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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on 03.08.2016****Judgment Delivered on 19.10.2016****WPC No. 206 of 2016**

1. Avinash Infra Project Private Limited (Formerly Known As Jai Bhole Agro Farm Private Limited), Avinash House, Maruti Business Park, G.E. Road, Raipur (Chhattisgarh) Through Its Director Anand Singhania, S/o Shri Santosh Singhania, Aged About 43 Years, R/o Madhuban, Geeta Nagar, Besides Maruti Business Park, G.E. Road, Raipur (Chhattisgarh).

---- Petitioner**Versus**

1. South East Central Railway (SECR) Raipur, Through The Divisional Railway Manager, SECR, Fafadih, Raipur (Chhattisgarh).
2. Division Engineer-II, SECR, Fafadih, Raipur (Chhattisgarh).
3. SSE/Works/WRS, SECR, WRS Colony, Raipur (Chhattisgarh).
4. State Of Chhattisgarh, Through The Secretary, Department Of Revenue, Mantralaya, Mahanadi Bhawan, Naya Raipur (Chhattisgarh).
5. Collector, Raipur, District Raipur (Chhattisgarh).
6. Tahsildar, Raipur, District Raipur (Chhattisgarh).

---- Respondent**And****WPC No. 1526 Of 2016**

1. Avinash Infra Project Private Limited (Formerly Known As Jai Bhole Agro Farm Private Limited), Avinash House, Maruti Business Park G.E.Road, Raipur Chhattisgarh Through Its Director Anand Singhania, S/o Shri Santosh Singhania, Aged About 43 Years, R/o

Madhuban, Geeta Nagar, Besides Maruti, Business Park, G.E. Road, Raipur Chhattisgarh

---- **Petitioner**

Vs

1. South East Central Railway (SECR) Raipur, Through The Divisional Railway Manager, SECR Fafadih, Raipur Chhattisgarh
2. Division Engineer-II, SECR Fafadih, Raipur Chhattisgarh
3. SSE/Works/WRS, SECR WRS Colony, Raipur Chhattisgarh
4. State Of Chhattisgarh Through The Secretary, Department Of Revenue, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
5. Collector, Raipur District Raipur Chhattisgarh
6. Tahsildar, Raipur, District Raipur Chhattisgarh

---- **Respondent**

For Petitioner : Dr. N.K. Shukla, Sr. Adv. with Shri Sumesh Bajaj, Advocate

For Respondent/SECR: Shri Abhishek Sinha, Advocate

For Respondent/State : Shri Shashank Thakur, Govt. Adv.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

1. These two writ petitions under Article 226 of the Constitution of India have been preferred by the same petitioner, raising similar issues, therefore, they are analogously considered for disposal.

2. In WPC No.206 of 2016, the petitioner has prayed for a declaration that the respondents No.1, 2 & 3 i.e. South East Central Railway, Division Engineer-II & SSE/Works/WRS, SECR, respectively have no right whatsoever on the land in question and they cannot obstruct the petitioner from using the same either by construction of a boundary wall or otherwise whereas in WPC No.1526 of 2016, the petitioner has prayed for a direction to the respondents No.4, 5 & 6 i.e. State of Chhattisgarh, Collector, Raipur & Tehsildar, Raipur, respectively to decide its application (Annexure P-3) within a fixed time frame and till then the respondents No.1, 2 & 3 i.e. South East Central Railway, Division Engineer II & SSE/Works/WRS, SECR, respectively be refrained from obstructing the petitioner from using the land in question.
3. Both the writ petitions were heard on the question of maintainability. For the sake convenience, the facts narrated and documents annexed in WPC No.206 of 2016 are referred.
4. The petitioner has developed a residential colony in the name of Avinash Sun City in village Daldalsivini, Raipur, for which layout has been sanctioned/approved by the

Joint Director, Town and Country Planning, Regional Office, Raipur on 24.02.2014. As per the Master Plan the petitioner's land was abutting the road, therefore, the petitioner was in the process of constructing a feeder road to approach the main road, sometimes in January-February, 2015 on a part of land bearing Khasra No.2 i.e. unoccupied land of Patwari Halka No.109/41. The total area of the Khasra No.2 is 306.365 hectares at village Daldalsivini, Raipur.

5. The respondent No.3 SSE/Works/WRS, SECR informed the petitioner on 12.02.2015 that the lands belong to the respondents No.1, 2 & 3, therefore, the petitioner should stop the construction. Being under *bona fide* impression and belief that the respondent No.3 would not misstate the facts, the petitioner stopped the construction and sought permission from the respondents No.1, 2 & 3, however, when the petitioner did not receive any further communication, the petitioner verified the revenue records only to be aware that the name of the respondents No.1, 2 & 3 is not mentioned in the revenue record as owner and the lands, in fact, belong to the State Government.

