

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 5449 of 2007**

Smt. N. Bharti Devi, W/o. Shri Manikya Rao, resident of Village : Shankar Nagar, Raipur, Tahsil & Distt. Raipur (C.G.), Through the constituted lawful attorney : Anil Rao, S/o. Shri N. Manikya Rao, aged about 39 years, R/o. Shankar Nagar, Raipur, Tahsil and District Raipur (C.G.)

---- Petitioner**Versus**

1. Tarun Ghosh, S/o. Late P.B. Ghosh, R/o. Matrachhaya, Jal Vihar Colony, Katora Talab, Raipur, Tahsil & Distt. Raipur (C.G.)
2. Smt. Savitri Bai Ghosh (since deceased) through LRs:-
 - (a) Smt. Sangeeta Bose, aged about 47 years, wife of D.N. Bose, R/o Maihar District Satna (M.P.)
 - (b) Smt. Nikita Dey, aged about 37 years, wife of Shri Niladi Dey, R/o. Jabalpur (M.P.)
 - (c) Smt. Suchita Singh, aged about 37 years, wife of Shri Arjun singh, R/o Awanti Vihar, Raipur, District Raipur (C.G.)
3. Chairman, Board of Revenue, Chhattisgarh, Circuit Court Raipur (C.G.)
4. State of Chhattisgarh, Through: Collector, Raipur (C.G.)
5. Sub Divisional Officer, (Revenue), Raipur (C.G.)
6. Tahsildar / Additional Tahsildar, Raipur, District. Raipur (C.G.)

---- Respondents**Writ Petition (C) No. 5455 of 2007**

1. Smt. Nakka Bharti, W/o. Shri Manikya Rao,
2. Ku. M. Anita Rao, D/o. Shri Manikya Rao,

Both are R/o. Village : Shankar Nagar, Raipur, Tahsil & Distt. Raipur (C.G.) Through the constituted lawful attorney : Anil Rao, S/o. Shri N. Manikya Rao, aged about 39 years, R/o. Shankar Nagar, Raipur, Tahsil and District Raipur (C.G.)

---- Petitioners**Versus**

1. Tarun Ghosh, S/o. Late P.B. Ghosh, R/o. Matrachhaya, Jal Vihar Colony, Katora Talab, Raipur, Tahsil & Distt. Raipur (C.G.)

2. Smt. Savitri Bai Ghosh (since deceased) through LRs:-

(a) Smt. Sangeeta Bose, aged about 47 years, wife of D.N. Bose, R/o Maihar District Satna (M.P.)

(b) Smt. Nikita Dey, aged about 37 years, wife of Shri Niladi Dey, R/o Jabalpur (M.P.)

(c) Smt. Suchita Singh, aged about 37 years, wife of Shri Arjun singh, R/o Awanti Vihar, Raipur, District Raipur (C.G.)

3. Chairman, Board of Revenue, Chhattisgarh, Circuit Court Raipur (C.G.)

4. State of Chhattisgarh, Through: Collector, Raipur (C.G.)

5. Sub Divisional Officer, (Revenue), Raipur (C.G.)

6. Tahsildar / Additional Tahsildar, Raipur, District. Raipur (C.G.)

---- Respondents

Writ Petition (C) No. 5451 of 2007

1. Smt. Nakka Bharti, W/o. Shri Manikya Rao,

2. Ku. M. Anita Rao, D/o. Shri Manikya Rao,

Both are R/o. Village : Shankar Nagar, Raipur, Tahsil & Distt. Raipur (C.G.) Through the constituted lawful attorney : Anil Rao, S/o. Shri N. Manikya Rao, aged about 39 years, R/o. Shankar Nagar, Raipur, Tahsil and District Raipur (C.G.)

---- Petitioners

Versus

1. Tarun Ghosh, S/o. Late P.B. Ghosh, R/o. Matrachhaya, Jal Vihar Colony, Katora Talab, Raipur, Tahsil & Distt. Raipur (C.G.)

2. Smt. Savitri Bai Ghosh (since deceased) through LRs:-

(a) Smt. Sangeeta Bose, aged about 47 years, wife of D.N. Bose, R/o Maihar District Satna (M.P.)

(b) Smt. Nikita Dey, aged about 37 years, wife of Shri Niladi Dey, R/o Jabalpur (M.P.)

(c) Smt. Suchita Singh, aged about 37 years, wife of Shri Arjun singh, R/o Awanti Vihar, Raipur, District Raipur (C.G.)

3. Chairman, Board of Revenue, Chhattisgarh, Circuit Court Raipur (C.G.)

4. State of Chhattisgarh, Through: Collector, Raipur (C.G.)

5. Sub Divisional Officer, (Revenue), Raipur (C.G.)

6. Tahsildar / Additional Tahsildar, Raipur, District. Raipur (C.G.)

---- Respondents

Writ Petition (C) No. 5456 of 2007

1. Smt. Nakka Bharti, W/o. Shri Manikya Rao,
2. Ku. Sunita Rao, D/o. Shri Manikya Rao,

Both are R/o. Village : Shankar Nagar, Raipur, Tahsil & Distt. Raipur (C.G.) Through the constituted lawful attorney : Anil Rao, S/o. Shri N. Manikya Rao, aged about 39 years, R/o. Shankar Nagar, Raipur, Tahsil and District Raipur (C.G.)

---- Petitioners

Versus

1. Tarun Ghosh, S/o. Late P.B. Ghosh, R/o. Matrachhaya, Jal Vihar Colony, Katora Talab, Raipur, Tahsil & Distt. Raipur (C.G.)
2. Smt. Savitri Bai Ghosh (since deceased) through LRs:-
 - (a) Smt. Sangeeta Bose, aged about 47 years, wife of D.N. Bose, R/o Maihar District Satna (M.P.)
 - (b) Smt. Nikita Dey, aged about 37 years, wife of Shri Niladi Dey, R/o Jabalpur (M.P.)
 - (c) Smt. Suchita Singh, aged about 37 years, wife of Shri Arjun singh, R/o Awanti Vihar, Raipur, District Raipur (C.G.)
3. Chairman, Board of Revenue, Chhattisgarh, Circuit Court Raipur (C.G.)
4. State of Chhattisgarh, Through: Collector, Raipur (C.G.)
5. Sub Divisional Officer, (Revenue), Raipur (C.G.)
6. Tahsildar / Additional Tahsildar, Raipur, District. Raipur (C.G.)

---- Respondents

For Petitioner	: Mr. Raghvendra Pradhan, Advocate.
For Respondents No. 1 & 2	: Mr. P.R. Patankar, Advocate.
For State	: Mr. Arun Sao, Dy. Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

23/11/2017

(1) Since common question of law and fact is involved in this batch of writ petitions, they are being disposed of by this common order.

(2) On an application under Section 110 of the C.G. Land Revenue Code, 1959 (henceforth "Code") filed by the petitioners, order of mutation was passed in their favour by the Additional Tahsildar, Raipur, by its order dated 5.10.2002.

(3) Feeling aggrieved & dissatisfied with the order of Additional Tahsildar, respondents No. 1 & 2 preferred first appeal before the Sub Divisional Officer (Revenue), Raipur. The SDO (R), by its order dated, 28.06.2004, dismissed the appeal for want of prosecution. The respondents No. 1 & 2 preferred an application for restoration of the appeal under Section 35(3) of the Code on 26.7.2004 thereagainst. In that application, notices were served upon the petitioners through paper publication on 09.12.2005, but it appears that S.D.O. (R) without deciding the application under Section 35(3) of the Code, decided the appeal finally on 31.03.2006, which has been affirmed by the Collector, Raipur by its order dated 08.01.2007 and Board of Revenue, by its order dated 27th June, 2007, against which this batch of writ petitions has been filed questioning the same.

(4) Learned counsel appearing for the petitioners would submit that the appeal could not have been heard by S.D.O. (Revenue) without restoring the appeal by allowing the application under Section 35(3) of the Code and, therefore, order passed by SDO (R) and subsequently affirmed by the Collector, Raipur & Board of Revenue are liable to be dismissed.

(5) On the other hand, counsel for the State would support the impugned order and submit that order impugned is strictly in accordance with law.

(6) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

(7) It is apparent on the face of the record that the appeal filed by the respondents No. 1 & 2 was dismissed in default on 28.06.2004; and application under Section 35(3) of the Code for restoration of the appeal was filed on 26.07.2004, but without deciding the application under Section 35(3) of the Code, the Sub Divisional Officer (R) heard the appeal filed by respondents No. 1 & 2 finally, which was not pending on the date when the SDO (R) decided the appeal on merits as the application under Section 35(3) of the Code was pending consideration before the SDO (R) and this illegality was perpetuated by the Collector and the Board of Revenue, therefore, the order passed by the SDO (R) dated 31.03.2006 is hereby quashed. Consequently the order dated 8th January, 2007 passed by the Collector & the order dated 27th June, 2007 passed by the Board of Revenue are also quashed and an application under Section 35(3) of the Code is restored to the file of SDO (R) for hearing and disposal in accordance with law.

(8) The parties are directed to appear before the Sub Divisional Officer (Revenue), Raipur on 11th December, 2017.

(9) The writ petitions are allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

