

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.469 of 2021

- Charanjeet Singh Kohil S/o Shri Kartar Singh Aged About 78 Years R/o Opposite Prince Food Square, Neta Ji Hotel, Katora Talab, Raipur Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Collector, District Raipur Chhattisgarh
2. The Municipal Corporation, Raipur Through The Commissioner, White House Raipur Chhattisgarh
3. The Zone Commissioner Zone No. 10, Near Water Tank, Amlidih, Raipur Chhattisgarh
4. The Sub Divisional Officer (Revenue) Office Of Sub Divisional Officer, Opposite Bajrang Hotel, G. E. Road, Raipur Chhattisgarh
5. The Tahsildar, Office Of Tahsildar, Opposite Bajrang Hotel, G. E. Road, Raipur Chhattisgarh
6. The Halka Patwari, Patwari Halka No. 113, Office Of Patwari Near Bade Jhaad, Shyam Nagar Raipur Chhattisgarh
7. The Managing Director Smart City Office Of Smart City Raipur Near Stadium And Vivekanand Sarovar, Budhapara Raipur Chhattisgarh
8. Shri Vijendra Yadav S/o Shri Lalluram Yadav R/o Near Shani Temple, Khamardih, Shankar Nagar, Raipur Chhattisgarh
9. Shri Anil Yadav S/o Shri Panchram Yadav
10. Shri Rakesh Yadav S/o Panchram Yadav
11. Smt. Neeta Yadav W/o Shri Dinesh Yadav
12. Shri Chatur Yadav S/o Parsuram Yadav
13. Shri Netram Yadav S/o Shri Parasram Yadav
14. Pramila Yadav D/o Shri Lallu Yadav
15. Anusuiya Yadav D/o Shri Lallu Ram Yadav
16. Smt. Kaliya Bai Yadav W/o Shri Lallu Yadav
17. Smt. Neera Bai Yadav W/o Shri Pancharam Yadav
18. Saraswati Bai Yadav D/o Shri Pancharam Yadav
19. Dropadi Yadav D/o Shri Panchram Yadav

20. Preeti Yadav D/o Panchram Yadav
21. Sarita Alias Muniya D/o Panchram Yadav
22. Hemlata Yadav D/o Panchram Yadav
23. Durga Yadav D/o Panchram Yadav
24. Dalluram Yadav S/o Shri Parasram Yadav
25. Gopal Yadav S/o Shri Parasram Yadav
26. Sukhiya Yadav S/o Shri Prabhu Yadav
27. Geeta Yadav D/o Shri Prabhu Yadav
28. Seeta Yadav D/o Shri Prabhu Yadav
29. Smt. Keja Yadav W/o Shri Prabhu Yadav
30. Smt. Dukhiya Yadav W/o Shri Kali Yadav
31. Smt. Bitawan Yadav D/o Shri Prabhu Yadav
32. Mannu Lal Yadav S/o Shri Lallaram Yadav
33. Dhannulal Yadav S/o Lallaram Yadav
34. Chhannulal Yadav S/o Shri Lallaram Yadav
35. Sohadara Bai Yadav W/o Shri Nepal Yadav
36. Mukesh Yadav S/o Nepal Yadav
37. Manish Yadav S/o Nepal Yadav
38. Manisha Yadav D/o Nepal Yadav

(Respondents No.9 to 38 aged not mentioned in order copy, resident respondent No.08 ot 38C/o Shri Vijendra Yadav, Near Shani Temple, Khamardih, Shankar Nagar, Raipur Chhattisgarh)

39. Road Executive Engineer (Bha/sa) Public Works Department, Raipur Division, Byron Bazar, Raipur Chhattisgarh

---- Respondents

For Petitioner	– Mrs. Supriya Upasane, Advocate.
For State	– Ms. Shivali Dubey, Panel Lawyer.
For respondents No.2, 3 & 7	– Mr. Sandeep Dubey, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

22-09-2021

1. This petition has been brought being aggrieved by the order dated 17.08.2021 passed by the Court of Upper District Judge, Raipur, C.G. in Miscellaneous Civil Appeal No.18/2021, by upholding the order of the

trial Court dated 24.07.2021, in Civil Suit No.148-A/2021, dismissing the application under Order 39 Rule 1 & 2 read with Section 151 of C.P.C. and dismissing the appeal.

