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BEFORE THE HON'BLE HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

W.P. No. 11007 / 2013 (O)

PETITIONER :

Mahant Rarnkrishnadas Guru Jaganath Das,
Aged: 84 Years, Occupation: Mahant,
Address: Kheda Pati Hanuman Mandir,
INDORE (Madhya Pradesh).

Versus

RESPONDENTS :

- (1) State of Madhya Pradesh,
Through: Principal Secretary,
Department of Revenue,
Vallabh Bhawan , **BHOPAL**.
- (2) The Sub-Divisional Magistrate (SDM)
INDORE, Tahsil -Indore, District- Indore.
- (3) The Tahsildar,
INDORE, Tahsil -Indore, District- Indore.

WRIT PETITION UNDER ARTICLE 226
OF THE CONSTITUTION OF INDIA

The petitioner, above named, humbly submits this petition as under :-

(1) PARTICULARS OF THE CAUSE/ORDER AGAINST WHICH
THE PETITION IS MADE :

- | | | | |
|-------|----------------------|---|------------------------------|
| (i) | Date of Order | : | This petition is being filed |
| (ii) | Passed in | : | against notice dated |
| (iii) | | | 13.09.2013 issued by the |
| | | | respondent no. 3 for |
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Passed By : dispossession and removal of the alleged encroachment within 24 hours, in view of the Order dated 13.09.2013 passed by the respondent no.2 in appeal no. 117/12-13.

(iv) **Subject Matter in Brief :**

That, the petitioner has filed the present petition challenging the Notice No. 2128/Re. Tah./13 dated 13.09.2013 issued by the respondent no.3 for dispossession and removal of the alleged encroachment within 24 hours in view of the Order dated 13.09.2013 passed by the respondent no.2 in Appeal No. 117/12-13. The petitioner say and submits that the illegal action of the respondent no.3 is violative of the petitioner statutory right of the appeal under section 44 (2) or Revision under section 50 of the Madhya Pradesh Land Revenue Code and is also an act which tries to over reach the hearing before the competent Court of Law under the powers of the Appeal or Revision. It is further submitted that petitioner has not encroach on any parcel of the government land, on the contrary the petitioner is the owner of the properties in question.

(2) **DECLARATION :**

That, the petitioner declares that no proceedings in respect of the impugned action, order is pending before any court of law or tribunal.

(3) **DETAILS OF THE REMEDIES EXHAUSTED:**

The petitioner has remedy of appeal as well as Revision under section 44(2) & 50 of the Land Revenue Code. However, the respondent no.3 has issued notice and has given only 24 hours and therefore there is no efficacious remedy against the aforesaid illegal action of the respondents except submitting the present Writ Petition

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ANNEXURE-C

HIGH COURT OF MADHYA PRADESH

CASE NO. OF 20

ORDER SHEET (CONTINUATION)

DATE & S. NO. OF THE ORDER	ORDER
	<p style="text-align: center;"><u>WP No.11007/2013</u></p> <p><u>24/09/2013 :-</u></p> <p>Petitioner by Mr. Akshad Pahadiya, advocate. Respondents by Mrs. Vinita Phaye, GA. Arguments heard finally. Order dictated in Open Court.</p> <p style="text-align: center;"><u>ORDER</u></p> <p>The prayer in this petition is to quash the notice dated 13/09/2013 Annexure-P/7 issued by the respondent No.3.</p> <p>2. Undisputed facts of the case are that petitioner is in occupation of a piece of land situated at Palasiyahana Gali No.4, Indore. Action was taken by the respondent No.3 to dispossess the petitioner and in that circumstance writ petition was filed by the petitioner which was numbered as 1127/2012 which was disposed of vide order dated 02/08/2013 with a direction to avail efficacious alternative remedy available to the petitioner. In compliance of that appeal was filed by the petitioner with SDO, Indore on 30/08/2013 which was</p> <p style="text-align: right;"><i>N. K. Singh</i></p>

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ANNEXURE-C

HIGH COURT OF MADHYA PRADESH

CASE NO. OF 20

ORDER SHEET (CONTINUATION)

DATE & S. NO. OF THE ORDER	ORDER
	<p>dismissed on 13/09/2013. Again on 13/09/2013 show-cause notice was issued by the respondent No.3 to vacate the premises within 24 hours, therefore, petition was filed on 14/09/2013. Since 14/09/2013 was Holiday, therefore, special request was made to Hon'ble the Acting Chief Justice to give hearing at the residence and upon the recommendations of Hon'ble the Administrative Judge of this Bench and in compliance of the orders passed by Hon'ble the Act Chief Justice Court was held on 14/09/2013 and interim order of stay was passed on that very day and case was listed for hearing on 17/09/2013.</p> <p>3. Learned counsel for the petitioner submits that against the orders passed by the Tehsildar appeal was filed by the petitioner on 30/08/2013 in which date of hearing was fixed as 23/09/2013 by SDO, Indore. It is submitted that after giving the date of hearing as 23/09/2013 the date was preponed and case was fixed on 05/09/2013. It is submitted that thereafter petitioner requested the SDO, Indore to list the case for hearing on 23/09/2013 as fixed earlier but the request was turned down and case was listed on 06/09/2013. It is submitted that on 06/09/2013 again an application was filed by the petitioner for listing the case for hearing on 23/09/2013 but that application</p> <p style="text-align: right;">H-11-11-11</p>

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HIGH COURT OF MADHYA PRADESH

CASE NO. OF 20

ORDER SHEET (CONTINUATION)

DATE & S. NO. OF THE ORDER	ORDER
	<p>was dismissed and case was listed for hearing on 13/09/2013. It is submitted that as the prayer was turned down, therefore, documents were submitted by the petitioner at 05.10 PM. It is submitted that on that very day appeal was dismissed and on that very day at 07.50 PM respondent No.3 issued show-cause notice to the petitioner to vacate the premises within 24 hours. It is submitted that since petitioner was having no efficacious alternative remedy, therefore, in the compelling circumstances petition was filed by the petitioner. It is submitted that petition filed by the petitioner be allowed and the notice Annexure-P/7 be quashed.</p> <p>4. Mrs. Vinita Phaye, learned Government Advocate appearing on behalf of the respondents vehemently opposed the allegations made and submit that on each of the date petitioner was present in Court through his counsel, therefore, nothing has been happened behind the back of the petitioner. It is submitted that not only this time was sought on all the dates. It is submitted that since remedy to file appeal is available with the petitioner, therefore, petition itself is not maintainable. It is submitted that petition filed by the petitioner has no merits and the same be dismissed.</p> <p style="text-align: right;">14-11-13</p>

ANNEXURE-C⁶

HIGH COURT OF MADHYA PRADESH

CASE NO. OF 20

ORDER SHEET (CONTINUATION)

DATE & S. NO. OF THE ORDER	ORDER
	<p>5. Learned counsel for the petitioner submits that petitioner has filed application for certified copy of the order but copy of the order has not been received till to this date. To demonstrate the petitioner produces the receipt of Copying Section which shows that petitioner applied for certified copy on 16/09/2013 and date was fixed for supplying the copy on 25/09/2013.</p> <p>6. After hearing counsel for both the parties at length, this Court is of the view that because of undue haste on the part of respondents, petitioner was compelled to file the petition. This Court also finds that respondents managed the media as it was published that respondents shall take possession on 14/09/2013 after expiry of 24 hours, while the news was not published in the news paper regarding the stay in favour of the petitioner on holiday by giving the same coverage. However, petition filed by the petitioner is disposed of with the following directions :-</p> <p style="text-align: right;"><i>H. K. ...</i></p>

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ANNEXURE-C

HIGH COURT OF MADHYA PRADESH

CASE NO. OF 20

ORDER SHEET (CONTINUATION)

DATE & S. NO. OF THE ORDER	ORDER
	<p>i) That petitioner shall be at liberty to file the appeal against the order passed by SDO, Indore within two weeks before the Revenue Commissioner, Indore.</p> <p>ii) That upon filing the appeal Appellate Authority shall call the record and shall decide the same by passing a reasoned order after giving an opportunity of hearing to the petitioner.</p> <p>iii) That if any adverse order is passed, then, the same shall not be implemented for a period of one week.</p> <p>✓ iv) Revenue Authorities of the State are directed not to issue show-cause notice for handing over the possession at the end of the week of which time period expires on holiday which compels the litigants to approach this Court on holiday which increases the load on this Court un-necessarily as whole machinery is require to be activated on Holiday.</p> <p>7. With the aforesaid observations, petition stands disposed of. C.C. as per rules.</p> <p style="text-align: right;">Sd/- (N.K. MODY) Judge</p> <p><u>Aiyer</u></p>