NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 475 of 2020

1. Rajesh Kesharwani, S/o Late Surajpal, Aged About 59 Years, R/o Manendragarh, District- Koriya (C.G.)
2. Om Prakash Kesharwani, S/o Late Surajpul, Aged About 73 Years, R/o Manendragarh, District- Koriya (C.G.)
3. Durga Prasad Kesharwani, S/o Late Surajpal, Aged About 71 Years, R/o Manendragarh, District- Koriya (C.G.)
4. Vikas Kumar Kesharwani, S/o Late Surajpal, Aged About 45 Years, R/o Manendragarh, District- Koriya (C.G.)
5. Smt. Rajkumari, Wd/o Late Hariprasad, Aged About 80 Years, R/o Manendragarh, District- Koriya (C.G.)
6. Arun Kumar, S/o Late Hariprasad, Aged About 56 Years, R/o Manendragarh, District- Koriya (C.G.)
7. Rakesh Kumar, S/o Late Hariprasad, Aged About 54 Years, R/o Manendragarh, District- Koriya (C.G.)
8. Gyanesh Kumar, S/o Late Hariprasad, Aged About 51 Years, R/o Manendragarh, District- Koriya (C.G.)
9. Sanjay Kumar, S/o Late Hariprasad, Aged About 49 Years, R/o Manendragarh, District- Koriya (C.G.)
10. Smt. Kiran, D/o Late Hariprasad, Aged About 58 Years, R/o Behind Press Colony, P.O. and District- Shahdol (M.P.)
11. Smt. Manjula @ Manju Devi, D/o Late Hariprasad, Aged About 47 Years, R/o Ganga Plywood Centre, P.O. & District- Katni (M.P.)
12. Smt. Draupadi, D/o Late Surajpal, Aged About 68 Years, R/o Vijayapuram, Seepat Road, Bilaspur, District- Bilaspur (C.G.)
13. Smt. Lakshmi, D/o Late Surajpal, Aged About 65 Years, R/o Sangam Chowk, Ambikapur, District- Surguja (C.G.)

14. Smt. Sarla, D/o Late Surajpal, Aged About 61 Years, R/o Main Road, P.O. Bhatapara, District- Balodabazar- Bhatapara (C.G.)

--- Petitioners

Versus

1. State of C.G. through Secretary Department of Revenue, Mantralaya, Mahanadi Bhawan, Naya Raipur (C.G.)
2. Appellate Authority-Cum-Additional Collector Manendragarh, District- Koriya (C.G.)
3. Nazul Officer Manendragarh, District- Koriya (C.G.)

--- Respondents

For Petitioners	:	Dr. N.K. Shukla, Sr. Advocate with Mr. Prakash Tiwari, Advocate.
For State/ respondents	:	Mr. Gurudev I. Sharan, Govt. Adv.

<u>Hon'ble Shri Justice Rajendra Chandra Singh Samant</u>

<u>Order on Board</u>

<u>04/12/2020</u>

1. This writ petition has been brought praying for invoking power under Article 227 of the Constitution of India for quashment of the order dated 07.08.2020 passed by respondent No. 3-Nazul Officer Manendragarh, District- Koriya (C.G.), in Revenue Case No. 56/A-6/2010-11.

2. It is submitted by learned Senior counsel for the petitioners that the order passed by the Nazul Officer is perverse, illegal and arbitrary. The property in dispute, is plot No. 391 and the construction on it, is situated at Manendragarh town within the municipal limit. This property was purchased from Mahavir

Prasad by Late Surajpal and Late Hariprasad on 28.11.1956. Subsequent to which, the records were mutated in the name of Late Surajpal and Late Hariprasad. Both the purchasers of the property have expired. An application was moved for mutation of the disputed property in the name of the successors of Surajpal and Hariprasad, on which, the Nazul Officer has passed the order dated 14.09.2011 in Revenue Case No. 56/A6/2010-11, that the property in dispute i.e. plot No. 391, be mutated in the name of Smt. Kalawati Devi. This order was challenged in appeal by objector- Rakesh Kumar Gupta in Revenue Appeal Case No. 06/A-6/2016-17 before the court of Additional Collector, Manendragarh, District- Koriya. The order was passed on 28.12.2017, in which, the order of the Nazul Officer, was set aside and it was ordered that the plot No. 391 be mutated in the name of the successors/ legal representatives of Surajpal and Hariprasad. It is on the basis of this order of the appellate court, an application was filed before respondent No. 3 praying for mutation of nazul records, on which, the impugned order has been passed mentioning that the petitioners have filed a sale-deed dated 28.11.1956, which is 64 years old. The petitioners are unable to produce any lease-deed and as the sale-deed filed, is 64 years old, therefore, the mutation cannot be done and the proceeding was closed.

3. It is further submitted that the petitioners have entitlement for mutation in accordance with the appellate court's order dated 28.12.2017, which has been denied by the Nazul Officer and the

impugned order has been passed, therefore, indulgence of this Court is sought for and it is prayed that the impugned order may be set aside.

4. Learned State counsel opposes and denied all the pleadings of the petitioners side.

5. I have heard learned counsel for the parties and perused the documents that are present on record.

6. It cannot be disputed that there is order dated 28.12.2017 passed in Revenue Appeal Case No. 06/A-6/2016-17 in favour of the petitioners, in which, respondent No. 2 itself has ordered for mutating the records in the name of the petitioners, who are successors and legal representatives of Surajpal and Hariprasad, therefore, this is a mandate, which was needed to be complied with by respondent No. 3. The reason found for dismissing the mutation proceeding that, the sale-deed is 64 years old, is totally absurd, as mutation was already there in government records, in favour of Surajpal and Hariprasad, on the basis of sale-deed dated 28.11.1956.

7. It is the case, in which, the petitioners seeking mutation on account of death of the recorded owners namely Surajpal and Hariprasad, on the ground that the petitioners are their legal representatives and successors. The other reasons assigned that the petitioners and respondents failed to produced lease-deed, again is baseless and unreasonable, as there was no such prayer for mutation on the basis of any acquired lease-

deed. Hence, although, there is scope of enquiry to be made with respect to the entitlement of the petitioners by the Nazul Officer, but instead of proceeding in that direction, respondent No. 3 has chosen to dismiss the proceeding by the impugned order, therefore, the impugned order is non-speaking, arbitrary and unreasonable, which is against the provisions of law.

8. On the basis of the discussions made hereinabove, the instant writ petition is disposed of at motion stage itself. The impugned order is set aside. However, respondent No. 3 is directed to proceed and comply with the order of respondent No. 2 passed on 28.12.2017 in Revenue Appeal Case No. 06/A-6/2016-17 and the proceeding of the same be concluded within a period of four months from the date of passing of this order.

9. In view of the above, the instant writ petition is disposed of.

Sd/-
(Rajendra Chandra Singh Samant)
Judge