

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 971 of 2020**

1. Tularam Jaiswal, S/o. Late Keshoram Jaiswal, Aged About 92 Years, Caste Kalar.
 2. Jagdish Prasad Jaiswal, S/o. Late Makhanlal Jaiswal, Aged About 57 Years, Caste Kalar.
- Both R/o. Village Sothi, Tahsil - Masturi, District Bilaspur, Chhattisgarh.

---- Petitioners**Versus**

1. State Of Chhattisgarh, Through Secretary, Department Of Revenue, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, Chhattisgarh.
2. Collector, District Bilaspur, Chhattisgarh.
3. Additional Tahsildar, Sub Tahsil - Sipat, Tahsil Masturi, District Bilaspur, Chhattisgarh

---- Respondents

For Petitioner : Mr. Devesh G. Kela, Advocate

For State : Ms. Sunita Jain, Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****16.03.2021**

Heard

1. The case of the petitioners is that the petitioners own a land bearing Khasra No.92, admeasuring 1.60 acre wherein the pond situates and the bank of the pond of land bears Khasra No.91 admeasuring 1.18 acre. The lands are situated at village Sothi, P.C. No.31, R.I. Circle Seepat, Tahsil & District Bilaspur. Initially when the dispute arose the petitioners filed a Civil Suit bearing No.288-A/98. The said civil suit was decreed on 18.01.1999 wherein it was decreed that the ownership in respect of the property belong to the plaintiffs therein i.e. Tularam & Makhanlal and the State who was defendant in the civil suit was restrained to interfere in peaceful possession of plaintiff petitioners. On the basis of the said decree, the petitioners filed an application before the Naib Tahsildar under Section 109 & 110 of the Land Revenue Code

(Annexure P-4). The Naib Tahsildar by its order dated 30.12.2006 directed that according to the decree, the ownership and the possession of plaintiffs and their legal heirs be recorded in the revenue record that of the plaintiffs. It is contended that thereafter the name of the petitioners were not recorded, consequently again an application was filed by the petitioners lately in the year 2019 by Annexure P-6. The Addl. Tahsildar on 06.01.2020 passed an order that according to the law laid down in case of Jagatpal Singh v. State of Punjab, all the ponds are to be recorded in the name of the State. Consequently, the application of the petitioners was dismissed.

2. Learned counsel for the petitioners submits that the decree in this case has attained the finality wherein the ownership in respect of the pond and adjacent land have been held to be in favour of the petitioners/ plaintiffs who are owner along-with their legal heirs. He submits that since the decree has attained the finality, the Addl. Tahsildar cannot overreach the decree as the decree of the Civil Court would prevail over the Revenue Court.
3. Learned State counsel opposes the argument.
4. Perusal of the record would show that the suit was filed in respect of the land bearing Khasra No.92 admeasuring 1.60 acre, which is shown to be under water and the bank of the pond is having Khasra No.91 admeasuring 1.18 acre, both the land was situated at village Sothi, P.C. No.31, R.I. Circle Seept, Tahsil Bilaspur. The decree is dated 18.01.1999 observed that the plaintiffs therein i.e. Tularam & Makhanlal are declared to be owner and in possession along with their legal heirs. Further, the decree was to the effect the possession over the land that of plaintiff should not be disturbed. On the basis of such decree, when the application was filed, the Tahsildar directed that the revenue record be corrected accordingly and the plaintiffs/ petitioners herein be declared the owner of the land. It appears the same was not carried out,

therefore, when the subsequent application was filed, the Addl. Tahsildar by the impugned order dated 06.01.2020 has dismissed the application.

5. In any case, when the decree of the Civil Court exists, it will prevail over the finding of the Revenue Court. Apart from that, the decree of the Civil Court has attained its finality as no appeal was preferred. Therefore, the merit of the order at this stage cannot be gone into. It is also important to note that on the basis of the initial decree when the application were filed, the Tahsildar has ordered for correction of the name but eventual fruit of decree were not allowed to be carried out. Therefore, when the subsequent application was filed, the adverse order dated 06.01.2020 was passed, which is on record as Annexure P-7. The order dated 06.01.2020 virtually is an order of review, which is contrary to order passed by the Tahsildar itself on the earlier occasion. Therefore, the Tahsildar was not vested with any jurisdiction under Section 51 of the Land Revenue Code to review its own order as no permission to review was given by any higher officials to which the Tahsildar is sub-ordinate. Consequently, the order dated 06.01.2020 which overrides the statutory provisions of Section 51 of the Land Revenue Code and also overrides the decree of the Civil Court cannot be allowed to sustain. The finding of the Civil Court by the Tahsildar cannot be set aside by the impugned order. Therefore, the order dated 06.01.2020 is set aside. The Tahsildar is directed to carry out the correction pursuant to its earlier order dated 30.12.2006 which is passed on the basis of decree dated 18.01.1999 passed by the Court of Third Civil Judge Class-1 in Civil Suit No.288-A/98. The said mutation be carried out within a period of 60 days from the date of receipt of a copy of this order.
6. In a result, the petition is allowed to the above extent.

Sd/-
(Goutam Bhaduri)
Judge