

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 614 of 2015**

- Arvind S/o Narayan Vishwas Aged About 47 Years Resident Of Village- P.V.- 116, Tahsil And Police Station - Pakhanjur, District- North Bastar Kanker (Chhattisgarh)

---- Petitioner**Versus**

1. Aseem Saha S/o Adhir Saha Resident Of Village- P.V.- 22, Tahsil And Police Station - Pakhanjur, District- North Bastar Kanker (Chhattisgarh)
2. Deenbandhu Sardar (Dead) Through Legal Representative - Shyamli Sardar, Wife Of Late Deenbandhu Sardar, Resident Of Village J.V.- 128, Tahsil And Police Station- Pakhanjur, District - North Bastar Kanker (Chhattisgarh)
3. Smt. Renuka Sen W/o Late Nagendra Sen Resident Of Village- P.V.- 42, Tahsil And Police Station- Pakhanjur, District- North Bastar Kanker (Chhattisgarh)
4. State Of Chhattisgarh, Through The Collector, Kanker, District- North Bastar Kanker (Chhattisgarh)

---- Respondent

For Petitioner : Shri D.N. Prajapati, Advocate.
 For Respondents 1 to 3 : Shri Parag Kotecha, Advocate.
 For Respondent No.4 : Shri S. Majid Ali, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****20/06/2016**

1. The petitioner has assailed the legality and validity of the order passed by the Board of Revenue whereby the revision application preferred by respondents No.1 to 3 has been allowed in part to set

aside the order passed by the Commissioner on 16.2.2010 and the Collector has been directed to correct the revenue record to mention the name of original lease holder Smt. Renuka Sen, wife of late Nagendra Sen in the revenue record.

2. Indisputably, lease of the land was granted in favour of late husband of respondent No.3 Smt. Renuka Sen sometimes in the year 1996. After the death of Nagendra Sen, his widow Renuka Sen executed the sale deed in the year 2008 in favour of respondent No.1 Aseem Saha and respondent No.2 Deenbandhu Sardar (dead), now represented through his legal heirs. The application for mutation moved by respondents No.1 and 2 was allowed by Tehsildar which compelled the petitioner to move an appeal before the Sub Divisional Officer (Revenue), Pakhanjur which came to be dismissed on 20.3.2009, however, the revision application preferred by the petitioner before the Collector was allowed on 8.9.2009 and the sale deed in favour of respondents No.1 and 2 was declared illegal. The Collector also declared that the subject land shall now be recorded as Government land and encroachment on the land be removed under Section 248 of the CGLR Code, 1959. Respondents 1 to 3 preferred revision application before the Commissioner, Bastar, which was dismissed on 16.2.2010 affirming the order passed by the Collector on 8.9.2009. Thereafter respondents 1 to 3 preferred revision application before the Board of Revenue in which the petitioner moved an application under Order 1 Rule 10 of the CPC for his impleadment on the ground that before the SDO, Collector

and Commissioner he was already a party, therefore, he should be heard in the revision application. In the said application under Order 1 Rule 10 CPC the petitioner was proceeded ex-parte on 8.12.2014 and subsequent application was dismissed on 5.5.2015.

3. Learned counsel for the petitioner would argue that once the petitioner was a party before the SDO, Collector and Commissioner, the revision application preferred by respondents 1 to 3 before the Board of Revenue was not maintainable without arraying all the persons who were parties before the subordinate revenue Courts.
4. In the considered opinion of this Court, once the petitioner was a party before the Commissioner but was not arrayed as respondent before the Board of Revenue, memo of revision was not duly constituted. It was not at all necessary for the petitioner to move an application under Order 1 Rule 10 CPC because he had a right to be heard by virtue of he being a party before the Commissioner whose order was under challenge before the Board of Revenue.
5. For the foregoing, the impugned order having passed in violation of principles of natural justice deserves to be and is hereby set aside. The matter is remitted back to the Board of Revenue for deciding the same afresh in accordance with law within a period of 3 months from today.
6. Shri Kotecha, learned counsel for respondents 1 to 3 has vehemently argued that the civil suit preferred by the petitioner having already been dismissed and there is no title or instrument in his favour by

which he can derive ownership, he is an encroacher of the land and he has no right to be heard.

7. The issue concerning dismissal of the suit preferred by the petitioner and all other aspects of the matter is left open to be considered by the Board of Revenue. This order remitting the matter to the Board of Revenue is not to be considered as opinion in favour of either of the party and the Board of Revenue would decide the matter strictly in accordance with law.
8. With the aforesaid direction and observation, the writ petition stands disposed of.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve