



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

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 8th OF JANUARY, 2025

WRIT PETITION No. 38439 of 2024

GOPAL DAS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Jitendra Verma- Advocate for the petitioner.

Shri Bhuwan Deshmukh- G.A. for the State.

Shri Amol Shrivastava- Advocate for the respondent No.2.

ORDER

This petition has been filed by the petitioner under Article 226 of the Constitution of India, seeking the following reliefs:-

“The petitioner, therefore, pray that this Hon'ble court may be pleased to:-

(a) Allow the present writ petition, quash the letter dated 01-08-2024 (ANNEXURE P/1) issued by respondent no. 4 and issue appropriate writ, direction or order, directing the respondents to decide the application submitted by the petitioner for mutation and transfer of lease in favour of the present petitioner in accordance with law within a time bound period.

(b) Issue appropriate writ, order or direction directing the respondent No. 2 & 3 to mutate the petitioner's name in the record and also transfer the lease in favour of the present petitioner on the basis of WILL executed in favour of present petitioner.

(c) issue any other appropriate writ, direction or order, which this Hon'ble Court deems just and fair in the circumstances of the case.

(d) The petitioner may be awarded cost of this petition.”



2] The petitioner is aggrieved by Annexure-P/1 dated 01.08.2024, whereby, his application for mutation on the basis of a Will has been rejected by the In-Charge, Lease Cell of Municipal Corporation, Indore, while referring to an opinion of the Government Advocate.

3] Shri Amol Shrivastava, learned counsel for the respondent No.2 has submitted that since the aforesaid issue, *i.e.*, whether mutation can be carried out on the basis of a Will, has been referred to the Larger Bench by the Co-ordinate Bench of this Court in the case of ***Nita Bhattacharya Vs. State of Madhya Pradesh and Others***, in **W.P. No. 7492 of 2022**, dated **07.10.2022**, and since the aforesaid matter is still pending, the impugned order has been passed in the light of the said order only.

4] Shri Shrivastava has also relied upon a decision rendered by the Co-ordinate Bench of this Court, in the case of ***Dinesh Siloniya and Another Vs. Smt. Soram Bai and others***, passed in **M.P. No.441/2020**, dated **03.05.2023**, wherein, this Court has also held that revenue authorities have no jurisdiction to mutate the names of the beneficiaries on the basis of a Will, whether it is disputed or undisputed.

5] On the other hand, Shri Jitendra Verma, learned counsel for the petitioner has drawn the attention of this Court to a subsequent order passed by the Co-ordinate Bench of this Court at Gwalior in the case of ***Anil Kumar Vs. State of M.P. and others***, reported as **2024 (1) M.P.L.J. 236**, in which this Court has held that mutation can take place on the basis of a Will.



6] Shri Verma has also submitted that if a judgment were under reference, it would still not hold the field unless and until it is set aside. Thus, it is submitted that since the Co-ordinate Bench has already taken a view that mutation can take place on the basis of a Will, the impugned order be quashed and the matter may be remanded back to the concerned Officer of Municipal Corporation, Indore.

7] Heard. On due consideration of submissions and on perusal of the documents filed on record, as also the aforesaid decisions relied upon by the counsel for the parties, this Court is of the considered opinion that none of the aforesaid decisions would be applicable in the case at hand where the order has been passed by an officer of Municipal Corporation, which is not a **court** as defined under Section 3 of the Evidence Act, 1872 (hereinafter referred to as ‘the Act of 1872’). Section 3 of the Act of 1872 defines ‘Court’ and ‘documentary evidence’ as under:-

“3. Interpretation-clause.—In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context: —

“Court”.—“Court” includes all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence.”

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“Evidence”. —“Evidence” means and includes —

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;

such statements are called oral evidence;

(2) [all documents including electronic records produced for the inspection of the Court;]

such documents are called documentary evidence.”

(Emphasis Supplied)



8] Thus, apparently when the order of mutation is not required to be passed by any authority which can be defined as a '**Court**' under the Act of 1872, the strict proof as required under Section 68 of the same would not be applicable. Section 68 reads as under:-

68. Proof of execution of document required by law to be attested. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence :

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.] *[Inserted by Act 31 of 1926, Section 2.]*

(Emphasis Supplied)

9] Whereas, in all the decisions cited above by various benches of this High Court, the orders have been passed by the Revenue Authorities only. Thus, in the context of a Will executed in accordance with law and produced before a Municipal Officer, neither the Will is *evidence* as provided under the Evidence Act, 1872, nor the Municipal Officer, a *Court*. Thus, for the purposes of the ***Municipal records***, a Will, which is executed in accordance with law and is not disputed, can be relied upon to mutate the names of the persons, who are the beneficiaries of the same, and no purpose would be served to relegate the parties to go through the rigor of filing of a civil suit and spend considerable time and money only to get their names mutated.



10] In such circumstances, presently, this Court is not required to reflect upon the validity of a Will presented before a Revenue Officer for the purposes of mutation. Thus, no further discussion is required on the judgements relied upon by the counsel for the parties.

11] In view of the same, the impugned order dated 01.08.2024 is hereby quashed, and the matter is remanded back to the concerned authority, with a direction to pass appropriate order, in accordance with law and the observations made by this Court, as aforesaid.

12] Let the aforesaid exercise be completed within a further period of one month.

13] With the aforesaid, the petition stands *disposed of*.

(SUBODH ABHYANKAR)
JUDGE

Bahar