NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 250 of 2017

- Smt. Radha Bai Chouhan W/o Meghuram Chouhan, Aged About 58 Years, R/o Village Beladula, Raigarh, Tahsil and District Raigarh, Chhattisgarh

---- Petitioner

Versus

1. Smt. Durgesh Sharma W/o Rajesh Sharma, Aged About 55 Years R/o Lal Tanki Road, Raigarh, Tahsil and District Raigarh, Chhattisgarh

2. State Of Chhattisgarh, Through Collector, Raigarh, Tahsil and District Raigarh, Chhattisgarh

3. Additional Commissioner, Bilaspur Division, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh

4. Tahsildar, Raigarh, Tahsil and District Raigarh, Chhattisgarh

---- Respondents

For Petitioner	Shri Manoj Paranjpe and Shri Prasoon Agrawal, Advocates
For Respondent No.1	Shri Aman Kesharwani, Advocate
For Respondent-State	Shri Rajendra Tripathi, PL

Hon'ble Justice Mr. Prashant Kumar Mishra

Order On Board

25/09/2018

1. The issue brought before this Court by way of challenge to the order passed by the Board of Revenue on 24.10.2016 pertains to exercise of power by the concerned Tehsildar under Section 250 of the Chhattisgarh Land Revenue Code, 1959 (for short the Code, 1959) directing the petitioner to hand over possession of the land to the respondent No.1.

2. It is argued that while exercising power under Section 250 of the Code, 1959, the procedure prescribed under the Code, 1959 has not been followed. It is further putforth that the petitioner has constructed a house over some part of the land, therefore, it was not vacant agricultural land. Thus, power under Section 250 of the Code, 1959 is not invokable.

3. Having heard learned counsel for the parties and on perusal of papers, it appears that there is a demarcation report dated 8.01.2013 holding that the petitioner has encroached 338 sq. meter of land belonging to the respondent No.1 and has raised *Kachcha* construction on a part thereof. If the petitioner claims title to the said piece of land and on that basis claims entitlement to protect her possession, the appropriate recourse open to the petitioner is to move before the jurisdictional Civil Court to establish her title and protect possession.

4. Even if the Commissioner has dismissed petitioner's appeal on the ground of limitation, the Board of Revenue has passed the order on merits. To give quietus to the entire lis between the parties, it would be appropriate for the petitioner, if she so desires, to move before the jurisdictional Civil Court.

5. Accordingly, the writ petition is disposed of with observation that if the petitioner moves before the jurisdictional Civil Court to establish her title and protect possession within a period of 2 months from today and also moves an application for grant of temporary injunction, the same shall be considered on its own merits by the Civil Court within a period of 2 months from the date of filing of suit.

6. For a period of 4 months from today, the parties shall maintain status quo over the suit property. However, it is made clear that the order of status quo allowed by this Court shall remain subject to the order passed by the Civil Court on petitioner's application under Order 39 Rule 1 & 2 of CPC on its own merits and grant of status quo under this order shall not be construed to be any finding one way or the other on the three pillars of issuance of temporary injunction.

Sd/-
Prashant Kumar Mishra
Judge

Nirala