NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 7049 of 2008

1. Om Prakash Sahu S/o Naresh Kumar Sahu, aged about 31 years, R/o Village Hadia, Post Tarri, Tah. Gurur, Distt. Durg (CG)

--- Petitioner

Versus

1. State Of Chhattisgarh through the Secretary Revenue Department, DKS Bhawan, Mantralaya, Raipur, District Raipur, CG
2. The Board Of Revenue Chhattisgarh, Circuit Court Raipur, Distt. Raipur (CG)
3. The Additional Collector Durg, Distt. Durg (CG)
4. The Sub Divisional Officer (Revenue) Balod, Tah. Balod Distt. Durg (CG)
5. Nayab Tahsildar Tah. Balod Distt. Durg (CG)
6. Smt. Chandrika Bai W/o Shri Chandrapal Sahu, D/o Shri Naresh Kumar Sahu, aged about 46 years, R/o Pakurbhata P.S. & Tah. Balod Distt. Durg (CG)
7. Shri Naresh Kumar Sahu S/o Late Shri Sukhbeerdas Sahu, aged about 76 years, R/o Pakurbhata P.S. & Tah. Balod, Distt. Durg (CG)

---- Respondents

For Petitioner:	Shri B.P. Singh, Advocate
For Respondents No.1 to 5:	Shri Adil Minhaj, PL
For Respondent No.6:	Shri R.M. Solapurkar, Advocate
For Respondent No.7:	None.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

20/07/2015

1. On an application filed by respondent No. 7 Naresh Kumar Sahu order dated 15.3.1990 was passed by the Naib Tehsildar for mutation recording the names of Smt. Chandrika Bai (daughter of Naresh Kumar Sahu) and

Tulsi Bai (second wife of Naresh Kumar Sahu) in respect of the land bearing Khasra No. 356, 386 and 174, total area being 1.83 hectares situate at village Pakurbhata, Tehsil and District Balod. On 9.12.2005 the petitioner herein filed an application under Section 51 of the CG Land Revenue Code (for short the “Code”) before the Naib Tehsildar, Balod seeking review of the order dated 15.3.1990 and on due consideration on 20.3.2006 the Naib Tehsildar sent the matter to the SDO for proper guidance and the permission to review its order dated 15.3.1990.

2. From the facts it appears that on 13.10.2006 the SDO refused to grant permission for review sought for by the Naib Tehsildar. This order passed by the SDO was challenged by the petitioner before the Additional Collector, Durg by way of appeal who vide order dated 12.3.2007 allowed the same and set aside the order dated 13.10.2006 passed by the SDO. Additional Collector remanded the matter to the SDO asking him to conduct suitable enquiry, examine the matter again and also consider whether the provisions of the Code were followed by the Naib Tehsildar at the time mutation or not. This order dated 12.3.2007 passed by the Additional Collector was challenged by respondent No.6 Chandrika Bai before the Board of Revenue and vide impugned order dated 16.9.2008 the Board of Revenue allowed the revision preferred by her holding that the order passed by the Additional Collector remitting the matter to the SDO is not in accordance with law as the same has been passed after the lapse of about 16 years from passing the order dated 15.3.1990 by the Naib Tehsildar directing for mutation of the land. Board of Revenue further held that no application whatsoever was filed by the petitioner herein seeking condonation of delay and therefore after the lapse of about 16 years it would not be proper to remit the matter to the SDO. It was further held by the Board of Revenue that it has not been pleaded and proved by the petitioner that the order dated 15.3.1990 was not within his

knowledge.

3. Counsel for the petitioner submits that even if no separate application was filed by the petitioner under Section 5 of the Limitation Act seeking condonation of delay but in his application (Annexure P-1) it has been mentioned by him that the order dated 15.3.1990 was not within his knowledge and he came to know about the same on 24.11.2005. He submits that once the reason has been assigned by the petitioner in his application (Annexure P-1) and he has shown the cause of delay as also the date on which he came to know about the order dated 15.3.1990, the Additional Collector was justified in remanding the matter to the SDO. He further submits that no harm would be caused to anyone if the SDO or the Naib Tehsildar examines the matter afresh and validity of order dated 15.3.1990 is judged by the competent authority in accordance with law.

4. On the other hand, counsel for the respondents support the order impugned and submit that the same is strictly in accordance with law and there is no infirmity in the same.

5. Heard counsel for the parties and perused the documents on record.

6. Though the application under Section 51 of the Code was filed by the petitioner after the lapse of about 16 years but it was specifically pleaded therein that he was not aware of the order dated 15.3.1990 till 24.11.2005, the date on which he came to know about passing of the said order. From the documents on record it does not appear that while passing the mutation order dated 15.3.1990 the Naib Tehsildar has followed the entire procedure as provided in the Code. Considering this aspect of the matter the Additional Collector has remitted the matter to the SDO to consider all the aspects of the case and then proceed further. The Board of Revenue has erred in law in setting aside the order of the Additional Collector solely on the ground that

the petitioner has failed to explain the delay in approaching the Naib Tehsildar again after the lapse of about 16 years. If a fresh enquiry is conducted and the Naib Tehsildar comes to the conclusion that the order of mutation was right, no harm would be caused to either of the parties and likewise if the Naib Tehsildar comes to the conclusion that the mutation order was wrongly passed ignoring the provisions of the Code, the truth would come to the surface and proper order would be passed. Order impugned passed by the Board of Revenue is thus liable to be set aside and that of the Additional Collector dated 12.3.2007 deserves to be restored. It is done accordingly. Direction given by the Additional Collector while passing the order dated 12.3.2007 is directed to be complied with by the SDO and accordingly the Revenue authorities will proceed further with the matter expeditiously.

7. On production of this order by either of the parties, Collector Balod to ensure that all the proceedings are completed by the Revenue authorities expeditiously because the litigants are ceaselessly contesting the mutation related matter for sufficient long time.

8. Any observation made by this Court will not come in the way of the Revenue authorities while dealing with the case and it would be for them to decide the same but being within the parameters of law.

9. Petition is thus allowed.

Sd/-

(Pritinker Diwaker)
Judge

Jyotishi