NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 4128 of 2009

Lord Balaji Mandir through Pujari Yogendra Sharma, S/o Late Ganesh Prasad Sharma Caste Bramhin, aged about 50 years, R/o Balaji Mandir Rajapara, Kanker, District- Kanker (CG)

---- Petitioner

Versus

1. State Of Chhattisgarh through Secretary Revenue Department DKS Bhawan Raipur (CG)
2. Collector (Revenue Department) Kanker, District Kanker (CG)
3. Tahsildar Kanker, District Kanker (CG)
4. Tahsildar Narharpur, District Kanker (CG)
5. Minor Rukhmani through its natural guardian Smt. Neera Bai, R/o Bewarti, Police Station Kanker, District- Kanker (CG)
6. Tikeshwar Sharma, S/o Late Ganesh Prasad Sharma, aged about 35 years, R/o Rajapara Kanker, District Kanker (CG)
7. Smt. Shanti Sharma, W/o Late Shri Ganesh Prasad Sharma, aged about 58 years, R/o Rajapara Kanker, District- Kanker (CG)

---- Respondents

For Petitioner	:	Shri Mukesh Shrivastava, Advocate
For Respondents 1 to 4/State	:	Shri Anmol Sharma, Panel Lawyer
For Respondent No.5	:	Shri Raj Kumar Pali and Shri Amit Kumar Sahu, Advocates

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SB: Hon'ble Shri Justice Manindra Mohan Shrivastava

Judgment On Board

09/01/2020

1. This petition, essentially under Article 227 of the Constitution of India, is preferred against order dated 9th April 2009 passed by the Board of Revenue whereby the revision filed by respondent- Rukhmani has been allowed setting aside the order passed by the Collector and restoring the order of mutation passed by the Tahsildar.

2. Respondent – Rukhmani moved an application for mutation of her

name in respect of the property which were recorded in the name of Late Mahant Awadhbihari Das, who is said to be managing the affairs of 'Balaji Temple' and other property. The Tahsildar passed an order mutating the name of respondent -Rukhmani. This order was challenged by one Sanjay who claimed to be the disciple of Late Mahant Awadhbihari Das. The Sub Divisional Officer passed an order that as Sanjay Das had renounced the world, therefore, his brother and mother could not represent his case as his legal representative upon his death during the pendency of the appeal. Aggrieved by the said order, the present petitioner, his brother- Tikeshwar and mother Shanti Sharma preferred appeal before the Collector which was eventually allowed vide order dated 8.12.2005. The Collector passed an order rejecting the appeal and at the same time, directing that the entire property which stood in the name of Mahant Awadh Bihari Das is vested in the State and registered in the name of Collector. Tahsildar, Narharpur was accordingly directed to correct the revenue records. This order was challenged by respondent – Rukhmani before the Board of Revenue. The Board of Revenue proceeded to pass order dated 9.4.2009 which is under challenge before this Court.

3. Amongst various grounds, one of the main ground taken by learned counsel for the petitioner to assail the order of the Board of Revenue is that the Board of Revenue committed serious illegality and jurisdictional error in not affording any opportunity of hearing to the petitioner before allowing revision filed by the respondent. Referring to ground No.9.3 raised in the petition, learned counsel for the petitioner submits that even though the Collector, the second appellate authority, had held that the property could not be recorded in the name of the petitioner, the petitioner is interested in supporting the order of the Collector to the extent it directs the property to be recorded in the name of the Collector instead, in the name of respondent. Had an opportunity been afforded to the petitioner, the petitioner would have satisfied the Board of Revenue that order passed by the Collector directing the property to be vested in the State is just and proper.

Therefore, only on this ground, it is argued, impugned order passed by the Board of Revenue is liable to be set aside.

4. Learned counsel for respondent No.5 would submit that the petitioner is not entitled to any relief only on the technical ground that he was not afforded any opportunity of hearing. He would submit that otherwise also, the Board of Revenue has clearly recorded in its order that despite issuance of the notice, the petitioner and respondents No. 6 & 7 did not take part in the proceedings, therefore, it proceeded to pass ex-parte order. Learned counsel for respondent No.5 would further submit that the revenue records were rightly mutated in the name of respondent No.5 Rukhmani because she had come out with the case that property belongs to Late Mahant Awadhbihiari Das and she had succeeded to the property by virtue of a 'will'. It is also submitted that in any case, the dispute is of civil nature and if the petitioner had any grievance with the impugned order, his remedy lies in approaching Civil Court seeking adjudication of the civil rights.

5. I have heard learned counsel for the parties and perused the records of the case.

6. Irrespective of merits of the case, one of the main ground raised by the petitioner in the writ petition is that he was not afforded any opportunity of hearing by the Board of Revenue. A specific ground has been taken in the writ petition, as below :-

> **"**9.3. That order of Revenue Board having been passed without notice to the petitioner who was admittedly a party in the revision petition i.e. violative of the principles of natural justice as also the statutory provision, is illegal and deserves to be set aside on this short ground alone.**"**

7. Respondent No.5 in its return has nowhere denied this specific ground taken by the petitioner that the order was passed by the Board of Revenue without affording any opportunity of hearing to the petitioner

In the return, respondent No.5 sought to justify the order of the Board of Revenue on the merits of the case.

8. Having considered the submissions made by learned counsel for the parties and particularly taking into consideration that the specific ground raised by the petitioner that the petitioner was not afforded any opportunity of hearing by the Board of Revenue before passing the impugned order, has not been disputed by respondent No.5 in their return, in the considered opinion of this Court, the impugned order is liable to be set aside only on the ground of violation of principles of natural justice.

9. Accordingly, the impugned order passed by the Board of Revenue is set aside. The matter is remitted to the Board of Revenue. The Board of Revenue shall issue notice to the all the parties and after affording full opportunity of hearing to them shall decide the matter afresh in accordance with law.

10. It is made clear that this Court has not commented upon merits of the claim of respective parties.

11. The petition is accordingly allowed to the manner and extent indicated above.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen