

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 546 of 2019**

{Arising out of order dated 19.07.2019 passed by the learned Single Judge in Writ Petition (C) No. 2469 of 2019}

- Ku. Shaista @ Rimsa Rahman D/o Late S.M. Rahman, Aged About 29 Years R/o Near Dau Rice Mill, Nayapara Jagdalpur, Post Office Jagdalpur, Police Station City Kotwali, Tahsil Jagdalpur, District Bastar, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh Through The Secretary, Department of Revenue, New Raipur, Mantralaya New Raipur, Civil and Revenue District Raipur, Chhattisgarh.
2. The Collector Bastar, District Bastar, Chhattisgarh.
3. The Sub Divisional Officer (Revenue) Place Jagdalpur, Tahsil Jagdalpur, District Bastar, Chhattisgarh.
4. The Tahsildar Jagdalpur, District Bastar, Chhattisgarh.
5. Sadik Rahman S/o Late S.N. Rahman, Aged About 52 Years R/o Nayapara, Jagdalpur, District Bastar, Chhattisgarh.
6. Shakil Rahman S/o Late S.N. Rahman, Aged About 65 Years R/o Nayapara, Jagdalpur, District Bastar, Chhattisgarh.
7. Dr. Shahid Rahmanm S/o Late S.N. Rahman Aged About 61 Years R/o Nayapara, Jagdalpur, District Bastar, Chhattisgarh.
8. Smt. Shabnam Zahir, W/o Dr. S. Zahiruddin Aged About 58 Years R/o Nayapara, Jagdalpur, District Bastar, Chhattisgarh.
9. The Nazul Officer Jagdalpur, District Bastar, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Punit Ruparel, Advocate.
For Respondent/State	:	Shri Amit Buxy, Panel Lawyer.

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

Judgment on Board

Per Parth Prateem Sahu, Judge

04.03.2020

1. Challenge in this appeal is to the order dated 19.07.2019 passed by the learned Single Judge in Writ Petition (C) No. 2469 of 2019, whereby the proceeding pending before the Nazul Officer in Nazul Case No. 156/A-6/2018-2019 is challenged which came to be dismissed.
2. Facts of the case as submitted by the learned counsel for Appellant are that the Respondent No. 5 had moved an application before the Nazul Officer under Section 110 of the Chhattisgarh Land Revenue Code, 1959 for mutation of the names of himself and 3 others persons on property bearing Sheet No. 49, Plot No. 35/102 measuring 960 sq.ft. Nazul Officer registered the case and issue notice. After appearance the Appellant raised objection which was not decided and this made the Appellant to file writ petition with the following reliefs:

"i. That, this Hon'ble Court may kindly be pleased to quash the Nazul Case No. 156/A-6/2018-2019 registered on the basis of application filed by the respondent no. 5 under Section 110 of Chhattisgarh Land Revenue Code, 1959.

ii. That, this Hon'ble Court may kindly be pleased to direct the respondent no. 5 to 8 to approach the competent civil court for the purpose of mutation of their names over the disputed property.

iii. Any other relief, which this Hon'ble Court deems fit and proper, may also, kindly be granted to the petitioner in the interest of justice.

iv. Cost of the petition may also be granted to the petitioner.”

The writ petition upon hearing came to be dismissed by impugned order.

3. The submission of the learned counsel for the Appellant is that earlier father of the Respondents No. 5 and 6 has filed a civil suit before the Civil Court for declaration and injunction wherein after his death his legal heirs though were substituted, subsequently they withdraw the suit with liberty to bring the fresh suit.
4. The Respondents No. 5 and 6 have not filed fresh suit, but filed an application under Section 110 of the Chhattisgarh Land Revenue Code, 1959. The application for mutation is not maintainable in view of order passed in civil suit. It is also submitted that the upon notice issued to the Appellant to made the appearance and also made the objection, but the said objection has not been considered by the Nazul Officer.
5. We have considered the submission made by the learned counsel for the Appellant as well as the pleadings and the reliefs of writ petition.
6. The relief No. i is for quashing of the proceedings pending before Nazul Officer in Revenue Case No. 156/A-6/2018-2019 in an application under Section 110 of the Chhattisgarh Land Revenue Code, 1959. No order of the Nazul Officer is under challenge in writ petition. Nazul Officer is dealing with the application under a statute, he may pass order either way. The Appellant could have raised all the objection which she is raising before this Court.
7. Though the learned counsel for the Appellant has argued that objection was raised, but not decide. In the record Annexure P/3 is referred to as objection raised by the Appellant, but perusal of it would show that it is not an objection filed before Nazul Officer. But, an application/representation is made to

Collector. Annexure P/3 is not an objection before the Nazul Officer, the submission made by the counsel to this effect is not correct.

8. The Respondent under the Land Revenue Code has filed an application before the authority prescribed under the Code. The High Court in the petition under Article 226 of the Constitution of India cannot usurp the jurisdiction of any authority as provided under the statute merely on objection of the Respondent to that proceedings.
9. The Appellant becoming aware of the mutation proceedings pending before Nazul Officer of the property in which she is having interest can very well raise all objections including the objection as submitted before this Court. The proceedings before Nazul Officer is pending for consideration. In view of the above, we do not find any tenable ground in this appeal.
10. The appeal is barred by 62 days. As we are not entertaining the appeal on merits, the appeal as well as the application for condonation of appeal are dismissed.
11. However, the Appellant will be at liberty to file objection in a proceeding before Nazul Officer or file any proceeding before Civil Court as available to her under law.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge