

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No.239 of 2015**

Sanjay Bajpai, son of Shri S.N. Bajpai, aged about 47 years, resident of Exotica, Shankar Nagar, Post and Police Station Shankar Nagar, Raipur, Chhattisgarh

---- Appellant**versus**

1. State of Chhattisgarh, through the Secretary, Department of Revenue, Mahanadi Bhawan, Mantralaya, Naya Raipur
2. The Registrar under the Registration Act, 1908, Raipur
3. The Sub-Registrar, Raipur

---- Respondents

For Appellant	:	Shri B.P. Sharma, Advocate
For Respondents/State	:	Shri U.N.S. Deo, Government Advocate

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

Judgment on Board**Per Navin Sinha, Chief Justice****9/9/2015**

1. The present appeal arises from order dated 24.3.2015 dismissing Writ Petition (C) No.503 of 2015. The Learned Single Judge held that the Appellant had an alternative remedy of appeal under Section 72 of the Registration Act, 1908 (hereinafter referred to as "the Act") and therefore the writ application could not be entertained.

2. Learned Counsel for the Appellant submits that in the writ application order dated 18.3.2015 passed by the Sub-Registrar, Raipur declining to register the sale-deed executed by the Appellant was assailed on the ground that the refusal was not for relevant and germane reasons under Rule 35 of the Madhya Pradesh Registration Rules, 1939 (hereinafter referred to as "the Rules"). The reasons for refusal to register the deed were extraneous and irrelevant. The availability of an alternative remedy

under the Act is not a complete bar to the maintainability of the writ application if the order was on grounds extraneous to the Act and the Rules. The fact that permission for development on the lands may have been refused or cancelled is a completely separate issue and cannot be inextricably mixed-up with his rights to sell the lands. It goes without saying that the purchaser would undoubtedly have to comply with the building and development laws.

3. Learned Counsel for the State supporting the order under appeal submitted that it cannot be said that the impugned order dated 18.3.2015 is wholly based on extraneous considerations. If the lands in question are to be sold by the Appellant, any development by making construction on the same can only be in accordance with law and for which the orders passed by this Court annulling the cancellation of the development approval for violation of the principles of natural justice and directing fresh decision in accordance with law is a relevant material.

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

5. In response to our order dated 20.8.2015, an affidavit has been filed today on behalf of Respondent No.2 answering the three questions framed by us in favour of the Appellant and yet seeking to contest a case which apparently appears completely incontestable.

6. Respondent No.2 does not dispute that the Appellant is the absolute title-holder of the lands identified as Khata No.685 Khasra No.516/2 situated at Village Dunda - New Swagat Vihar and that his name is also entered in the revenue records as the absolute owner of the same. We had specifically asked the Respondents to point out under which clause of Rule 35 registration has been refused. The affidavit filed today at paragraph 5 contains very ambivalent pleadings refusing to make specific statements.

The State does not stand as a private adversarial litigant. Its duty is to assist the Court in dispensation of justice. It cannot be said that the pleadings in paragraph 5 represent a fair stand on behalf of the State in assisting the Court to render justice. Reiterating the impugned order dated 18.3.2015, it states that registration has not been refused under Rule 35. That part of the pleadings establishes complete arbitrariness on part of Respondent No.2 and was a fit case for imposition of cost. We however refrain from doing so.

7. The Sub-Registrar is directed to consider the documents presented for registration in accordance with law. The present order cannot be deemed or construed as any opinion or observation on aspect for any construction or development on the lands in question which is entirely a separate matter and can be done only in accordance with law regulating the same.

8. Before we part with the order, in the facts of the case, we consider it appropriate to briefly discuss the issue for availability of alternative statutory remedy is not a complete bar to the maintainability of a writ application. It is a mere self imposed restriction by the Court in exercise of its plenary powers under Article 226 of the Constitution.

9. If, in a particular case, the Court finds that the original order of the authority was completely arbitrary and without any authority of law, relegating the person to the alternative remedy would be an exercise in futility as no other conclusion would have been possible on facts by the appellate authority also.

10. Reference may appropriately be made to (2005) 8 SCC 264 (U.P. State Spg. Co. Ltd. v. R.S. Pandey) observing as follows :-

“16. There are two well-recognised exceptions to the

doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings themselves are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.”

11. The order dated 18.3.2015 is set aside. The appeal is allowed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE