

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.1618 of 2014**

Dr.Chitrarekha Kabre d/o Late Shri Ram Gopal Kabre Aged About 51 Years
R/o House No. C-57, Campus D.C.R. University Of Science & Techonology
Murthal Haryana 131039

---- **Petitioner****Versus**

1. Nagar Palika Nigam Bhilai Represented Thorough Its Commissioner, G.E.
Road, Nh. 6, Bhilai C.G.
2. The Government Of Chhattisgarh Represented Through Its Chief Secretary
Mahanadi Bhavan Naya Raipur C.G.
3. The Estate Officer Nagar Palika Nigam Bhilai G.E. Road, Nh 6, Bhilai Distt.
Durg. C.G.
4. Shri Rajendra Kabre S/o Late Shri Ram Gopal Kabre Aged About 46 Years
R/o Plot No. 18, Block 13, M. Nehru Nagar, East Bhilai Distt. Durg. C.G.

---- **Respondent**

For Petitioner	:	Dr. Chitrarekha Kabre, petitioner in person.
For Respondent No.1 & 3	:	Shri H. B. Agrawal, Sr. Adv. With Ms. Preeti Yadav, Adv.
For Respondent No.2	:	Ms. Shubha Shrivastava, Panel Lawyer
For Respondent No.4	:	Shri Badruddin Khan, Advocate

C A V Order**15/10/2015**

This petition under Article 226 of the Constitution of India has been filed by the petitioner, challenging legality and validity of order dated 26-07-2012 (Annexure P-10) passed by respondent No.3, directing mutation of name of respondent No.4 in the records of the Municipal Corporation in respect of land ad measuring 360 square meter with a house constructed thereon. The petitioner has prayed for a direction to respondents No.1 & 3 to mutate the name of the petitioner and other surviving heirs of the deceased- RamGopal Kabre. Further prayer has been made for a direction to register lease of the

plot of the land and house constructed thereon in favour of the petitioner and other legal heirs.

2. Quintessential facts necessary for determination of controversy involved in this petition are that the plot measuring 360 Sq. Meter numbered as Plot No.18 in Block No.13 of Motilal Nehru Nagar (East), Bhilai, was leased out by the then Special Area Development Authority, Bhilai (In short "SADA") in favour of one Shri R. G. Kabre, father of the petitioner. Copy of the lease deed dated 16-07-1982 in favour of Ramgopal Kabre has been placed on record as Annexure P-1. The lease was executed for a period of 99 years with a clause of renewal after every 30 years. Ramgopal died intestate on 10-04-1985. After his death, his widow Smt. Sulochana R. Kabre and three sons and one daughter including the petitioner and respondent No.4 executed family settlement deed (Annexure P-3) before the Sub Divisional Magistrate in presence of two witnesses on 31-12-1987 and affidavit dated 14-06-1989 (Annexure P-4) was also submitted along with an application dated 13-07-1989 (Annexure P-5) before the erstwhile SADA, Bhilai for transfer of the plot in the name of heirs jointly. The original sale deed was also submitted. Thereafter, public notification was published in the newspaper on 21-06-1990 inviting objection against transfer of the plot and land jointly in the name of the legal heirs of the deceased Ramgopal Kabre which included petitioner- the only daughter and respondent No.4, one of the three sons. No objection was submitted. However, the Estate Officer passed an order dated 20-12-1990 granting permission for transfer of land/plot in the name of Smt. Sulochana R. Kabre, widow of Late Ramgopal Kabre. It was sent for grant of N.O.C. to the competent authority constituted under Urban land Ceiling and Regulation Act, 1976. The competent authority refused to grant NOC vide its letter dated 22-

12-1990 (Annexure P-8). In the note sheets, the matter was processed for transfer of name of Sulochana R. Kabre, it was recorded therein that the applicant is not interested in seeking mutation and therefore, case be filed.

3. While the matter stood thus, in the year 1998, SADA, Bhilai was dissolved and its assets and liabilities were transferred to newly constituted Municipal Corporation, Bhilai. The proposal (Annexure P-10) was submitted before the Estate Officer on 25-07-2012 stating that as earlier permission was granted, mutated the name of Smt. Sulochana R. Kabre, who died on 29-12-2010 and as she has executed a will in favour of respondent No.4, two other sons namely Ravindra Kabre, Arun Kabre and daughter Chitrarekha Kabre (petitioner herein), residing outside the country, name of respondent No.4 may be mutated in place of Late Sulochana Kabre. The note sheets record that objections were invited in newspapers on 02-06-2012 and no objections were submitted, therefore, the name of respondent No.4 be mutated and lease be renewed in his favour. The proposal on note sheets was followed by impugned order dated 26-07-2012 passed by the Estate Officer of the Corporation directing mutation of the name of respondent No.4 and renewal of lease in his favour.

4. When the petitioner came to know about such a decision taken on the note sheets followed by impugned order dated 26-07-2012 in favour of respondent NO.4, she objected to the same by submitting an application before the Corporation vide her representation dated 22-10-2012 (Annexure P-11) followed by an appeal under Section 403(1) of the Municipal Corporation Act, 1956 to the Commissioner. Later on, the petitioner preferred a petition under Section 421 sub section (1) of the Municipal Corporation Act, 1956. As

no relief was granted by any of these authorities, the petitioner finally approached this Court.

5. Challenging the action of the respondent-Corporation in directing mutation of the name of respondent No.4 and execution of lease deed in his favour, the petitioner, who appeared in person, submitted that the respondent No.4 has played fraud in collusion with the Corporation authorities. She submitted that the entire records available with the Corporation, which fact has not been disputed by any one, clearly shows that the lease was granted in favour of Ramgopal Kabre, who died intestate, therefore, his interest in lease devolved upon his surviving heirs namely his widow-Sulochana Kabre, three sons namely Ravindra Kabre, Rajendra Kabre (respondent No.4), Arun Kabre and only daughter, the petitioner herself. It is further argued that all of them executed a family settlement deed dated 31-12-1987 and affidavit dated 14-06-1989. Objection was invited vide notification published in the newspaper on 21-06-1990, in which, names of all the surviving heirs of the deceased-Ramgopal Kabre were proposed for mutation. However, thereafter, the respondent No.4 illegally managed the officers of the SADA, Bhilai and all of a sudden, order came to be passed on 20-12-1990 mutating the name of Sulochana Kabre, widow of the deceased Ramgopal Kabre, without notice and knowledge of the petitioner. It is further submitted that this order, by which, permission was granted to mutate the name of Sulochana Kabre in place of Ramgopal Kabre was never executed or implemented because firstly, the competent authority under the Urban Land Ceiling and Regulation Act, 1976 refused to grant NOC and secondly, the application for mutation was itself withdrawn on 05-06-1991 and case was filed. Thereafter, no proceedings were drawn nor any order was passed by the SADA authorities and its successor-

Municipal Corporation or any competent Court of law or any authority under M.P./C.G. Nagar Tatha Gram Nivesh Adhiniyam, 1973 nor proceedings were drawn under the Municipal Corporation Act, 1956. Respondent No.4 managed to get note sheets prepared on 25-07-2012 in his favour, referring to order dated 22-12-1990. In the said note sheets, the fact that the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 had refused to grant NOC vide its order dated 22-12-1990 and later on, application for mutation was withdrawn and case was filed and the fact that the objection published in the newspaper on 21-06-1990, proposed mutation of all the surviving heirs of the deceased-Ramgopal Kabre was very ingeniously suppressed. This led to passing of impugned order dated 26-07-2012 directing mutation of name of respondent No.4 on a false premise that the lease was earlier mutated in the name of Late Sulochana Kabre. The will executed by Sulochana Kabre in favour of respondent NO.4 does not entitle respondent No.4 to get plot and the house constructed thereon and mutation in his favour would not exclude other brothers and the sister because there was no valid transfer of lease or actual mutation of the name of Sulochana Kabre. Therefore, the petitioner prayed that the impugned order may be set aside and the Corporation authority may be directed to renew the lease in favour of surviving heirs of the deceased-Ramgopal Kabre so as to include the petitioner, respondent No.4 and two other sons.

6. On the other hand, learned counsel for the respondent-Corporation opposed the prayer by submitting that the petitioner is wrecking up an old and stale issue. It is submitted that rightly or wrongly, order dated 22-12-1990 was passed by the then Estate Officer of erstwhile SADA, Bhilai. This order was never challenged by the petitioner. Name of Late Sulochana Kabre was

recorded in the records as only surviving heir of the deceased-Ramgopal Kabre. When lease expired after a period of 30 years on 16-07-2012, by virtue of registered will deed executed in favour of respondent No.4, the Estate Officer rightly ordered the name of respondent No.4 to be mutated. It is submitted that the petitioner has not challenged the order dated 26-07-2012 by way of an appeal before any competent authority under the Municipal Corporation Act. The matter involves disputed question of facts. The petitioner is only seeking enforcement of her civil rights, for which, proper course of action is to take recourse to civil remedy where all the disputed facts with regard to devolution of interest of Late Ramgopal Kabre can be decided. It is also submitted by learned counsel for the Corporation that the appeal filed by the petitioner was hopelessly barred by limitation because the petitioner sought to challenge the order dated 20-12-1990 in the year 2013, without seeking condonation of delay in filing appeal. The petitioner, though preferred an appeal against order dated 20-12-1990, in the absence of challenge to order dated 26-07-2012 passed by the Estate Officer, SADA, Bhilai in favour of respondent No.4, the appeal is neither competent nor maintainable.

7. Learned State counsel submitted that upon appeal being preferred by the petitioner, comments of the Corporation were obtained. Comments given by the Corporation would show that the matter is pending adjudication before the State Authorities.

8. Learned counsel for respondent No.4 relied upon the submissions made by learned counsel for respondent-Corporation and State counsel and the documents filed by them, it is not necessary to again re-agitate those submissions, which have already been made by learned counsel for

respondent-Corporation or State counsel.

9. It appears that the petitioner filed two appeals i.e. one before the Corporation and other before the State Government, feeling aggrieved by order dated 20-12-1990. However, by this petition, the petitioner has assailed legality and validity of order dated 26-07-2012 passed by the respondent-Corporation in favour of respondent-Corporation.

10. The pleadings and documents filed by the respective parties would reveal that Ramgopal Kabre died intestate which is not disputed. None of the respondents could not dispute this fact that after death of Ramgopal Kabre, family settlement deed dated 31-12-1987 was submitted before the Sub Divisional Magistrate. A perusal of the family settlement deed dated 31-12-1987 (Annexure P-3) clearly shows that the petitioner, respondent No.4, Smt. Sulochana Kabre, widow of the deceased-Ramgopal Kabre, Arun Kabre (who was then minor) had executed deed. Smt. Sulochana Kabre signed not only in her capacity but also as guardian of Arun Kabre, who at that time, was minor. There is an endorsement made by the Sub Divisional Magistrate, Durg on 31-12-1989 that the settlers and witnesses were signed before him on 31-12-1987. None of the respondents have disputed execution and submission of this family settlement deed.

11. Submission of affidavit (Annexure P-4) is also not in dispute. This clearly shows that a prayer for mutation was made by all the legal heirs of the deceased-Ramgopal Kabre, which included his widow and three sons and daughter including respondent No.4 and the petitioner herein. A perusal of the application for mutation submitted before the competent authority, copy of

which has been filed as Annexure P-5 also leaves no manner of doubt that the application for mutation was made jointly in the name of legal heirs of the deceased-Ramgopal Kabre. This document is also beyond any pale of doubt or dispute.

12. The notification inviting objection was published in the newspaper (Amar Kiran) on 21-06-1990 (Annexure P-6), which has been placed on record by the petitioner, is also not been disputed by any of the respondents. The aforesaid admitted and undisputed facts clearly show that Ramgopal Kabre died intestate. Thereafter, his surviving legal heirs namely his widow Sulochana Kabre, three sons Ravindra Kabre, Rajendra Kabre, Arun Kabre and only daughter-petitioner herein executed family settlement deed as also filed affidavit. An application for mutation was made jointly in the name of all the legal heirs and objection was also invited against proposal of mutation of names of all the legal heirs. There is nothing to show that any objection was submitted by any one.

13. It is highly surprising as to how all of a sudden order dated 22-12-1990 came to be passed by the Estate Officer granting permission to mutate the name of Sulochana Kabre alone. The order records that it has been issued as directed by the Chairman of SADA, Bhilai. This Court had directed the respondent Corporation to place before the Court, the original note sheets and files relating to mutation proceedings. Vide order dated 10-04-2015, this Court also directed to place before the Court the original documents of renewal of lease and order passed by the Municipal Corporation. Relevant note sheets have been filed by the petitioner as well as by Corporation. From the entire records/note sheets which has been placed on record, there is nothing to

