NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No. 1795 of 2002

Devi Prasad Gupta, S/o Shri Badri Prasad Gupta, aged about 49 years, R/o Village Gurur, Distt. Durg (C.G.)

---- Petitioner

Versus

1. Shriram (since deceased)

    (a) Rajendra, S/o. Shriram Gond,

    (b) Narendra, S/o. Shriram Gond,

    (c) Ashwani, S/o. Shriram Gond,

    (d) Ashoni Bai, D/o Shriram Gond,

    (e) Kakshmi Bai, Wd/o. Shriram Gond,

    All R/o. Village Bichhibahra, Tehsil Gurur, Distt. Durg (C.G.)

2. State of Chhattisgarh, through Collector, Durg (C.G.)
3. Upper Commissioner, Raipur Division, Raipur (C.G.)
4. Upper Collector, Durg, Distt. Durg (C.G.)
5. Sub-Divisional Officer, Balod, Distt. Durg (C.G.)

---- Respondents

For Petitioner: Mr. Malay Kumar Shrivastava, Advocate.
For State : Mr. Aditya Sharma, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

21/11/2017

Heard.

(1) Sub Divisional Officer (Revenue) entertained the application filed by respondent No.1-Shriram (since deceased) holding that proceedings under Section 170-B of the Land Revenue Code, 1959 (for short “Code”)

is maintainable, against which petitioner preferred revision before the Additional Collector, Durg. The Additional Collector, Durg dismissed the revision filed by petitioner. The petitioner preferred revision before the Commissioner thereagainst. The Commissioner, by its impugned order dated 16.08.2002, dismissed the revision affirming the order of SDO & Additional Collector, Durg, against which instant writ petition has been filed questioning the same.

(2) Learned counsel for the petitioner would submit that the proceedings under Section 170-B of the Code is not maintainable as transaction between the parties is after 24.10.1980, therefore, it ought not to have been entertained by the SDO and both the authorities i.e. Collector and Commissioner have committed illegality in affirming the order of Sub Divisional Officer and rejecting the revision filed by petitioner.

(3) On the other hand, counsel for the state would support the impugned order.

(4) I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

(5) It is apparent from the record that the petitioner has not raised such an objection before the Sub Divisional Officer and straightway he has filed revision against the order dated 14.12.2001 and the order of SDO has been affirmed by Additional Collector and Commissioner. Thus, the authorities have not considered and decided the maintainability of the proceddings under Section 170-B of the Code, which ought to have been decided by the authorities.

(6) Accordingly, the impugned order passed by Collector as affirmed by the Commissioner is set aside. The petitioner is at liberty ot make an

objection with regard to maintainability of Section 170-B of the Code before the Sub Divisional Officer (Revenue) and in turn the Sub Divisional Officer shall consider and decide the same strictly in accordance with law after hearing the affected parties expeditiously preferably within a period of six months from the date of receipt of certified copy of this order.

(7) The writ petition is allowed to the extent indicated hereinabove. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

D/-