

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 26th OF APRIL, 2024

WRIT PETITION No. 366 of 2024

BETWEEN:-

1. **KHEMCHANDRA GOLHANI S/O SHERI MANMOOD GOLHANI, AGED ABOUT 50 YEARS, OCCUPATION: PRIVATE JOB R/O GRAM MAHATA TEHSIL GHANSOR DISTRICT SEONI (MADHYA PRADESH)**
2. **POHAP SINGH GOLHANI S/O LATE SHRI KAPURA GOLHANI, AGED ABOUT 33 YEARS R/O SAMNAPUR, MAHAVIR WARD NO.7, THANA AND TAHSIL LAKHNADON, DISTRICT SEONI (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI HITENDRA KUMAR GOLHANI - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY HOME DEPARTMENT MANTRALAYA VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**
2. **DISTRICT MAGISTRATE DISTRICT SEONI (MADHYA PRADESH)**
3. **SUB DIVISION MAGISTRATE SUB DIVISION GHANSORE DISTRICT SEONI (MADHYA PRADESH)**
4. **STATION HOUSE OFFICER (SHO) THANA GHANSOR DISTRICT SEONI (MADHYA PRADESH)**
5. **JAGDISH PRASAD SHIVHARE S/O VISHNU PRASAD SHIVHARE, AGED ABOUT 47 YEARS, R/O GRAM MAHATA TEHSIL GHANSOR DISTRICT SEONI (MADHYA PRADESH)**

.....RESPONDENTS

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This petition coming on for admission this day, the court passed the following:

ORDER

Heard on **I.A. No.3274/2024**, an application for impleading Pohap Singh Golhani as petitioner No.2.

2. For the reasons mentioned in the application, the same is **allowed**.
3. Let necessary amendment be carried out.
4. This petition under Article 226 of Constitution of India has been filed against order dated 21.12.2023 passed by SDM, Ghansor, District Seoni in Criminal Case No.42/2023 by which an injunction order has been issued against petitioner No.1 thereby restraining him to make any attempt to encroach upon Khasra No.126/1/3/1 area 0.15 hectares.
5. It is submitted by counsel for petitioners that father of respondent No.5 was the owner of Khasra No.126/1/1/1 and Khasra No.126/1/3/1 total area 0.15 hectares. On 14.09.2022 petitioner No.2 entered into an agreement to purchase the aforesaid land. In the agreement to sell, it was mentioned that consideration amount of entire transaction is Rs.27 Lakh, which has already been received by father of respondent No.5 in cash or through RTGS and on 14.09.2022 possession of property has also been given and now from today onwards father of respondent No.5 will not have any title or claim over the said property and petitioner No.2 is free to utilize the same as per his own wishes. It is submitted that thereafter sale deed was to be executed and accordingly, draft of sale deed was prepared but since server was slow on the said date, therefore, sale deed could not be executed. Thereafter, father of respondent No.5 expired and accordingly, respondent No.5 started

disputing agreement to sell and filed an application under Section 145 of Cr.P.C.. The SDM without giving any opportunity of hearing to petitioners has issued an injunction order, whereas under Section 146 of MPLR Code he could have attached the property and appointed the receiver.

6. Considered the submissions made by counsel for petitioners.

7. It is the case of petitioners that petitioner No.2 had entered into an agreement to purchase Khasra Nos.126/1/1/1 and 126/1/3/1 total area 0.15 hectares for a total consideration amount of Rs.27 Lakh and the said amount was also paid to father of respondent No.5 in multiple instalments and possession was also delivered. However, petitioners has also filed a copy of draft sale deed as Annexure P/4, according to which market value of land is Rs.2,46,420/- and consideration amount of said transaction has been shown to be 10 Lakh and as per this sale deed, Khasra No.126/1/3/1 total area 0.15 hectares was proposed to be sold. Although, it is the case of petitioners that because server was down therefore, sale deed could not be executed but the question for consideration is as to whether petitioners had made an attempt to evade the stamp duty or not?

8. The agreement to sell has already been placed on record as Annexure P/3 and 0.15 hectares of land was agreed to be sold for a consideration amount of Rs.27 Lakh and entire consideration amount was also paid on 14.09.2022. Thus, declaration made by petitioners in draft sale deed that consideration amount is Rs.10 Lakh was with a clear intention to evade the stamp duty for the simple reason that it is for the purchaser to pay the stamp duty and by showing lesser consideration amount petitioners tried to evade the stamp duty on Rs.17 Lakh. It is

true that sale deed could not be executed but making an attempt to commit an offence is also an offence. Under these circumstances petitioners cannot run away from their criminal liability of making an attempt to evade the stamp duty.

9. Furthermore agreement to sell, which has been filed as Annexure P/3 contains the following recital:

“खसरा नं. 126/1/1/1 एवं 126/1/3/1 कुल भूमि 0.15 हे.।

कुल विक्रय भूमि कुल रकवा 0.15 हे. भूमि राजस्व पर पांच शटर स्थित है।

कुल सौदा- 2700000/- सत्ताईस लाख

प्रथम ब्याना राशि 65000/- पैसठ हजार रू दिनांक 28/6/2022 को प्राप्त किया।

द्वितीय ब्याना राशि-50,000/- पचास हजार रुपये, दिनांक 11/7/2022 को प्राप्त किया।

खसरा नं. 126/1/3/1 एवं 126/1/1/1 की विक्रय राशि 10,0000/- दस लाख रुपये दिनांक 2/9/2022 को बैंक खाता R.T.G.S. द्वारा प्राप्त किया।

अतः आज दिनांक 14/9/2022 को 15,85000 पन्द्रह लाख पचासी हजार रुपये नगद प्राप्त किया, कुल शेष राशि लेना निरंक है।

जिसमें मुझ पक्ष कं.1 को रूपयों की आवश्यकता होने के कारण उक्त 0.15 हे. भूमि जो कि कहानी से घंसौर हाईवे से लगकर स्थित है, व जिसमें हाई वे रोड से लगकर पांच शटर लेंटर वाली स्थित है। पक्ष कं.2 क्रेता को कुल 27,00,000/- सत्ताईस लाख रू. में विक्रय किया हूँ जिस विक्रय सौदा की कुल राशि 27,00,000/- सत्ताईस लाख नगद क्रेता से गवाहो के समक्ष प्राप्त कर 1,000/- के ई स्टाम्प पर आज दिनांक 14/09/2022 को उक्त जमीन व 5 शटर का विक्रय करने का विक्रयनामा निष्पादित किया हूँ। यह कि मुझ विक्रेता को आज दिनांक 14/09/2022 को रूपयों की आवश्यकता होने के कारण मुझ विक्रेता द्वारा पक्ष कं.2 क्रेता से विक्रय सौदे की कुल राशि 27,00,000/- सत्ताईस लाख नगदक्रेता से गवाहो के समक्ष प्राप्त कर क्रेता को उक्त भूमि व शटर पर काबिज दाखिल कर कब्जा दे दिया अब पांचो शटर की कोई भी राशि मुझ विक्रेता को क्रेता से लेना शेष नहीं है। क्रेता उक्त भूमि व पांचो शटरों को जैसा चाहे वैसा उपयोग उपभोग करे इसमें मुझ विक्रेता या मेरे परिवार वालों के द्वारा कोई भी उजर आपत्ति नहीं की जावेगी।

यह कि विक्रय की जा रही उपरोक्त शटरों में किसी प्रकार का कोई भी विवाद नहीं है। मुझ विक्रेता द्वारा पूर्ण होश- हवास में

अपने परिवार के अन्य सदस्यों व पुत्र पिन्टू शिवहरे की सहमति से पक्ष क.2 को यह भूमि व शटर विक्रय की जा रही है। भविष्य में उक्त भूमि व शटर की संबंध में किसी प्रकार का विवाद होता है तो इसकी संपूर्ण जवाबदारी मुझ विक्रेता की होगी। यह कि मुझ विक्रेता द्वारा आज दिनांक 14/09/2020-22 को क्रेता के पक्ष में उक्त भूमि पांच शटर का विक्रय नामा निष्पादित कर दिया हूँ, जिसकी मान्यता समक्ष न्यायालय में मुझ विक्रेता द्वारा की जावेगी।”

10. Thus, it is clear that this document contains all ingredients of sale i.e. transfer of title, handing over of possession as well as receipt of entire consideration amount. It is well established principle of law that whatever nomenclature of the document may be but if it contains all ingredients of sale, then it is required to be registered. Since, agreement to sell, which in fact is in the shape of sale deed, is an un-registered document and has been executed on a stamp paper of Rs.1000/- therefore, it is not admissible in law and thus, it cannot be looked into at this stage.

11. Faced with such a situation, it is submitted by counsel for petitioners that in fact possession was not delivered.

12. If possession was not delivered, then why it is so mentioned in agreement to sell and if it was not delivered, then petitioners should not have any grievance by injunction order issued by SDM.

13. Faced with this situation, it is submitted by counsel for petitioners that in fact rent note was executed between petitioner No.1 and father of respondent No.5 and therefore, petitioners are in possession of property by virtue of said rent note.

14. Considered the submissions made by counsel for petitioners.

15. Petitioners have filed a certificate issued by Gram Panchayat Mahata, Janpad Panchayat Ghansor, District Seoni, which reads as under:

“कार्यालय ग्राम पंचायत – मेहता ज.पं.घंसौर

क्रमांक Q/2023

दिनांक 20/12/2023

प्रमाण पत्र

प्रमाणित किया जाता है कि श्री खेमचंद गोल्हानी पिता श्री मनमोघ प्रसाद गोल्हानी जाति तेली ग्राम मेहता ग्राम पंचायत मेहता प.ह.न.28 रा. नि.न. कहानी तह. बसौर जिला सिवनी के स्थाई निवासी है। अतः ग्राम मेहता श्री विष्णु प्रसाद शिवहरे की शटर में लगभग 3 वर्षों से गोल्हानी कृषि संचालित है। एवं सुचारु रूप से चल रही है।

प्रमाणित किया जो सत्य है।

संरपंच

सचिव

ग्राम पंचायत मेहता

ग्राम पंचायत मेहता

ज.प.घंसौर, जि सिवनी

ज.पं. घंसौर, जि सिवनी”

16. The rent note, which has been filed by petitioners, is dated 21.01.2017. Another un-notarized rent note has also been filed by petitioners, which is dated 03.12.2015. Thus, if petitioners want to claim that they are in possession of property in capacity of tenant from the year 2015, then certificate issued by Janpad Panchayat will completely demolish the case of petitioners. The certificate issued by Gram Panchayat has already been reproduced. This certificate was issued on 20.12.2023 and according to this certificate, petitioner No.1 is running a business in disputed premises for the last three years. If petitioner No.1 was inducted as tenant in the year 2015, then that means he must be running his business for the last 8 years on the date of issuance of certificate, whereas certificate says that petitioner No.1 is running his business for the last approximately three years. Thus, the documents filed by petitioners are self contradictory to each other.

17. Under these circumstances where petitioners had made an attempt to evade the stamp duty, accordingly, Collector Stamps, District Seoni is directed to take cognizance of attempt made by petitioners to execute the sale deed at a lesser consideration amount in the light of agreement

to sell executed between petitioner No.2 and father of respondent No.5 and if it is found that petitioners had made an attempt to commit any offence by evading stamp duty, then shall take further action in accordance with law for prosecution of petitioners.

18. As petitioners have failed to make out a *prima facie* case for retaining their possession over Khasra No.126/1/3/1, therefore, no case is made out warranting interference.

19. Petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

SR*