2. It is submitted by learned counsel for the petitioner that the petitioner is the owner of Khasra No.207/14 measuring 0.020 hectare situated in Village Telibanda, District Raipur. This property was purchased by the petitioner by registered sale deed dated 16.07.1987. The name of the petitioner was mutated in the records. The petitioner has initiated demarcation proceeding of the property on which demarcation report dated 23.04.2010 shows the suit property was in possession of the petitioner. Later on, the petitioner has come to know that the name of the Executive Engineer P.W.D. was recorded by the Tehsildar by order dated 12.09.2019 (Annexure-P/4). This order was challenged in appeal by the petitioner before the Court of S.D.O. Revenue, Raipur. By the appellate order dated 03.01.2020 (Annexure-P/5), the appeal was allowed and the case was remanded to Tehsildar with directions to complete proceeding after following the principle of natural justice.
3. It is submitted again by the learned counsel for the petitioner that Tehsildar has after completion of proceeding passed order dated 22.03.2021 (Annexure-P/6) and upheld the order dated 12.09.2019. The petitioner then preferred an appeal against this order and he has also filed a Civil Suit praying for relief declaration and title. An application was also filed under Order 39 Rule 1 & 2. One application was separately filed under Order 39 Rule 3 of C.P.C. which was dismissed by the trial Court vide order dated 10.06.2021, that order was challenged in W.P.(227) No.293 of 2021. The petition was disposed off vide order dated 28.06.2021, with a direction to the trial Court to dispose off the application under Order 39 Rule 1 & 2 of C.P.C. within a period of one month. The learned trial Court has then dismissed the application

under Order 39 Rule 1 & 2 read with Section 151 of C.P.C. vide order dated 24.07.2021 and also the appeal preferred has been dismissed by the appellate Court by the impugned order.

4. It is further submitted that the impugned order and the order of the trial Court both are erroneous, illegal and unsustainable. The petitioner is in continuous possession of the suit property since the year 1987 and his possession and title has never been challenged by any person. The suit land was also mutated in favour of the petitioner and he has paid all the taxes accrued so far. The deletion of the name of the petitioner in the revenue records is unlawful and liable to be set aside. The respondent No.2 has issued a notice on 01.06.2021 informing the petitioner that the construction raised on the suit property is without permission, which will be removed. Therefore, the prayer was made for want of temporary injunction. Hence, the dismissal of the prayer for temporary injunction by both the Courts below is illegal and the petitioner is entitled for relief.
5. Learned Counsel for respondent No.2 & 3 opposes the submission made by the Learned counsel for the petitioner and submits that it is not denied that the petitioner had purchased the property bearing khasra No. 207/14. It is submitted that the petitioner has apart from the land of his title and possession has encroached upon the municipal land. In the later on development, a portion of land of the petitioner has been acquisitioned for the construction of road.
6. Considered on the submission. The occasion for making prayer for grant of temporary injunction has occurred in this case on the notice issued by the respondent No. 2. The notice issued by the respondent No. 2 is dated 13.08.2021 (Annexure-P/14) mentions that the illegal construction raised by the petitioner has been removed by the Municipal Corporation, Raipur and debris of the same has not been removed regarding which, notice was given to the petitioner to remove the debris and in case the

order is not complied with then the petitioner shall be proceeded against. This notice does not mention of removal of any structure present on the disputed property. After perusal of the order dated 17.08.2021 of the trial Court and the impugned order, I am of this view that both the Courts below have not committed any error in holding that the petitioner has encroached upon the suit land, therefore, the rejection of the prayer made by the petitioner by both the Courts below does not need any interference. Therefore, this petition is dismissed.

7. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika