

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(C) No. 2891 of 2021

Shailendra Mahapatra, S/o. Late Vallabh Mahapatra, Aged About 51 Years, R/o. House No. 222, Ward No. 23, Kaserpara, Raigarh (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Department Of Urban Administration, Mahanadi Bhawan, Mantralaya, New Raipur (Chhattisgarh)
2. Collector Raigarh (Chhattisgarh)
3. Municipal Corporation Raigarh, Through The Commissioner, Raigarh (Chhattisgarh)
4. Chhotelal Kenwat, S/o. Late Parasram Kenwat, R/o. Balmiki Ambedkar Awas, ITI, Raigarh (Chhattisgarh)

---- Respondents

For Petitioner	:	Mr. Varun Sharma, Advocate
For State/Respondents No.1 & 2	:	Mr. Gagan Tiwari, Dy. Govt. Advocate
For Respondent No.3	:	Mr. Arvind Shrivastava, Advocate

Hon'ble Shri Justice Goutam Bhaduri

ORDER

19.07.2021

Heard

1. The contention of the petitioner is that a shop was allotted to one Poramati Kenwat by the Municipal Corporation Raigarh on 14.03.2005 (Annexure P-2) and the petitioner and Poramati both were running a Barbar shop in the said premises and infact the petitioner was running a shop. Subsequently, Poramati died on 12.02.2013 and during the lifetime, Poramati had executed a WILL on 21.04.2005 in favour of the petitioner. Therefore, the name of the petitioner is required to be mutated in respect of the said property. He would submit that the Collector by the impugned order dated 25.02.2021 has without enquiry directed to record the name of Chhotelal Kenwat in respect of the shop who is also the applicant. Therefore, the order dated 25.02.2021 (Annexure P-1) be set aside.
2. Learned counsel for the Municipal Corporation would submit that the Collector has only observed that “ नियमानुसार नामांतरण की कार्यवाही करें। ” and as such no

decision has yet been arrived thereafter. The paper publication has been made in the name of the Commissioner on 21.03.2021 wherein objections were invited and as on date the objection though might have been filed late by the petitioner, the same would be considered by the Municipal Corporation Raigarh. Therefore, this petition is premature. He further submits that as per sub-section (2) of Section 79-A of the Municipal Corporation Act, even if the petitioner is aggrieved, he may file a civil suit against such order.

3. Considering the submission of the petitioner that the final mutation proceeding is yet to be concluded, the instant petition is premature. Even otherwise sub-section (2) of section 79-A of the C.G. Municipal Corporation Act, 1956 purports that the Corporation or any person aggrieved by an order passed by the Collector under sub-section (1) may, notwithstanding anything contained in any law for the time being in force, within one year from the date on which the Corporation or such person had due notice of such order institute a suit in any competent Civil Court to set aside such order to claim a relief consistent therewith.
4. Considering the fact the final decision is yet to be arrived, the instant petition is premature. Even otherwise the petitioner appears to establish his right on the basis of a WILL, which cannot be adjudicated by this Court. Since it has been stated that the final decision has not been taken, it is directed that before taking a decision for final mutation, the petitioner shall be given an opportunity of hearing.
5. With the aforesaid observation, the petition stands disposed off.

Sd/-
(Goutam Bhaduri)
JUDGE

Aks