

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 569 of 2017**

1. Jawahar Lal Sahu S/o Late Nandulal Ji Bhagat, Aged About 72 Years R/o 4, Park Street, Choubey Colony, Raipur, District Raipur (Chhattisgarh)
2. Sanket Sahu, S/o Balram Sahu, Aged About 38 Years R/o 18, North Street, Bhubey Colony, Raipur, District Raipur, (Chhattisgarh)
3. Ramakant, S/o Radheshyam Sahu, Aged About 57 Years
4. Vijay Kumar, S/o Late Radheshyam Sahu, Aged About 54 Years
5. Rajesh Kumar, S/o Late Radheshyam Sahu, Aged About 50 Years
6. Shashikant Sahu, S/o Late Radheshyam Sahu, Aged About 45 Years
7. Ajay Kumar, S/o Late Radheshyam Sahu, Aged About 47 Years

Petitioner No.3 to 7: All R/o 4, Park Street, Choubey Colony, Raipur, District Raipur, (Chhattisgarh)

---- **Petitioners**

Versus

1. State of Chhattisgarh Through Collector, Raipur, District Raipur (Chhattisgarh)
2. The Sub Divisional Officer, Raipur, District Raipur, (Chhattisgarh)
3. The Officer On Special Duty, Diversion Branch, Raipur, District Raipur, (Chhattisgarh)
4. Gouri Shanker Agrawal, S/o Late Shri Kishorilal Agrawal, Aged About 68 Years Power Of Attorney Holder Of Respondent No. 5 To 9, R/o Bagadiya Mansion, Jawahar Nagar, Raipur, District Raipur, (Chhattisgarh)
5. Smt. Revati Devi @ Saraswati Devi, Wd/o Late Kishori Lal Agrawal, Aged About 89 Years R/o Bagadiya Mansion, Jawahar Nagar, Raipur, District Raipur (Chhattisgarh) Through Power Of Attorney Holder Respondent No.4.
6. Ashok Agarwal, S/o Late Kishori Lal Agrawal, Aged About 66 Years R/o Toronto, Canada, Through Power Of Attorney Holder Respondent No.4.
7. Omi Bagadiya @ Omprakash Agrawal, Aged About 55 Years R/o Bagadiya Mansion, Jawahar Nagar, Raipur, District Raipur, (Chhattisgarh) Through Power Of Attorney Holder Respondent No.4.
8. Smt. Asha Goyal, W/o Shri Pramod Goyal, Aged About 57 Years R/o

Haryana Cottage, Satna, District Satna (Madhya Pradesh), Through Power Of Attorney Holder Respondent No.4.

9. Smt. Namrata Sanghi, W/o Shri Sameer Sanghi, Aged About 50 Years R/o Sitabardi, Nagpur, (Maharashtra) Through Power Of Attorney Holder Respondent No.4.

---- Respondents

For Petitioners	:	Shri Yogesh Pandey, Advocate
For Respondents-State	:	Shri PK Bhaduri, GA for the State

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

09/03/2017

1. The petitioners would challenge the order passed by the Board of Revenue (for short 'the Board') on 07.01.2017 dismissing their revision application preferred against the order passed by the Sub-Divisional Officer (R), Raipur (for short 'the SDO') on 31.03.2016 granting permission to review the order dated 12.09.2008 passed by the Officer on Special Duty, Diverted Land Branch, Raipur (for short 'the OSD').
2. The respondents were neither party nor were heard before the OSD when the order was passed on 12.09.2008, therefore, they moved application before the said officer for review of the order which was sent to the SDO seeking permission to review. The SDO granted permission to review vide its order dated 15.10.2013. Challenging the said order of SDO, the petitioners herein moved revision application before the Board which was allowed on 23.06.2015, which, in turn, was subject matter of challenge before this Court in WPC No.1402/2015. This writ petition was disposed of on 06.10.2015 in the following terms:-

“Heard.

1. The order dated 23rd June, 2015 passed by the Board of Revenue has been assailed on the sole submission that before undertaking review of the order passed earlier in favour of the petitioners, the petitioners were not noticed.

2. Learned counsel for respondents No. 1 to 7 submits that even he was not noticed.

3. Apparently, the order was passed by the Sub Divisional Officer without affording any opportunity of hearing to any of the parties to the earlier order and proceedings.

4. Therefore, on this short count, the impugned order cannot be sustained in law and is set aside. The matter is remanded to the Sub Divisional Officer to draw appropriate proceedings by giving opportunity of hearing to the petitioners as well as respondents.

5. Let the parties appear before the Sub Divisional Officer on 28th October, 2015.”

3. The SDO thereafter heard both the parties and passed fresh order on 31.03.2016 permitting the OSD to proceed to review the order dated 12.09.2008. The petitioners again approached the Board by filing revision application which has now been dismissed by the impugned order Annexure P-7 dated 07.01.2017.
4. Learned counsel for the petitioner has vehemently argued that while granting permission to review, the SDO should not have recorded a finding that there is an error apparent on the face of the record because it would amount to prejudge the issue, which is yet to be considered by the OSD.
5. Having perused the entire order passed by the SDO on 31.03.2016, petitioners apprehension does not appear to be ill founded. The SDO has passed a lengthy order dealing with the merits of the case although it was only required to consider whether a prima facie case for allowing the OSD to review the order is made out. Even though, while recording such prima facie opinion, the authority is always required to assess the merits of the

grounds on which the permission of review is sought, yet since a superior revenue officer has passed the order it may weigh in the mind of the OSD when it proceeds to decide the review application on merits, therefore, the writ petition is disposed of with observation that when the OSD proceeds to decide the review application preferred by the respondents, it shall not be influenced by the findings recorded or observations made by the SDO and Board of Revenue in any of their previous orders and the review application shall be decided on its own merits in accordance with law.

6. Accordingly, the writ petition stands disposed of with the above observation.

Sd/-

Judge

Prashant Kumar Mishra

Ashu