

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 795 of 2017**

Ghuneshwar S/o Bodh Singh, Aged About 52 Years, R/o Village Kurmibhouna, Tahsil Gharghoda, District- Raigarh, Chhattisgarh

---- Petitioner**Versus**

1. Kamal Kishore S/o Nihalchand Aged About 51 Years Caste Agrawal, Proprietor Of Raigarh Iron Industries Limited, Punjipathara, Tahsil Gharghoda, District- Raigarh, (C.G.)
2. Sushila Devi W/o Ramashish Singh Caste Rajpur, R/o Village Gharghoda, Tahsil Gharghoda, District- Raigarh, Chhattisgarh
3. Minor Avdhesh Kumar S/o Ramashish Singh Minor Through Legal Guardian Mother Shushila Devi (Respondent No. 2) Caste Rajpur, R/o Village Gharghoda, Tahsil Gharghoda, District- Raigarh, Chhattisgarh
4. Minor Surendra S/o Ramashish Singh Minor Through Legal Guardian Mother Shushila Devi (Respondent No. 2) Caste Rajpur, R/o Village Gharghoda, Tahsil Gharghoda, District- Raigarh, Chhattisgarh
5. Minor Kamla D/o Ramashish Singh Minor Through Legal Guardian Mother Shushila Devi (Respondent No. 2) Caste Rajpur, R/o Village Gharghoda, Tahsil Gharghoda, District- Raigarh, Chhattisgarh
6. Minor Vimla S/o Ramashish Singh Minor Through Legal Guardian Mother Shushila Devi (Respondent No. 2) Caste Rajpur, R/o Village Gharghoda, Tahsil Gharghoda, District- Raigarh, Chhattisgarh
7. Minor Mita S/o Ramashish Singh, Minor Through Legal Guardian Mother Shushila Devi (Respondent No. 2) Caste Rajpur, R/o Village Gharghoda, Tahsil Gharghoda, District- Raigarh, Chhattisgarh
8. Collector, Raigarh, District Raigarh (Chhattisgarh).
9. Tahsildar, Gharghoda, District Raigarh (Chhattisgarh).
10. A. K. Marbal, Tahsildar, Gharghoda, District Raigarh (Chhattisgarh)

---- Respondent

For Petitioners	: Ms. Hamida Siddiqui, Advocate.
For Respondent No. 1	: Mr. Manoj Paranjpe, Advocate.
For State	: Mr. Shashnak Thakur, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

31/08/2017

(1) Learned counsel for the petitioner would submit that order has been passed by the Nayab Tahsildar, Gharghoda directing mutation of the land in favour of respondent No.1 behind the back of the petitioner, which is unsustainable and without authority of law, and, therefore, the same is liable to be set aside. She placed reliance upon the judgment of the Supreme Court in the matter of **Harbanslal Sahnia and another Vs. Indian Oil Corpn. Ltd. And others**¹ in support of her submissions.

(2) Learned counsel for the respondent No.1 would submit that order passed by the Nayab Tahsildar, Gharghoda is appealable under Section 44 of the M.P./C.G. Land Revenue Code, 1959.

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

(4) Issue of jurisdiction can very well be agitated before the appellate authority and there is no constitutional command that each and every petition having alternative remedy and by passing that remedy should be heard by the Constitutional Court as the plea raised by the petitioner factually as well as legally can very well be considered by the appellate authority and, therefore, the writ petition deserves to be dismissed as having efficacious statutory alternative remedy under the provisions of Chhattisgarh Land Revenue Code, 1959.

(5) In the matter of **Union of India & others Vs. Major General Shri Kant Sharma & another**², their Lordships of the Supreme Court have held as under:-

¹ 2003 AIR SCW 126

² (2015) 6 SCC 773

“ **36.** The aforesaid decisions rendered by this Court can be summarised as follows:

(i) The power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation including the Armed Forces Tribunal Act, 2007 cannot override or curtail jurisdiction of the High Court under Article 226 of the Constitution of India.

(ii) The jurisdiction of the High Court under Article 226 and this Court under Article 32 though cannot be circumscribed by the provisions of any enactment, they will certainly have due regard to the legislative intent evidenced by the provisions of the Acts and would exercise their jurisdiction consistent with the provisions of the Act.

(iii) When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

(iv) The High Court will not entertain a petition under Article 226 of the Constitution if any effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievances.”

(6) In view of above settled legal position, this Court is not inclined to entertain this writ petition, thus, the writ petition, being devoid of merit is liable to be and is hereby dismissed on the ground of availability of alternative remedy. However, the petitioner is at liberty to file appeal against the order of Nayab Tahsildar in accordance with law.

Sd/-

(Sanjay K. Agrawal)

Judge

D/-

