

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 1056 OF 1993

Vibhuti Bhushan Rath, S/o Late Shri Abhimanyu Rath, aged about 47 years, Caste Brahmin, R/o Bhairamdeo Ward, Jagdalpur Town, District Bastar (MP)

... Petitioner

Versus

1. Member, Board of Revenue, Madhya Pradesh, Gwalior.
2. Commissioner, Baster Division, Jagdalpur (M.P.)
3. Sub-Divisional Officer (Revenue), Jagdalpur, District Baster (M.P.)
4. Additional Tehsildar (Nazul), Jagdalpur, Jagdalpur Tahsil, District Baster (M.P.)
5. Umashankar Jha, S/o Udaiakant Jha, aged about 25 years, R/o Dalpat Sagar Ward, Jagdalpur, District Bastar (C.G.)
6. Dayashankar Jha, S/o Udaikant Jha, aged about 25 years, R/o Dalpat Sagar Ward, Jagdalpur, District Bastar (C.G.)

... Respondents

For Petitioners	:	Mr. J.N. Nande, Advocate.
For Respondents 6 & 7	:	Mr. Sourabh Sharma, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

21/08/2017

1. The present writ petition has been filed by the petitioners on 25.2.1993, challenging the order of the Board of Revenue, dated 9.6.1992, whereby the Board of Revenue had confirmed the order of the Commissioner in favour of Smt. Durga Devi Joshi, the original respondent no.1, vide its order dated 25.1.1992.
2. The Commissioner earlier had vide its order dated 25.1.1992 affirmed the order of the Tehsildar dated 27.6.1992, whereby an application filed by the original respondent no.1, Smt. Durga Devi Joshi, for mutation, had been allowed in her favour by the Tehsildar.
3. A development which has been brought to the notice of this Court at this juncture is that subsequent to the filing of the present writ petition, the petitioner herein has filed a fresh civil suit, i.e., Civil Suit No. 24A/2001, challenging the sale deed dated 3.11.1997 made in favour of one

Umashankar Jha and Dayashankar Jha. The petitioner has also sought for declaration of title over the suit property.

4. Perusal of the records which are enclosed along with the writ petition would show that on 13.7.2001 while framing the issues, the issue no.2 framed was, whether the mutation order passed in favour of Smt. Durga Devi Joshi on 21.12.1992 was proper, legal or justified or not.

5. From the proceeding it also reflects that the said issue no.2 questioning the validity of the mutation order in favour of Smt. Durga Devi Joshi was subsequently deleted vide order dated 14.9.2001. The said civil suit which has been renumbered as Civil Suit No. 36A/2005 has at present reached the stage of evidence where the plaintiffs evidence is yet to be concluded.

6. Learned counsel for the petitioner at this juncture also makes a submission that a civil suit was also filed by the other relatives of the petitioner, namely, Shashi Shekhar Rath and Shitanshu Shekhar Rath, wherein they had also claimed for title over the said suit property by virtue of a 'will' executed in their favour which was in their possession. It has also been stated that the said suit has also been decided in favour of the plaintiffs therein.

7. Be that as it may, since these are the developments which have occurred in between and that the issue involved in the present case, of the challenge to the mutation proceedings would also require documentary evidence to establish the title of the petitioner over the suit property which was the basis of opposing the mutation proceedings. Even otherwise the contentions which are relied upon and the stand of the respondents are all disputed questions of fact. Either party are relying upon documentary evidence to substantiate their respective stand. This being all matter of evidence which would have to be thrashed out by leading evidence by

either side to prove and disprove the respective contentions and which perhaps would not be possible for this Court to venture into in exercise of its writ jurisdiction, this Court while disposing of this petition permits the petitioner to move an appropriate application for reopening the issue which stood deleted on 14.9.2001 in respect of questioning the order of mutation in favour of Smt. Durga Devi Joshi along with other reliefs that he has sought for. In addition, the petitioner, who was the original plaintiff before the Court below, shall also have the liberty of moving appropriate amendment application seeking proper amendment to the pleadings in the civil suit after adding this relief also, so far as challenge to the mutation order in favour of Smt. Durga Devi Joshi. Further, it is also observed that any orders passed by this Court in the present writ petition should not have any bearing on the outcome of the civil suit which is pending consideration and the same shall be decided purely on its own merits based on evidence and the law dealing with the subject.

8. Taking into consideration the fact that the original suit was filed in the year 2001, i.e., almost 17 years have passed, the present writ petition being pending since 1993 and all these matter, for a substantial period of time was pending consideration before this Court, ends of justice would meet if subject to the cooperation of either of the parties, the suit itself be decided on its own merits as far as possible within an outer limit of six months to one year.

9. The writ petition stands disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge