

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Orders on : 24/09/2021

Order Passed on : 09/11/2021

W.P.(227) No.5038 of 2009

1. Narendra Kumar S/o Late Jeevan Lal Aged About 50 Years
2. Manoj Kumar S/o Late Jeevan Lal Aged About 40 Years
3. Shiv Kumar S/o Late Jeevan Lal Aged About 36 Years
4. Shatrughan S/o Late Jeevan Lal Aged About 38 Years
5. Kumari Sarla D/o Late Jeevan Lal Aged About 42 Years
6. Kumari Shyama D/o Late Jeevan Lal Aged About 32 Years
7. Kumari Uma D/o Late Jeevan Lal Aged About 34 Years

(All are r/o Of Village Bodri, Tahsil Bilha, District Bilaspur Chhattisgarh)

---- Petitioners

Versus

1. Board Of Revenue Chhattisgarh Bilaspur, District Bilaspur Chhattisgarh
2. Lochan Prasad (Died) Through His Legal Heirs As Per The Court's Order
Date 14-02-2014.
 - 2.(i) Smt. Shakuntala Mishra W/o Late Lochan Prasad Aged About 55 Years, R/o Village Bodri, Tahsil Bilha, District- Bilaspur, C.G.
 - 2.(ii) Anil Kumar S/o Late Lochan Prasad Aged About 30 Years, R/o Village Bodri, Tahsil Bilha, District- Bilaspur, C.G.
 - 2.(iii) Arwind Kumar S/o Late Lochan Prasad Aged About 28 Years, R/o Village Bodri, Tahsil Bilha, District- Bilaspur, C.G.
 - 2.(iv) Pankaj Kumar S/o Late Lochan Prasad Aged About 26 Years, R/o Village Bodri, Tahsil Bilha, District- Bilaspur, C.G.
 - 2.(v) Smt. Minakshi D/o Lochan Prasad Aged About 32 Years, R/o

Village Bodri, Tahsil Bilha, District- Bilaspur, C.G.

3. Dinesh Kumar S/o Late Jeevan Lal, R/o Village Bodri, Tahsil Bilha, District- Bilaspur, C.G.
4. Kusum Bai W/o Bhuvan Lal, R/o Village Bodri, Tahsil Bilha, District- Bilaspur, C.G.
5. Rama Bai W/o R.P. Pathak Resident Of Talapara, Bilaspur, Tahsil And District Bilaspur Chhattisgarh

---- Respondents

For Petitioners : Mr. Sudhir Kumar Agrawal, Advocate.

For State/Respondent No.01 : Mr. Alok Nigam, Govt. Advocate.

For Respondent No.02 : Mr. Ravish Verma, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

09/11/2021

1. This petition has been brought being aggrieved by the order dated 17.07.2009 vide Annexure-P/1, passed in Revenue Case No.RN/02/R-A-6/239/2009 by the C.G. Board of Revenue against the petitioners.
2. The brief facts of the case are these that the petitioners are grandsons and grand-daughters of late Smt. Kadam Bai and respondent No.2 is son of Smt. Kadam Bai and they have a joint Hindu family. The disputed land bearing Khasra No.114/2 measuring 2.52 acre situated in village Bodri, Tehsil- Bilha, District- Bilaspur, C.G. was recorded in the name of Smt. Kadam Bai. The respondent No.02 claims title on the basis of notarized documents dated 22.05.1995 and it was on that basis, the mutation has been entered in favour of respondent No.2 in the revenue records by Revenue Inspector on 19.06.1995. The petitioners preferred

appeal before Sub-Divisional Officer, Bilaspur which was allowed vide order dated 20.03.1997. The Second Appeal filed by respondent No.2 before Additional Commissioner Bilaspur was dismissed vide order dated 01.04.1999. The respondent No.2 then preferred revision before the Board of Revenue that is respondent No.1, by which the impugned order has been passed and the orders of S.D.O. and Additional Commissioner Bilaspur both have been set aside.

3. It is submitted by the learned counsel for the petitioners that in the proceeding for mutation, the procedure provided under Section 110 of C.G. Land Revenue Code was not followed, in which no opportunity of hearing was given to the petitioners. Rule 27 of the Rules framed under Section 110 of Land Revenue Code, 1959 very clearly provides that on intimation from Patwari or from registering officer, the Tehsildar shall have the intimation duly published by beat of drum in the village and shall get a copy of intimation pasted at Chaupal and other public places in the village. One copy shall also be sent to the Gram Panchayat of the village. The Tehsildar is also required to intimate to all the persons concerned or interested in that mutation proceeding. It is submitted that no such proceedings has taken place. The affidavit of Smt. Kadam Bai granting right over the disputed property to respondent No.2 cannot be regarded as a document for transfer of title. The Court of S.D.O. and the Additional Commissioner have rightly held that the mutation order in favour of hte respondent No.1 is against the provisions of law, hence, the impugned order is not sustainable which may be set aside by restoring the orders of the Additional Commissioner and S.D.O.
4. Learned State counsel for respondent No.1 opposes the submissions and submits that the impugned order is sustainable.

5. Learned counsel for the private respondent opposes the submissions and submits that the late Kadam Bai had transferred the disputed property to the deceased respondent No.2 by a registered sale deed dated 22.05.1995, therefore, the transfer of land is not based on any notarised document alone. It is on this basis, the mutation order was passed. In case, the petitioners have a claim on the disputed property, the appropriate forum is Civil Court before which they can place their claims. The impugned order does not suffer from any infirmity. Hence, the petition may be dismissed.
6. Heard learned counsel for the parties and perused the documents present on record.
7. Considered on the submissions. It was the finding of the S.D.O. in First Appeal order dated 20.03.1997 that the petitioners were not given any opportunity of hearing. As no notices were served upon and neither any notice was published in that respect, the Additional Commissioner in order dated 01.04.1999 concurred with the view taken by the S.D.O. and dismissed the Second Appeal. This was the conclusion drawn on the basis of the facts present in the case. The learned Revenue Board while considering on the Revision Petition has not given any consideration, the sole emphasis given for the passing of order is that the sale deed was in favour of the deceased respondent No.2 registered.
8. The entitlement of deceased respondent No.2 for grant of mutation order in his favour was secondary. The primary ground for consideration had to be whether, the petitioners were given opportunity of hearing as per the provisions under Section 110 of the Land Revenue Code, 1959 and as per the Rules 27 of the Rules framed under Section 110 of Land Revenue Code, 1959, regarding which there is no observation and no

conclusion drawn by the Board of Revenue in the impugned order. Hence, the impugned order is totally unsustainable. The petition is allowed with modification and the impugned order is set aside. The orders of S.D.O. and Collector both are set aside. The mutation case is remanded to the Court of Nayab Tehsildar having jurisdiction with a direction to reconsider on the application for mutation filed by the deceased respondent No.2, who is now represented by his legal heirs and after following the procedure as laid down under the rules framed under Section 110 of L.R.C. 1959, pass appropriate order in accordance with law. It is made clear that the petitioners shall be granted liberty of proper hearing in the case concerned.

9. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge