NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1394 of 2009

Smt. Chanda Bai W/o Shri Harilal, aged about 66 years, R/o Near Rawlani Nursingh Home, Shyam Nagar, Katora Talab, District - Raipur C.G.

---- Petitioner

Versus

1. Satyanarayana Mishra, aged about 51 years, S/o Shri Baijnath Mishra, Caste, Bramhan, R/o- B/25, Diling Camp Colony, Korba, Tahsil and District- Korba, Chhattisgarh.
2. State of Chhattisgarh through Collector, Korba, Distt. Korba (CG)
3. Smt. Kamla Bai, aged about 60 years, widow of late Shri Shrichand, Resident of Janta Colony, Raipur (CG)
4. Smt. Sarla, aged about 42 years, wife of Jitendra Kumar, resident of Priyadarshini Nagar, Pachpedi Naka, Raipur, Distt. Raipur (CG)
5. Vipin Kumar Nanda, aged about 46 years, son of Late Shri Manikchand Nanda, Caste Brahman, resident of main road, Korba, Tahsil and Distt. Korba (CG)
6. Raghubir Chanda, aged about 37 years, son of Ramadhar Chandra, Caste Chandranahu, R/o Quarter No.M-211, Ompur, Rajgamar, Tahsil and District-Korba (CG)
7. Subhash Chandra Sharma, aged about 48 years, Son of Late Shri Mahabir Prasad Sharma, caste Brahman, resident of Premnagar, Rajgamar Tahsil and Distt. Korba
8. Prahlad Ram Agrawal, aged about 41 years, son of late Omprakash Agrawal, Caste Agrawal, resident of Premnagar, Rajamar, Tahsil and District- Korba (CG)
9. Rupendra Singh Yadav, aged about 32 years, son of Shri Harihar Singh Yadav, Caste Yadav, resident of Premnagar, Rajgamar, Tahsil and Distt. Korba (CG)
10. Surendra Yadav, aged about 35 years, Son of Shri Harihar Singh Yadav, Caste Yadav, resident of Premnagar,Rajgamar, Tah. And Distt. Korba (CG)
11. Smt. Bindu Devi Singh, aged about 38 years, wife of Shri S.P Singh,caste Kshatri, resident of LIG 134, RP Nagar, Korba.
12. (a). Manish Ranjan, aged about 30 years, son of Shri Gopal Jha

12 (b). Vibha Kumari, aged about 25 years, wife of Manish Ranjah Jha, Caste Brahman

Both resident of Quarter No.B/25, Diling Camp Colony, SECL Korba (CG)

13. Board of Revenue, Bilaspur Chhattisgarh

---- Respondents

For Petitioner	:	Shri Sourabh Sharma, Advocate
For Respondents 1, 6 and 7 to 12(b)	:	Shri Atanu Ghosh, Advocate

For Respondent No.5	:	Shri Ravish Verma, Advocate
For State/Res. No.13	:	Shri Alok Bakshi, Addl. Adv. General

SB: Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

02/01/2020

1. This petition under Article 227 of the Constitution of India is preferred against order dated 4.4.2008 passed by the Board of Revenue in appeal filed by respondent No.1 by which the Board of Revenue has reversed the order dated 25.3.2006 passed by the Additional Collector, Korba.

2. The factual matrix giving rise to present petition is that three sisters namely Smt. Chanda Bai, Smt. Kamla Bai and Smt. Sarla Bai purchased the disputed land admeasuring 2 acres, said to be situated in khasra No.233/1, from one Narendra Puri, vide registered sale deed dated 12.4.1982. Later on, Sarla and Kamla sold 1.33 acres of land situated in khasra No.233/1 to respondent No.1 and 5 to 12 (b) on 10.8.2004. An application was moved by Chanda Bai through her power of attorney before the Collector raising objection to said sale transaction on the ground that the subject matter of sale were diverted land and therefore, in view of provision contained in Section 165 (6-a) of the Land Revenue Code, transaction required prior consent of the Collector. The case of remaining two sisters Sarla and Kamla was that the land was certified to be non-diverted land and, therefore, there was no impediment as permission of the Collector was not necessary in terms of provision contained in Section 165 (6-a) of the Land Revenue Code.

3. The Collector summoned original records of diversion proceedings concerning the land comprised in khasra no. 233/1 and upon perusal of the original records, proceedings and order passed therein on 27.2.1982 in Revenue Case No.159-A-2/1981-82, had reached to the conclusion that land which was subject matter of sale vide registered

sale deed dated 10.8.2004, were comprised in khasra No.233/1 which was diverted land. On this finding, the Addl. Collector held that transaction was in violation of the provision contained in Section 165 (6-a) of the Land Revenue Code. A revision was preferred by respondent which too was dismissed and, thereafter, respondent No.1 filed appeal before the Board of Revenue.

4. By the impugned order, the Board of Revenue allowed the appeal and set aside the order passed by the Collector. Board of Revenue relied upon subsequent certificate issued by the Revenue Officer that the land was not diverted and that the Collector was misled by certain incorrect entries made in B-1 khasra document.

5. Learned counsel for the petitioner argues that the order passed by the Board of Revenue is completely perverse and contrary to the records of the diversion proceedings in respect of land comprised in khasra no.233/1. He would argue that when the dispute arose as to whether land comprised in khasra No.233/1 were diverted or not, the Collector summoned original records and proceeding of diversion were initiated which culminated in passing of final order dated 27.2.1982. Upon perusal of original records, the Collector reached to the conclusion that the land were diverted and therefore permission was necessary. The Board of Revenue, however, did not look for the original records of diversion but it relied mainly upon subsequent report and entries which were based on order passed in the original diversion proceeding, to record a finding that land comprised in khasra no.233/1 was not proved to be a diverted land. This approach, it is argued, was patently illegal and erroneous. The findings recorded by the Collector were based upon perusal of original records, and if at all, the Board of Revenue had any doubt, it was required to summon those very original records of diversion. It is also submitted that, in fact, the sale deed under the disputed transaction clearly records that it is khasra No. 233 /1 and not 232/1.

6. On the other hand, learned counsel for the respondents No. 1, 5 to 12

(b) submits that the Board of Revenue has meticulously examined the records of the case and upon perusal of different reports, entries made as also report of Revenue Inspector issued on 2.9.2004 has recorded a finding that the land comprised in khasra No.233/1 cannot be said to be diverted land and thus, this finding based on record cannot be said to be perverse or patently illegal warranting any interference.

7. Learned State counsel would submit that the position could be clarified only upon perusal of the original records.

8. After having heard learned counsel for the parties and perusing the records before me, I am of the view that the Board of Revenue ought to have summoned the original records before reversing the finding recorded by the Additional Collector because the Additional Collector had recorded finding based upon perusal of the original records of diversion in which, final order was passed on 27.2.1982. As there is some dispute as to whether the diversion proceedings under Revenue Case No.159-A-2/1981-82 were in respect of the land comprised in khasra no.233/1 or khasra no. 232/1, it was all the more necessary for the Board of Revenue to have summoned those very original records which were made basis by the Collector, to record finding before reversing finding of the Collector.

9. While deciding the issue in hand, approach of the Board of Revenue has been patently erroneous and it has acted with material illegality in exercise of its jurisdiction. Therefore, interference under Article 227 of the Constitution of India is imperative. The impugned order passed by the Board of Revenue is set aside and the matter is remitted to the Board of Revenue. The Board of Revenue shall summon all the original records including the diversion proceedings of Revenue Case No.159-A-2/1981-82 in which, final order was passed on 27.2.1982 by the SDO (Diversion) Korba. Board of Revenue shall also afford both the parties, opportunity of hearing and thereafter pass appropriate order in the appeal preferred against the order of the Collector.

10. The parties shall appear before the Board of Revenue on

24th April 2020.

11. The Board of Revenue shall do well to decide the case finally within an outer limit of 6 months from the date of first appearance of the parties before it.

12. The petition is accordingly allowed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Praveen