NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

WA No. 590 of 2019

Judgment reserved on 02.02.2021

Judgment delivered on 18.02.2021

{Arising out of Order dated 03/07/2019 passed in Writ Petition(C) No. 2184 of 2019 by the learned Single Judge}

1. Goswami Triveni Giri, Disciple of Mahant Dhansukh Giri, aged about 70 years
2. Goswami Gangasharan Giri, Diciple of Mahant Sadanand Giri, aged about 69 years
3. Goswami Harwansh Giri Disciple of Mahant Sadanand Giri, aged about 68 years

Mahant Sudarshan Giri (*since died)*

Appellant no. 1 to 3 R/o village Silsila, Tahsil Lundra, District Surguja, C.G.

------Appellants

VERSUS

1. State of Chhattisgarh through: Secretary, Revenue Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur, Chhattisgarh
2. Commissioner, Surguja Division (Ambikapur), District Surguja, Chhattisgarh
3. Sub-Divisional Officer (Revenue), Ambikapur, District Surguja, Chhattisgarh
4. Additional Tahsildar, Lundra (Dhourpur), District Surguja Chhattisgarh

------**Respondents**

For Appellants	:	Mr. Anurag Singh, Advocate
For Respondents	:	Mr. Ashish Tiwari, Government Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C.A.V. Order

Per Parth Prateem Sahu, J.

1. Correctness and sustainability of the order passed by learned Single Judge, declining to interfere with the order of the Commissioner, Surguja, District Ambikapur, Chhattisgarh dated 06.08.2018, is under challenge in this appeal.

2. Brief facts of the case are that the appellants' name has been recorded in

the revenue records of the lands bearing khata No. 254 ad-measuring 17.802 hectare; khata No. 253 ad-measuring 9.640 hectare; khata No. 251 ad-measuring 14.92 hectare; khata No. 294 ad-measuring 11.62 hectare, are recorded. In the revenue records of the said land, name of Collector, Surguja (Chhattisgarh) was also recorded as Manager/ Administrator along with name of appellants, which made the appellants to file an application before the Additional Tahsildar, Lundra (Dourpur), District Surguja for correcting revenue entries and deleting the name of Collector as Manager/ Administrator from revenue records. The Additional Tahsildar, after proceeding in accordance with law, issuing notice by paper publication, dismissed the application holding that the lands recorded in the name of *Goswami Triveni Giri Chela Mahant, Swargiya Giri Pujari Boudh Gaya Math*, resident of village Silsila is property of *math*, State Government has issued a Circular for entering the name of Collector as Manager/ Administrator in the revenue records of the lands given in the name of *math* (temple) for its proper management and to protect it from illegal sale and encroachment. Order of Tahsildar was put to challenge before the S.D.O. (Revenue) in an appeal which was dismissed *vide* order dated 12.03.2014. Against the order of S.D.O. (Revenue), appellants preferred Second Appeal before the Commissioner, Surguja Division which also came to be dismissed on 06.08.2018. The order passed by Commissioner was put to challenge in writ petition, upon considering the pleadings, documents as well as submissions made by the respective parties, learned Single Judge held that the question of title is involved and liberty was reserved with the petitioners to file civil suit in accordance with law.

3. Mr. Anurag Singh, learned counsel for the appellants submits that the Courts below committed error in not considering the facts of the case in its entirety. The land in question has been given to the ancestors of the

appellants prior to the abolition of *jamidari* rights. In view of the provisions under Section 158 of the Chhattisgarh Land Revenue Code, 1959 (for short "Code, 1959"), holders of the land have acquired the *Bhumiswami* Rights, as such, the appellants are owners of the land, it is not a land of *math* or temple. Properties involved in the litigation are not properties of *math* and all the Courts below fallen into an error in holding the same and for that reason only, name of Collector as Manager/ Administrator of land has been mutated in the revenue record. Proper opportunity of hearing was not provided in terms of Sections 109 and Section 110 of the Code, 1959, before mutating the name of Collector as Manager/ Administrator in the individual ownership property. The said land is a Mafi land. He also pointed out that as per the Sarguja, State Settlement Record, Annexure P-3, name of ancestors has been recorded as owner of property, hence, impugned order requires to be interdicted, submits the learned counsel. In support of his submission, he places his reliance in case of ***Shrikrishna v. State of M.P.,*** ***[(2012) 4 MPLJ 466]***.

4. Mr. Ashish Tiwari, learned counsel for the Respondent-State submits that the State Government, looking to the encroachment over the lands recorded in the name of temple (*math)*, its illegal use and sale, made the State Government to issue circular/ memo that in records of any of such land which belongs to temple/ math, name of Collector be also recorded as Manager/ Administrator with others in the revenue record for its proper management, to protect the land of temple/ *math* from encroachment and illegal use. Grievance raised by the appellants is with regard to ownership that they are exclusive individual owners of property which is a title dispute. Learned Single Judge has rightly taken note that the disputed question of facts is involved which cannot be decided in the writ petition under Article 226 of the Constitution of India and dismissed the writ petition.

5. We have heard learned counsel for the respective parties and also perused the record of writ petition as well as the writ appeal.

6. The submission made by the learned counsel for appellants that the name of Collector is also recorded/ entered in the revenue records with appellants without granting opportunity of hearing is not available to appellants now. The order of adding the name of Collector was by virtue of circular. Initial order of Tahsildar dated 05.04.2006 of recording the name of Collector was put to challenge in appeal before Collector and then to Commissioner. The Commissioner accepting the submissions of the petitioners therein allowed the revision and remitted back the case again to Tahsildar to decide the case after hearing the respective parties vide order dated 01.10.2012. Tahsildar after hearing all the parties concerned passed fresh order on 09.09.2013 after hearing appellants. In these circumstances, the submission made by learned counsel for appellant that the order of entering of name of Collector in revenue records along with them is without granting opportunity of hearing is not correct and sustainable.

7. From the very submission made by the learned counsel for the appellants that the property recorded in the name of their ancestors by virtue of provisions of Section 158 of the Code, 1959, appellants have acquired the *Bhumiswami* Rights of property in question for which he also referred to Annexure P-3 ie. the Settlement Record. The cause of dispute is with regard to entry of name of Collector as Manager/ Administrator in revenue records of the land recorded in the name of appellants. Claim of the appellants is that they are exclusively title holder of the land based on Annexure P-3/ State Settlement Record.

8. Upon perusal of Annexure P-3, we do not find any merit in the submission made by learned counsel for the appellants at this stage. Learned Single

Judge taking note of the judgment passed by Hon'ble Supreme Court in case of ***Municipal Corporation, Gwalior v. Puran Singh @ Puran Chand*** reported in **AIR 2014 SC 2665**, purporting that the khasra entry only will not have any title as well as considering that the dispute raised can be decided only after evidence, dismissed the writ petition. The case law relied upon by the learned counsel for the appellants is on different footings; in that case, the name of persons recorded in the revenue record as '*pujari*' along with Manager/ Administrator, Collector, has been sought to be deleted/ removed, has been interdicted and the order was passed. The said ruling will not applicable to the facts of the present case.

9. At this stage, we are refraining ourselves from making any comment with regard to the Rights as claimed by the appellants based on Annexure P-3/ Revenue record of Surguja State Settlement. Perusal of the record and the challenge made by the appellants relate to the dispute of title which can only be decided in a regular civil suit after recording of the evidence.

10. For the foregoing reasons, we do not find any merit in this appeal which is liable to be and is hereby dismissed accordingly. However, Appellants will be at liberty to avail other remedy available to them under the law of filing a civil suit before the appropriate forum in accordance with law.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Pawan