

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 477 of 2018

1. Kamal Kumar Kashyap S/o Chhedi Lal Kashyap, Aged About 45 Years R/o Bus Stand Road, Teli Para, Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
2. Rekha Kashyap, D/o Krishna Kumar Kashyap, W/o Kamal Kumar Kashyap, Aged About 42 Years R/o Bus Stand Road, Teli Para, Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Petitioners

Versus

1. Paster N.L. Soni S/o Late P.D. Soni, Aged About 68 Years, R/o Civil Lines, Bilaspur, District Bilaspur (Chhattisgarh), District : Bilaspur, Chhattisgarh
2. Samual, S/o Ramadhin, Aged About 57 Years, R/o Village Jaraundha (Nawapara), Tahsil Takhatpur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

----Respondents

For Petitioners – Shri Abhijeet Mishra, Advocate.

For Respondent No.1 – Shri N.L. Soni and Shri Malay Kumar Bhaduri, Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

04-12-2019

1. This petition has been brought being aggrieved by the order dated 27-02-2018 passed by the Board of Revenue Chhattisgarh, Bilaspur in case No.R.N./02/R/A-6/413/2015.
2. It is submitted that the disputed property was earlier recorded in the name of respondent No.2, which was purchased by the petitioners through registered sale deed of 11-03-1997 and 21-03-1997. Thereafter, the name was mutated in revenue records in favour of the petitioners vide Annexure-P/1. A complaint was filed by respondent No.1 that the revenue records reflected the name of Dr. Meghavarani since 1954-55 of the land belonged to the missionary society, without any transfer or execution of sale deed the revenue officers have entered the mutation in the name of respondent No.2 in the year 1995-96, which is a fraudulent act. The Tahsildar Takhatpur sought for review of the

order of mutation in favour of the petitioners and thereafter the order of mutation was reviewed by the order dated 31-08-2007 vide Annexure-P/4 and it was ordered that the disputed property be entered in the name of Meghavarani S/o Danial Christian. The appeal before the Sub-Divisional Officer (Revenue) by the petitioners was dismissed. Which was again challenged before the Commissioner, Bilaspur Division and the same was dismissed and lastly the matter was brought before the Board of Revenue Chhattisgarh, Bilaspur, which has confirmed the orders of the other revenue authorities and dismissed the revision filed before it.

3. It is submitted that the Tahsildar has passed the review order without notice to respondent No.2. Relying on the judgment of this Court in **Writ Petition (227) No. 3225 of 2011** (Kailash Mishra Vs. Board of Revenue and others) decided on 09-12-2016 it is submitted that while reviewing an order opportunity must be granted to opposite party. It is argued that in **WP(227) No.3612 of 2011** (State of Chhattisgarh Vs. Sunil Kumar Gupta and another) decided on 14-08-2018 this Court has held that as per the provisions under Section 51 of the CGLRC, 1959 no order passed can be varied or reversed unless notice has been issued to the respondents interested to appear and opportunity of hearing is given to them.

4. It is submitted on behalf of respondent No.1 that this petition is not maintainable under Article 227 of the Constitution of India in view of the order of this Court in **WPC No.2113 of 2015** (Dr. Ram Sharan Lal Tripathi Vs. State of Chhattisgarh and others) decided on 01-12-2015, in which it is categorically held by learned Single Bench of this Court that Board of Revenue is not a civil Court but it is a revenue authority established under the CG Land Revenue Code, therefore, any petition under Article 227 of the Constitution of India shall not be maintainable, however, a petition under Article 226 of the Constitution of India shall be maintainable for challenging the order of Board of Revenue. In

this case no such default was raised by the Registry at the stage of filing this petition.

4. In view of the objection raised and the judicial pronouncements available regarding maintainability of the petition under Article 227 of the Constitution of India against the order passed by Board of Revenue, I am of this view that this Court is not in a position to exercise any jurisdiction to interfere or set aside the order passed by the Board of Revenue which is the impugned order. Clearly the petitioner has a remedy available under Article 226 of the Constitution of India and he should have invoked the same for exercise of appropriate jurisdiction by the Court. Therefore, I am of this view that this petition is not maintainable and the same is dismissed accordingly. However, the petitioner has liberty to file petition under Article 226 of the Constitution of India.

Sd/-

(Rajendra Chandra Singh Samant)
Judge