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HIGH COURT OF CHHATTISGARH, BILASPUR

WPPIL No. 91 of 2020

1. Manik Lal Dahariya S/o Tanturam Dahariya, Aged About 58 Years
2. Dasrath Ghiri S/o Late Bahadur Ghiri, Aged About 60 Years
3. Manik Chand S/o Late Devlal Aged About 65 Years
4. Shiv Kumar Miri S/o Late Bijlai, Aged About 56 Years
5. Punaram Dhiri S/o Bahadur Dhiri, Aged About 53 Years
6. Ashok Kumar Bhaskar S/o Kumbhkaran, Aged About 45 Years
7. Khelan Miri S/o Adhunu Miri, Aged About 50 Years
8. Ram Singh S/o Budhram, Aged About 65 Years
9. Rajaram, S/o Janta Prasad Aged About 45 Years
10. Sushila Ghiri (Ex-Sarpanch of Year 2009-2014) W/o Punnu Ram Ghiri Aged About 50 Years

All Petitioners No. 1 to 10 are R/o Village Manki, Tahsil Lormi, District Mungeli Chhattisgarh

---- Petitioners

Versus

1. State of Chhattisgarh Through The Secretary, Revenue Department Mantralaya, Mahanadi Bhawan, New Raipur Chhattisgarh.
2. Collector, Mungeli, District Mungeli Chhattisgarh.
3. Sub Divisional Officer, Lormi, District Mungeli Chhattisgarh
4. Nayab Tahsildar, Lormi, District Mungeli Chhattisgarh.
5. Director Of Prosecution Head Office- Raipur, District Raipur Chhattisgarh.
6. Sarpanch Gram Panchayat Manki, Tahsil Lormi, District Mungeli Chhattisgarh.
7. Secretary Gram Panchayat Manki, Tahsil Lormi, District Mungeli Chhattisgarh.
8. Patwari Of Halka No. 32, Tahsil Lormi, District Mungeli Chhattisgarh.
9. Chandrabhan S/o Daulal Satnami Aged About 61 Years
10. Rekharam S/o Mohan Satnami, Aged About 44 Years
11. Dawni S/o Guha Satnami, Aged About 64

12. Rajkumar S/o Devni Satnami, Aged About 39 Years

13. Evan Kumar S/o Dawni Satnami Aged About 34 Years

14. Dev Prasad S/o Lakhan Satnami Aged About 56 Years

15. Hemnath S/o Gayaram Satnami Aged About 56 Years

16. Katlam S/o Dau Ram Satnami Aged About 39 Years

17. Bhagwat S/o Lakhan Satnami Aged About 64 Years

18. Bhola S/o Chamru Satnami Aged About 64 Years

19. Ashok S/o Lochan Satnami Aged About 34 Years

20. Rajkumar S/o Ridhwa Satnami Aged About 49 Years

Respondents No. 9 to 20 are R/o Village Manki, Tahsil Lormi, District Mungeli Chhattisgarh.

---- Respondents

For Petitioners : Ms. Reena Singh, Advocate.
For Respondents-State : Shri Sudeep Agrawal, Deputy Advocate General.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Order on Board

Per P. R. Ramachandra Menon, Chief Justice

17.09.2020

1. The Petitioners have moved this Court contending that, land belonging to the 1st Respondent-State has been wrongly caused to be mutated in favour of the Respondents No. 9 to 20 making entries in the revenue records.

2. It is pointed out that the order passed by the Nayab Tahsildar Lormi vide Annexure P/1 dated 24.06.2020 in this regard, is pursuant to the Judgment and Decree dated 31.01.2020 vide Annexure P/4 passed by the Civil Judge Class-II, Lormi, District Mungeli, which is stated as not correct or sustainable either on facts or in law. It is in the said circumstance, that the Petitioners have filed the above writ petition styled as 'Public Interest Litigation' with the following prayers:

> " 10.1 That, this Hon'ble Court may kindly be pleased to call for entire records relating Civil Suit No. 02-A/2016 (decided by the Learned Civil Class-II, Lormi' Dist – Mungeli (C.G.) dated 31.01.2020 or any other records as this Hon'ble Court deems fit to call for disposal of the instant petition.
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> 10.2 That, this Hon'ble Court may kindly be pleased to declare the Judgment and Decree dated 31.01.2020 passed in Civil Suit No. 02-A/2016 by the Learned Civil Class-II, Lormi, Dist-Mungeli (C.G.) as null and void and direct the respondent concerned to mutate the disputed area of the aforesaid Khasras in the Name of State Government i.e. State of C.G.
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> 10.3 That this Hon'ble Court may further direct the authority concerned to initiate an enquiry relating to transfer of the Ponds/Tanks/Pethu (feeder tank) of aforesaid Khasra 1/1, 41, 39, 312 (P.H. No. 12) area in sequence 29.04, 5.92, 6.63, 2.29 Acres situated at village – Manki, Tahsil – Lormi, Dist-Mungeli (C.G.)
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> 10.4 That, any further relief which the Hon'ble Court deems fit in the interest of Public at Large may be granted.
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> 10.5 Cost of the petition to be awarded to be petitioners."

3. Ms. Reena Singh, the learned counsel appearing for the Petitioners submits that the matter requires serious consideration in view of the various documents produced before this Court. An enquiry is also necessary in relation to the transfer of Ponds/Tanks/Pethu (Feeder Tanks) of the properties concerned. The learned counsel further submits that the Petitioners came to know about the proceedings only much later as they were never parties to the Civil Suit.

4. We heard Shri Sudeep Agrawal, the learned Deputy Advocate General appearing on behalf of the Respondents-State and Authorities under the State, who submits that the writ petition itself is not maintainable, particularly, since the main prayer sought for is to declare Annexure P/4 Judgment and Decree passed by the Civil Court on 31.01.2020 to be null and void. The learned Deputy Advocate General also points out that it is a matter involving disputed questions of facts and the Petitioners are having effective remedy under the Civil Law, if they are aggrieved in any manner.

5. It is settled law that the power and jurisdiction of this Court under Article 226 of the Constitution of India cannot be used for setting aside the Judgment and Decree passed by a Competent Civil Court and the aggrieved party has to pursue the remedy by filing appropriate proceedings before the appropriate forum under the Civil Law. We find support from the ruling rendered by the Apex Court in ***Radhey Shyam and Another v. Chhabi Nath and Others*** reported in ***(2015) 5 SCC 423*** holding that correctness of the orders passed by the Civil Court can't be tested under Article 226 of the Constitution of India.

6. On questioning the maintainability of the writ petition preferred by the Petitioners, the learned counsel for the Petitioners seeks for permission to withdraw the petition without prejudice to rights and liberties of the Petitioners to pursue their grievance / prayer by way of other appropriate remedies in accordance with law.

7. Permission is granted.

8. The writ petition is dismissed as withdrawn.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

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