

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :22/02/2021

Order passed on :13/04/2021

WP227 No. 1583 of 2008

- Ranulal (Died) Through Lrs. (amendment incorporated as per Hon'ble Court order dated 03-10-2019).
- 1 A). Roshan Jain, S/o Late Ranulal Jain, Aged About 51 Years, Present Resident of Village Bhakhara, Tehsil Kurud, District Dhamtari Chhattisgarh., District : Dhamtari, Chhattisgarh
- 1 B). Kanwar Lal Jain S/o Late Shri Ranulal Jain, Present Resident of Village Bhakhara, Tehsil Kurud, District Dhamtari Chhattisgarh.
- 1 C). Motilal Jain S/o Late Shri Ranulal Jain, Present Resident of Village Bhakhara, Tehsil Kurud, District Dhamtari Chhattisgarh.
- 1 D). Padam Chand Jain, S/o Late Shri Ranulal Jain, Present Resident of Village Bhakhara, Tehsil Kurud, District Dhamtari Chhattisgarh.
- 1 E). Harakh Chand Jain Present Resident of Village Bhakhara, Tehsil Kurud, District Dhamtari Chhattisgarh.
- 1 F). Tara Bai Jain D/o Late Shri Ranulal Jain, Present Resident of Village Bhakhara, Tehsil Kurud, District Dhamtari Chhattisgarh.
- 1 G). Kanti Jain D/o Late Shri Ranulal Jain, Present Resident of Village Bhakhara, Tehsil Kurud, District Dhamtari Chhattisgarh.
- 1 H). Saroj Jain D/o Late Shri Ranulal Jain, Present Resident of Village Bhakhara, Tehsil Kurud, District Dhamtari Chhattisgarh.
- 1 I). Hera Jain D/o Late Shri Ranulal Jain, Present Resident of Village Bhakhara, Tehsil Kurud, District Dhamtari Chhattisgarh.
- 1 J). Santoshi Jain D/o Late Shri Ranulal Jain, Present Resident of Village Bhakhara, Tehsil Kurud, District Dhamtari Chhattisgarh.

---- Petitioners

Versus

- Megh Singh (Died) Through Legal Representative- (amendment incorporated as per Hon'ble Court order dated 16-11-2011)
- 1 (a). Khuman Singh, S/o. Late Megh Singh, Aged About 60 Years, R/o. C/o. Vijay Medical, Bhakhara Tahsil Kurud, District Dhamtari (C.G.)
- 1 (b). Narendra Singh, S/o. Late Megh Singh, Aged About 55 Years, R/o. C/o. Vijay Medical, Charama, Tahsil Charama, District Kanker (C.G.)
- 1 (c). Basant Singh S/o. Late Megh Singh, Aged About 50 Years, R/o. C/o. Vijay Medical, Paatan, Tahsil Paatan, District Durg (C.G.)
- 1 (d). Jawahar Singh, S/o. Late Megh Singh, Aged About 47 Years, R/o. C/o. Vijay Medical, Village Gujra (Bhakhara) Tahsil Kurud, District Dhamtari (C.G.)
- 2. The Collector Dhamtari, District - Dhamtari Chhattisgarh., District : Dhamtari, Chhattisgarh
- 3. The Sub Divisional Officer (Revenue) Dhamtari, District - Dhamtari Chhattisgarh., District : Dhamtari, Chhattisgarh

4. The Tahsildar Dhamtari, District Dhamtari Chhattisgarh., District :
Dhamtari, Chhattisgarh

----Respondents

For Petitioners – Shri Ashish Surana, Advocate.

For Respondents No.1(A) to 1(D) – Shri Goutam Khetrapal, Advocate.

For Respondents No.2 to 4 – Shri Gurudev I. Sharan, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

13-04-2021

1. This petition has been brought under Article 227 of the Constitution of India seeking indulgence of this Court to quash the impugned order dated 25-01-2008 passed by Board of Revenue, by allowing the revision petition of respondent No.1 and dismissing the order of Additional Collector dated 13-02-2007 which was in favour of the petitioners.

2. It is submitted by learned counsel for the petitioners, that undisputedly the petitioners are owner of the land bearing Khasra No.696 measuring 0.06 hectare and the respondent No.1 is title holder of the land bearing Khasra No.697 measuring 0.02 hectare, both situated in Village Bhakara in Patwari Halka No.10, District Dhamtari. On request made by respondent No.1 Khasra No.697 was demarcated by revenue officer. Vide its report (Annexure-P/1) dated 26-02-2005, the demarcation officer reported that part of Khasra No.697 measuring 0.02 hectare was added to the property of the petitioners.

Respondent No.1 then filed an application under Section 250 of Chhattisgarh Land Revenue Code, 1959 (in short 'the Code, 1959') for declaration of possession over his property, alleging to have been encroached upon by the petitioners. The Court of Additional Tahsildar Bhakara dismissed this application vide order dated 30-11-2005 (Annexure-P/2). Respondent No.1 then preferred appeal before the Court of Sub-Divisional Officer Dhamtari which was allowed by the order dated 26-09-2006 (Annexure-P/3) directing the eviction of the petitioners from the disputed property and restoration of possession of respondent No.1 on the same. The petitioners then preferred

second appeal before the Court of Additional Collector, District Dhamtari. This appeal was decided vide order dated 13-02-2007 (Annexure-P/4) and this appeal was allowed and the order of the SDO was set aside. Respondent No.1 then preferred revision before the Chhattisgarh Board of Revenue and this revision was decided by the impugned order dated 25-01-2008 (Annexure-P/5) in which the revision was allowed and the order of Additional Collector (Annexure -P/4) was set aside.

3. It is submitted by learned counsel for the petitioners that the demarcation report has been erroneously construed by learned Board, which does not mention that the petitioners have encroached upon the land in Khasra No.697 belonging to respondent No.1. It is submitted that the matter should have been remanded to the initial Court for making a clear demarcation and submission of report, before deciding the application under Section 250 of the Code, 1959.

Reliance has been placed on the judgment of this Court delivered in WPC No.1134 of 2019 on 15-11-2019 (Ashok Kumar Tiwari Vs. Mohit Kumar and others), in which it has been held, as to what is the correct procedure for making demarcation of a land in dispute and the order was passed issuing direction to the Tahsildar to carry out fresh demarcation of the land before passing further orders. Therefore, this petition deserves to be allowed for grant of reliefs as prayed for.

4. Learned counsel for legal representatives of respondent No.1, opposes the submission made by learned counsel for the petitioners and submits that no error has been committed by learned Board in passing the impugned order. The demarcation report (Ex.-P/1) was in favour of respondent No.1, in which there was clear mention that the disputed land belonging to respondent No.1 was encroached upon by the petitioners. Learned SDO while passing order dated 26-09-2006 (Annexure-P/3) had made observations on the basis of this

demarcation report and granted relief to respondent No.1. The order of the Additional Collector dated 13-02-2007 (Annexure-P/4) was clearly erroneous in which the view of the SDO regarding encroachment made by the petitioners on the land of respondent No.1 was not at all discussed and the appeal was allowed on technical ground, that provisions under Section 250 of the Code, 1959 is not applicable to the property in dispute, as the property is construction on Abadi land. Learned Board was in disagreement with this view of the Additional Collector and therefore, the order of the Additional Collector was set aside and the impugned order was passed. It is submitted that the provisions under Section 257(x) of the Code, 1959 clearly bars the jurisdiction of Civil Court in the matter of reinstatement of bhumiswami under Section 250 of the Code, 1959. Therefore, the impugned order is sustainable, which cannot be interfered with in this petition.

5. In reply, it is submitted by learned counsel for the petitioners that this Court may please to set aside the demarcation report (Annexure-P/1) and issue direction for fresh demarcation of the disputed property for the purpose of proper decision of the dispute between the parties.

6. Considered on the submissions.

7. The demarcation report (Annexure-P/1) is dated 26-02-2005. The report is submitted pointwise, in which point 1 and 2 are formal and point 3 mentions the method in which the demarcation was made by making use of Chanda and Jarib. Point No.5 is erroneously numbered which should have been point No.4 in which report regarding possession has been submitted, which is very essential for the purposes of determining the dispute between the parties. Point No. 5 and 6 are mentioned which are as follows:-

“5. यह कि आवेदक के दक्षिण ख0नं0 697 का भाग 0.02 कड़ी क्षेत्र x 160 कड़ी लम्बाई पूर्व पश्चिम क्षेत्र ख0नं0 696 रानूलाल पि0बस्तीमल जैन के भूमि में सम्मिलित है। आवेदक के

कब्जे पर पूर्व चला आ रहा है। आवेदक का अप्राधिकृत कब्जा नहीं है।

6. अनावेदक द्वारा 0.02 कड़ी चौड़ा तथा अपने स्वयं के 0.05 कड़ी दोनों क्षेत्र मिलाकर नाली तैयार कर बना हुआ है।”

The cause of dispute between the parties appears to be the report in the point No.6, in which it is mentioned that the land of both the parties was used for construction of drainage.

There is no report as to who is in possession of this drainage system and which of the parties is using the same. It was the submission of respondent No.1 in his application under Section 250 of the Code, 1959, that the drainage system was constructed by the petitioners by encroaching upon the land of respondent No.1. Learned Naib Tahsildar observed in the order dated 30-11-2005 (Annexure-P/2) that there is no report of encroachment upon the land of respondent No.1 in the report submitted by the Revenue Inspector, whereas, the SDO in order dated 26-09-2006 held that the petitioners have unauthorized possession of the land in dispute and they have also raised construction in the same. This order of SDO (Annexure-P/3) has been restored by the impugned order.

The dispute between the parties is clearly based on the report dated 26-02-2005 submitted by the revenue officer which is mentioned hereinabove in which in point No.5 it is mentioned that there is no unauthorized possession of the petitioners, whereas, in point No.6 it is mentioned that a drainage system has been made which is present on the land of both the parties. As it is claim of respondent No.1 that he is neither in possession of the said drainage system and neither he is making use of the same, therefore, this claim needs to be examined.

8. Subsection 2 of Section 250 of the Chhattisgarh Land Revenue Code, 1959 is as follows:

250. Reinstatement of bhumiswami improperly dispossessed; – (1)xxxxx

xxxxx xxxxx xxxxx xxxxx xxxxx xxxxx

(2) The Tahsildar shall, after making an enquiry into the respective claims of the parties, decide the application and when he orders the restoration of the possession to the bhumiswami, put him in possession of the land.”

9. This provision contemplates an enquiry to be made by the Tahsildar on receipt of any application under Section 250 of the Code, 1959. On perusal of the order dated 30-11-2005 (Annexure-P/2), it appears that learned Tahsildar has placed whole reliance on the report of Revenue Inspector dated 26-02-2005, which was a report of earlier demarcation and passed the order. The words of the report on point No.5 firstly declares that the applicant/petitioners is not in any unauthorized possession and report in point No.6 mentions about construction of drainage system on the land of both the parties, but there is no mention that who is in possession of this drainage system and making use of the same. Learned Tahsildar has drawn conclusion that the petitioners are not in any unauthorized possession, whereas, in the same report the SDO has drawn conclusion that it is the petitioners who are in unauthorized possession.

It is found that no enquiry was conducted calling for production of evidence oral or documentary or even calling of any further demarcation report. Therefore, if the same demarcation report is to be relied upon for any further decision, the dispute between the parties shall never come to an end. Clearly the demarcation report which has been the basis of passing of all the orders by the revenue courts below was ambiguous report, not being sufficient to reach to any conclusion. Hence, this petition is disposed off. The orders passed by all the revenue courts are hereby set aside. Respondent No.4 is directed to conduct an enquiry in letter and spirit of the provisions under Section 250(2) of the Code, 1959. Then the Tahsildar is also directed to direct for demarcation of

the disputed property at the expense of the petitioners and after receiving submission of report of the same and completion of the enquiry, the application under Section 250 of the Code, 1959 filed by respondent No.1 may be disposed off in accordance with law.

Sd/-

(Rajendra Chandra Singh Samant)
Judge