

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 535 of 2015

Smt. Shashi Bai Pradhan Wd/o Kailash Pradhan aged about 67 years R/o Village Van Gram Gabod Post Office Bar Navapara Tahsil Kasdol Police Station Kasdol District Baloda Bazar-Bhatapara Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh through the Secretary Forest Department Mantralaya Mahanadi Bhawan New Raipur Chhattisgarh
2. Chief Conservator of Forest Forest Department Jail Road Raipur District Raipur Chhattisgarh
3. Conservator of Forest Forest Department Raipur Circle Raipur District Raipur Chhattisgarh
4. Division Forest Officer Regular Forest Division Raipur District Raipur Chhattisgarh
5. Range Officer Bar Navapara Abhayran District Baloda Bazar-Bhatapara Chhattisgarh
6. Deputy Range Officer Bar Navapara Abhayran District Raipur Chhattisgarh
7. Chaturbhuj Pradhan S/o Sitaram Pradhan aged about 56 years R/o Van Gram Gabod District Baloda Bazar-Bhatapara Chhattisgarh

---- Respondents

For Appellant	:	Shri S.K. Dadsena, Advocate.
For Respondents/State	:	Shri U.N.S. Deo, Government Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board

Per Navin Sinha, Chief Justice

17/11/2015

1. The present appeal arises from order dated 18.9.2015 dismissing Writ Petition (C) No. 5644 of 2008. The Learned Single Judge declined to interfere with the order dated 22.4.2006 of the Divisional Forest Officer cancelling the lease

granted to the Appellant, as affirmed in Revision by the Conservator of Forests and in Appeal by the Chief Conservator of Forests.

2. Learned Counsel for the Appellant submits that originally lease for the subject lands was taken in the name of Respondent No. 7 in 1971 for a period of 15 years as the Appellants son was a minor. After expiry of the lease, Respondent No. 7 never applied for renewal and consented in writing that the lease may now be granted in favour of the Appellant. Respondent No.7 was never a lessee but only a name lender. A false plea had been taken by Respondent No. 7 that his signature had been obtained fraudulently representing that the document was for renewal of his lease. It was lastly submitted that the lease granted to the Appellant on 15.11.2000 was cancelled by the Divisional Forest Officer, Raipur on an application by Respondent No. 7 in violation of the principles of natural justice without any notice or hearing as also required statutorily by Rule 8 of The Establishment of Forest Villages in Reserved and Protected Forest Rules, 1977 (hereinafter called 'the Rules').

3. Learned Counsel for the State submitted that the order under appeal called for no interference. The contentions on behalf of the Appellant were raising disputed questions of facts on which there were concurrent findings by three authorities which did not warrant interference in the writ jurisdiction. Rule 8 had no application in the facts of the case as the lease was not cancelled for any violation of the same. The Appellant had been heard by the Conservator of Forests and the Chief Conservator of Forests. The ground for any violation of natural justice was earlier given up by the Appellant in Writ Petition (C) No. 3022 of 2008, disposed on 19.6.2008 seeking limited directions for disposal of the appeal by the Chief Conservator of Forests only.

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

5. The lands in question are situated in forest village Gabaud having an area of 2.50 hectares. The order of the Chief Conservator of Forest reveals that the Appellant is the aunt of Respondent No. 7. It was the case of the Appellant

that the lease was originally taken by her in the name of Respondent No. 7 as a name lender only because her own son was a minor on the relevant date. Respondent No. 7 claimed to be the genuine lessee contending that after expiry of the lease his signature was obtained by playing fraud on the representation that it was for renewal of his lease and he had never consented for grant of fresh lease to Appellant. The appellate order by the Chief Conservator of Forests further reveals that the Appellant through her representative during hearing was granted opportunity to cross examine Respondent No. 7 also but declined to do so. The Appellant had failed to produce any evidence whatsoever in support of the plea that the original lease was obtained by her in the name of her minor son for which Respondent No. 7 was a mere name lender. These are concurrent findings of fact by three authorities. The writ Court shall be loathe to interfere with concurrent finding of facts by three authorities as it does not sit in judgment over the same as an appellate authority but will examine the same only in the limited jurisdiction of judicial review for errors in the decision making process or perversity. In (2015) 1 SCC 553 (Krishnanand v. Director of Consolidation) it was observed as follows :-:

“13. We are of the view that the High Court ought not to have entered into reappreciation of evidence and reversed the findings of fact arrived at by the three authorities below, especially since the authorities had neither exceeded their jurisdiction nor acted perversely. The High Court has nowhere stated that it was of the view that there is any perversity, much less the High Court failed to demonstrate any such circumstances.”

6. It needs no emphasis that whether Respondent No.7 was a mere name lender or not and whether his signature was obtained by playing fraud or not are complicated and disputed questions of fact which can be decided only by leading evidence of the concerned in an appropriate civil proceeding and cannot be decided in the writ jurisdiction.

7. The contention for denial of hearing under Rule 8 by the Divisional Forest Officer is also of no avail to the Appellant in the facts of the case more particularly in view of the order in Writ Petition (C) No. 3022 of 2008. Any lack of hearing by

the Divisional Forest Officer has stood compensated by the hearing granted by the Revisional and Appellate authority. In (2003) 4 SCC 557 (Canara Bank v. Debasis Das) on failure to grant hearing at the original stage but granted by the Appellate authority it was observed as follows :-

“23. As was observed by this Court we need not go into “useless formality theory” in detail; in view of the fact that no prejudice has been shown. As is rightly pointed out by learned counsel for the appellants, unless failure of justice is occasioned or that it would not be in public interest to dismiss a petition on the fact situation of a case, this Court may refuse to exercise the said jurisdiction (see *Gadde Venkateswara Rao v. Govt. of A.P.*). It is to be noted that legal formulations cannot be divorced from the fact situation of the case. Personal hearing was granted by the Appellate Authority, though not statutorily prescribed.....”

8. Rule 8 furthermore has no application to the facts of the case as it deals with cancellation of a lease in the event of violation of any condition of the same, which is not the case presently. Whether the lease was originally taken by the Appellant with Respondent No. 7 only as a name lender, if Respondent No. 7 had signed the application under a misconception that it was a renewal application leading to grant of lease in favour of Respondent No. 7, who had taken possession originally on grant of lease, the status regarding possession after expiry of the lease even if not renewed, any dispossession etc. are all disputed question of facts which can well be examined in an appropriate civil proceedings before the competent court of law. In any such proceedings, the appropriate Court shall consider the matter on its own merits independently in accordance with law and the evidence that may be led before it without being influenced by any observations and/or opinion in the present order.

9. We therefore find no reason to interfere with the order under appeal. The appeal is dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE