forwarded to the SDO for appropriate action. The SDO, Datia by show-cause notice dated 30/12/2016 asked the petitioners involved in the present writ appeals on individual basis to produce relevant documents establishing their claim over the property in question including source of the claimed title. Number of petitioners submitted their replies to the show-cause notice by 16/1/2017 on which date the SDO, Datia gave further time to those petitioners who have failed to do so. On the next date, i.e. 27/1/2017 on the request of the counsel for certain petitioners further time was granted as last indulgence till 7/2/2017. The SDO however granted another opportunity to some petitioners to have their say on 9/2/2017 by fixing the next date of hearing as 15/2/2017. The case could not be taken up on 15/2/2017 due to the Presiding Officer being on tour and thus was taken up on 16/2/2017.

Further opportunity was granted to some petitioners on 16/2/2017 and 25/2/2017 to submit their replies/documents. Thereafter on 27/2/2017 those petitioners who had failed to file replies suffered forfeiture of their right to file reply and the report from the SDO (Forest) was requisitioned by the SDO (Revenue), Datia. Thereafter, the matter was fixed on 6/3/2017, 7/3/2017 and 8/3/2017 whereafter on 9/3/2017 the SDO passed an order declining to accept the documents submitted by the petitioners in support of their claim over the lands in question and held that since the revenue record of 1943-44 reflected Survey No.257 as forest, it is clear that the same has been changed unlawfully in connivance with the revenue officers/employees in favour of the certain private individuals (petitioners). However, considering the amendment caused in Section 57(2) of the Code vesting power upon the State to decide any dispute in respect of any right over lands belonging to the State, the matter was forwarded to the State Govt. for passing appropriate orders.

6.2 The State after deliberating upon the matter found the issue to be not falling within the ambit of Sec. 57(2) of the Code and therefore by letter dated 25/4/2017 send the case back to Collector, Datia for taking appropriate action at the level of the competent authority. The Collector thereafter by letter dated 27/4/2017 constituted a team of revenue officers fixing their responsibility for taking appropriate steps in the matter. Tehsildar, Datia being the competent authority was directed for rectifying clerical errors in the entries contained in the revenue record u/S. 115/116 of the Code. The SDO, Datia was directed to conduct proceedings of hearing of affected parties while the Additional Collector, Datia was entrusted with supervision to ensure that the entire exercise conducted by the SDO and Tehsildar, Datia is accomplished within the time frame

prescribed.

6.3 It is evident from the record that subsequent to the letter dated 27/4/2017 no fresh opportunity of hearing was afforded to the petitioners as contemplated by letter dated 25/4/2017 which was not only necessary in terms of the said letter but more so due to the fact that the proceedings conducted earlier were initiated u/S. 115/116 and 57(2) of the Code which were suddenly converted into those of Sec. 248 of the Code.

6.4 The impugned orders which came to be challenged in the writ petitions were passed imposing penalty of different amounts on all the petitioners u/S. 248 of the Code, declaring Survey No. 257 to be vested in the State with consequential change in revenue entries and directing the petitioners to remove unauthorized occupation within seven days or else to face civil jail.

7. From the above conspectus of facts, it is crystal clear that after the matter was remanded by the State declining exercise of power u/S. 57(2) of the Code and asking the Collector to ensure passing of appropriate orders by the competent authority, it was evident that the competent authority was to conclude proceedings initially commenced u/S. 115/116 of the Code and to take it to its logical conclusion on the basis of the objections already received earlier from various petitioners in response to show cause.

7.1 Instead, the Tehsildar straightway passed an order not only u/S. 115 & 116 but also u/S. 248 of the Code imposing penalty for un-authorized occupation of the govt. land and for removal of the said occupation failing which to suffer civil jail.

7.2 Evidently, there was no fresh opportunity given to the petitioners before passing orders u/S. 248 of the Code.

7.3 More so, while proceeding under a new provision, i.e., Sec. 248 of the Code fresh show-cause notice was necessary to be issued

before deciding the question of quantum of penalty and prescribing time period for removal of unauthorized construction which factors lie exclusively within the discretion of Tehsildar.

7.4 The writ court appears to have misdirected itself by presuming that the proceedings u/S. 115/116 and that of Sec. 248 of the Code can be conducted and concluded together. The object behind Sec. 115 & 116 on one hand and Sec. 248 on the other is distinct and therefore enquiry contemplated in both these provisions are meant to achieve different purpose. The object of Sec. 115 & 116 is merely to correct entries in the revenue record including Khasra except records prepared u/S. 108. Both these provisions, i.e., Secs. 115 & 116 prescribe holding of enquiry which inherently pre-supposes affording of opportunity of being heard before making corrections. Thus, the object of Sec. 115 & 116 is to correct any wrong and incorrect entries in the land records prepared u/S. 114 of the Code. While on the other hand, Sec. 248 of the Code is a penal provision which empowers Tehsildar to impose penalty upon a person in un-authorized possession of any un-occupied/abadi/service land or Nistar land as defined in S. 237 of the Code or upon any land which is the property of Government, or any authority, body corporate, or institution established under any State enactment. The said provision of Sec. 248 of the Code obliges the Tehsildar to conduct enquiry in respect of the following questions:-

- (i) Whether any person is in possession of any kind of land enumerated above ?
- (ii) Whether the said occupation is unauthorized ?
- (iii) Whether construction made over the land under unauthorized possession has been removed or not within the time prescribed by the Tehsildar ?
- (iv) Whether any rent/penalty is payable by the person

in unauthorized occupation of the said land for the period from date of first order of ejectment ?

(v) What should be the quantum of said land/penalty ?

(vi) Whether any compensation is to be paid to the person deprived of the property due to unauthorized occupation ?

(vii) Whether unauthorized occupant has rendered himself liable for suffering civil jail for which separate show-notice is required ?.

8. For deciding the aforesaid questions, the competent authority, i.e., Tehsildar is required to conduct enquiry, which though may be of summary nature but ought to include the all important elements of affording reasonable opportunity to the affected parties of being heard.

8.1 The necessity of compliance of the principle of natural justice of *audi alteram partem* by affording reasonable opportunity of hearing is inherent in the provisions of Sec. 248 of the Code. This court is bolstered in it's view by the two decisions of the single bench of this court rendered in the cases of **Sendhwa Club & another Vs. State of M.P. & others** reported in **1998 RN 106** and **Turabali & others Vs. State of M.P. & another** reported in **2000 RN 57**.

8.2 In the case of **Sendhwa Club & another** (supra) it is observed as under:-

"15. The Respondents Nos 1 to 3 have submitted that, Notice U/s. 248 of the M.P.L.R. Code has already been issued to the petitioners by the Tehsildar, it has therefore, become necessary to direct him only, to complete and conclude the enquiry. The petitioners shall be at liberty to file documents in support of their contentions and if prayed for producing and recording evidence, then the same may also be considered by him."

8.3 So also in the case of **Turabali & others** (supra) it is held as

under:-

"9. ....Three days time to remove the 45 years old encroachment in the shape of Pucca construction was absolutely insufficient, therefore the petitioners were fully justified in approaching the Court. It is very much clear that the petitioners appear to be in possession since 1945 and, therefore, they were having every right to protect their property right and possession over the land and could not have been treated as encroachers. Even if they were encroachers, then, it was for the competent authority to give them proper notice, applying proper law and providing them a reasonable time to file reply and also an opportunity of hearing. From the notices it appears that this was not intended."

9. From the above it is evident that the learned single judge erred by treating the earlier exercise of affording of opportunity to the petitioners prior to passing of the order by the SDO, Datia dated 9/3/2017, to be sufficient to meet the statutory requirement of enquiry u/S. 248 of the Code.

10. In view of the above, this court allows the writ appeals in the following terms:-

(i) The order of the writ court dated 24/8/2017 passed in W.P.No.3332/17, W.P.No.3478/17 and W.P.No.3543/17 is set aside.

(ii) Consequently, the impugned order of Tehsildar dated 8/5/2017 also stands set aside.

(iii) The competent authority u/S. 248 of the Code is directed to now proceed to issue show-cause notice to the petitioners u/S. 248(1), & 248(2) of the Code if need arises and thereafter to conduct summary enquiry by considering the objections if any and thereafter pass appropriate orders u/S. 248 of the Code within an outer limit of four months from today.

11. Since a huge chunk of land which is claimed by the State to



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be worth of Rs. 230 crores is involved, the alternate mode of publication of show-cause notice in two Hindi newspapers having wide circulation in the area concerned is directed to be adopted for expediency if the normal mode of service by individual notice turns out to be a time consuming exercise.

No cost.

**(Sheel Nagu)**  
**J U D G E**  
**27/10/2017**

**(Ashok Kumar Joshi)**  
**J U D G E**  
**27/10/2017**

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