

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 593 of 2005

1. Brijram, S/o Prabhudas Keswani.
2. Mukesh Kumar, S/o Prabhudas Keswani.
3. Naresh, S/o Prabhudas Keswani.
4. Smt. Sharda Bai, W/o Naresh Keswani.

All resident of Mata Devalaya, Ward Bhatapara, Tahsil- Bhatapara,
Distt. Raipur, CG

---- Petitioners

Versus

1. State Of Chhattisgarh, through Revenue Department, D. K. Bhawan,
Raipur (C.G.)
2. Kalyan Singh, S/o Sunderdas Chawla
3. Manohar Singh, S/o Sunderdas Chawla.

Respondent No. 2 & 3 are R/o Munshi Ismil ward, Bhatapara, Tahsil-
Bhatapara, Distt. - Raipur, C.G.

---- Respondents

For Petitioner	:	Mr. Ritesh Ahuja, Advocate.
For State	:	Mr. Majid Ali, Dy. GA
For Respondents No. 2 & 3	:	Mr. Varun Sharma, Advocate.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order on Board

15/05/2018

1. This petition, under Article 227 of Constitution of India, is directed against the order passed by the Board of Revenue in revision preferred against the appellent order passed by the Sub Divisional Officer, revenue on 30-10-2004.
2. Respondents No. 2 & 3 moved an application before the Tahsildar seeking a direction for removal of obstruction in the shape of wall allegedly constructed

by the petitioner herein. It was the case of respondents No. 2 & 3 before the Tahsildar that there exists a Gully which is being used by both the parties as 'Aam Nestari Gully'. By raising wall, obstruction is being created. The petitioner herein opposed the same. The tahsildar passed an order after holding a summary enquiry and rejected the application. Aggrieved by the order, an appeal was filed by the respondents No. 2 & 3 to Sub Divisional Officer. Appeal was partly allowed. Aggrieved by the Sub Divisional Officer, petitioner preferred a revision before the Board of Revenue which was dismissed affirming the order passed by Sub Divisional Officer and thereby giving rise to this petition.

3. Learned counsel for the petitioner would argue that the Sub Divisional Officer and Board of Revenue have passed the impugned order on the assumption that patch of land alleged to be passage is common passage used by the petitioner and the respondents No. 2 & 3 whereas this land belongs to the appellant in ownership and title. He would submit that in such a case, revenue authorities ought not to have drawn any proceeding but left the parties to work out their remedy before the Civil Court.

4. On the other hand, learned counsel for respondents No. 2 & 3 would submit that the petitioner has admitted in proceedings before the Revenue Court that the space between the house of the appellant and the respondents is common passage used for common ingress and egress by both the parties and the justification provided for raising wall is that as respondent No. 2 & 3 are accumulating waste water on the common passage, the wall had to be constructed.

5. I have gone through the order passed by Tahsildar, Sub Divisional Officer and also Board of Revenue. In Paragraph 5 of the order passed by Sub Divisional Officer it has been recorded that the petitioner has admitted the Gully to be a common passage in use. Moreover, while the order of Sub Divisional Officer as also Board of Revenue had taken into consideration various report of the revenue authorities in the matter, upon appreciation of oral and documentary evidence on record, the revenue officers in summary proceedings have come to the conclusion that it is a common use passage which is being used both by the appellant and the respondents No. 2 & 3.

The findings which have been recorded by the revenue Courts are essentially in the nature of findings of fact. Though number of grounds have been urged in this petition, they are related to exercise of reassessing of evidence on record to substitute new finding of fact. There does not appear to be any jurisdictional flaw in the order.

6. The proceedings drawn by the revenue authority are summary in nature. If the petitioner has a case based on his title, the petitioner can always approach Civil Court and seek appropriate declaratory and injunctive relief. That liberty shall always be there to the petitioner. It is made clear that this Court has not commented upon the merits of title of the parties and the issue will have to be decided only by the Civil Court.

7. Subject to the aforesaid observations, I am not inclined to interfere with the order. Therefore, the petition is dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge