HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 93 of 2017

Ghuneshwar (wrongly written as Dhuneshwar) S/o Bodh Singh, Aged About 52 Years R/o Village Kurmibhouna, Tahsil Gharghoda, District Raigarh, Chhattisgarh **---- Petitioner**

Versus

1. Raigarh Iron Industries Limited, Punjipathara Through Kamal Kishore Bhartiya (Agrawal) R/o Raigarh, District Raigarh, Chhattisgarh

2. Sushila Devi, W/o Ramashish Rajput, R/o Gharghoda, Tahsil Gharghoda, District Raigarh, Chhattisgarh

3. State Of Chhattisgarh, Through The Collector, Raigarh, Chhattisgarh **--- Respondents**

For petitioner – Shri Sumit Singh Rathore, Advocate.
For State-Shri Sudhir Sahu, PL.
For respondent No.1- Shri Manoj Paranjpe, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

19/09/2019

Heard.

1. Instant petition is filed for the following reliefs:-

> "1.That, this Hon'ble Court may kindly be pleased to allow the writ petition and be pleased to quash the order dated 16/09/2016 passed by the Additional Commissioner, Bilaspur Division, Bilaspur (Camp Raigarh) (C.G.), in Revenue Case No.89/A-6/2014-15 (Annexure P-1) by holding that the provision under Section 165 (6-a) is not applicable on agriculture land particularly the suit land.
> 2. That, this Hon'ble Court may kindly be pleased to grant any other relief, as it may deems fit and appropriate."

2. Learned counsel for the petitioner would submit that the petitioner has purchased the subject land on 16/01/1981. Thereafter a mutation proceeding were drawn and by shear mutation the proprietary right cannot be conferred. It is further submitted that since the mutation do not confer any title and the land in question was not an agricultural land, therefore the finding of the learned court below cannot be sustained. As such the order of the Commissioner dated 16/09/2016

(Annexure P-1) is liable to be set aside.

3. Return of the State and respondent are on record. Along with the return the document filed alongwith the petition also perused. It shows that the instant petition predominantly arose from the proceeding when the application under section 109 and 110 of the Land Revenue Code was preferred wherein respondent No.1 Raigarh Iron Industries on the basis of purchase made from respondent No. 2 Sushila Devi on 20/10/2004 filed an application for mutation of their names against khasra No.63, 337 and 483. In such mutation proceeding an objection was preferred by the petitioner herein about the maintainability of the proceeding and Naib Tahsildar observed to decide the objection at the time of final hearing. The said order was subject of revision before the Collector and the Collector in the revision No.46/A-6/2009-2010 by an order dated 5/06/2010 has set aside the order of the Tahsildar and directed for adjudication of the objection made by the petitioner. Thereby the preliminary objection was directed to be decided. Said order of the Collector dated 5/06/2010 was further challenged before the Commissioner. The Commissioner by the impugned order has set aside the order of the Collector and maintained the order of Naib Tahsildar which observed that at the time of final hearing the objection made by the petitioner would be decided. The said order is under challenge before this court.

4. In the meanwhile since the original mutation proceeding were pending adjudication and no stay was operating, the Naib Tahsildar by the order dated 6/12/2016 passed in revenue case No.19/A-6/2005-2006 has passed an order of mutation in favour of the respondent No.1. The order dated 31/08/2017 passed in WPC No.795/2017 would show that said order of the Naib Tahsildar it was subject of challenge

before the court in the writ petition. This court has dismissed the writ petition with observation that the issue of jurisdiction can very well be agitated before the appellate authority and dismissed the writ petition. The said order of learned Single Judge was subject of challenge in W.A. No.384/2017 and writ appeal was also dismissed on 6/12/2017 with an observation that appellate tribunal has to consider all the grounds which are raised by the petitioner therein who is petitioner herein also. The application filed copy of which is produced for suitable direction shows that against the original order the appeal has been preferred by the petitioner and the appellate court number is Revenue case no. 69/A-6/2017-2018. Therefore the appeal appears to be finally is pending against the initial order dated 6/12/2016. In view of the facts since the originally order itself has been passed by the Naib Tahsildar with respect to the subject issue on 6/12/2016 and the appeal has already been preferred by the petitioner, the argument of the petitioner cannot be appreciated. This petition arose out of a primary objection made in the proceeding of mutation which has finally been decided and further course of proceeding has already been adopted which would be evident from the order of the writ court and the order passed by the division bench in writ appeal. In the result, no relief can be granted in this petition.

5. Consequently, the petition is dismissed. The appellate authority shall be within its jurisdiction to pass the appropriate order and the appellant/petitioner shall be entitled to raise all the grounds before the appellate court.

Sd/-

(Goutam Bhaduri)

Judge

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