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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (227) No. 5940 of 2010

Order Reserved on : 30.06.2017

Order passed on : 14.07.2017

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

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Versus

1. The Chhattisgarh Board of Revenue, Bilaspur, Circuit Court, Raipur, Through : The Registrar, Raipur
2. Ratan Bai, W/o Dr. Shobha Chand Begani, R/o Sadar Bazar, Raipur, Tahsil & District Raipur (C.G.)

   Through : The Attorney – Premchand Daga, S/o Teekam Chand Daga, R/o Sadar Bazar, Raipur, Tahsil & District Raipur (C.G.)

For Petitioner	:	Mr. Arun Sao, Deputy Advocate General.
For Respondent No.2:		Mr. Manoj Paranjpe and Mr. Anurag Singh, Acvocate.

Hon'ble Shri Justice Sanjay K. Agrawal

ORDER [C.A.V.]

(1) Impugning legality, validity and correctness of the order dated 2nd March, 2010 passed by Chhattisgarh Board of Revenue, Bilaspur, Circuit Court Raipur, in Revenue Revision Case No. R.N./14/R-A-01/37/2010 directing recording the name of respondent No. 2 in the revenue records, this writ petition has been filed by the petitioner-State of Chhattisgarh.

(2) The necessary facts to highlight the subject in dispute are as under :-

(2.1) The respondent No. 2 herein filed an application for mutation of suit land bearing Khasra No. 497/1, area 7.92 acres situated at Village Raipura, District Raipur in the revenue records stating *inter alia* that she has purchased the suit land by un-registered sale deed dated 15.06.1948 from its owner / erstwhile Malgujar namely Tikamchand S/o Tejmal for a cash consideration of Rs.951/- and since then she is having possession over the suit land by cultivating the same; and on account of inadvertent mistake or clerical error, her name could not be recorded in the revenue records, which she came to know on 28.12.2002 and thereafter filed application for entering her name in the revenue records.

(2.2) The matter was directed to be placed before the Sub Divisional Officer. Sub Divisional Officer (Revenue), by its order dated 31.08.2015 rejected that application holding that the suit land is recorded as grass land and the application filed under Section 57(2) of the Madhya Pradesh/Chhattisgarh Land Revenue Code, 1959 (henceforth "Code") is hopelessly barred by limitation.

(2.3) Feeling aggrieved and dissatisfied with that order, the petitioner preferred appeal before the Additional Collector, Raipur. The Additional Collector dismissed the appeal by affirming the order of Sub Divisional Officer.

(2.4) Respondent No. 2 herein preferred a revision before the Board of Revenue with a delay of three years. The Board of

Revenue by its impugned order dated 02.03.2010 not only condoned the delay in filing the revision but also simultaneously allowed the revision directing mutation of the name of respondent No. 2 in the revenue records, against which instant writ petition under Article 227 of the Constitution of India has been filed questioning the same by the State of Chhattisgarh, petitioner herein.

(3) Mr. Arun Sao, learned Deputy Advocate General for the State/petitioner would submit that the Board of Revenue is absolutely unjustified in directing the recording the name of respondent No. 2 in the revenue records as the mutation was claimed on the basis of unregistered sale deed dated 15.06.1948 after period of 53 years whereas under Section 109 of the Code, a person lawfully acquiring any right or interest in land has to be report to the Patwari within six months from the date of such acquisition and no right or title is created in favour of respondent No. 2 on the basis of un-registered sale deed and, therefore, order passed by the Board of Revenue directing mutation of the name of respondent No. 2 is unsustainable and bad in law and deserves to be set aside.

(4) On the other hand, Mr. Manoj Paranjpe, learned counsel for the respondents would submit that the respondent No.2 has acquired title over the suit land by sale deed dated 15.06.1948 from erstwhile Malgujar namely Tikamchand S/o Tejmal and obtained possession and made application for mutation of all the properties including the suit land but the suit land could not be mutated on account of some typographical / clerical error and

since she is in possession from that day, she is entitled to be mutated her name in he revenue records. He placed heavy reliance upon the judgment of Supreme Court in the matter of **Begam Suraiya Rashid and others Vs. State of M.P. and others**[1] in support of his case.

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

(6) The petitioner's application is initially made before the Tahsildar for correction / mutation of her name in the suit land bearing Khasra No. 497/1, area 7.92 acres based on un-registered sale deed dated 15.06.1948, purchased from erstwhile Malgujar namely Tikamchand S/o Tejmal for a cash consideration of Rs.951/- on the ground that this land could not be mutated on account of some inadvertent error while mutating the name of respondent No. 2 in other lands adjacent to the suit land. The subject land is said to have been purchased by un-registered sale deed dated 15.06.1948 for a cash consideration of Rs.951/- on 15.06.1948 but the application was made on 23.01.2002 and, as such, there is delay of 53 years in making the application for correction of revenue records.

(7) The purchase was made on 15.06.1948 by un-registered sale deed and the Madhya Pradesh Land Revenue Code came into force with effect from 2.10.1959. The petitioner made an application after coming into force of the said Code.

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1 (2006) 3 SCC 305

(8) At this stage, it would be appropriate to notice Section 109 of the Land Revenue Code, which states as under:-

> "**109. Acquisition of rights to be reported. –** (1) Any person lawfully acquiring any right or interest in land [x x x] shall report orally or in writing his acquisition of such right to the patwari within six months from the date of such acquisition, and the patwari shall at once give a written acknowledgment for such report to the person making it in the prescribed form:
>
> Provided that when the person acquiring the right is a minor or is otherwise disqualified, his guardian or other person having charge of his property shall make the report to the patwari.
>
> *[Explanation 1.-* The right mentioned above does not include an easement or a charge, not amounting to a mortgage of the kind specified in section 100 of the Transfer of Property Act, 1882]
>
> *Explanation II.-* A person, in whose favour a mortgage is redeemed or paid off or a lease is determined acquires a right within the meaning of this section.
>
> *Explanation III-* for the purpose of this chapter, the term "patwari" includes any person appointed to perform the duties of a Patwari under Chapter.
>
> *Explanation IV-* Intimation in writing required to be given to the patwari under this section may be given either through a messenger or handed over in person or may be sent by registered post.
>
> (2) Any such person as is referred to in sub-section (1) may also report in writing his acquisition of such right to the Tahsildar within six months from the date of such acquisition.
>
> **110. Mutation of acquisition of right in field Book and other relevant land records.-** (1) The patwari shall enter into a register prescribed for the purpose every acquisition of right reported to him under section 109 or which comes to his notice from intimation from Gram Panchayat or any other source.
>
> (2) The patwari shall intimate all the reports regarding acquisition of right received by him under sub-section (1) to the Tahsildar within thirty days of the receipt there of by him.
>
> (3) On receipt of the intimation from patwari under subsection (2), the Tahsildar shall have it published in the village in the prescribed manner and shall also give written intimation thereof to all person appearing to him to be interested in the mutation and also to such other person and authorities as may be prescribed.

> (4) The Tahsildar shall after affording reasonable opportunity of being heard to the persons interested and after making such further enquiry, as he may deem necessary, make necessary entry in the field Book and other relevant land records.]

(9) A careful perusal of the 109(1) of the Code would show that a person lawfully acquiring any right or interest in land shall report either to the patwari or Tahsildar within a period of six months from the date of such acquisition. If such acquisition is made under Section 109(1) of the Code, Tahsildar under Section 110 (4) of the Code shall after affording reasonable opportunity of hearing to the person interested and after making such further enquiry, make necessary entry in the field Book and other relevant land records. But in the instant case, the acquisition was never reported to the Patwari or Tahsildar even after six months from the date of coming into force of Chhattisgarh Land Revenue Code i.e. 2.10.1959 and the application for recording the name of respondent No. 2 in the revenue record was filed on 23.01.2002 with inordinate delay of 43 years.

(10) The Supreme Court in the matter of **Begam Suraiya Rashid and others (supra)** has clearly held that power under Section 109 of the Code can only be exercised by the authority in respect of any person lawfully acquiring a right and such applicant has to be filed within six months from the date of such acquisition and held as under:-

> "**21.** For the first time in 1989 an application was made under Section 109 of the Code for mutation purportedly on the strength of the order dated 2-3-1954 passed by

> the Jagir Commissioner. The power under Section 109 can only be exercised by the authority in respect of any person lawfully acquiring a right and such application shall also be filed within six months from the date of such acquisition. In the instant case, as already noted, the land in question was never lawfully acquired by the appellants as they were only the lessees paying Rs.375 to the jail authorities and there was no question of lawfully acquiring any right as contemplated under Section 109 of the Code. This apart, the right if any, is acquired lawfully by any person, such application must be made within six months from the date of such acquisition and therefore the application made for the first time in 1989 under Section 109 of the Code purportedly on the basis of the order dated 2-3-1954 passed by the Jagir Commissioner was clearly an abuse of the process of law."

(11) In the instant case, the alleged lawful acquisition was made on 15.06.1948 but this was not reported even after six months from the date of coming into force of Chhattisgarh Land Revenue Code i.e. 2.10.1959 and the application for mutating the name of respondent No. 2 in the revenue record was made as belatedly as on 23.01.2002, which does not fulfill the essential ingredients as required under Section 109 (1) read with Section 110 (4) of the Code and, therefore, in light of statutory provisions contained in interpretation so made by the Supreme Court in **Begam Suraiya Rashid and others (supra),** the respondent No. 2 is not entitled her name to be mutated on the basis of un-registered sale deed in contravention of Section 109 (1) read with Section 110 (4) of the Code and the Board of Revenue committed grave legal error in exercising revisional jurisdiction by granting the revision with

illegality and material irregularity. Thus, the impugned order dated 2nd March, 2010 passed by the Board of Revenue, Bilaspur runs contrary to the provisions contained in Section 109 (1) read with Section 110 (4) of the Code.

(12) Consequently, the writ petition is allowed. Impugned order is set aside. Order passed by the Sub Divisional Officer rejecting the application filed by respondent No. 2 for recording her name in the record as affirmed by the Additional Collector is hereby restored. Leaving the parties to bear their own costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-