

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

**BEFORE**

**HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE**

**ON THE 23<sup>rd</sup> OF AUGUST, 2024**

**W.P. No.1987 of 2015**

*(YASMEEN BEE @ BABY AND OTHERS*

*Vs*

*MOHAMMAD SHAHID KHAN AND OTHERS)*

**Appearance:**

*(BY SHRI ANAND BHARADWAJ – ADVOCATE FOR PETITIONERS)*

*(BY SHRI RAM KUMAR UPADHYAY – ADVOCATE FOR  
RESPONDENTS)*

**ORDER**

The instant petition under Article 226 of the Constitution of India is directed against the order dated 23.02.2015 passed by State of M.P. in case No.F-10-06/2014/18-2 whereby the revision preferred by the present respondents against resolution No.94 dated 25.11.2011 by which the name of petitioner No.1 was mutated in municipal records over the house admeasuring 30 x 40 sq. ft. on the basis of hibanama executed by late Ayub Khan (father-in-law of present petitioner No.1) dated 25.12.2009, without issuing any notice, was set-aside and the mutation of the petitioner No.1 was rejected and parties were directed to get their rights crystallized by the civil court. Aggrieved by the aforesaid order, present petition has been filed.

2. The short facts of the case are that the petitioner had applied for mutation over house admeasuring 30 X 40 sq. ft. on the basis of Hibanama executed by Ayub Khan dated 25.12.2009. The Municipal Council vide its resolution No.94 in its meeting dated

25.11.2011 allowed the said mutation in favour of petitioner. Against the said order of mutation, an appeal was filed before the Additional Collector, District Vidisha (M.P) and the learned Additional Collector vide its order dated 17.06.2013 came to a conclusion that the appeal is not maintainable and dismissed the appeal. Against the said order, the respondents preferred revision U/sec.330 read with Section 331 of the Municipalities Act before the State of M.P. alongwith application for condonation of delay and application for exemption from filing certified copy. Upon such revision, opinion was called for from Chief Municipal Officer, Nagar Panchayat, Lateri District Vidisha (M.P) vide letter dated 13.03.2014 & so also letter dated 28.03.2014. Upon the said letters, C.M.O. Lateri, Vidisha sent the report on 15.07.2014 and on the basis of said report, the impugned order came to be passed without issuing any notice to the petitioner. Though an application for grant of opportunity of hearing was also filed by the petitioner on 17.09.2014 but the same was not taken into consideration and the impugned order was passed which is *per se* illegal and dehorse the principle of natural justice, therefore, the order dated 23.02.2015 passed by the State in revision whereby the mutation of petitioner has been set-aside is *per se* illegal. Hence, present petition has been filed.

3. Learned counsel for the petitioner has vehemently argued that it is a trite law that nobody should be condemned unheard and though the Municipal Council Lateri had mutated the name of present petitioner in the revenue records on 25.11.2011, on the basis of hibinama executed by father-in-law of present petitioner on 25.12.2009 and when the said mutation was put to test in revision, without giving any notice to the petitioner and giving any

opportunity of hearing, the said mutation was cancelled which is *per se* illegal.

4. It was further argued that both the parties are governed by Muslim Law and as per the rule of succession, respondent No.1 had lost his right to succeed the property after he has been declared as accused of a murder, which in the present case was that of his own brother Mohd. Iqbal Khan i.e. husband of present petitioner and therefore, out of love and affection, father-in-law of present petitioner by way of aforesaid hibanama has gifted the property to the petitioner. Thus, mutation was rightly carried out and certificate was rightly issued in the year 2011.

5. It was further argued that at the time of passing of mutation order, there was no challenge on behalf of present respondents and it was only at the time of revision that the said mutation was challenged and as the legal position with regard to challenge to the mutation on the basis of hibanama/will is very well settled, the party who is asserting the said hibanama/will is required to assail the same before the competent court of civil jurisdiction and the other side whose name has been mutated without any objection cannot be asked to go and get its rights crystallized before the Court and to this extent, the order impugned herein is bad in law. It was thus prayed that the present petition deserves to be allowed and the impugned order dated 23.02.2015 is liable to be set-aside.

6. On the other hand, learned counsel for the respondents has argued that even it is assumed that no opportunity of hearing was granted to the petitioner while setting aside the mutation, the State has rightly observed in the order that when the matter is regarding rights in property, then the proper forum is the civil court, therefore,

the parties are required to approach the competent court of civil jurisdiction for crystallizing their rights and in the light of the aforesaid, it cannot be said that the directions for setting aside the order of mutation was bad. It was thus prayed that the present petition is without any sum and substance is liable to be dismissed.

7. Heard learned counsel for the parties and perused the record.

8. The basic issue which is before this Court in the present petition is as to whether the petitioner was ever heard by the State while passing the order dated 23.02.2015. Admittedly the answer is in negative.

9. From bare reading of the entire order dated 23.02.2015, it would be reflected that only respondents alongwith their counsel were present at the time of hearing and no notices were ever issued to the petitioners. However, a report was called from Chief Municipal Officer, Nagar Parishad Lateri and on the basis of said report, it was held that the said mutation vide resolution dated 25.11.2011 in favour of present petitioner done on the basis of hibanama was *per se* illegal, therefore, the order of mutation was set-aside and further it has been directed that both the parties are free to approach the competent court of civil jurisdiction to get their rights crystallized.

10. It is noteworthy that the State while setting aside the order of mutation had not observed that mutation on the basis of hibanama was barred in law rather had gone into the merits of the matter that the mutation of the name of petitioner done in the municipal records was not in accordance with law. Thus, when the very mutation of the name of petitioner done in the municipal records was not set-aside

on the ground of maintainability of very application on the basis of hibanama, then it was trite on the part of State to have issued notices to the petitioner and only after hearing the petitioner should have passed the impugned order.

11. The 'rule of fair hearing' or 'Audi Altarem Partem' is a well- recognized principle of natural justice and is applied to ensure that no person should be condemned or punished by a superior authority without having a fair chance of being heard. One of the component of this rule is 'issuance of notice' upon which receipt of the same would be assumed that proper and adequate opportunity has been given to the party concerned to enter appearance in any proceeding, be it before the court or a competent authority who could be a superior officer.

12. In view of above, the present petition is **allowed**. The impugned order dated 23.02.2015 is hereby set-aside. Since the determination of the right of party in the property is within the exclusive domain of civil court, the respondents herein who are challenging the mutation in municipal records on the basis of hibanama can very well agitate the same before the Civil Court, therefore, instead of remanding the matter back to the State, the petition is disposed of with liberty to the respondents to approach the competent court of civil jurisdiction for crystallizing their rights in the property in question.

13. With the aforesaid observation, the petition stands disposed of.

**(MILIND RAMESH PHADKE)**  
**JUDGE**