

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 494 of 2001

Order reserved on 18.06.2019

Order delivered on 19.12.2019

Chairman Shala Vikas Samiti Akoli (Govt. Primary School Akoli)
P.S. Bhatapara (Rural) Tahsil Bhatapara, District Bhatapara (C.G.)

---- Applicant

Versus

1. Ghanshyam S/o. Devaram Verma, Aged 55 years, R/o. Village Akoli, P.S. Bhatapara, District Raipur (C.G.)
2. State of Chhattisgarh through Collector, Raipur District Raipur (C.G.)
3. Nakul Singh Thakur, Aged about 45 years, R/o. Amlidih, P.S. Bhatapara, District Raipur (C.G.)

---- Respondents

For Applicant : Mr. Hemant Gupta, Advocate
For Respondent/State : Mr. Aman Kesharwani, PL
For Respondents No.1 and 3 : Mr. P.R. Patankar, Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Order

Facts of case in brief are that on 01.11.1996, Sub Divisional Magistrate, Bhatapara passed preliminary order and attached the disputed land situated at village Akoli and placed one Navalram in Supradnama. Thereafter, Sub Divisional Magistrate, Bhatapara by its order dated 08.02.2001 held that applicant in

possession over the disputed land on the date of preliminary order dated 01.11.1996. The disputed land was allotted by the State through Upper Collector Raipur by order dated 28.11.1995 for agriculture purposes. On 25.04.1991 Tahsildar Bhatapara initiated encroachment proceedings against respondent Ghanshyam which was challenged by way of revision petition. The said revision petition however came to be dismissed 28.09.1992 maintaining the order dated 25.04.1991. In pursuance of order dated 28.11.1995, the applicant was placed in possession of the disputed land on 20.12.1995 by Patwari. Respondent Ghanshyam thereafter filed an appeal against the order dated 28.11.1995 passed by Upper Collector Raipur allotting the land to the applicant but the said appeal was dismissed vide order dated 24.07.1997 by Upper Commissioner Raipur Division.

2. Thereafter, dispute arose between the parties and proceedings under Section 145 and 146 Cr.P.C. were initiated and preliminary order dated 01.11.1996 was passed and disputed land was attached. Sub Divisional Magistrate Bhatapara found vide its order dated 08.02.2001 found the applicant herein to be in possession of the disputed land but however, the said order was set aside by Additional Sessions Judge, Raipur on 13.10.2001 and declared respondent Ghanshyam to be in possession of the land. Hence this revision.

3. Counsel for the applicant submits that there was no legal error in the order passed by the Sub Divisional Magistrate Bhatapara declaring the applicant in possession of the disputed land on the date of preliminary order dated 01.11.1996. He submits that revisional Court should not have re-appreciated the evidence and recorded another finding of fact. He further submits that even the revisional Court has set aside the order of the Sub Divisional Magistrate going beyond the revisional scope.

4. On the other hand, counsel for the respondents No.1 and 3 supports the order impugned. State counsel however assisted the Court.

5. Having heard counsel for parties and perused the material on record this Court finds that the land in dispute originally belonged to the State and the encroachment proceedings also went against the respondent Ghanshyam where he was even imposed fine. Furthermore, as respondent Ghanshyam did not claim the disputed land independently and admitted the ownership of the State over it, the applicant herein should not have been dragged in the second round of litigation under the provisions of Land Revenue Code. Apparently, the order impugned passed by the revisional Court suffers from gross legal error as such orders are supposed to be passed only in exceptional cases where manifest error of law in the order of Sub Divisional Magistrate was there warranting interference with the same. Since respondent Ghanshyam has already been held to be

an encroacher of the property belonging to the State and was even fined, the order impugned again placing him in possession of the disputed property is unwarranted and liable to be set aside.

6. Accordingly, the revision petition is allowed and the order impugned passed in Criminal Revision No.145/2001 is hereby set aside and consequently, the order dated 08.02.2001 passed in Criminal Case No.4/1996 by Sub Divisional Magistrate, Bhatapara declaring Shala Vikas Samiti, Akoli to be in possession of the disputed land is hereby restored.

Sd/-

(Vimla Singh Kapoor)

JUDGE

Jyotishi/ajay.