

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 339 of 2021**

M/s Ajneya Constructions Through Its Partner Shri Shiva Naidu S/o V. Ashok Naidu Aged About 66 Years, R/o 305, Chandra Park Apartment Brihaspati Bazar Bilaspur, District Bilaspur Chhattisgarh. District : Bilaspur, Chhattisgarh

---- Appellant**Versus**

1. State of Chhattisgarh Through Collector, Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
2. M/s Rishabh Associated Through Shri Devidas Wadwani S/o Hundraj Mal Wadhwani R/o Near Chhabda Marbals Jagmal Chowk, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
3. Smt. Parvati Bai W/o Late Surit Ram Banjare Aged About 59 Years R/o Magarpara, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
4. Smt. Laxmi Bai D/o Late Surit Ram Banjare Aged About 41 Years R/o Magarpara, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
5. Smt. Sati Bai D/o Late Surit Ram Banjare Aged About 39 Years R/o Magarpara, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
6. Smt. Jati Bai D/o Late Surit Ram Banjare Aged About 37 Years R/o Magarpara, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
7. Smt. Nisha D/o Late Surit Ram Banjare Aged About 34 Years R/o Magarpara, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
8. Smt. Kiran Bai D/o Late Surit Ram Banjare Aged About 33 Years R/o Magarpara, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
9. Ramesh Banjare S/o Makhan Banjare Aged About 54 Years R/o Magarpara, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
10. Naresh Banjare S/o Makhan Banjare Aged About 54 Years R/o Magarpara, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondents

(Cause Title taken from Case Information System)

For Appellant	: Mr. Y.C.Sharma, Senior Advocate with Mr. Narendra Mehar, Advocate.
For Respondent No. 1	: Mr. H.S.Ahluwalia, Deputy Advocate General
For Respondent No. 2	: Mr. Neeraj Choubey, Advocate.
For Respondent No. 3 to 9	: Mr. K. Rohan, Advocate.

Hon'ble Mr. Arup Kumar Goswami, Chief Justice

Hon'ble Mr. Arvind Singh Chandel, Judge

Judgment on Board

Per Arup Kumar Goswami, Chief Justice

18/11/2021

Heard Mr. Y.C.Sharma, learned senior counsel for the appellant. Also heard Mr. H.S.Ahluwalia, learned Deputy Advocate General for the respondent No. 1, Mr. Manoj Paranjpe, learned counsel for the respondent No. 2 and Mr. K. Rohan, learned counsel for the respondent No. 3 to 9.

2. This appeal is directed against the order dated 28.09.2021 passed by the learned Single Judge in WP(C) No. 2540/2021, whereby the interim order of stay dated 30.06.2021 passed in the said petition was vacated.

3. Primarily on the ground that the appellant was not heard by the learned Board of Revenue while passing the order dated 22.05.2021, which was put to challenge in the writ petition in question, the learned Single Judge had passed the order dated 30.06.2021 staying the order dated 22.05.2021 till the next date of hearing. Subsequently, on the basis of an application filed by the respondent No. 2, the aforesaid interim order came to be vacated and accordingly, this appeal is filed.

4. Before proceeding further, it will be appropriate to note that pursuant to the order of this Court vacating the interim order, name of Respondent No. 2 has been mutated in the land records.

5. Paragraph 9 of the order passed by the learned Single Judge reads as follows:

“9. Two sale deeds in respect of same property are in existence. The sale executed in favour of respondents was prior to that of the petitioner. Who was legally entitled to what extent to execute the sale deed may be required to go to adjudicate the right under common law. It appears that in the meanwhile when the name of the subsequent purchaser/petitioner was recorded and the case of the respondent No.2 was kept in abeyance an application was filed before the Board of Revenue which came to be decided by the impugned order.”

6. The Board of Revenue, by order dated 22.05.2021 had directed the jurisdictional Tahsildar to mutate the name of respondent No. 2 in the present proceedings within a period of 30 days, while setting aside orders dated 27.10.2016, 04.10.2018, 20.02.2019 and 14.03.2019.

7. Though, it appears that the learned counsel for the petitioner had raised the issue of the petitioner and his predecessor-in-interest not having been heard by the Board of Revenue and which principally was the reason for passing of the interim order dated 30.06.2021, this aspect of the matter was not considered while vacating the interim order. The learned Single Judge observed that the entries as ordered by the Board of Revenue shall be subject

to final outcome of the petition. However, no observation was made with regard to the direction of the learned Board of Revenue regarding cancellation of the order dated 27.10.2016, 04.10.2018, 20.02.2019 and 14.03.2019.

8. After hearing the learned counsel for the parties and on perusal of the materials on record, we observe that setting aside of the orders dated 27.10.2016, 04.10.2018, 20.02.2019 and 14.03.2019 shall also be subject to final outcome of the writ petition. We further provide that neither the petitioner nor the respondent No. 2, both of whom are claiming the property in question, shall alienate the property or create any third party interest over the property till disposal of the writ petition. We also hasten to add that this Court has not expressed any opinion on merits of the case of either of the parties.

8. With the aforesaid observation and direction, this appeal stands disposed of. No cost.

Sd/-
(Arup Kumar Goswami)
CHIEF JUSTICE

Sd/-
(Arvind Singh Chandel)
JUDGE