indicate that there was any note sheet prepared to propose and as to how, all of a sudden despite aforesaid family settlement deed, affidavit, application and notice inviting objection published in the news paper, mutation was proposed only in the name of Sulochana Kabre. Curiously enough, the note sheets (Annexure P-9) placed on record would show that even proposal of mutation, which required 10% of the market value to be deposited as mutation fee was not deposited and on the contrary, statement was made that no mutation is needed as the applicant is not interested in mutation, the case was filed. This is clear from noting made in the note sheets on 05-06-1991. In the note sheet dated 05-06-1991, original lease deed was directed to be returned. Not only this, permission granted vide order dated 20-12-1990 (Annexure P-7) for mutation in favour of Sulochana Kabre was not cleared by the competent authority under Urban Land (Ceiling and Regulation) Act, 1976. He refused to grant NOC vide Annexure P-8. Thus, neither the competent authority under Urban Land Ceiling and Regulation Act granted NOC nor any mutation was actually done nor mutation was sought. Use of the word “-Aavedak” in the note sheets indicated that the respondent No.4 appeared before the Corporation Authorities and stated that no mutation is needed. This shows that mutation proceedings were also not concluded because when the Corporation proposed that the fee of 10% of the valuation of land is to be deposited as mutation fee, therefore, the case itself was withdrawn. The prayer for mutation was withdrawn and case was filed. It is thus clear that even though, permission was granted vide letter dated 20-12-1990. This order was never executed and implemented.

14. There is no material placed by the respondent on record to show that as to how and under what circumstances and on what considerations, decision

was taken to mutate the name of Sulochana Kabre alone as against family settlement deed dated 31-12-1987, affidavit dated 14-06-1989 and mutation application dated 13-07-1989 as also notice inviting objection dated 21-06-1990. This only leads to inference that the respondent No.4, taking undue advantage of the fact that the petitioner and other brothers, were residing outside the country were not present at the station, was making all attempts to ensure that names of those are not included. None of the respondents could satisfy the Court on this aspect.

15. In this manner, neither any mutation was actually done nor in the lease deed, name of Sulochana Kabre was substituted in place of Late Ramgopal Kabre.

16. The next serious illegality resulted in issuance of impugned order dated 26-07-2012 directing mutation of the name of respondent No.4 on the assumption that the plot and house constructed thereon was mutated in the name of Sulochana Kabre, which is contrary to material on record. A perusal of note sheet dated 25-07-2012 (Annexure P-10) only shows that in order to extend undue favour to respondent No.4, a proposal, not only by suppressing the material fact but also misleading higher authorities by distorting facts, was made. When there was no mutation in the name of Sulochana Kabre nor correction in the lease deed recording the name of Sulochana Kabre, the will, if any, executed by Late Sulochana Kabre in favour of respondent No.4, would not entitle respondent No.4 to get his name mutated. The manner, in which, the SADA/Corporation authorities have acted, clearly show that in order to extend undue benefit to respondent No.4, the most material fact regarding execution of family settlement deed, affidavit, application for mutation, paper

notification all were either suppressed or distorted.

17. In view of the admitted and relevant facts of the case and disclosure from the records of the Municipal Corporation, it is apparently clear that impugned order dated 26-07-2012 is illegal and unsustainable in law. In these circumstances and the material available on record, I do not find that the facts of this case are so disputed as this would require this Court either to relegate the petitioner to avail alternative remedy of appeal or civil proceedings before the Civil Court. Existence of alternative remedy is only a matter of consideration for the Court as to whether in a given facts and circumstances, the matter has to be examined on merits or party is to be relegated to alternative remedy. In a case like the present one, in the considered opinion of this Court, there would be no fruitful purpose served in asking and relegating the petitioner to take recourse to alternative remedy, in the light of the pleadings and document on record. It is not a case whether the petitioner had preferred an appeal against order dated 26-07-2012. Order dated 20-12-1990 was not given effect to nor mutation was actually been done in favour of Sulochana Kabre nor is there corrected lease deeds on record. Further taking into consideration the fact that the Urban Land Ceiling and Regulation Authority refused to grant NOC, this Court has no hesitation in allowing this petition.

18. Accordingly, this petition is allowed. The impugned order dated 26-07-2012 is quashed. The matter relating to mutation shall be considered by the Corporation Authorities strictly in accordance with family settlement deed dated 31-12-1987, affidavit dated 14-06-1989 and application for mutation dated 13-07-1989 submitted by the legal heirs of the deceased-Ramgopal

Kabre, considering that the lease deed has come to an end on 25-07-2012 after expiry of 30 years requiring renewal, the authorities shall first decide the issue of mutation and pass appropriate orders and thereafter, if the present successors of Late Ramgopal Kabre are willing to comply with the conditions of renewal, prayer of renewal shall be considered by the respondent-Corporation. The entire exercise shall be completed by the Corporation within a period of four months.

Sd/-
Manindra Mohan Shrivastava
Judge