NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 178 of 2016

- Rajendra Agrawal S/o Surendra Agrawal, Aged About 49 Years R/o 45/3 & 4 Nehru Nagar, West Bhilai, Police Station And Post Durg, Civil And Revenue District Durg (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh Through : Secretary, Revenue Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur (Chhattisgarh).
2. Commissioner, Durg, District Durg (Chhattisgarh).
3. Additional Tahsildar, Bhilai Nagar, Durg, District Durg (Chhattisgarh).
4. Sub Divisional Officer (Revenue), Durg District Durg (Chhattisgarh).
5. Girish Raipurkar, S/o. Balkrishna Bamanrao, Aged About 52 Years R/o. Raipur, Police Station And Post Raipur, Civil And Revenue District Raipur (Chhattisgarh).

---- Respondent

For Petitioner : Shri Manoj Paranjpe with Shri Vikram Dixit, Advocates.
For Respondent/State : Shri S. Majid Ali, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

02/11/2016

1. By the impugned order dated 6.1.2016, the Board of Revenue, Chhattisgarh has allowed the revision application preferred by respondent No.5 and has remanded the matter to Tehsildar for making a fresh demarcation after making enquiry under Section 70 of the CG Land Revenue Code, 1959 (for short 'the Code') and after making

divisions of Khasra No.1946.

2. The contesting respondent i.e. respondent No.5 has not entered appearance despite service by publication.

3. It is argued that the Board of Revenue was exercising revisional jurisdiction against the order passed by the Additional Commissioner, Durg on 13.7.2015, therefore, it was not exercising any greater power than the appellate authority and as such it has no power to remand the matter to the Tehsildar.

4. A reading of the impugned order would indicate that after recording the findings that demarcation carried out by the Revenue Inspector was not in accordance with law, the Board of Revenue instead of setting the matter at rest, directed for fresh demarcation. The Board has also refused to decide the locus of respondent No.5 against the backdrop of specific arguments raised by the petitioner that the said respondent having not at all concerned with the land in question was not entitled to object to demarcation and prefer an appeal before the SDO which has rejected the appeal on the ground of locus and thereafter before the Additional Commissioner.

5. In addition to the above, it is also to be seen that under Section 49 of the Code the power of appellate authority has been provided which reads as under:-

> "**49. Power of appellate authority**.- (1) The appellate authority may either admit the appeal or, after calling for the record and giving the appellant an opportunity to be heard, may summarily reject it:
>
> Provided that the appellate authority shall not be bound to call for the record where the appeal is time-barred or does not lie.
>
> (2) If the appeal is admitted date shall be fixed for hearing and notice shall be served on the respondent.

> (3) After hearing the parties, the Appellate Authority may confirm, vary or reserve the order appealed against; or may take such additional evidence as it may consider necessary for passing its order:
>
> Provided that the Appellate Authority shall not remand the case for disposal by any Revenue Officer subordinate to it."

6. It is thus apparent that the law has issued a clear mandate that any order passed by the Appellate Authority shall not have the effect of remanding the case for disposal by any Revenue Officer subordinate to it. Even if no such limitation has been prescribed for exercise of revisional power, yet considering the settled principles of jurisdiction that the revisional jurisdiction is always considered to be a narrower jurisdiction than the appellate jurisdiction, the Board of Revenue while deciding the revision application, could not have exercised any power which is wider than the statutory restraint created under the proviso to sub-section (3) of Section 49 of the Code.

7. For the foregoing, the impugned order deserves to be and is hereby set aside.

8. The Writ Petition is accordingly allowed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve