NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 223 of 2012

1. Saroj @ Vinita, aged about 40 years,Wd/o Late Bajrang Lal Agrawal, & Others
2. Ankit Kumar @ Salu, aged about 18 years, S/o Late Bajrang Lal Agrawal
3. Ku. Sanchi, aged about 14 years, D/o Late Bajrang Lal Agrawal, minor through guardian mother petitioner No.1

---- Appellants

Versus

1. Santosh Kumar Agrawal, S/o Late Shri Harchand Agrawal, aged about 52 years
2. Mulchand Agrawal, S/o Late Shri Harchand Agrawal, aged about 40 years

   All R/o Ward No.6 Baradwar, Tah. Sakti, Distt. Janjgir-Champa (CG)
3. Board of Revenue, Chhattisgarh, Bilaspur CG
4. State of Chhattisgarh through Secretary Revenue Deptt.,DKS Bhawan, Raipur (CG)

---- Respondents

For Petitioner:	Shri Ashok Kumar Shukla, Advocate
For Respondents No 3 & 4/State:	Shri UNS. Deo, Govt. Advocate

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Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board

Per **Navin Sinha, Chief Justice**

29/04/2015

1. The present appeal arises from order dated 31.10.2011 passed in W.P.(Article 227)No.6343/2011. The Learned Single Judge declined to interfere with the order of the Board of Revenue affirming the order of the Additional Collector which had set aside the order of the Naib Tahsildar.

2. Despite valid service of notice, no one has entered appearance on behalf of Respondent Nos.1 & 2.

3. Learned Counsel for the Appellants submits that they applied for mutation of the lands in question before the Naib Tahsildar. Objections were filed by Respondents No.1 & 2, which were rejected on 19.6.2001. The rejection was challenged before the Additional Collector, Janjgir-Champa. While the challenge to the order rejecting the objections was pending, mutation was finally ordered in favour of the Appellants by the Naib Tahsildar on 22.8.2001. If Respondents No.1 & 2 were aggrieved by the final order for mutation, the remedy lay in an Appeal under Section 44 of the Chhattisgarh Land Revenue Code (hereinafter called 'the Code') before the Sub Divisional Officer. But the Additional Collector entertained the challenge to the final order dated 22.8.2001 in the proceedings before him arising from the interim order dated 19.6.2001, rejecting the objections. The Additional Collector committed gross procedural illegality and an order not specifically under challenge before the appropriate authority was set aside by usurpation of powers vested by the Code in the Appellate authority. The legality or illegality of the order of the Naib Tahsildar could only have been questioned in accordance with law in the manner prescribed in the Code and not in any other manner. The Board of Revenue perpetuated the illegality by declining to interfere with the order of the Additional Collector.

4. Learned Counsel for the State submitted that if the order of the Naib Tahsildar has ultimately been found to be bad, the Court in exercise of discretionary jurisdiction, may not interfere as it may amount to revival of an illegal order.

5. We have considered the submissions on behalf of the parties.

6. The order dated 19.6.2001 was interim in nature rejecting the objections. If final orders for mutation had been passed and the procedure prescribed under the law was to challenge it under Section 44 of the Code before the Sub Divisional Officer, that was the only remedy available to Respondents No.1 & 2. The proceedings before the Additional Collector challenging rejection of the objections was interim in nature and became infructuous after final order for mutation was passed. The Additional Collector could not have usurped the powers of the Sub Divisional Officer as the Appellate authority under Section 44 of the Code. Considering that this procedural illegality was gross in nature, we are not inclined to agree with the submission made on behalf of the State that it would amount to reviving an illegal order of the Naib Tahsildar. In our opinion, the order of the Naib Tahsildar has not been tested in accordance with law and therefore, it cannot be said at this stage that it was a wrong order.

7. The order under appeal is set aside. The order of Board of Revenue dated 21.5.2010 and that of the Additional Collector dated 28.7.2004 are also set aside, but without prejudice to the rights of the Respondents afresh in accordance with law.

8. The appeal is allowed.

(Navin Sinha)	(P. Sam Koshy)
CHIEF JUSTICE	**JUDGE**

Priya