

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (C) NO. 3516 OF 2019**

- Kuldeep Dhar Diwan, S/o Shri Ghasi Dhar Diwan, aged about 57 years, R/o Village- Khara, Tahsil Patan, District Durg (CG)

... Petitioner**versus**

1. State of Chhattisgarh, through the Collector, District Durg (CG)
2. The Sub Divisional Officer (R), District Durg (CG)
3. The Nayab Tahsildar, Tahsil Ameri, District Durg (CG)
4. Smt. Rambai Tiwari, W/o Late Shiv Kumar Tiwari, R/o Brahman Para, Raipur, District Bilaspur (CG)

... Respondents

For Petitioner	:	Mr. Prateek Sharma, Advocate.
For Respondent-State	:	Mr. Ashutosh Mishra, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****05/11/2019**

1. Challenge in the present writ petition is to the order dated 21.6.2019 (Annexure P-1) passed by Sub Divisional Officer (Revenue), Patan, District Durg in Appeal No. 26-A/6/Year 2017-18, order dated 7.8.2019 (Annexure P-2) passed by the Collector, Durg in Revenue Case No. 10-A/74/Year 2018-19 and order dated 21.8.2019 (Annexure P-3) again passed by the Sub Divisional Officer (Revenue), Patan, District Durg.

2. Facts of the case in brief are that the petitioner is said to be the son-in-law of one Smt. Nandini Bai in whose name there was a land measuring 2.39, 0.53, 0.04 totaling 2.96 hectares in Khasra No. 114/1, 115 and 697 situated at Village Ameri, Tahsil Patan, District Durg. The said Nandini Bai expired on 26.12.2010. It is said that she had executed a will and had also registered the same on 17.2.2010 in favour of the petitioner in respect of the aforementioned property. The petitioner initially had moved an application for mutation before the Tahsildar, Patan, District Durg which was rejected on 26.7.2014. This order was challenged by the petitioner before the Sub Divisional Officer (Revenue), Patan, District Durg by way of appeal and the said appeal stood allowed at the first instance on 28.2.2017 and the matter was remanded back to the Tahsildar for a fresh consideration taking note of the will which was in possession of the petitioner.

3. The said allowing of the appeal of the petitioner by the Sub Divisional Officer (Revenue), Patan was challenged by respondent no.4-Smt. Rambai Tiwari before the Additional Commissioner, Durg by way of a revision petition under Section 50 of the Chhattisgarh Land Revenue Code and the said revision is said to be still pending. Since there was no interim order in the said revision petition, as per the order of the Collector, the Tahsildar proceeded further with the mutation proceedings and passed an order on 11.5.2017 in favour of the petitioner.

4. The said order of mutation dated 11.5.2017 was again subjected to challenge by respondent no.4 afresh and the Sub Divisional Officer on 21.6.2019 vide Annexure P-1 allowed the said appeal setting aside the order of mutation and further directed the mutation to be done in favour of respondent no.4 for the entire land. Subsequently, the Sub Divisional Officer also after obtaining permission of the Collector, Durg for reviewing his order dated 21.6.2019 (Annexure P-1) and the Collector having granted the permission for review vide his order dated 7.8.2019 (Annexure P-2), a fresh order was passed on 21.8.2019 (Annexure P-3) by the Sub Divisional Officer (Revenue), Patan, District Durg.

5. It is these two orders dated 21.6.2019 (Annexure P-1) and dated 21.8.2019 (Annexure P-3) which are primarily under challenge in the present writ petition.

6. Since the petitioner at the first instance had already challenged the order rejecting his application for mutation by way of an appeal to the Sub Divisional Officer (Revenue) and the respondent no.4 in turn having challenged the order before the Additional Commissioner, Durg, this Court is of the opinion that the present writ petition also would not be maintainable at this stage on the ground of having a statutory alternative remedy available to the petitioner under Section 50 of the Chhattisgarh Land Revenue Code, 1959.

7. The revision of respondent no.4 against the earlier order dated 28.2.2017 of the Sub Divisional Officer is said to be already pending before the Commissioner, which by now must have lost its efficacy in the light of the further order passed by the Tahsildar on 11.5.2017 and the same being decided in an

appeal before the Sub Divisional Officer who has also passed an order on 21.6.2019.

8. Given the said facts, the petitioner now would be required to file an appeal before the Collector against the orders of Sub Divisional Officer challenging Annexure P-1 and P-3.

9. The ground of the counsel for petitioner that since the Collector had already passed an order on 7.8.2019 vide Annexure P-2 and it would be a futile exercise so far as the petitioner approaching the Collector again challenging Annexure P-1 and Annexure P-3 is concerned, this ground of the petitioner would not be sustainable for the reason that the Collector while passing the order dated 7.8.2019 has not decided the order dated 21.6.2019 on its merits. The Collector has only allowed a request of the Sub Divisional Officer seeking permission to review his order dated 21.6.2019. The Collector as such has not exercised his appellate power or revisional power which he has. Unless the petitioner challenges the order of the Sub Divisional Officer on the question of competency as also the jurisdiction of the Sub Divisional Officer, the Collector cannot be said to have exercised his supervisory power which is otherwise conferred upon him under the provisions of the Land Revenue Code.

10. Reserving the right of the petitioner to approach the Collector under Section 50 of the Chhattisgarh Land Revenue Code, the present writ petition in its present form stands disposed of.

11. In the event of the petitioner approaches the Collector promptly challenging the order of the Sub Divisional Officer, it is expected that the Collector shall decide the same as expeditiously as possible, ignoring the aspect of limitation, if any, since the petitioner had approached this Court by way of a writ petition.

12. The writ petition accordingly stands disposed of.

Sd/-
(P. Sam Koshy)
JUDGE

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