

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 7047 of 2007**

1. Vishnu Dayal Agrawal, S/o Late Roopchand, aged about 68 years
2. Vijay Kumar Agrawal S/o Late Roopchand, aged about 58 years
3. Shiv Kumar Agrawal, S/o Late Roopchand, aged about 53 years,
4. Shyam Sundar Agrawal, S/o Late Roopchand, aged about 48 years.
5. Anand Kumar Agrawal, S/o Roopchand, aged about 43 years. All residents of Sakti, Tehsil Sakti, District Janjgir-Champa (Chhattisgarh)

---- Petitioners

Versus

1. Shankar Lal Agrawal (Dead) through LR's
 - (i) Vinod Agrawal, S/o Late Shri Shankar Lal Agrawal, Aged about 54 years, R/o Ward No.7, Sakti, District Janjgir-Champa, Chhattisgarh. (son of the deceased)
 - (ii) Ravi Agrawal, S/o Late Shri Shankar Lal Agrawal, Aged about 37 years, R/o Ward No. 7, Sakti, District Janjgir-Champa, Chhattisgarh. (son of the deceased)
 - (iii) Devendra Agrawal, S/o Late Shri Shankar Lal Agrawal, Aged about 35 years, R/o Ward No. 7, Sakti, District Janjgir-Champa, Chhattisgarh. (son of the deceased)
 - (iv) Smt. Saroj Agrawal, D/o Late Shri Shankar Lal Agrawal, W/o Shri Satish Agrawal, Aged about 50 years, C/o Varsha Medical, Near Old Bus Stand, Korba, District Korba, Chhattisgarh. (daughter of the deceased)
 - (v) Smt. Anita Agrawal, D/o Late Shri Shankar Lal Agrawal, W/o Shri Arun Agrawal, Aged about 45 years, C/o Aasharam Electricals Opp. Carmel School, Raigarh, District Raigarh, Chhattisgarh. (daughter of the deceased)
2. Jagdish Prasad, S/o Ramphal Agrawal, aged about 53 years. Resident of Sakti, Tehsil, Sakti, District Janjgir-Champa (Chhattisgarh)

3. Additional Collector, Janjgir-Champa, District Janjgir Champa
(Chhattisgarh)

---- Respondents

For Petitioners	: Shri Rajeev Shrivastava and Shri Ankit Singhal, Advocates.
For Respondents 1(i)	: Shri Sanjay Shyam Agrawal, Advocate
For Respondent 3/ State	: Shri Prafull Bharat, Additional Advocate General.

HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE

ORDER ON BOARD

15/5/2015

1. No one appears on behalf of Respondents 1 (ii) to (v) and Respondent 2 despite valid service of notice.
2. Heard Counsel for the Petitioners, Respondent 1(i) and the Additional Advocate General on behalf of Respondent 3.
3. The Petitioners purchased the subject lands on 6.4.2005 pursuant to permission granted for sale under Section 165 (6) (ii) of the Chhattisgarh Land Revenue Code, 1959 (hereinafter referred to as 'the Code') by the authorities. The sale deed was registered on 7.4.2005. The order granting permission contained directions for ensuring the correctness of the boundaries of the lands sold so that lands beyond that for which permission had been granted did not form part of the transaction. On 23.4.2005, the predecessor of Respondent 1 (i) filed application under Section 32 of the Code that the boundaries mentioned in the sale deed were not in accordance with the permission dated 6.4.2005 and wrongly included a part of his lands. The maintainability of the proceedings under Section 32 was challenged by the Petitioners. In Writ Appeal No.13 of 2006, the proceedings were held to be within jurisdiction of the Additional Collector. By the impugned order dated 20.8.2007, the Additional Collector after hearing the parties has issued directions to the Petitioner for making necessary rectification in the sale deed dated 7.4.2005 in accordance with the directions contained in the order dated 6.4.2005.

4. Learned Counsel for the Petitioners submits that once a registered sale deed was executed, the Additional Collector or any third person has no right to interfere with the same, unless and until he obtains orders from a competent Court of law. The Additional Collector has no powers to annul a registered sale deed. The Additional Collector has virtually usurped the jurisdiction of a Civil Court by pronouncing on the validity of a registered sale deed. The Respondents have adequate remedies before the competent Civil Court if they are aggrieved by the registered sale deed.

5. Learned Counsel for the Petitioners next submitted that without prejudice to all of the above, it was a question of fact whether the recitals of the boundaries in the sale deed were correct or incorrect and whether there had been any encroachment on the lands of the Respondent. The Additional Collector could not have decided this question of fact by hearing the parties and examination of documents only. Prudently and appropriately the Additional Collector who also possessed powers of a Civil Court to take evidence and issue Commissions should have either conducted a spot enquiry or have called for a physical verification report and then passed the order.

6. Learned Counsel for the Respondents submitted that the jurisdiction of the Additional Collector to examine if the conditions subject to which permission has been granted has been violated or not stands concluded by the order of the Division Bench in Writ Appeal No. 13 of 2006. Even if no spot inspection was done, the order of the Additional Collector is reasoned and based on consideration of documentary evidence and the submissions made on behalf of the parties.

7. Having considered the submissions on behalf of the parties, the Court finds substance in the submission made on behalf of the Petitioners that in the given nature of the controversy and to give quietus to it, a physical inspection of the lands in question would have certainly been more appropriate. If disputed facts are involved, a decision based on documents only may not suffice.

8. It is therefore ordered that the impugned order dated 20.8.2007 of the Additional Collector shall be kept in abeyance. The Additional Collector shall have a spot enquiry made either in his presence or by an Officer nominated by him who shall carry out the inspection and measurement in presence of the parties after due notice to them with regard to the date and time. In view of Section 43 of the Code, the Additional Collector shall follow the procedure for measurement etc. as provided for under Order XXVI, Rule 9 of the Code of Civil Procedure. After the report is received, the Additional Collector shall pass a fresh reasoned and speaking order based on the physical inspection report either confirming his earlier order or if he is satisfied that it is required to be set aside or modified/ annulled, as the case may be the reasons for the same.

9. Let such fresh orders be passed by the Additional Collector in the manner as directed within a maximum period of three months from the date of receipt and/ or production of a copy of this order before him.

(Navin Sinha)
CHIEF JUSTICE