

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Orders on : 10.03.2021

Order Passed on : 13/04/2021

W.P.(227) No.246 of 2020

- Khorbaharin Bai Koshle, Wd/o Fusaku Koshle, aged about 75 years, R/o Village Temri, Tahsil Nawagarh, District- Bemetara, C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Revenue, Mahanadi Bhavan, Atal Nagar, District Raipur Chhattisgarh
2. Sub Divisional Officer (Revenue) Of Sub Division Nawagarh, District Bemetara Chhattisgarh
3. Dharmin Bai Wd/o Daulal Sonwani, Aged About 70 Years
4. Babulal S/o Daulal Sonwani, Aged About 50 Years
5. Baburam S/o Daulal Sonwani, Aged About 47 Years
6. Bhaiyaram S/o Daulal Sonwani, Aged About 45 Years
7. Saheblal S/o Daulal Sonwani, Aged About 43 Years
8. Nemin Bai Kurre, W/o Sendas Kurre, Aged About 40 Years
9. Manisha Patle, W/o Manoj Patle, Aged About 35 Years
10. Pardeshi Sonwani, S/o Late Awadhram Sonwani, Aged About 70 Years
11. Rajaram Sonwani, Late Awadhram Sonwani, Aged About 65 Years
12. Sarju Ram Sonwani Late Awadhram Sonwani, Aged About 62 Years
13. Pyare Lal S/o Late Rasalu, Aged About 45 Years
14. Ramsingh S/o Late Rasalu, Aged About 40 Years

(respondents No.3 to 14 are r/o Village Fulwari, Post Padampur, Police Station Jarhagaon, Tahsil And District Mungeli Chhattisgarh)

---- Respondents

For Petitioner	:	Mr. Tarendra Kumar Jha, Advocate.
For Respondents No.1 & 2/State	:	Mr. Devendra Pratap Singh, Dy. A.G.
For Respondents No.3 to 14	:	Mr. Shivraj Singh, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Order

13/04/2021

1. This petition has been brought challenging the order dated 28.02.2019 passed in Revenue Appeal Case No.13A/6 year 2017-18, passed by respondent No.2 Sub-Divisional Officer (Revenue) Nawagarh, District- Bemetara, C.G. and the order of Commissioner, Durg, Division- Durg, C.G. passed in Appeal Case No.131-A-6 year 2018-19 dated 09.01.2020.
2. The facts of the case are these that the disputed property belonged to one Fusaku Ram. On his death, the application was filed by the petitioner and other successors of Fusaku Ram for mutation. Gram Panchayat- Temri gave proposal for mutation on 31.01.1999. The resolution of Gram Panchayat was challenged in Revenue Appeal No.13-A/, that appeal has been decided by the impugned order dated 28.02.2019 by S.D.O. by dismissing the proposal of Gram Panchayat- Temri. Second Appeal was preferred before the Commisisoner Durg by Paras @ Lakhan Koshle and Purushottam @ Bhajan Koshle against Daulal Sonwani and other private respondents. That appeal has been decided vide order dated 9.01.2020 and dismissed.
3. It is submitted by the learned counsel for the petitioner, that the petitioner is the widow of late Fusaku Ram and thus she has inherited

the property of Fusaku after his death. The petitioner got her share in the lands and on that basis, she executed sale deed dated 13.03.1993 in favour of Ganesh Satnami regarding the house in Abadi Land. She executed another sale deed dated 23.03.1993 in favour of Parasram and Purushottam with respect to agriculture land. She has also executed sale deed dated 19.07.1988 in favour of Loknath and Sukariya with respect to agriculture lands. Further, she also executed sale deed dated 22.03.2006 in favour of Ganesh and Mukund with respect to agriculture lands.

4. It is further submitted by the learned counsel for the petitioner that the petitioner was not a party in the appeal filed before S.D.O., Navagarh, she was not arrayed as party, therefore, the order passed for setting aside the mutation proposal of Gram Panchayat is totally illegal. The private respondents made an incorrect statement in the memo of appeal before S.D.O. that the petitioner is dead, therefore, the impugned order of the S.D.O. and further, the order of the Commissioner suffers from grave infirmity.
5. Reliance has been placed on the judgment of M.P. High Court in the case of ***Keshri Nandan & Anr. Vs. Pradeep Kumar & Ors.*** dated 03.07.2019, on this point, that the present petition is maintainable under Article 227 Constitution of India.
6. It is again submitted by the learned counsel for petitioner that the appeal was filed before the S.D.O. after a huge delay of about 18 years. The delay in filing this appeal was condoned without any notice to the respondent parties. Hence, it is a fit case, in which the petitioner has entitlement to be heard before the appeal filed by the private respondents before S.D.O. Raipur has been decided. Therefore, the prayer has been made for remand of the case to the S.D.O. Navagarh

for fresh decision on appeal.

7. Learned counsel for the respondents submits that the petitioner is the second wife of Fusaku Ram, therefore, she has no entitlement for any inheritance. The S.D.O. has allowed the appeal and that order has been confirmed by the Commissioner. Subsequent to that, a Civil Suit has also been filed on 27.01.2020, which has been registered as Civil Suit No.10A/2020 filed by the petitioner, which is pending in the Court of Civil Judge, Class-1, Bemetara. It is also submitted that the present petition is not maintainable.
8. Learned State counsel appearing for respondent No.1 submits that the present petition is not maintainable as there is remedy of revision available to the petitioner, which can be filed before the Board of Revenue. Hence, the petition may be dismissed.
9. In reply, it is submitted by the learned counsel for the petitioner that the petitioner had never been a party in the appeal before S.D.O. and in the Second Appeal before the Commissioner. Therefore, it is a fit case for exercise of jurisdiction under Article 227 of Constitution of India.
10. Considered on the submissions in the case of ***Budhia Swain and Ors. Vs. Gopinath Deb***, it was held that in the matters, where there is a lack of jurisdiction, that strikes at the very root of the case and want of jurisdiction, in absence of any order may vitiate the whole proceeding rendering the orders passed in nullity. Therefore, there is a distinction between the lack of jurisdiction and error in exercise of jurisdiction. In the case of ***Shalini Shyam Shetty Vs. Rajendra Shankar Patil*** reported in (2010) 8 SCC 329, it was held in paragraph 60 that one distinction between the two jurisdiction under Article 226 and 227 is this that High Court normally annuls and quash the proceeding under Article

226 Constitution of India but in exercise of jurisdiction under Article 227 Constitution of India, the High Court apart from annulling the proceeding can also substitute the impugned order by the order which the inferior Tribunal should have made. The power under Article 227 Constitution of India is exercised by the High Court Suo-moto as the custodian of justice.

11. It was also held that according to the ratio laid down in the case of **Waryam Singh & Anr. Vs. Amarnath & Anr.** reported in AIR 1954 SC 215, the High Court can exercise jurisdiction of superintendence only to keep the tribunals and Courts subordinate to it within the bounds of their authority in order to ensure that the law is followed by such Tribunals and Court by exercise of jurisdiction which is vested in it and by not practicing the exercise of jurisdiction, which is restricted.

12. It is a similar case before this court, in which the private respondent made a statement that the petitioner, who claims to be the wife of Fusaku Ram and inheritor of the property of Fusaku, was not alive. The respondent before the S.D.O. namely Paras @ Lakhan Koshle and Purushottam @ Bhajan Koshle derived title from this petitioner, who has transferred the property to them by execution of sale deed in their favour. Hence, taking into consideration these facts, I am of this view that the resolution of Gram Panchayat- Temri, which had been in favour of this petitioner and others and the same was under challenge before the appeal without arraying the petitioner as a party or lay suppression of this fact that the petitioner was alive. Therefore, for this reason, this petitioner had a right to be heard before disposing off the appeal by the S.D.O. Hence, this order passed by the S.D.O./respondent No.2 and Commissioner, Durg and Second Appeal both are invalid. Hence, this petition is allowed. The impugned order that is the order of S.D.O. dated

28.02.2019 Annexure-P/1 and the order of Commissioner dated 09.01.2020 both are set aside. The case is remanded back to the Court of S.D.O. Revenue Navagarh, District- Bemetara with a direction to provide an opportunity to the petitioner for being heard after arraying her as a party in that case within a period of 21 days, from the date this order is passed. On failure of her filing any such application, the learned S.D.O. shall be at liberty to proceed and decide the appeal afresh.

13. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika