IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

WRIT PETITION No. 10900 of 2026

DEVASWAR TRADING PRIVATE LIMITED FORMERLY KNOWN DEV FISCAL SERVICES PRIVATE LIMITED THROUGH AUTHORIZED REPRESENTATIVE SHARAD KUMAR JOSH

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Amit Lahoti - Advocate alongwith Shri Divakar Vyas - Advocate for the petitioner.

Shri Ravindra Dixit - Govt. Advocate for the State.

Shri Rajmani Bansal - Advocate for the respondent No.5.

RESERVED ON :- 15/06/2026

DELIVERED ON :- 16/07/2026

ORDER

The present petition, under Article 226/227 of the Constitution of India, has been filed on 24.03.2026 by the petitioner seeking following reliefs:-

> *"i) That, the order annexure P/1 dated 26.07.2019 passed by the respondent No. 3 may kindly be set aside.*
>
> *ii) That, the ownership rights of the property in question bearing Survey No. 1139 to 1146 situated at Gram Mahalgaon may be restored in the name of petitioner firm and further the same may be mutated in the revenue record.*

iii) That, any other suitable direction which this Hon'ble Court deems fit in the facts and circumstances of the case may kindly be passed."

FACTS

The petitioner, Devaswar Trading Private Limited, formerly known as Dev Fiscal Services Private Limited, has filed the present petition through its duly authorized representative vide Annexure P/2.

The present petition arises out of proceedings concerning land situated at Village Mahalgaon, District Gwalior, bearing Survey Nos.1139, 1140, 1141, 1142, 1143, 1144, 1145 and 1146, ad-measuring a total area of 5.225 hectares. The petitioner company has been in possession of the said land for several years and has been exercising rights over the same. An application was submitted by the petitioner before the competent revenue authority seeking recording of its possession in the revenue records. Upon conducting due enquiry and after obtaining reports from the *Patwari* and Revenue Inspector, both of whom confirmed the petitioner's possession over the land, notices were issued to all interested persons and objections were invited. As no objections were received and the possession of the petitioner stood established, the competent authority, vide order dated 23.01.2007 (Annexure P/3) passed in Case No.353/2005-06/B-121, directed entry of the petitioner's name in Column No.12 of the revenue records in respect of the aforesaid survey numbers. Thereafter, the petitioner moved an application under the relevant provisions of the Madhya Pradesh Land Revenue Code, including Sections 109, 110, 169 and 190, seeking conferment of ownership rights on the ground that it had been cultivating and possessing the land continuously for more than three years. Upon issuance of notices and in the absence of any objection from any interested person, the competent revenue authority, vide order dated 25.11.2010 (Annexure P/4) passed in Case No. 01/2010-11/A-46, declared the petitioner as *Bhumiswami* of the land in question and directed corresponding entries in the revenue records. Consequently, the petitioner's ownership and possession over Survey Nos.1139 to 1146 came to be duly reflected in the revenue records. Subsequently, on the basis of a complaint made by a third person, the Collector, Gwalior initiated *suo motu* revision proceedings bearing Case No.78/2012-13. The Collector, vide order dated 12.04.2016 (Annexure P/5), set aside the order dated 25.11.2010 and directed restoration of the land as Government land in the revenue records. Aggrieved by the order dated 12.04.2016, the petitioner preferred a revision before the Board of Revenue, Madhya Pradesh. The petitioner specifically contended therein that the order dated 12.04.2016 had been passed in violation of the principles of natural justice, as no opportunity of hearing had been granted to the petitioner before adverse orders were passed. The Board of Revenue accepted the said contention and, vide order dated 27.06.2019 (Annexure P/6), set aside the Collector's order and remanded the matter for fresh consideration after providing an adequate opportunity of hearing to all concerned parties. Pursuant to the remand order dated 27.06.2019, fresh proceedings were registered before the Collector, Gwalior as Case No.4/Revision/2019-20. However, by the impugned order dated 26.07.2019, the Collector once again set aside the order dated 25.11.2010 and held that the land bearing Survey Nos.1139 to 1146 constituted Government land, directing restoration of Government entries in the revenue records. Being aggrieved by the said order, the petitioner preferred an appeal before the Commissioner, Gwalior Division. However, the appeal was dismissed vide order dated 12.07.2021 (Annexure P/7) solely on the ground of maintainability without examining the merits of the petitioner's claim. Being left with no other efficacious remedy, the petitioner was constrained to invoke the extraordinary jurisdiction of this Court under Article 226/227 of the Constitution of India challenging the impugned order dated 26.07.2019.

ARGUMENTS

At the outset, learned counsel submitted that though there is some delay in filing the present petition, the law in this regard is well settled that the doctrine of delay and laches is not an inflexible rule and cannot be mechanically applied where the impugned action is patently illegal, without jurisdiction or results in manifest injustice. Reliance was placed upon the judgment of the Hon'ble Supreme Court in **Shiv Dass v. Union of India**, reported in **(2007) 9 SCC 274**, wherein it has been held that delay and laches is a factor to be considered in exercise of writ jurisdiction but the same is not an absolute bar and relief may be granted where refusal to interfere would result in continuing injustice. The Hon'ble Supreme Court observed that each case must be examined on its own facts and the Court may exercise jurisdiction where substantial justice so demands. Learned counsel further placed reliance upon the judgment of the Hon'ble Supreme Court in **Dehri Rohtas Light Railway Company Ltd. v. District Board, Bhojpur**, reported in

(1992) 2 SCC 598, wherein it was held that the rule relating to delay and laches is a rule of practice and discretion and not a rule that completely bars the jurisdiction of the Court. The Hon'ble Supreme Court held that where the impugned action is without jurisdiction or where manifest injustice would result, the High Court may entertain a petition despite delay. Reliance was also placed upon the judgment of the Hon'ble Supreme Court in **State of Punjab v. Gurdev Singh**, reported in **(1991) 4 SCC 1**, wherein it has been authoritatively held that an order which is void or without jurisdiction is a nullity in the eyes of law. It was observed that a void order can be challenged whenever and wherever it is sought to be enforced and mere lapse of time does not confer legality upon an order which is inherently without jurisdiction. In the present case the very assumption of revisional jurisdiction by the Collector after an unreasonable lapse of time is under challenge. Therefore, applying the ratio of **Gurdev Singh (*supra*)**, the impugned order being without jurisdiction cannot be protected merely on the ground of delay.

Reliance was further placed upon the judgment of the Hon'ble Supreme Court **in Mafatlal Industries Ltd. v. Union of India**, reported in **(1997) 5 SCC 536**, wherein the Court recognized that where an order is void, unconstitutional or passed without authority of law, constitutional courts retain the power to grant relief notwithstanding procedural objections in appropriate cases. Learned counsel also relied upon the judgment of the Hon'ble Supreme Court in **Tukaram Kana Joshi v. MIDC**, reported in **(2013) 1 SCC 353**, wherein it was held that delay and laches cannot be used as a shield by the State where the action complained of is illegal or results in deprivation of property rights. The Apex Court observed that the right to property, though no longer a fundamental right, continues to be a valuable constitutional right under Article 300-A of the Constitution and Courts should be slow in denying relief on technical grounds where valuable property rights are affected. He further relied upon the judgment of the Hon'ble Supreme Court in **Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu**, reported in **(2014) 4 SCC 108,** whrein while discussing the doctrine of delay and laches, it was observed that the principle is founded on equity and must be applied with reference to the facts of each case. It was emphasized that the doctrine is not to be applied mechanically and substantial justice remains the guiding consideration. Reliance was also placed upon the judgment of the Hon'ble Supreme Court in **Ram Chand v. Union of India**, reported in **(1994) 1 SCC 44**, wherein it was held that where the State action is arbitrary or results in continuing prejudice to a citizen, the Court may grant relief despite delay, particularly when valuable property rights are involved. Thus, he submitted that the revisional jurisdiction exercised by the Collector, having been invoked after an unreasonable and unexplained lapse of time, is unsustainable in law. Consequently, the delay in the exercise of such jurisdiction cannot be made a ground to non-suit or oust the petitioner.

In furtherance of his submissions, learned counsel for the petitioner, adverting to the merits of the case, contended that the impugned order dated 26.07.2019 passed by the Collector, Gwalior is wholly arbitrary, illegal, without jurisdiction, contrary to the record and unsustainable in law, as it proceeds on an erroneous assumption that the land in question constitutes Government land, while completely disregarding the historical revenue entries, the lawful proceedings conducted by the competent revenue authorities, and the rights accrued in favour of the petitioner over a long period of time.

It was further submitted that the petitioner's possession over Survey Nos.1139 to 1146 was duly verified by the Patwari and Revenue Inspector, who, after conducting spot inspections and revenue enquiries, reported that the petitioner was in possession of the land. Acting upon such reports and after issuing notices to all interested persons, the competent revenue authority passed an order dated 23.01.2007 directing entry of the petitioner's name in Column No.12 of the revenue records. The said order attained finality and was never challenged by any affected person. Subsequently, the petitioner invoked the provisions of Sections 109, 110, 169 and 190 of the Madhya Pradesh Land Revenue Code seeking conferment of Bhumiswami rights on the basis of continuous cultivation and possession. During the said proceedings, notices were issued, statements of the concerned persons were recorded and no objections were raised by any recorded tenure holder or interested person. Upon consideration of the material available on record, the competent authority passed the order dated 25.11.2010 declaring the petitioner as Bhumiswami of the land in question and directed corresponding entries in the revenue records. The said order remained operative for several years and was never challenged by the persons in whose names the land was previously recorded or by their legal representatives.

Elaborating further, learned counsel submitted that one of the principal grounds adopted by the Collector for setting aside the order dated 25.11.2010, namely that the proceedings had been decided by a Naib Tehsildar holding charge of the office of the Tehsildar, is wholly misconceived and contrary to the statutory scheme governing the functioning of revenue authorities. It was submitted that the officer who passed the order was functioning as the In-charge Tehsildar and was lawfully discharging the duties and functions of the office. An officer holding charge of the post of Tehsildar is competent to exercise all the legal, administrative and quasi-judicial powers vested in the office of the Tehsildar, unless such powers are expressly restricted or withdrawn by a specific order issued by the competent authority. Neither the Madhya Pradesh Land Revenue Code nor any rule framed thereunder creates any distinction between a regularly appointed Tehsildar and a Naib Tehsildar who has been validly entrusted with the charge of the office, so far as the exercise of the statutory powers attached to that office is concerned. Once an officer is placed in charge of the office of the Tehsildar, he exercises the jurisdiction attached to that office and is fully competent to discharge all functions incidental thereto, including adjudication of applications under the relevant provisions of the Code. The only exception to the above principle would arise where the Collector or any competent authority has issued a specific order restricting or excluding the exercise of any particular statutory or quasi-judicial power by the officer holding charge. However, in the present case, the Collector has neither referred to nor produced any notification, administrative order, circular or direction indicating that the Naib Tehsildar holding charge of the office was prohibited from deciding applications for conferment of Bhumiswami rights under Sections 109, 110, 169 and 190 of the Madhya Pradesh Land Revenue Code. In the absence of any such restriction, the presumption in law is that the officer was competent to exercise all powers attached to the office which he was holding. Thus, the Collector's finding regarding lack of competence is founded entirely on assumption and not on any statutory provision or documentary material. A finding affecting vested rights cannot rest upon mere conjecture or administrative assumption without reference to any statutory prohibition.

Learned counsel submitted that the land in question was originally recorded as "Mafi Atiya Sarkar" in Samvat 1997 and was thereafter granted as Mafi Atiya (gift) to His Highness Jiwaji Rao Scindia, who cultivated the land and exercised ownership rights thereon. Consequently, the land came to be recorded in his name as private landowner, and the subsequent revenue entry in Samvat 2007 attained finality, having never been challenged by the State. The petitioner thereafter derived its rights through the lawful possession and cultivation of the land under the successors of Jiwaji Rao Scindia, culminating in the conferment of Bhumiswami rights by the competent revenue authority. Significantly, neither the original recorded owner nor his legal heirs ever challenged the conferment of ownership rights in favour of the petitioner, thereby lending further legitimacy to the petitioner's claim and the orders passed by the revenue authorities.

It was further submitted that the petitioner derived its rights through lawful possession and cultivation over the land and the conferment of Bhumiswami rights was made after due compliance with the statutory procedure. The Collector completely ignored the fact that neither the original recorded tenure holders nor their legal heirs ever disputed the petitioner's possession or challenged the conferment of ownership rights in its favour. The impugned order, therefore, unsettles vested rights which had crystallized in favour of the petitioner and had remained unquestioned for several years.

It was further submitted that the entire *suo motu* revision was initiated solely on the basis of a complaint submitted by a third party having no right, title or interest in the property and the exercise of revisional jurisdiction at the instance of a stranger to the proceedings is contrary to the scheme of the Madhya Pradesh Land Revenue Code. The Collector failed to appreciate that where statutory remedies of appeal and revision are available against an original order, a complaint by a private individual cannot be used as a substitute for such remedies so as to reopen concluded proceedings after several years.

It was further submitted that the impugned proceedings are also vitiated by gross violation of the principles of natural justice, as the Collector relied upon enquiries, reports and materials which were never supplied to the petitioner and no effective opportunity was granted to rebut the material relied upon by the Collector. The petitioner was never afforded an opportunity to lead evidence, cross-examine the persons whose reports formed the basis of the adverse findings, or effectively contest the allegations forming the foundation of the *suo motu* proceedings. The reliance on undisclosed material and *ex parte* enquiries has caused serious prejudice to the petitioner and renders the impugned order unsustainable.

Learned counsel further submitted that even assuming, without admitting, that there were procedural irregularities in the proceedings culminating in the order dated 25.11.2010, the same could not furnish a ground for outright extinguishment of the petitioner's rights. The Collector travelled far beyond the scope of the original proceedings and declared the land itself to be Government land, an issue which was never the subject matter of adjudication before the authority passing the order dated 25.11.2010.

It was further submitted that the Collector exceeded the scope of the remand order passed by the Board of Revenue, after the Board of Revenue had set aside the earlier order dated 12.04.2016 and remitted the matter for fresh adjudication after granting adequate opportunity of hearing to all concerned parties. However, instead of objectively reconsidering the matter on the basis of the evidence and contentions advanced by the petitioner, the Collector merely reiterated his earlier conclusions and once again arrived at the same result without properly appreciating the evidence available on record.

Learned counsel places strong reliance upon the Full Bench decision of this Hon'ble Court in the matter of **Ranveer Singh (Dead) through LRs. Kishori Singh and Others v. State of Madhya Pradesh,** reported in **2010 (4) MPLJ 178**, wherein it has been authoritatively held that *suo motu* revisional powers under Section 50 of the Madhya Pradesh Land Revenue Code must be exercised within a reasonable period and ordinarily within 180 days from the date of knowledge of the alleged illegality, irregularity or impropriety. The Full Bench has further held that even where Government land or public interest is involved, the revisional power cannot be exercised after an indefinite lapse of time. In the present case, the order conferring Bhumiswami rights was passed on 25.11.2010 whereas the *suo motu* revision proceedings were initiated years thereafter. The impugned order does not disclose any satisfactory explanation for such extraordinary delay nor does it record the date on which the alleged illegality came to the knowledge of the Collector. The exercise of revisional jurisdiction after such prolonged delay is therefore *ex facie* barred by limitation and without jurisdiction.

It was also submitted that the petitioner cannot be penalized for any alleged procedural lapse committed by revenue officials while discharging their statutory duties and if any irregularity existed in the manner in which the proceedings were conducted by the concerned revenue authority, the same cannot be used to divest the petitioner of rights, which had accrued in its favour pursuant to orders passed by competent authorities acting within the framework of law. The settled principle is that a litigant should not suffer for an error attributable to the administration.

Learned counsel further submitted that the Collector has committed a manifest error in proceeding on the assumption that the petitioner company, being a juristic entity, was incapable of acquiring Bhumiswami rights under the provisions of the Madhya Pradesh Land Revenue Code. The expression "person" used in the terms defined by the Code is governed by the definition contained in the Madhya Pradesh General Clauses Act. In that context, it cannot be disputed that a bona fide agriculturist could even be a company or an association of persons. Thus, the finding is contrary to the statutory definition of the term "person" contained in Section 2(31) of the Madhya Pradesh General Clauses Act, which expressly provides that the expression "person" shall include any company, association or body of individuals, whether incorporated or not. Therefore, wherever the provisions of the Madhya Pradesh Land Revenue Code confer rights, impose liabilities, or recognize legal status upon a "person", such expression necessarily includes a company unless the context otherwise requires..

It was further submitted that the petitioner is a duly incorporated company and is therefore a juristic person recognized by law. Merely because the petitioner is a corporate entity cannot be a ground to deny the benefits flowing from the provisions of the Madhya Pradesh Land Revenue Code. Agricultural operations can lawfully be carried out through employees, agents, representatives or persons acting under the authority of a company, and such cultivation cannot be disregarded solely because the recorded occupant is a corporate entity. More so, the stand of the State/Collector is not that no agricultural activities were being carried out by the petitioner; rather, it is that, being a company and not a "person", the petitioner could not acquire Bhumiswami rights under the Code. The impugned order, insofar as it proceeds on the premise that the petitioner company could not have acquired rights under the Code merely because it is a company, is contrary to Section 2(31) of the Madhya Pradesh General

Clauses Act and is liable to be set aside on this ground alone.

In view of the aforesaid submissions, it is submitted that the impugned order dated 26.07.2019 suffers from jurisdictional error, violation of the principles of natural justice, misreading of the revenue records, non-consideration of material evidence, and patent illegality in the exercise of revisional powers under Section 50 of the Madhya Pradesh Land Revenue Code. The impugned order is therefore liable to be quashed and set aside and the rights of the petitioner in respect of the land bearing Survey Nos. 1139 to 1146, Village Mahalgaon, District Gwalior deserve to be restored.

Per contra, learned counsel appearing for the respondents submitted that the present writ petition has been filed challenging the order dated 26.07.2019 (Annexure P/1) passed by the respondent No.3/Collector, Gwalior in Revision Case No.4/Revision/2019-20, whereby, in exercise of powers conferred under Section 50 of the Madhya Pradesh Land Revenue Code, 1959, the respondent No.3 set aside the order dated 25.11.2010 (Annexure P/4) passed by the respondent No.4, Tehsildar, Gwalior, and directed that the land bearing Survey Nos.1139 admeasuring 2.769 hectares, 1140 admeasuring 0.063 hectare, 1141 admeasuring 0.209 hectare, 1142 admeasuring 0.930 hectare, 1143 admeasuring 0.031 hectare, 1144 admeasuring 0.084 hectare, 1145 admeasuring 1.097 hectares and 1146 admeasuring 0.082 hectare, having a total area of 5.225 hectares, be restored in the name of the Government.

It is the petitioner's case that, by order **dated 23.01.2007 (Annexure P/3)** passed in Case No.353/2005-06/B-121, the Tehsildar directed entry of the petitioner's name in Column No.12 of the revenue records on the basis of reports submitted by the Patwari and Revenue Inspector regarding its alleged possession over the land and after issuance of notices to the interested persons. Thereafter, the petitioner preferred an application under Sections 109, 110 and 190 of the Madhya Pradesh Land Revenue Code seeking conferment of ownership rights under Section 169 of the Code, pursuant to which the Tehsildar passed an order dated 25.11.2010 (Annexure P/4) declaring the petitioner as Bhumiswami of the land in question. Subsequently, on the basis of a complaint, the Collector initiated suo motu revision proceedings and, by order dated **12.04.2016 (Annexure P/5)**, set aside the order dated **25.11.2010 (Annexure P/4)** and restored the land in the name of the Government. Although the said order was remanded by the Board of Revenue on the ground that adequate opportunity of hearing had not been afforded to the petitioner, upon remand the Collector, after granting proper opportunity of hearing to all concerned parties, again passed the order dated **26.07.2019 (Annexure P/1)** restoring the land in the name of the Government. The appeal preferred by the petitioner before the Commissioner, Gwalior Division, also came to be dismissed on **12.07.2021 (Annexure P/7)** on the ground of maintainability, whereafter the present writ petition has been filed.

Learned counsel further submitted that the present writ petition is wholly misconceived, devoid of merits and liable to be dismissed, as the principal issue for consideration is whether the Tehsildar had the jurisdiction and legal competence to pass the orders dated 23.01.2007 and 25.11.2010, whereby the petitioner's name was first entered in Column No.12 of the revenue records and thereafter ownership rights were conferred in its favour. Both the aforesaid orders were passed wholly without jurisdiction, contrary to the provisions of the Madhya Pradesh Land Revenue Code and settled principles of law, and are, therefore, void *ab initio*.

Learned counsel further submitted that it is a settled legal position that the erstwhile Gwalior State was governed by its own revenue laws prior to Independence and the land recorded as "Mafi Atiya Sarkar" meants that such lands always belonged to the State and were never transferable in favour of private individuals or entities. The revenue records, including the Khasras of Samvat 1997 (1940), Samvat 2007 (1950) and Samvat 2008 (1951), consistently recorded the land in question as *"Mafi Atiya Sarkar"*, clearly establishing its character as Government land. Upon the merger of the erstwhile Gwalior State, such land vested in the State Government and no order was ever passed by the competent authority transferring the said land in favour of the petitioner. Therefore, mere recording of the petitioner's alleged possession in Column No.12 of the revenue records and the subsequent declaration of the petitioner as *Bhumiswami* by the Tehsildar could not confer any valid title or ownership upon the petitioner. The said orders were patently illegal, arbitrary and passed without jurisdiction, causing serious prejudice to the rights and interests of the State. Accordingly, when the illegality came to the notice of the Collector, he rightly exercised the revisional jurisdiction vested in him under Section 50 of the Madhya Pradesh Land Revenue Code and corrected the patent illegality by restoring the land in the name of the Government.

It was further submitted that a bare reading of the order dated 25.11.2010 (Annexure P/4) passed by the Tehsildar reveals that there is no discussion whatsoever regarding the legal basis of the petitioner's alleged possession over the land and no documentary evidence establishing lawful possession, title or entitlement of the petitioner was produced or considered. Likewise, the earlier order **dated 23.01.2007 (Annexure P/3)** directing entry of the petitioner's name in Column No.12 was also passed without any legal foundation. The proceedings before the Tehsildar were conducted in complete disregard of the statutory provisions governing Government land and did not disclose any legal basis for conferring Bhumiswami rights upon the petitioner. The Collector, therefore, rightly exercised revisional jurisdiction to rectify the manifest illegality committed by the Tehsildar.

It was further submitted that although the earlier order of the Collector dated **12.04.2016 (Annexure P/5)** was set aside by the learned Board of Revenue, the same was only on the limited ground of violation of the principles of natural justice and the Board of Revenue neither adjudicated upon the merits of the controversy nor affirmed the legality of the orders passed by the Tehsildar. Pursuant to the remand, the Collector granted full and effective opportunity of hearing to the petitioner and all other concerned parties and thereafter, upon due consideration of the entire material available on record, passed the impugned order dated 26.07.2019. Consequently, the petitioner's plea alleging violation of the principles of natural justice is wholly untenable and deserves to be rejected.

It was further submitted that while examining the legality of the proceedings before the Tehsildar, the Collector also recorded specific findings regarding the lack of jurisdiction of the concerned Tehsildar. It was found that, at the relevant point of time, the Tehsildar was merely holding temporary administrative charge and was not legally competent to pass orders declaring the petitioner as *Bhumiswami* or directing mutation of ownership in its favour. The Collector further noticed several serious procedural irregularities and jurisdictional defects in the proceedings before the Tehsildar, which rendered the orders dated 23.01.2007 and 25.11.2010 wholly unsustainable in law.

The respondents also raised a preliminary objection regarding delay and laches, submitting that the impugned order was passed in July, 2019 whereas the present writ petition has been filed only in the year 2026. No satisfactory explanation has been furnished for such extraordinary delay and the plea based on the COVID-19 pandemic cannot justify approaching the Court after several years. It was therefore submitted that the petitioner, being guilty of gross delay and laches, is not entitled to invoke the discretionary jurisdiction of this Court under Article 226 of the Constitution. On these grounds, they prayed for dismissal of the writ petition.

Heard counsel for the parties and perused the record.

<u>DISCUSSION AND CONCLUSION</u>

Before examining the merits of the controversy, this Court deems it appropriate to deal with the preliminary objection raised by the respondents regarding **delay and laches.**

According to the respondents, the impugned order was passed on 26.07.2019 whereas the present writ petition has been filed in the year 2026 and, therefore, deserves to be dismissed on the ground of unexplained delay. This Court is unable to accept the aforesaid objection, as the record reveals that immediately, upon being aggrieved by the order dated 26.07.2019, the petitioner did not remain inactive or acquiesce in the impugned action. On the contrary, the petitioner promptly invoked the remedy which it *bona fide* believed to be available under the provisions of the Madhya Pradesh Land Revenue Code by preferring an appeal before the Commissioner, Gwalior Division and the said proceedings remained pending and were actively prosecuted by the petitioner until their culmination on 12.07.2021, when the appeal came to be dismissed solely on the ground of maintainability without any adjudication on the merits of the controversy. The period spent by a litigant in pursuing a remedy before a forum, which ultimately declines to entertain the matter on a technical ground is a relevant consideration while examining an objection based on delay and laches, particularly where the litigant has acted with due diligence and in good faith. It is therefore, apparent that the petitioner was continuously asserting its rights and pursuing available legal remedies. The conduct of the petitioner does not indicate negligence, indifference or abandonment of its claim, rather, the material on record demonstrates a *bona fide* effort to obtain redress through legal proceedings, which the petitioner genuinely believed to be maintainable. The period consumed in such proceedings cannot be viewed in isolation while considering the question whether the petitioner approached this Court within a reasonable time.

This Court also cannot lose sight of the fact that a substantial part of the intervening period coincided with the unprecedented outbreak of the COVID-19 pandemic, which disrupted normal judicial functioning throughout the country. The extraordinary situation created by the pandemic was judicially recognized by the Hon'ble Supreme Court in In Re: Cognizance for Extension of Limitation, Suo Motu Writ Petition (Civil) No. 3 of 2020, wherein the period of limitation prescribed under general and special laws was directed to stand extended in order to obviate hardship to litigants, who were unable to effectively pursue legal remedies during the said period. The benefit flowing from the aforesaid orders cannot be ignored while examining the present objection.

Apart from the aforesaid circumstances, the challenge raised in the present petition pertains to the legality of the exercise of *suo motu* revisional jurisdiction by the Collector after a considerable lapse of time and concerns valuable rights in immovable property. The petitioner alleged that the impugned order suffers from jurisdictional infirmities and has resulted in divesting it of rights which had accrued pursuant to orders passed by competent revenue authorities. The consequences of the impugned order are not confined to a past event but continue to operate against the petitioner by affecting its recorded rights in respect of the property in question. In such circumstances, the Court is required to adopt a pragmatic and justice-oriented approach rather than a purely technical one.

It is equally significant that no material has been placed before this

Court to demonstrate that any third-party rights have intervened during the intervening period or the respondents have altered their position to their detriment on account of the delay. No prejudice has been shown to have been caused to the respondents by reason of the petitioner approaching this Court after pursuing alternate remedies. On the contrary, refusal to examine the challenge on merits would have the effect of perpetuating an order, which is alleged to be without jurisdiction and contrary to law.

It is a settled principle that the rule relating to delay and laches is not a rule of limitation, but a rule of discretion founded on considerations of equity. The doctrine cannot be applied mechanically so as to defeat substantial justice, particularly where the litigant has been *bona fide* pursuing available remedies and where the challenge raises questions touching upon jurisdiction and continuing civil consequences.

Apart from the above, the challenge raised in the present petition goes to the very root of the jurisdiction exercised by the Collector and the petitioner has questioned the legality of the exercise of suo motu revisional powers after an inordinate lapse of time and has alleged violation of settled principles governing Section 50 of the Madhya Pradesh Land Revenue Code. It is well settled that where an order is alleged to be without jurisdiction, arbitrary or productive of continuing civil consequences, the rule of delay and laches cannot be applied in a rigid or mechanical manner.

In **Dehri Rohtas Light Railway Company Ltd. v. District Board, Bhojpur, (supra)**, the Hon'ble Supreme Court held that the doctrine of delay and laches is a rule of discretion and not a rule of limitation and the relief may be granted notwithstanding delay where refusal to interfere would result in perpetuation of illegality or manifest injustice. Similarly, in Shiv Dass v. Union of India, (supra), the Supreme Court reiterated that delay by itself cannot defeat a claim where substantial justice requires examination of the matter on merits. The principles laid down in the aforesaid decisions are fully attracted to the facts of the present case.

This Court also cannot lose sight of the fact that the impugned order has the effect of depriving the petitioner of valuable rights in immovable property and directs restoration of the land in the name of the Government. The consequences of the impugned order are continuing in nature and continue to affect the petitioner. No third-party rights have intervened during the intervening period and no prejudice has been demonstrated by the respondents on account of the delay. In such circumstances, this Court is of the considered opinion that the objection regarding delay and laches does not constitute a valid ground to non-suit the petitioner. The preliminary objection is accordingly rejected.

Having held that the writ petition deserves consideration on merits, this Court proceeds to examine the legality/illegality of the impugned order.

<u>Status of the Petitioner as a Company</u>

This Court finds considerable substance in the contention advanced on behalf of the petitioner regarding its **legal status as a company** and its competence to acquire and enjoy rights under the provisions of the Madhya Pradesh Land Revenue Code, as a careful reading of the impugned order reveals that the Collector has substantially proceeded on the premise that the petitioner, being a corporate entity incorporated under the Companies Act, could not have acquired rights flowing from possession, cultivation or occupancy of agricultural land. In the considered opinion of this Court, such an approach is founded upon an erroneous understanding of the legal status of a company and is contrary to the statutory framework governing the interpretation of State enactments.

It is a settled principle of law that a company, upon incorporation, acquires a legal personality separate and distinct from its shareholders, directors and officers. The doctrine of separate corporate personality, authoritatively is recognized in a historical case of **Salomon v. Salomon & Co. Ltd., [1897] AC 22**, which has been consistently accepted and applied by Indian Courts. The Supreme Court in **Bacha F. Guzdar v. Commissioner of Income Tax, AIR 1955 SC 74**, and **State Trading Corporation of India Ltd. v. Commercial Tax Officer, AIR 1963 SC 1811**, has reiterated that a company is a juristic person recognized by law and is capable of holding property, acquiring rights and incurring liabilities in its own name. Thus, once incorporated, a company is treated in law as a legal person capable of owning and possessing property independent of the individuals who constitute it.

The statutory position is made even more explicit by Section 2(31) of the Madhya Pradesh General Clauses Act, which provides that the expression "person" includes any company, association or body of individuals, whether incorporated or not, unless there is anything repugnant in the subject or context. The definition is intentionally broad and inclusive. Consequently, wherever the Madhya Pradesh Land Revenue Code confers rights, imposes obligations or recognizes legal status in favour of a "person", such expression must ordinarily be construed to include a company unless the statute expressly excludes corporate entities from its operation.

No provision of the Madhya Pradesh Land Revenue Code has been brought to the notice of this Court, which excludes a company from the ambit of the expression "person" or disentitles a corporate entity from claiming rights recognized under the Code. In the absence of any such statutory prohibition, it would be impermissible to read into the statute a restriction which the Legislature itself has consciously omitted. The interpretation adopted by the Collector effectively introduces a disqualification which finds no place in the statutory scheme and is, therefore, unsustainable.

The reasoning adopted by the Collector appears to proceed on the assumption that agricultural operations can be undertaken only by a natural human being and a company, being an artificial legal person, is incapable of cultivating land. Such reasoning overlooks the fundamental principle that a juristic person necessarily acts through human agency. Every act of a company is performed through its directors, officers, servants, employees, agents or authorized representatives. The law has consistently recognized that acts performed by such persons within the scope of their authority are, in the eyes of law, acts of the company itself.

Agricultural activities stand on no different footing. Cultivation may lawfully be carried out through labourers, employees, managers or agents acting under the authority and control of a company. The fact that the physical acts of cultivation are performed through human agency does not alter the legal character of the possession or cultivation exercised by the company. To hold otherwise would lead to the anomalous conclusion that a company may own property, but can never cultivate or manage it, a proposition unsupported either by statute or by settled principles of law.

The material available on record further indicates that the original proceedings were not founded merely upon the corporate status of the petitioner, but upon findings regarding actual possession, cultivation and enjoyment of the land. Reports submitted by the *Patwari* and Revenue Inspector, spot inspections, *Panchanama* proceedings and revenue entries were all directed towards determining whether the petitioner was in possession and exercising control over the land. The relevant consideration under the statutory provisions was the existence of possession and cultivation and not the corporate character of the person asserting such rights.

The Collector therefore committed a manifest error in law by treating the petitioner's status as a company as a circumstance disentitling it from acquiring rights under the Madhya Pradesh Land Revenue Code. Such reasoning is directly contrary to Section 2(31) of the Madhya Pradesh General Clauses Act, ignores the well-established doctrine of separate corporate personality and proceeds on an interpretation which finds no support in the statutory provisions. Once it is accepted that a company is a juristic person recognized by law and the expression “person” includes a company, the petitioner's claim was required to be examined on the touchstone of the statutory requirements relating to possession, cultivation and acquisition of rights under the Code, and not on the basis of an assumption that a corporate entity is inherently incapable of acquiring such rights. [Pls. see:- **Bhopal Sugar Industries Ltd. vs. State of M.P. & Others** reported in **1984 MPLJ 40**].

The undisputed record reveals that the petitioner's possession over the land bearing Survey Nos. 1139, 1140, 1141, 1142, 1143, 1144, 1145 and 1146 situated at Village Mahalgaon, District Gwalior was recognized by the competent revenue authority vide order dated 23.01.2007 passed after obtaining reports from the *Patwari* and Revenue Inspector and after issuing notices to all concerned persons. The said order remained unchallenged and attained finality.

Subsequently, the petitioner sought conferment of *Bhumiswami* rights under the provisions of the Madhya Pradesh Land Revenue Code. After conducting due enquiry and following the prescribed procedure, the competent authority passed the order dated 25.11.2010 declaring the petitioner as *Bhumiswami* of the land in question. Significantly, neither the recorded tenure holders nor their legal representatives questioned the aforesaid order. Consequently, rights accrued in favour of the petitioner and remained operative for several years.

The record further discloses that the *suo motu* revisional proceedings were initiated after a substantial lapse of time and the Collector neither recorded the date on which the alleged illegality came to his knowledge nor assigned any satisfactory reason for invoking revisional jurisdiction after several years. The Full Bench of this Court in **Ranveer Singh (Dead) through LRs. Kishori Singh and Others v. State of Madhya Pradesh, (*supra*)** has categorically held that *suo motu* revisional powers under Section 50 of the Madhya Pradesh Land Revenue Code are required to be exercised within a reasonable period and ordinarily within one hundred and eighty days from the date of knowledge of the alleged illegality. The exercise of revisional jurisdiction in the present case is therefore clearly contrary to the law laid down by the Full Bench.

This Court also finds substance in the contention advanced on behalf of the petitioner that the Collector committed a manifest error in holding that the order dated 25.11.2010 was without jurisdiction merely because it had been passed by the Naib Tehsildar, while holding charge of the office of the Tehsildar. The Collector has not referred to any provision of the Madhya Pradesh Land Revenue Code, 1959, any statutory rule, notification, circular or administrative instruction which either prohibits an In-charge Tehsildar from exercising the powers of the Tehsildar or excludes from his jurisdiction the adjudication of applications under Sections 109, 110, 169 and 190 of the Code.

Equally, no order of the Collector placing any restriction upon the exercise of such powers by the officer concerned has been brought on record. In the absence of any such statutory or administrative embargo, an officer who has been lawfully entrusted with the charge of the office of the Tehsildar is competent to exercise all the statutory, administrative and *quasi-judicial* powers attached to that office. The authority exercised by such an officer flows not from his substantive designation as Naib Tehsildar but from the office of the Tehsildar, the charge whereof has been validly entrusted to him. It is a settled principle of administrative law that an officer placed in current charge of a statutory office is entitled to discharge all functions attached to that office unless the governing statute or a lawful order expressly provides otherwise. Jurisdiction cannot be denied merely on the basis of nomenclature or the fact that the officer was holding current charge. Acceptance of the contrary proposition would render every judicial or *quasi-judicial* order passed by an officer holding current charge susceptible to challenge solely on that ground, leading to uncertainty in public administration and defeating the very purpose of making in-charge arrangements. Since the Collector has failed to point out any legal provision restricting the competence of the In-charge Tehsildar and has proceeded merely on an unsupported assumption, the finding regarding lack of jurisdiction cannot be sustained. Consequently, the order dated 25.11.2010 cannot be held to be invalid merely because it was passed by the In-charge Tehsildar, and the reasoning adopted by the Collector on this aspect is legally untenable and is hereby set aside.

This Court further finds that while exercising revisional jurisdiction, the Collector travelled beyond the scope of the original proceedings. Instead of confining himself to the legality of the order conferring Bhumiswami rights, the Collector proceeded to determine the nature and title of the land itself and declared the same to be Government land. Such an adjudication was beyond the scope of the proceedings and could not have been undertaken while exercising limited revisional powers under Section 50 of the Code.

The respondents have placed considerable reliance upon certain historical revenue entries describing the land as *"Mafi Atiya Sarkar"*. However, this Court is unable to accept the contention that the mere existence of such historical entries conclusively establishes present Government ownership over the land in question. The expression "Mafi Atiya Sarkar" is an old revenue nomenclature traceable to the revenue administration of the erstwhile princely State and ordinarily denotes land which was originally associated with a revenue-free grant, concession or assignment emanating from the State. Such an entry may indicate the historical origin of the land, but it does not, by itself, constitute conclusive proof of title in favour of the Government.

Apart from the aforesaid, one significant circumstance emerging from the revenue entries relied upon by the State is that Column No. 5 specifically records the name of the erstwhile Ruler, Shrimat Maharaj Major Sir Jiwajirao Scindia. A plain reading of the said entry, if accepted in its ordinary and natural sense, clearly indicates that the land was held by the Ruler in his personal capacity and was exempted from payment of land revenue. The erstwhile Maharaja, being the sovereign authority of the Gwalior State, exercised plenary powers over the administration of the State, including the power to own and manage private properties, realize land revenue, and exempt certain lands from the payment of revenue. Consequently, it was well within his authority to retain lands as his private property and exempt them from the ordinary incidence of land revenue.

A further examination of the revenue records pertaining to the years 1940–1950 reveals that there is no indication whatsoever that the lands in question were recorded as Muafi (revenue-free grant) or Inam (grant-in-aid). Had the lands been of such character, they would ordinarily have been governed by the provisions of the Gwalior Kanoon Maal (Revenue Administration Code) or the Kawayad Maufi Dauran (Rules Governing Exempt Grants). Significantly, it is also not the case of the State that the lands originally belonged to any other person and that the name of the erstwhile Ruler was fraudulently or erroneously entered in the revenue records merely to secure exemption from payment of land revenue. Equally, no material has been placed on record to establish that the lands in question vested in or stood transferred to the Dominion of India or the successor State by virtue of the Instrument of Accession executed by the erstwhile Ruler. There is also no material to demonstrate that the lands were held by Shrimat Maharaj Major Sir Jiwajirao Scindia in the capacity of a proprietor so as to attract the provisions of the M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950.

Thus, when the record does not disclose that the lands in question were ever transferred to or vested in the State, and the material available indicates that they were held by the erstwhile Ruler in his individual capacity, it cannot be presumed that the lands automatically merged with or vested in the State Government. Neither the provisions of the Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 (Act No. 66 of 1950) nor those of the M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 have been shown to have operated so as to divest the erstwhile Ruler of such private ownership or to vest the lands in the State. In the absence of any statutory vesting or any specific legal instrument evidencing such transfer, the State cannot claim ownership merely on the basis of assumption or inference.

Furthermore, the revenue entries themselves admittedly depict the lands as standing in the name of the Scindia family in the capacity of Bhumiswami. Once the revenue records recognize the lands as privately owned and record the erstwhile Ruler or his successors as Bhumiswami, the conclusion reached by the Collector that the lands belong to the State Government is wholly unsupported by the revenue record. The findings recorded by the Collector, therefore, are contrary to the documentary evidence available on record and suffer from patent perversity and legal infirmity.

The legal character of land must be determined not merely from isolated historical entries but from the entirety of the revenue record, subsequent settlements, mutations, recognition of rights by competent authorities and other legally relevant materials. A historical entry describing land as *"Mafi Atiya Sarkar"* cannot automatically override subsequent revenue entries which have remained in existence for decades and have not been challenged before any competent forum. Nor can such an entry dispense with the requirement of establishing title in accordance with law.

Significantly, the State has not placed on record any sanad, grant, resumption order, settlement record, title proceeding or adjudication by a competent authority conclusively demonstrating that the land continued to vest in the Government. Equally significant is the fact that the State never instituted any independent proceedings seeking declaration of title, cancellation of revenue entries standing in favour of private persons, or correction of the revenue record through an appropriate forum.

In these circumstances, the Collector could not have treated the historical expression "Mafi Atiya Sarkar" as conclusive proof of Government ownership, whether of the erstwhile Gwalior State or, subsequently, of the State Government, and on that basis alone could not had proceeded to declare the land to be Government land. Such a course effectively amounted to adjudication of disputed questions of title in collateral revisional proceedings arising out of an order granting *Bhumiswami* rights. The scope of the revisional proceedings was confined to examining the legality and propriety of the order under challenge and did not extend to rendering a final declaration regarding title to the land itself. The Collector could not indirectly accomplish in revisional proceedings what the State itself never sought to achieve through independent legal proceedings. Consequently, the reliance placed upon the historical entry "Mafi Atiya Sarkar" cannot sustain the conclusion reached in the impugned order.

This Court further finds that the claim set up by Respondent No. 5, Shivajirao Education Society, is founded upon an alleged registered deed of gift executed in the year 1959 by the erstwhile Ruler, Shrimat Maharaj Jiwajirao Scindia. The Board of Revenue, while passing the order dated

27.06.2019, specifically recorded in paragraph 10 that, despite placing reliance upon the said registered deed of gift, the Society had never taken any steps to have its name mutated in the revenue records on the strength thereof. The Board further recorded that the Society was not found to be in possession of the land in dispute and, while reserving its independent rights, expressly granted liberty to Respondent No. 5 to initiate separate proceedings before the competent authority in accordance with law on the basis of the registered deed of gift.

The liberty so granted by the Board of Revenue was intended to enable Respondent No. 5 to establish its alleged title before the competent authority in appropriate proceedings. However, instead of availing the statutory remedy specifically reserved in its favour, Respondent No. 5 chose to invoke the writ jurisdiction of this Court. Even the writ petition instituted by Respondent No. 5 was ultimately dismissed for want of prosecution. Thus, Respondent No. 5 neither pursued the remedy expressly granted by the Board of Revenue nor diligently prosecuted the writ proceedings initiated by it. Having failed to avail the proper remedy in accordance with law, Respondent No. 5 cannot now seek adjudication of its disputed claim of title in the present proceedings. Questions relating to title arising out of a registered deed of gift, particularly where mutation has never been effected and possession itself is disputed, necessarily require adjudication by the competent authority upon appreciation of evidence and cannot ordinarily be decided in exercise of writ jurisdiction under Article 226 of the Constitution.

What is, however, of considerable significance is the very foundation of the claim advanced by Respondent No.5. The Society itself asserts that the land in question was gifted to it by the erstwhile Ruler, Shrimat Maharaj Jiwajirao Scindia, under a registered deed of gift executed in the year 1959. Such a plea necessarily proceeds on the premise that the donor possessed lawful title and legal competence to transfer the property. A registered deed of gift can be executed only by a person having transferable ownership rights over the property sought to be gifted. Consequently, the stand consistently taken by Respondent No. 5 itself constitutes a clear admission that the land belonged to the erstwhile Ruler in his individual and personal capacity and that he was competent to deal with the same as its owner. This circumstance lends substantial support to the petitioner's contention that the land was the personal property of the Scindia family and not a property vested in the State.

The existence of the unchallenged registered deed of gift, coupled with the stand taken by Respondent No. 5, constitutes a relevant circumstance while determining the true nature and character of the property.

A person who has obtained orders from competent authorities acting within their jurisdiction cannot ordinarily be deprived of such rights merely because the authorities subsequently choose to revisit the matter after several years.

For all the aforesaid reasons, this Court is satisfied that the impugned order dated 26.07.2019 suffers from jurisdictional error, arbitrary exercise of revisional powers, non-compliance with the law laid down by the Full Bench of this Court, and misappreciation of the material available on record. The impugned order therefore cannot be sustained in law.

Accordingly, the writ petition is allowed. The impugned order dated 26.07.2019 passed by the Collector, Gwalior in Revision Case No. 4/Revision/2019-20 is hereby quashed. Consequently, the order dated 25.11.2010 conferring Bhumiswami rights upon the petitioner shall stand restored and all consequential revenue entries flowing therefrom shall also stand revived. The respondents are directed to carry out necessary corrections in the revenue records in accordance with law within a period of **thirty days** from the date of receipt of a certified copy of this order.

The writ petition stands allowed. No order as to costs.

(MILIND RAMESH PHADKE)
JUDGE

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