6. Despite repeated requests, the respondents No.1, 2 & 3 did not submit the proof of their ownership. Thereafter, a legal notice was served vide Annexure P-9 and the petitioner applied before the respondent No.5 i.e. the Collector, Raipur for allotment of land vide Annexure P-11. The Department of Town and Country Planning also informed the respondents No.1, 2 & 3 vide Annexure P-16 that Khasra No.2 is, in fact, grass land and is not entered in the ownership of Railways in the Khasra papers. Similar was the communication to the respondents No.1, 2 & 3 by the Tehsildar, Raipur vide Annexure P-15. The Collector, Raipur, also informed the Joint Director, Town and Country Planning vide Annexure P-14 that the land does not belong to the Railways, but it is a grass land.
7. In WPC No.1526 of 2016, the petitioner has submitted coloured map of the Raipur Master Plan 2021 to put forth its case that in the Master Plan there is no mention of any land belonging to the Railways between the petitioner's land and the main road.
8. It is argued by Dr. N.K. Shukla, learned Sr. counsel appearing for the petitioner, that there being a serious dispute between the State Government and the Railways

about the ownership of the land, the Railways ought not to have issued a communication to the petitioner to stop the construction of road, which will connect the petitioner's colony through the main road. It is vehemently put forth that hundreds of the families have already shifted and are residing in the colony, therefore, restraining the petitioner from construction of road would not be in the interest of anybody.

9. Per contra, Shri Abhishek Sinha, learned counsel appearing for the respondent SECR, would vehemently argue that the writ petition is not maintainable, as it involves disputed questions of fact including dispute over title of the property, therefore, the petitioner should avail the appropriate remedy and the writ petition under Article 226 of the Constitution of India is not the appropriate remedy for the petitioner. To buttress his contention, Shri Sinha would place reliance upon the decisions of the Supreme Court rendered in the matters of **North Eastern Railway (HQ) Through Its General Manager, Gorakhpur and Another v. Chhedi Lal and Others¹, Mohan Pandey And Another v. Usha Rani Rajgaria (Smt.) And Others², Dwarka Prasad Agarwal (D) By**

¹ 1987 (Supp) SCC 609

² (1992) 4 SCC 61

**LRS. And Another v. B.D. Agarwal And Others³,
 Radhey Shyam and Another v. Chhabi Nath And
 Others⁴, Shalini Shyam Shetty and Another v.
 Rajendra Shankar Patil⁵, Moran M. Baselios
 Marthoma Mathews II & Ors. v. State of Kerla & Ors.⁶,
 Ayaaubkhan Noorkhan Pathan v. State of
 Maharashtra And Others⁷ and Ravi Yashwant
 Bhoir v. District Collector, Raigad and Others⁸.**

10. It appears, on the one hand the Railways would contend that in the Khasra entries the name of the Railways is entered, whereas in the same Khasra the land is described as grass land with entry in column 13 that a part of it is used as road which is also clear from nistar patrak mentioning existence of permanent (Kachcha) road through Khasra No.2. In one of the Khasra available at page 30, the ownership/occupant column is blank. The officers of the State Government including the office of the Collector, Tehsildar & Town and Country Planning issued letters to the effect that the land belongs to the Government. Thus, there appears dispute concerning title to the land, however, at the same time it

3 (2003) 6 SCC 230

4 (2015) 5 SCC 423

5 (2010) 8 SCC 329

6 2007 AIR SCW 4367

7 (2013) 4 SCC 465

8 (2012) 4 SCC 407

is also to be kept in mind that the petitioner has developed a colony wherein large number of people are residing and the petitioner wants to construct an approach road, which will use a minuscule part of the land bearing Khasra No.2.

11. It is also to be seen that the respondent SECR has not submitted any document of title before this Court by which the land in question was handed over to the Railways either on account of land acquisition award or under any Government grant/allotment. It is settled that mere entry of the name of a person in the Khasra entries is not a proof of title because Khasra entries are prepared for fiscal purpose.
12. Be that as it may, since the State Government is contending that the land belongs to it and the petitioner has moved an application before the Collector, Raipur, seeking allotment of land admeasuring 60 ft. x 380 ft. for construction of approach road for its colony and the said application is pending consideration before the Collector, Raipur, therefore, it would be appropriate if the petitioner is relegated to pursue his application before the Collector, Raipur, because there being disputed questions, the writ petition may not be the appropriate

remedy. Accordingly, both the writ petitions are disposed of with a direction to the Collector, Raipur, to decide the petitioner's application within a period of three months from today, in accordance with law by a reasoned order after affording opportunity of hearing to all the parties concerned including the Railways. Till the matter is decided by the Collector, Raipur, the interim order passed earlier shall continue.

13. Depending upon the outcome of the application, the petitioner would be at liberty to avail the appropriate remedy as may be available in law.
14. There will be no order as to costs.

Sd/-

Judge
Prashant Kumar Mishra

Gowri