NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 1046 of 2015

Bahadur Singh S/o Late Shri Jagmohan Singh, Aged About 53 Years R/o Village Chhote Atarmuda, Tahsil And District Raigarh (Chhattisgarh)......................Plaintiff

---- Petitioner

Versus

1. State Of Chhattisgarh Through Collector, Raigarh, District Raigarh (Chhattisgarh)....................Non Applicant
2. Chhattisgarh Board Of Revenue Through President Board Of Revenue, Chhattisgarh Raipur (Chhattisgarh)........................Non Applicant
3. Collector, Raigarh, District Raigarh (Chhattisgarh)....................Non Applicant
4. The Nazul Officer, Raigarh, District Raigarh (Chhattisgarh)....................Non Applicant
5. The Tahsildar, Raigarh, District Raigarh (Chhattisgarh)....................Non Applicant

---- Respondents

For Petitioner : Mr. Vineet Kumar Pandey, Advocate
For State : Mr. Chandresh Shrivastava, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order on Board

27/04/2016

Heard.

1. The petitioner has assailed the legality and validity of order dated 16.10.2015 passed by the Board of Revenue on various grounds *inter alia* on the ground that the Board of Revenue, having held that revision was not maintainable, exceeded its jurisdiction in dwelling into the merits of the case.

2. It is contended that once the revision was filed it ought to be dismissed as not maintainable so that the petitioner could have taken up remedy before the Appellate Authority.

3. Learned counsel for the State submits that the observations which have been made by the Board of Revenue are not adjudication because in concluding paragraph of the impugned order, it has been categorically held that the revision is not maintainable.

4. The order challenged by way of revision before the Board of Revenue, was an order of original nature, therefore, the petitioner did have a remedy of appeal and for that reason, the revision was not maintainable. To that extent, the Board of Revenue has correctly held that the revision is not maintainable.

5. Having held so, it was not within the domain of the jurisdiction of the Board of Revenue to dwell into the merits of the case. Whenever, an issue with regard to maintainability of proceeding arises for consideration, the authority is first required to examine the issue of maintainability. If the proceedings are held to be not maintainable, it would be an exercise in excess of jurisdiction to go into the merits of the case, which has been done in the present case.

6. Therefore, in view of the aforesaid consideration, the order of the Board of Revenue, to the extent, it records finding on merits, cannot be sustained being in excess of jurisdiction and the same is set aside. However, in view of the finding that the revision is not maintainable, the petitioner would have remedy of appeal against the order dated 04.05.2011 of the Nazul Officer. If the petitioner files an appeal within a period of 45 days before the Competent Appellate Authority, the appeal shall be decided on merits without going into the objection of limitation.

7. With the aforesaid observations, the petition is finally disposed off.

Sd/-
(**Manindra Mohan Shrivastava)**
J U D G E

Rekha