

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.2151 of 2017

Smt Lalti Devi, Wd/o Late Sevalal, aged about 70 years, R/o Village Chandan Nagar, Tahsil Prem Nagar, District Surajpur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Revenue Department, Mantralaya, Mahanadi Bhawan, New Raipur (C.G.)
2. The State of Chhattisgarh, through Collector, Surajpur, District Surajpur (C.G.)
3. The Sub Divisional Officer (Revenue), Surajpur, District Surajpur (C.G.)
4. The Tahsildar, Premnagar, District Surajpur (C.G.)
5. Mahadeo, S/o Late Chhabinath, aged about 75, R/o Village Chandan Nagar, Tahsil Prem Nagar, District Surajpur (C.G.)

---- Respondents

For Petitioner: Mr. Ashok Kumar Shukla, Advocate.
 For State/Respondents No.1 to 4: -
 Mr. Arun Sao, Deputy Advocate General.
 For Respondent No.5: Mr. Abhishek Sinha and Miss S. Harshita,
 Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

04/09/2017

1. By order dated 29-3-2017, the Tahsildar, Prem Nagar, has granted temporary injunction restraining the petitioner from raising any construction work till the partition is affected which has been assailed by the petitioner before the Collector by filing revision and the Collector has dismissed the revision and upheld the order passed by the Tahsildar against which this writ petition has been preferred.

2. Learned counsel for the petitioner submits that the Tahsildar has passed order on 29-3-2017 granting temporary injunction for which he has no jurisdiction, therefore, the order passed by the Tahsildar is without jurisdiction and without authority of law. He relies upon a decision of the High Court of Madhya Pradesh in the matter of **Maya Lalchandani (Mrs.) and others v. Board of Revenue and others**¹ in which the M.P. High Court has held as under: -

“4. After going through the order passed by the learned President, Board of Revenue and taking into consideration the legal provisions, we are of the opinion that the directions issued in paragraph 7 of the order passed by the Board of Revenue cannot be allowed to stand. Section 32 of the Land Revenue Code talks of the inherent powers of the Revenue Authorities while Section 43 talks of applicability of the Code of Civil Procedure. It is to be seen from Section 32 that nothing in the Land Revenue Code shall be deemed to limit or otherwise affect the inherent power of the Revenue Court to make such orders as may be necessary to meet the ends of justice or as may be necessary to prevent the abuse of the process of Court. Section 43 simply provides that unless otherwise expressly provided in the Code, the procedure laid down in the Code of Civil Procedure shall, so far as may be, followed in all proceedings under the Code. Section 43 in no case would authorize a Revenue Authority to grant an injunction. Section 43 simply provides that the procedure laid down in the Code of Civil Procedure so far as may be followed in all proceedings under the Code. It is also to be seen from the provision of the Code of Civil Procedure that an injunction can be granted only by civil Court and by none else. Section 32 of the M.P. Land Revenue Code only talks of the inherent powers of the Revenue Courts where they are required to make such order as may be necessary for the ends of justice or to prevent the abuse of the process of the Court. The powers under Section 32 can be exercised within the Code itself and not beyond the Code. If the Revenue Authority does not have the power to grant injunction then the Board of Revenue also could not grant injunction.”

3. Mr. Sao, learned Deputy Advocate General, and Mr. Abhishek

¹ 2009 (3) MPLJ 660

Sinha, learned counsel appearing for respondent No.5, would rely upon Section 178 (1-A) of the Chhattisgarh Land Revenue Code, 1959 (for short, 'the Code').

4. Order to grant injunction is surely vested in the civil court, revenue court cannot grant injunction restraining construction. So far as Section 178 (1-A) of the Code is concerned, Tahsildar has definitely jurisdiction to stay the proceeding pursuant to the stay order granted by the trial Court. Section 178 of the Code provides as under: -

“178. Partition of holding.”-(1) If in any holding, which has been assessed for purpose of agriculture under section 59, there are more than one Bhumiswami any such Bhumiswami may apply to a Tahsildar for a partition of his share in the holding:

Provided that if any question of title is raised the Tahsildar shall stay the proceeding before him for a period of three months to facilitate the institution of a civil suit for determination of the question of title.

(1-A) If a civil suit is filed within the period specified in the proviso to sub-section (1), and stay order is obtained from the civil court, the Tahsildar shall stay his proceedings pending the decision of the civil court. If no civil suit is filed within the said period, he shall vacate the stay order and proceed to partition the holding in accordance with the entries in the record of rights.

(2) The Tahsildar, may, after hearing the co-tenure holders, divide the holding and apportion the assessment of the holding in accordance with the rules made under this Code.

Explanation I.-For purposes of this section any co-sharer of the holding of a Bhumiswami who has obtained a declaration of his title in such holding from a competent Civil Court shall be deemed to be a co-tenure holder of such holding.”

5. In the instant case, the Tahsildar has not adopted such a procedure. It is not the case where the Tahsildar has stayed the

proceeding to facilitate the institution of a civil suit for determination of the question of title as said in Section 178 (1) of the Code. Therefore, the order granting injunction passed by the Tahsildar is set aside. However, the Tahsildar is free to proceed in accordance with Section 178 of the Code, if an application is made to that effect.

6. The writ petition is allowed to the extent indicated herein-above.

No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma