AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 139 of 2015

1. Smt.Gulab Bai W/o Late Shri Thakur Singh Thakur, aged about 85 years, Resident of Village Sarona, Tahsil & District Raipur (CG).
2. Ramji Singh Thakur S/o Late Shri Thakur Singh Thakur, aged about 63 years, Resident of Village Sarona, Tahsil & District Raipur (CG).
3. Janak Singh Thakur S/o Late Shri Thakur Singh Thakur, aged about 53 years, Resident of Village Sarona, Tahsil & District Raipur (CG).
4. Smt. Sindhu Thakur W/o Late Shri Banshi Singh Thakur, aged about 58 years, Resident of Village Sarona, Tahsil & District Raipur (CG).
5. Raghvendra Singh Thakur S/o Late Shri Banshi Singh Thakur, aged about 33 years, Resident of Village Sarona, Tahsil & District Raipur (CG).
6. Mahendra Singh Thakur S/o Late Shri Banshi Singh Thakur, aged about 30 years, Resident of Village Sarona, Tahsil & District Raipur (CG).

---- Petitioners

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Revenue & Disaster Management, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (CG).
2. Board of Revenue, through its President, Board of Revenue, Chhattisgarh, Bilaspur (CG).
3. Commissioner, Raipur Division, Raipur (CG).
4. Additional Commissioner, Raipur Division, Raipur (CG).
5. Collector, Raipur (CG).

---- Respondents

For Petitioners – Mr. H.B.Agrawal, Senior Advocate with Ms. Meera Jaiswal, Advocate.
For Respondents – Mr. S.C.Khakhariya, Deputy Advocate General.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

19/01/2016

1. Heard on admission.

2. It is submitted on behalf of the petitioners that the instant matter may be disposed of finally at the motion stage itself as the matter is covered by the order dated 26-08-2015 passed by a co-ordinate Bench of this Court in WP227 No.287 of 2015 (Jayant Kumar Gohil Vs. Smt. Pratibha Dani and others)

whereby and whereunder the co-ordinate Bench of this Court held in para 7 and para 8 that :-

> 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.
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> 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 nonspeaking and therefore, cannot be sustained.
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> 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."

Learned counsel for the petitioners further submits that as the matter is covered, the instant WP(227) may also be disposed of by quashing the impugned order as in Annexure-P/1 and Annexure-P/2 and the matter may be remanded back to the Additional Commissioner, Raipur Division for issuance of notice to the petitioners and for appropriate decision in the matter seeking permission for review in accordance with law.

3. On behalf of the respondents submission made on behalf of the petitioners is opposed. Learned counsel for the respondents submits that as per standing order by the revenue department as mentioned in the Annexure-P/2, the Additional Commissioner was required to take suo moto matter for permission for review, hence the respondent has not committed any error for not hearing the petitioners before sending the matter for permission to review.

4. For the purposes of appreciation as advanced in this behalf by the parties, I have perused the record, also perused the CAV order passed by the co-ordinate Bench of this Court.

5. From perusal of the order passed in WP227 No.287 of 2015 dated 26-08-2015, it goes to show that the order passed earlier by the co-ordinate Bench of this Court is applicable in the present matter and the present matter is covered.

6. On due consideration, it is undisputed fact that before praying for permission to review, the petitioners were not noticed. As the present matter is covered by the matter cited, the instant WP227 is hereby disposed of finally at the motion stage itself and accordingly the impugned order dated 29-09-2014 (Annexure -P/1) passed by respondent No.2 – Board of Revenue, C.G., Bilaspur in Case No.128/2014 and 130/2014 and the impugned order dated

22-08-2014 (Annexure -P/2) passed by respondent No.4 – Additional Commissioner, Raipur Division, Raipur, C.G. in Case Nos.502 A/1 year 2012-13, 503 A/1 year 2012-13 and 508 A/1 year 2012-13 are quashed and set aside. The matter is remanded to the Additional Commissioner, Raipur Division, Raipur who shall issue notice to the petitioners and take appropriate decision in the matter of seeking permission for review in accordance with law.

7. Accordingly, the petition is allowed.

8. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE

Aadil