NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 1804 of 2008

1. Vijay Kumar Agrawal, S/o Late Tarachand Agrawal, aged about 45 years,

2. Ajay Kumar Agrawal S/o Late Tarachand Agrawal, aged about 44 years,

3(a) Smt. Rekha Agrawal Wd/o Late Sanjay Agrawal, aged about 48 years,

3(b) Aman Garg, S/o Late Sanjay Agrawal, aged about 22 years,

4. Abhay Kumar Agrawal S/o Late Tarachand Agrawal, aged about 35 years,

5. Krishna Kumar Agrawal S/o Late Tarachand Agrawal, aged about 32 years,

All above R/o Juna Gaddi Road, Ambikapur, Civil and Revenue District Surguja, District Surguja (Chhattisgarh)

---- Petitioners

applicants

Versus

1. Smt. Premlata Gupta W/o Karta Ram Gupta, aged about 50 years, R/o Jawahar Market, Ambikapur, District Surguja, Chhattisgarh.

2. State of Chhattisgarh, Through Collector, Surguja, District Surguja, Chhattisgarh.

---- Respondents

For Petitioners : Shri V. Goverdhan, Advocate
For Respondent No.1 : Ms. Sharmila Singhai, Advocate
For Respondent No.2 : Shri Adil Minhaj, P.L.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

18/08/2015

According to the petitioners, on 15.6.1961 petitioners' father namely Tarachand Agrawal and one Vishambhar Dayal purchased nazul land bearing Khasra No. 3/1, total area 8.48 acre situate at Village -

Fundurdihari, P.S. and Tahsil - Ambikapur, from one Chadikeshwar Sharan through registered sale deed. Subsequently, part of the said land was sold by the petitioners and Vishambhar Dayal to different persons. On 16.11.2000 the petitioners filed an application under Section 115 of CG Land Revenue Code (in short “the Code”) before the Nazul Officer, for correction of the map to the effect that though there exists a road but the same has not been shown in the map. On 16.11.2000 the Nazul Officer directed the ASLR to submit report and after receiving the said report on 16.2.2001 (Annexure P/4) Nazul Officer directed for correction of the map. After lapse of four years, on 29.10.2004 respondent No.1 filed an appeal under Section 44 of the Code before the Additional Collector assailing the order dated 16.2.2001. The petitioners filed an application for dismissal of the appeal on the ground that respondent No.1 had no locus to file any such appeal, the appeal has been preferred with an inordinate delay of four years and the same itself is not maintainable. After considering the factual and legal aspects of the case, on 12.1.2006 the Additional Collector dismissed the appeal of respondent No.1 on merits. This order was further challenged by respondent No.1 by filing second appeal before the Board of Revenue. On 29.11.2007 the petitioners filed an application under Order VII Rule 11 of CPC for dismissal of the said appeal. After hearing the parties, vide impugned order dated 25.1.2008 the Board of Revenue set aside the order passed by the Nazul Officer, which was affirmed by the Additional Collector and remanded the matter back to the Nazul Officer for deciding the application as filed by the petitioners afresh after affording opportunity to all the parties. It is this order which has been challenged by the petitioners in this petition.

02. Learned counsel for the petitioners submits as under:

(i) while passing the impugned order on merits the Board of Revenue has not considered the important and relevant factual and legal aspects of the case.

(ii) that in view of Section 49(3) of the Code, the Board of Revenue has no power to remit the matter back to the Nazul Officer for fresh adjudication. If the Board of Revenue was of the opinion that further evidence is required to be adduced, the Board of Revenue itself should have allowed the parties to adduce such evidence and then passed the order.

(iii) that in the appeal preferred before the Board of Revenue, various new factual aspects were raised by respondent No.1 which were not raised before the Additional Collector and as such, the Board of Revenue could not have considered those factual aspects of the case.

(iv) that the case was fixed before the Board of Revenue for consideration on the application under Order VII Rule 11 of CPC but instead of deciding the said application, the Board of Revenue finally decided the matter and remitted the same.

03. On the other hand, supporting the impugned order it has been argued by the respondents that the order impugned is strictly in accordance with law and there is no infirmity in the same. Counsel appearing for respondent No.1 submits that even the application filed by the petitioners under Order VII Rule 11 of CPC was considered by

the Board of Revenue and then the order impugned was passed. Counsel for the respondents, however, does not dispute the legal position that as per Section 49(3) of the Code, the Board of Revenue being the appellate authority has no power to remit the matter back to the Additional Collector.

04. Heard counsel for the parties and perused the material on record.

05. Section 49(3) of the Code reads as under:

"**<u>49. Power of appellate authority</u>**. - (1) xxxx xxxx xxxx

(2) xxxx xxxx xxxx

(3) After hearing the parties, the Appellate Authority may confirm, vary or reverse the order appealed against; or may take such additional evidence as it may consider necessary for passing its order.

Provided that the Appellate Authority shall not remand the case for disposal by any Revenue Officer subordinate to it."

06. A bare perusal of the above provision makes it clear that while sitting in appeal the Board of Revenue has no power to remand the matter to the Nazul Officer for deciding the same afresh. If the Board of Revenue was of the opinion that certain more evidence is required to be adduced by the parties, it ought to have given opportunity to the parties to do the same and thereafter, should have passed order on merits.

07. Considering the above legal position and the fair submissions made by the parties, without further entering into merits of the case,

the order impugned dated 25.1.2008 (Annexure P/12) passed by the Board of Revenue is set aside. The matter is remitted back to the Board of Revenue for deciding the second appeal preferred by respondent No.1 afresh after considering all the aspects of the case. Board of Revenue is further directed to consider all the points raised by the respective parties before it. If additional evidence is required, the Board of Revenue would afford proper opportunity to the parties to adduce such evidence and then pass the appropriate order.

08. It is made clear that the Board of Revenue would not be influenced by any of the observations made by it in the impugned order and shall decide the appeal strictly in accordance with law. As stay was operating in this case since 2008, it is expected from the Board of Revenue to decide the appeal as expeditiously as possible. Parties are directed to appear before the Board of Revenue on 28th September, 2015.

09. With the aforesaid observations, the petition stands disposed of.

Sd/

(Pritinker Diwaker)

JUDGE

Khan