

CP 500/1-5

IN THE HIGH COURT OF JUDICATURE AT BILASPUR:
CHHATTISGARH

WRIT PETITION NO. 784 OF 2004

Petitioners

1. Meera Devi W/o Late Shri Tarachand Agrawal, Aged about 70 years
2. Vijay Kumar S/o Late Shri Tarachand Agrawal, Aged about 50 years
3. Ajay Kumar S/o Late Shri Tarachand Agrawal, Aged about 48 years
4. Sanjay Kumar, S/o Late Shri Tarachand Agrawal, Aged about 41 years.
5. Abhay Kumar S/o Late Shri Tarachand Agrawal, Aged about 36 years.

(All residents of Seth Basantlal Marg, P.S. & Tah. Ambikapur Distt. Sarguja (Chhattisgarh))

Versus

Respondents

1. Krishna Kumar Agrawal S/o Ramkumar Agrawal
2. Suresh Kumar Agrawal S/o Ramkumar Agrawal
3. Anand Kumar Agrawal S/o Ramkumar Agrawal
4. Premchand Agrawal S/o Ramkumar Agrawal
5. Bishambhar Dayal Agrawal S/o Fakirchand Agrawal

(All residents of Vishrampur, Tah. Surajpur, Distt. Sarguja (Chhattisgarh))

6. Ramesh Kumar Agrawal S/o Baijnath Agrawal

P. R. No. 764/04
Presented by Shri. Suresh Kumar Agrawal
dated 10/03/04



7. Radheshyam Agrawal
S/o Baijnath Agrawal

8. Hariom Agrawal S/o
Baijnath Agrawal

9. Savitri Agrawal W/o
Pushkar Agrawal

10. Mukesh Agrawal
S/o Pushkar Agrawal

11. Naresh Agrawal
S/o Pushkar Agrawal

12. Nisha Agrawal
D/o Pushkar Agrawal

(All residents of Baikunthpur
Tah. Baikunthpur, Distt.
Sarguja (Chhattisgarh)

13. Ramkumar Agrawal
S/o Balsukh Das R/o
Sadar Road, Ambikapur
Distt. Sarguja
(Chhattisgarh)

14. The Board of Revenue
Chhattisgarh,
Main Seat
Bilaspur (Chhattisgarh)

**WRIT PETITION UNDER ARTICLE 226/227 OF THE
CONSTITUTION OF INDIA FOR ISSUANCE OF
APPROPRIATE WRIT/WRITS,
DIRECTION/DIRECTIONS ETC.**

1. PARTICULARS OF PETITIONERS

As mentioned in the cause title.

2. PARTICULARS OF RESPONDENTS

As mentioned in the cause title. The Respondent No. 14 is a formal party as order passed by Learned Board of Revenue is under challenge and no relief has been sought against respondent No. 14.



73

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 784 OF 2004

Meera Devi & Others

Vs.

Krishna Kumar Agrawal & Others

ORDER

Post for 31-3-2004

Sd/-
Fakhruddin
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 784 OF 2004

Meera Devi & Others

Vs.

Krishna Kumar Agrawal & Others

Shri Sanjay Kumar Agrawal, Counsel for the petitioners.

Shri N.K. Agrawal, Dy. Advocate General appears on behalf of
respondent No.14.

ORDER

(31-03-2004)

It is pointed out by the learned Dy. Advocate General that this writ petition has been filed against the interim order passed by the Board of Revenue dated 03.03.2004. The Board of Revenue stayed the order-dated 20.02.2004 passed by the Sub-Divisional Officer, Ambikapur in case No.71-A/A-2/2003-04.

2. It is pointed out by the counsel for the petitioners that pursuant to the decree of the Civil Court dated 03.07.1986 and as a result of mutual settlement dated 20.07.1990, the petitioners filed an application before the Tehsildar, Ambikapur for separation of their holdings and the Tehsildar vide order dated 20.08.1999 separated their holdings. The respondents No.1 to 4 filed an appeal against the order-dated 24.08.1999 passed by the Tehsildar, Ambikapur alongwith an

application for condonation of delay before the Sub-Divisional Officer. It is pointed out that without passing any order on the application for condonation of delay the order of Tehsildar was set aside and appeal was allowed as per order dated 29.06.2002. It is stated that against said order dated 29.06.2002 passed by the Sub-Divisional Officer, the petitioner preferred an appeal under section 44 of C.G./M.P. Land Revenue Code before the Commissioner and the Commissioner passed an interim order dated 09.07.2002 staying the effect and operation of the order passed by the Sub-Divisional officer. The said order dated 09.07.2002 was subsequently modified on 27.08.2002 stating that parties will not alienate the suit property.

3. It appears that since the Court of Commissioner was abolished and in place of it the Board of Revenue was constituted, this matter which was earlier dealt with by the Commissioner, was taken up by the Board of Revenue. In the meanwhile, petitioner No.3 filed an application for diversion before the Sub-Divisional Officer and the Sub-Divisional Officer vide order dated 20.02.2004 granted application for diversion. The petitioners contended that this order dated 20.02.2004 passed by the Sub-Divisional Officer is appealable one before the Collector but without filing the appeal before the Collector, the respondents No.6 to 8 filed an application before the Board of Revenue in the said appeal which was

3

(76)

filed by the petitioners and was pending before the Board of Revenue. It is further contended that the Board of Revenue vide impugned order dated 03.03.2004 has stayed the order dated 20.02.2004 passed by the Sub-Divisional Officer and fixed the case for final hearing. It is submitted by the learned counsel for the petitioners that the Board of Revenue was not at all justified in entertaining the application against the order of the Sub-Divisional Officer. It is further submitted that the Board of Revenue ought to have considered that against the order of Sub-Divisional Officer an appeal lay before the Collector. It is also contended that this point was raised before the Board of Revenue but the order has been passed by the Board of Revenue mechanically without considering any of the questions. It is contended that the order is a cryptic one.

4. Learned counsel for the petitioners has placed on record the order sheets passed by the Commissioner and subsequently by the Board of Revenue. The interference sought for is under Article 226/227 of the Constitution of India. Learned counsel very fairly submitted that during pendency of this petition, the arguments before Board of Revenue have been heard and the case is closed for orders. Since the arguments have been heard and the matter has been closed and the questions have been raised before the Board of Revenue and are under consideration, this Court

would refrain from expressing any opinion at this juncture. In this connection, the judgment of Hon'ble Supreme Court in the case of Surya Devi Rai vs. Ramchandra Rai & Others reported in 2003 (6) SCC 675 has dealt the matter regarding exercise of powers under Article 227 of Constitution exhaustively. In that view of the matter, let the parties await the order / judgment of the Board of Revenue and thereafter avail the remedy available under law.

5. Learned counsel for the petitioners Shri Sanjay K. Agrawal expressed apprehension that he may not get sufficient time. Learned Dy. Advocate General of the State on the other hand submitted that there should be no apprehension, as the authorities will act strictly in accordance with law.

6. Under the circumstances, it is directed that once an order is passed by Board of Revenue, copies be obtained/supplied as per rules and due opportunity will be given to the parties to study the implications arising out of the order/judgment and they may challenge the same before the appropriate forum and for that reasonable time i.e. 15 days or so may be provided depending on the facts and circumstances. Let nothing be done in hot haste.

7. Learned counsel lastly raised an issue regarding non-acceptance of the notices by counsel appearing before the Board of Revenue on behalf of respondents No.6 to 8. The

notices if delivered ought to have been accepted by the counsel as notices are given to counsel with an object to facilitate early hearing. Be that as it may, so far as this case is concerned, no useful purpose will be served in making inquiry on that aspect of the matter.

8. Subject to what has been stated hereinabove, this petition stands disposed of.

Sd/-
Fakhruddin
Judge

Pahak/-