

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 214 of 2015

Om Sai Ram Swa- Sahayta Samuh, Bori Registration No. 245, Through President
Rajesh Sahu Situated At Vill Bori, Tah. Rajnandgaon, Distt. Rajnandgaon
Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary Department Of Rural Development,
Mantralaya, Naya Raipur, P.S. Vidhansabha Raipur Chhattisgarh
2. The Commissioner Durg Division Durg Chhattisgarh
3. The Collector Rajnandgaon, District Rajnandgaon Chhattisgarh
4. The Chief Executive Officer Janpad Panchayat, Rajnandgaon, District
Rajnandgaon Chhattisgarh
5. Deputy Director Fisheries Rajnandgaon District Rajnandgaon Chhattisgarh
6. Shri Guha Machua Co - Operative Society Maryadit Chikhali Ward No. 3,
Rajnandgaon Tah, And District Rajnadgaon Chhattisgarh

---- Respondents

Shri Rakesh Thakur, counsel for the petitioner/s.
Shri Ramakant Mishra, Dy.A.G. for the State / respondents 1 to 3 and 5.
Shri Akhilesh Kumar, counsel for respondent No.4.
Shri B.D.Guru, counsel for respondent No.6.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

17/02/2016

The matter involves a short issue for consideration as to whether the
impugned order passed by the State Government is within its jurisdiction or not.

2. Learned counsel for the petitioner raises solitary submission to challenge
the order passed by the State Government in revision that the second revision is
not maintainable. It is submitted that respondent No.6, aggrieved by the order

passed by the Collector, preferred a revision before the Commissioner in exercise of his remedy of revision available to him under the provisions of Panchayat (Appeal and Revision) Rules, 1995. The remedy of revision having already exhausted, no further revision would lie before the State Government. Reliance has been placed on the decision in the case of **Pritam Sahu v. State of C.G., 2005 (2) CGLJ 49.**

3. Learned counsel for respondent No.6 submits that the order passed by the Commissioner was illegal and unsustainable in law. Therefore, the State Government has rightly interfered with the order.

4. Learned counsel for respondent No.4 submits that now the petition is rendered infructuous because in compliance of the order passed by the State Government, now a lease deed has been executed in favour of respondent No.6.

5. As far as submission of counsel for respondent No.4 that the petition is rendered infructuous, I am not inclined to accept the same. It is not a case where the period of lease has come to an end. The lease which was granted to the petitioner was for a period of seven years. The lease which is now said to have been granted under the orders of the State Government has not come to an end.

6. In the case of **Pritam** (supra), identical issue came up for consideration wherein it was held that once the power of revision is exercised, second revision would not be maintainable under the provisions of the Rules of 1995. It was held-

“2. Perusal of Rule 5 of the Rules of 1995 reveals that the State Government, the Commissioner, the Director of Panchayat, the Collector may on its/ his own motion or on the application by any party, at any time for the purpose of satisfying itself / himself as to the legality or propriety of any order passed by or as to the regularity of the proceeding of the authority subordinate to it / him call for and examine the record of any case pending before, or disposed of by, such authority and may pass such order in reference thereto as it/ he may think fit.

In view of the above provisions, the revision was permissible before the State Government, the Commissioner, the Director of Panchayat and the Collector. In the present case, the

Commissioner had already exercised the revisional powers, therefore, in my opinion, no second revision was permissible before the Secretary. Therefore, only on this count alone, the impugned order is liable to be set aside. Even otherwise, the order passed by the Commissioner dated 10/07/2002 is an elaborate order in which, it has been specifically mentioned that learned SDO passed the order under Section 40 of the Act of 1993 without conducting enquiry as envisaged under Section 40(1) of the Act of 1993 without giving fair opportunity of hearing to the petitioner and in violation of the principle of natural justice. As per finding of learned Commissioner, statements of witnesses were not recorded in accordance with law and even the petitioner was not allowed to adduce evidence. Therefore, learned Commissioner held that since enquiry was not conducted in accordance with Section 40(1) of the Act of 1993, the order passed by the SDO & the Appellate Authority were set aside and matter was remanded back to the Prescribed Authority for conducting the enquiry afresh in accordance with provisions of Section 40 of the Act of 1993. Further clause (b) of Rule 5 envisages that 'an application for revision by any party shall only be entertained if it is on the point of law and not on facts.'

7. In view of above, the impugned order passed by the State Government is unsustainable in law and is therefore set aside. The petition is allowed.

It is made clear that it would be open for respondent No.6 to take such remedy as may be available to him under the law against the order passed by the Commissioner.

Sd/-

(Manindra Mohan Shrivastava)
Judge