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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 571 of 2016**

1. South East Central Railway, Through the Divisional Manager, South East Central Railway, Fafadih Raipur, Chhattisgarh.
2. Divisional Engineer-II, South East Central Railway, Fafadih Raipur Chhattisgarh.
3. SSE/Works/WRS South East Central Railway, WRS Colony, Raipur, Chhattisgarh.

---- Appellants**Versus**

1. Avinash Infra Project Pvt. Ltd. (Formerly known as Jai Bhola Agro Farm Pvt. Ltd.) Avinash House, Maruti Business Park, GE 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.
2. State of Chhattisgarh, Through the Secretary, Department of Revenue, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
3. Collector, Raipur, Distict Raipur, Chhattisgarh.
4. Tahsildar, Raipur, District Raipur, Chhathisgarh.

---- Respondents**Writ Appeal No. 573 of 2016**

1. South East Central Railway, Through the Divisional Manager, South East Central Railway, Fafadih Raipur, Chhattisgarh.
2. Divisional Engineer-II, South East Central Railway, Fafadih Raipur Chhattisgarh.
3. SSE/Works/WRS South East Central Railway, WRS Colony, Raipur, Chhattisgarh.

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3. Collector, Raipur, District Raipur, Chhattisgarh.
4. Tahsildar, Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Appellant : Shri Abhishek Sinha and Shri G.S.Patel, Advocates.
 For Respondent No.1 : Shri Sumesh Bajaj, Advocate.
 For Respondent/State : Shri Y.S.Thakur, Additional Advocate General.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

Judgment on Board

Per Deepak Gupta, Chief Justice

13/12/2016

1. These two appeals are being disposed of by one judgment since they arise from one common judgment dated 19.10.2016 passed by the learned Single Judge in Writ Petition (C) No. 206 of 2016 and 1526 of 2016.

2. Briefly stated, the facts of the case are that M/s. Avinash Infra Project Private Limited is a private limited company had filed Writ Petition (C) No. 206 of 2016 and Writ Petition (C) No. 1526 of 2016, out of which these writ appeals arise. The grievance of the Petitioner is that it had set up a project known as Avinash Sun City in village Daldalsivni, Raipur, after getting its plan approved from the Town and Country Planning Department, Raipur. According to the Petitioner, it had spent a lot of money in developing this project. The allegations of the Petitioner is that the Petitioner had an approach road adjoining the said colony and the Petitioner was in the process of constructing a feeder/link road in the month of January-February, 2015. The road was being constructed on a part of Khasra No. 2 i.e. unoccupied land of P.H. No. 109/41, admeasuring 306.365 hectares. At that time, the Appellant-South East Central Railway sent a

communication to the Petitioner that the said land belongs to the Railways and therefore, the work of construction of road should be stopped. It is stated that believing the statement of the Appellant-Railways, the Petitioner-Company stopped the work but later it came to know that this land does not belong to the Railways, but to the State Government. It therefore approached the State Government for allotment of the land for construction of a link road through their colony to the main road.

3. The case of the Petitioner-Company is that the land does not belong to the Railways and it is a Government land and therefore, it is entitled to connect its colony to the main road through the link road by getting the land allotted by the Government. In the second writ petition, the claim was that the Respondent-State especially the Collector, Raipur be directed to decide its application for allotment of the land for connecting its colony to the main road.

4. The allegations made by the Petitioner-Company are controverted by Shri Sinha, learned counsel for the Appellant-Railways and contends that the entire land comprising of Khasra No. 2 belongs to the Railways every since 1942.

5. We make it clear that in these cases, we are not deciding the title between the parties. However, one thing is clear. The Petitioner-Company is not the owner of the land. Either the land belongs to the Railways or to the State Government. If the State Government is the owner of the land, then it will have the power to allot a portion of the land to the Petitioner-Company for making feeder road or link road. However, if the Railways is the owner of the land, then the question of the Collector exercising any such power cannot arise because the policy under which the allotment is to be made is limited to the land of the State Government. It is more than obvious that the State Government cannot frame any policy for allotment of land belonging to the individuals or the Central Government.

6. The main grievance of the Petitioner-Company appears to be that a public road was already existing in the area in question and that the entire land has been shown as grass land and it does not belongs to the Railways. This appears to be the stand of the State also. However, the State has not filed any reply.

7. The Learned Single Judge has held that there are disputed question of facts involved, therefore, a writ petition may not be the appropriate remedy. We are in total agreement with the learned Single Judge as far as this part of the finding is concerned. The question as to who is the owner of the land is a question of title which cannot be decided in a writ proceedings. However, the learned Single Judge, despite holding that there is a dispute with regard to the question of title went on to direct that the application filed by the Petitioner-Company for allotment of the land shall be considered by the Collector and while considering the same, the Collector shall hear all the parties including the Railways.

8. We are afraid that we cannot uphold the aforesaid part of the judgment. This part of the judgment presupposes that the land belongs to the State Government. In any event, the Collector has no right to decide the title of the parties. The dispute, if any, is in between the State Government and the Union of India. Even the Civil Court cannot decide such a dispute. The High Court also has no jurisdiction to decide such a dispute. Therefore, we are of the view that no direction could be given to the Collector to decide the matter.

9. Therefore, we dispose of these appeals with a direction that as far as the dispute regarding title is concerned, that cannot be decided by the Collector. The Collector can only decide whether the entries in the revenue records are correct. He cannot decide the dispute of title.

10. In view of the above discussion, we allow these appeals and set aside the order dated 19.10.2016 in so far as the direction to the Collector for deciding the

application of the Petitioner-Company with regard to allotment of land is concerned.

11. The parties are free to avail other remedies with regard to their rights including easementary rights before the appropriate forum.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE