AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (227) No.3225 of 2011

Kailash Mishra S/o Late Shri Chandrashekhar Mishra, aged about 46 years, R/o Godhanpur, Ambikapur, District Surguja (CG)

----Petitioner

Versus

1. Board of Revenue, Through : Its Chairman, Bilaspur, District Bilaspur (CG)

2. The Collector, Surguja, Ambikapur, District Surguja (CG)

3. Sub-Divisional Officer (Revenue), Ambikapur, District Surguja (CG)

4. Dr.Jitendra Kumar Singh, S/o Purushottam Singh, aged about 56 years, Occupation-Doctor, R/o Chopdapara Nagar, Ambikapur, District Surguja (CG)

---- Respondents

For Petitioner	:	Mr.V.K.Pandey, Advocate
For Res.No.2 & 3	:	Mr.Gary Mukhopadhyay, Dy.G.A.
For Respondent No.4	:	Mr.Manoj Paranjape, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

09/12/2016

1. Respondent No.4 purchased the suit property on 23.6.2006 and thereafter, order of diversion was passed in his favour by the Sub-Divisional Officer on 20.7.2006. The petitioner herein filed a complaint before the Sub-Divisional Officer (Revenue), Ambikapur questioning the order of diversion granted in favour of the petitioner. The Sub-Divisional Officer sought permission from the Collector to review its order dated 20.7.2006. The

Collector, Surguja, Ambikapur by its order dated 3.8.2009 without noticing and without hearing respondent No.4 granted permission to review the order dated 20.7.2006.

2. Feeling aggrieved against that order, respondent No.4 preferred a revision before the Board of Revenue. The Board of Revenue by the order impugned set aside the order of the Collector dated 3.8.2009 on the ground that no opportunity of hearing was granted to respondent No.4 while granting permission to review the order. The petitioner has challenged that order before this Court by filing the writ petition under Article 227 of the Constitution of India.

3. Mr.V.K.Pandey, learned counsel appearing for the petitioner, would submit that since the order of the Collector was set aside by the Board of Revenue on the ground of non-compliance of principle of natural justice, it was incumbent the Board of Revenue to remand the matter to the Collector to give an opportunity of hearing to respondent No.4 and pass an order afresh, which has not been done and therefore, the order impugned deserves to be set aside.

4. Mr.Manoj Paranjape, learned counsel appearing for respondent No.4 would submit that permission for review was granted by the Collector without noticing and without hearing respondent No.4. It was passed mechanically and therefore, the impugned order deserves to be maintained.

5. I have heard learned counsel appearing for the parties, considered their rival submissions made herein and also gone through the documents appended with the petition.

6. In order to consider the plea raised at the Bar, it would be expedient to notice Section 51 (1) (i) and (i-a) of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called as "Code") which states as under:-

> 51. **Review of orders**.-(1) The Board and every Revenue Officer may, either on its/his motion or on the application of any party interested review any order passed by itself/himself or by any of its/his predecessors in office and pass such order in reference thereto as it/he thinks fit;
>
> Provided that-
>
> (i) if the Commissioner, Settlement Commissioner, Collector or Settlement Officer thinks it necessary to review any order which he has not himself passed, he shall first obtain the sanction of the Board, and if an officer subordinate to a Collector or Settlement Officer proposes to review any order, whether passed by himself or by any predecessor, he shall first obtain the sanction in writing of the authority to whom he is immediately subordinate;
>
> (i-a) no order shall be varied or reversed unless notice has been given to the parties interested to

appear and be heard in support of such order;"

7. The aforesaid provision would clearly state that permission cannot be granted without noticing and without hearing to the person to be affected by granting permission to review, therefore, opportunity must be granted before granting permission to review the order and the Sanctioning Authority must apply its judicial mind before granting sanction.

8. The Division Bench of the Madhya Pradesh High Court in the matter of **Shaheed Anwar v. Board of Revenue and another**[1] has held that under first proviso to Section 51 of the Chhattisgarh Land Revenue Code, 1959 sanction for review by Board or Revenue Officer cannot be granted without notice and hearing the other side.

9. Similarly, in the matter of **Ravi Narayan v. State of Madhya Pradesh and others**[2], the Madhya Pradesh High Court has held that power to sanction for review cannot be granted by the sanctioning authority mechanically and the order must show application of mind and held as under:-

> "21. A power of Review is vested in the Court so that the said Court can correct the wrong which has been committed by it. It may be a case where the same Court/authority after

1 2000 RN 76
2 2000(I) MPJR 528

learning about the wrong committed by it wants to correct the wrong. It can exercise the powers either on an application or *suo motu*. In case of a revision the superior Court invested with powers of revision want to correct the wrong committed by his subordinate. The superior Court may exercise these powers *suo motu* or on an application by the aggrieved party. The powers infact are such which can be exercised by the same court or by the revisional Court because each of the court wants to correct the wrong. In case of review the anxiety is of the same Court while in the case of revision the anxiety is of the superior Court. While granting permission for review the authority is not required to give a mechanical sanction. The order must show application of mind. It must appear form the order that the authority was not swayed away, but the order must show that it has considered the facts and after application of the mind has granted the permission……..”

10. The principle of law laid-down in **Shaheed Anwar** (supra) and **Ravi Narayan** (supra) has been further followed in **Biharilal v. State of Madhya Pradesh and others**[3] reiterating that sanction for review cannot be granted by sanctioning authority without affording opportunity of hearing to the other side and sanction order must show application of mind and it has been held as under:-

3 2010(2) MPHT 115 (DB)

> "12. It is further to be seen that a Division Bench of this Court in the matter of *Shaheed Anwar Vs. Board of Revenue and another*, 2000 Revenue Nirnay 76, has observed that under Section 51 Proviso 1 of M.P. Land Revenue Code, 1959 sanction for review by Board or any other Revenue Officer cannot be granted without any notice to and hearing other side. A juxtapose reading of the judgment in the matters of *Ravi Narayan* and *Shaheed Anwar* (supra), would spell out that review for sanction cannot be granted without affording an opportunity of hearing to the other side and the review cannot be made mechanically. The scheme of Section 51 and the principles of natural justice if are taken up together they will make it clear that opportunity of hearing is to be granted to the other side so that it may convince the Sanctioning Authority that case on hands is not worth grant of sanction for review. He can also convince the authority that because of the lapse of time the authority should not now exercise the powers of review or granting sanction. The other side can well convince the authority that the case on hands is not such where absolute illegality has been committed and possibility of the other view would not justify grant of sanction for review."

11. In the present case, the Board of Revenue by its order impugned has rightly set aside the order of the Collector granting permission to the Sub Divisional Officer to review its earlier order dated 20.7.2006, as the Collector neither noticed respondent No.4 nor heard him. The Board of Revenue has rightly held that without giving an opportunity of hearing and without noticing respondent No.4, permission could not have been granted, but the Board of Revenue instead of remitted the matter to the Collector, Surguja, Ambikapur to pass an order after giving an opportunity of hearing to respondent No.4 has set aside the order in toto and thereby committed legal error and as such the impugned order deserves to be set aside.

12. Therefore, the order impugned is partly set aside and the matter is remanded back to the Collector, Surguja Ambikapur who would hear the petitioner and respondent No.4 on the question of granting permission to review the order dated 20.7.2006 and pass an order afresh within a period of three months from the date of first hearing of the parties that is fixed on 3.1.2017.

13. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-