NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 287 of 2015

Jayant Kumar Gohil S/o Late Bisan Ji Bhai Govil Aged About 57 Years R/o Pachripara, Durg, Tahsil And District Durg, (Chhattisgarh)

---- Petitioner

Versus

1. Smt. Pratibha Dani W/o Veer Abhimanyu Dani Aged About 65 Years R/o Dani Hospital Kelabadi, Durg, Tahsil And District Durg, (Chhattisgarh)
2. Additional Commissioner, Durg Division, Durg, (Chhattisgarh)
3. Board Of Revenue, Chhattisgarh, Mungeli Road, Bilaspur, (Chhattisgarh)
4. State of Chhattisgarh through the Secretary, Revenue Department, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur (C.G.)

--- Respondent

For Petitioner : Shri H. B. Agrawal, Sr. Adv. With Shri Pankaj Agrawal, Adv.
For Respondent No.1: Shri V. A. P. Dani with Shri Amiyakant Tiwari, Advocates

---

C A V Order

26/08/2015

This petition under Article 226 of the Constitution of India is directed against order dated 29-09-2014 passed by the Board of Revenue, by which, the Board of Revenue has granted permission to the Additional Commissioner, Durg Division to review the order dated 26-03-2011.

2. The petitioner applied for grant of lease/settlement of land admeasuring 88.10 square meter situated in Plot No.82, Sheet No.45-D, Najul land before the Additional Collector, Durg. The authority, however, found that dispute is pending before the Civil Court as also before the High Court, therefore, it would not be proper to proceed with settlement of land till disposal of civil case in respect of the land in dispute and an order to this effect was passed on

09-10-2009. That order was approved by the Collector on 12-10-2009. Later on, the petitioner moved an application seeking review of order dated 09-10-2009. That application was rejected vide order dated 06-01-2010. Aggrieved by order dated 09-10-2009 and 06-01-2010 as aforesaid, the petitioner preferred an appeal before the Additional Commissioner, Raipur Division, Raipur, who allowed the appeal vide order dated 26-03-2011 directing the land in dispute to be settled in favour of the petitioner on the recommendation dated 13-05-2009 of the Najul Inquiry Officer.

3. An application for review was then filed by the respondent No.1 before the Additional Commissioner on the ground that the then Nazul Officer suppressing the fact of passing of order dated 09-10-2009 of Additional Collector and order dated 12-10-2009 of Collector, got lease granted in favour of the petitioner. The Additional Commissioner having found that there are allegations of granting lease by suppression of material facts and that review of the order is necessary, for which, permission of competent authority would be required under Section 51 of the Chhattisgarh Land Revenue Code, 1959 (In short “the Code”), sought permission of the Board of Revenue. Vide order dated 29-09-2014, the Board of Revenue granted permission to the Additional Commissioner, Raipur Division, Raipur to review its earlier order dated 26-03-2011.

4. Learned Senior counsel for the petitioner submitted that order dated 26-08-2014 and 29-09-2014 have been passed on an application for review, which was filed beyond the period of 90 days from the date of order sought to be reviewed. Therefore, in view of the provision contained in (iii) of proviso to sub section(1) of Section 51 of the Code, the proceedings itself are in excess of jurisdiction. Next contention of learned Senior counsel is that while seeking

permission of the Board of Revenue, the Additional Commissioner only heard the review applicant, without affording any opportunity of hearing to the petitioner, in whose favour, order under review was earlier passed on 26-03-2011. The third and last contention of learned Senior counsel for the petitioner that in any case, the order dated 26-03-2011 could be reviewed only by that Court, which has passed the order on 26-03-2011. The order dated 26-03-2011 was passed by the Additional Commissioner, Raipur Division, Raipur, whereas permission for review has been sought by the Additional Commissioner, Durg Division, Durg.

5. On the other hand, learned counsel for respondent No.1 submits that there is no illegality in seeking permission for review by the Additional Commissioner from the Board of Revenue or order dated 29-09-2014 passed by the Board of Revenue granting permission to review order dated 26-03-2011.

6. Learned counsel for respondent No.1 submits that permission for review has been sought by respondent No.1 on the ground that order dated 26-03-2011 was passed without impleading respondent No.1 as party and by suppressing material facts. Therefore, in these circumstances, even after the period prescribed for limitation, the Additional Commissioner had jurisdiction to seek review the order. Next submission is that at the stage of seeking permission to review, no opportunity was required to be afforded to the petitioner. Moreover, the Board of Revenue has only granted permission to review the order and in these proceedings also, the petitioner was not entitled to be afforded any opportunity of hearing. Replying to third ground, it is contended that at the time when order was passed on 26-03-2011, the Additional Commissioner, Raipur was an appellate authority in respect of

orders passed by the Collector, Durg. Later on, as separate commissionary including Durg district has been created, now the competent appellate authority in respect of orders passed by the Collector, Durg, is Additional Commissioner, Durg Division and Additional Commissioner, Raipur Division does not have the jurisdiction.

7. The Additional Commissioner while proposing to review the order and proceeding to seek permission of the Board of Revenue, as required under Section 51 of the Code, did not hear the petitioner. Order dated 26-08-2014 and the impugned order dated 29-09-2014 is based on proposal given by the Additional Commissioner on 26-08-2014. The Additional Commissioner heard the review applicant/respondent No.1 and formed opinion that order requires to be reviewed which cannot be done without seeking permission of the Board of Revenue. At that stage, the petitioner was entitled to an opportunity of hearing. The order itself records that upon review application filed, predecessor in office had admitted the review petition on 19-03-2013 and issued notice to both the parties. Despite this fact floating on the surface of the case, the Additional Commissioner, Durg acted in violation of the principles of natural justice in proceeding to form an opinion to review the order without hearing the petitioner.

It is noticed that the petitioner has raised substantial grounds with regard to very maintainability of the review application on the ground inter alia that the review petition itself is barred by limitation. The impugned order passed by the Board of Revenue is completely non-speaking order. While considering the proposal of seeking permission for review, the competent authority, whose permission has been sought, is duty bound under the law to consider as to whether a case of review is made out or not. While considering such proposal, the competent authority does not act like a post office. There has to be application of judicial mind before coming to the conclusion that a case for grant of permission to review is made out because it relates to review of order passed by a Revenue Court in quasi-judicial proceedings. Obviously, in such case, there has to be application of mind by the competent authority. This application of mind must be reflected from the order itself. A perusal of impugned order dated 29-09-2014 shows that the Board of Revenue has not recorded any reason as to why permission was granted to the Additional Commissioner to review its earlier order dated 26-03-2011. The order is non-speaking and therefore, cannot be sustained.

8. Accordingly, the impugned order dated 29-09-2014 as also proceedings dated 26-08-2014 are quashed and set aside. The matter is remanded to the Additional Commissioner, Durg, who shall issue notice to both the parties and take appropriate decision in the matter of seeking permission for review in accordance with law.

9. Accordingly, the petition is allowed.

Sd/-
Manindra Mohan Shrivastava
Judge

Tumane