NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 09.11.2017

Delivered on 17.11.2017

Writ Appeal No. 426 of 2017

(Arising out of order dated11-09-2017 in Writ Petition 227 No. 503/2017 passed by the learned Single Judge)

Dr. Khurshid Khan S/o Late Ataullah Khan, Aged About 45 Years R/o Turrapara, Dharamjaigarh, Tahsil Dharamjaigarh, District Raigarh, CG.

---- Appellant

Versus

Mohd. Salim Memon S/o Haji Harun Rasheed, Aged About 47 Years R/o Masjidpara, Dharamjaigarh, Tahsil Dharamjaigarh, Disttrict Raigarh, CG.

---- Respondent

For Appellant	: Shri Shivendra Bharadwaj, Advocate.
For Respondent	: Shri Prasoon Agrawal, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Sharad Kumar Gupta, Judge

CAV JUDGMENT

Per Sharad Kumar Gupta, Judge

1. In this writ appeal, the challenge levied is to the order dated 11-9-2017 passed by learned Single Judge in Writ Petition (227) No. 503/2017, whereby the said writ petition has been allowed.

2. In brief, case of the respondent is that he is the owner of land bearing Khasra Nos. 667, 668, 669 situated at Ward No. 4, Turrapara, Dharamjaigarh. The appellant is trying to encroach upon the said land and started construction on it. Respondent had filed an application dated 18-1-2013 vide Annexure P-3 before the Sub Divisional Officer (R), Dharamjaigarh. On the aforesaid application, a revenue case was registered against the

appellant. Copy of the order sheets of the Court of the Sub Divisional Officer (R), Dharamjaigarh is Annexure P-4. On 17-1-2014, the Sub Divisional Officer (R), Dharamjaigarh, by observing that the appellant is disobeying the order and has committed contempt, issued a memorandum to the police for taking suitable action against the appellant. The appellant preferred a revision before the Collector, Raigarh against the order dated 17-1-2014 passed by the Sub Divisional Officer (R), Dharamjaigarh. The Collector, Raigarh dismissed the revision on 6-2-2014 vide Annexure P-6. The appellant being aggrieved by Annexure P-6 preferred a revision before the Additional Commissioner, Bilaspur-Division who dismissed the said revision on 29-9-2014 vide Annexure P-7. The appellant being aggrieved, again preferred a revision before the Board of Revenue which was dismissed in default on 14-5-2015. Copy of the order sheets of the Board of Revenue is Ex. P-8. The respondent had also filed Writ Petition (c) No. 1695/2015 for early disposal of the said revenue case pending before the Sub Divisional Officer (R), Dharamjaigarh. The learned Single Judge passed an order on 21-9-2015 vide Annexure P-9 that the said pending revenue case be decided within a period of 3 months. The respondent moved an application on 9-10-2015 vide Annexure P-10 before the Najul Officer, Dharamjaigarh for early disposal of the said revenue case in the light of the said order passed by the learned Single Judge. Meanwhile, on 30-10-2015 the Board of Revenue which had earlier dismissed the revision of the appellant for want of prosecution, restored the same. On 7-10-2016 vide Annexure P-11, the Board of Revenue allowed the revision filed by the appellant and set aside the earlier orders passed by the Sub Divisional Officer (R), Dharamjaigarh, the Collector, Bilaspur and the Additional Commissioner, Bilaspur Division. Thereafter, the respondent again filed an application on 19-12-2016 vide Annexure P-12 for early disposal of the case in the light of the order passed by the learned Single Judge. On 17-3-2017 vide Ex. P-13, the Sub Divisional Officer (R), Dharamjaigarh directed the Tehsildar to decide the said revenue case. The appellant being aggrieved by the said order, preferred a revision before the Board of Revenue on 29-3-2017. The Board of Revenue on 20-4-2017 allowed the said revision and gave a finding that the order of the Sub Divisional Officer (R), Dharamjaigarh (Annexure P-13) is violative of principles of *res judicata.* Copy of the order sheets of the Board of Revenue is Annexure P-1. The appellant filed an application before the Najul Officer, Dharamjaigarh for termination of the proceeding. A revenue case was registered. On 18-5-2017, the Najul Officer gave a finding that no further proceeding would be continued and terminated the proceeding. Copy of the order sheets of the Najul Officer is Annexure P-2.

3. In brief, appellant's case is that the respondent had already filed a civil suit on 22-12-2014 in the Court of Civil Judge Class II, Dharamjaigarh and suppressed this material fact. On 7-10-2016, the Board of Revenue has decided the matter finally and the respondent could not have approached again before the Sub Divisional Officer (R), Dharamjaigarh. The second order of the Board of Revenue dated 20-04-2017 is just and proper.

4. It is noticeable that the respondent had also preferred Writ

Petition (227) No. 328 of 2017 against Annexure P-11 which was dismissed by the learned Single Judge on 11.09.2017.

5. The learned Single Judge on 11.09.2017 vide Annexure A-1 set aside the order dated 20-4-2017 in Writ Petition (227) No. 503 of 2017 and remanded the matter back to the Tehsildar for disposal of the application under Section 250 of the Land Revenue Code (hereafter called as 'the Code') which was filed by the respondent. Being aggrieved, the appellant has preferred this writ appeal.

6. Shri Shivendra Bharadwaj, counsel for the appellant argued that Section 250 of the Code has no applicability in this case. The Board of Revenue decided the matter vide Annexure P-11. The respondent again re-opened the case before the Sub Divisional Officer (R), Dharamjaigarh, thus the impugned order Annexure A-1 passed by learned Single Judge is bad in law.

7. Shri Prasoon Agrawal, counsel for the respondent supported the impugned order stating that it is in accordance with law and the writ appeal deserves to be dismissed.

8. It is pertinent to mention that after passing the order vide Annexure P-9, by learned Single Judge, Board of Revenue passed the order Annexure P-11. Thus it is clear that when Board of Revenue passed the order Annexure P-11, at that time the order vide Annexure P-9 passed by the learned Single Judge was in existence. Moreover, It is worthwhile that vide Annexure P-11, the order dated 17-1-2014 of the Sub Divisional Officer (R), Dharamjaigarh only has been set aside; meaning thereby, the

proceeding under Section 250 of the Code was not set aside and it was still pending in the Court of the Sub Divisional Officer (R), Dharamjaigarh.

9. It is also noticeable that when the order vide Annexure P-9 was in existence, Board of Revenue passed second order dated 20-4-2017. It is also notable that while passing the order dated 20-4-2017 Board of Revenue ignored this fact that proceeding under Section 250 of the Code was pending before the Sub Divisional Officer (R), Dharamjaigarh, which ought to have been decided on the merit of the case.

10. Looking to the aforesaid facts and circumstances of the case, we hold that order dated 20-4-2017 passed by the Board of Revenue is illegal, improper and not sustainable.

11. Looking to the aforesaid facts and circumstances of the case, we agree with the reasoned impugned order of the learned Single Judge and affirm it.

12. On the corner stone of the aforesaid facts and circumstances, we conclude that there is no substantial issue raised in this appeal calling for interference in the impugned order. Hence this writ appeal deserves to be dismissed.

13. However, It is directed that the Tahsildar, Dharamjaigarh shall decide the proceedings under Section 250 of the Code on its own merit without being prejudiced by any of the orders which has been passed by this Court, in accordance with prescribed law and procedure.

14. The writ appeal is dismissed with the direction contained in the preceding paragraph.

15. Appellant shall bear his own costs as well as costs of the respondents.

Sd/-	Sd/-
(Thottathil B. Radhakrishnan) **Chief Justice**	(Sharad Kumar Gupta) **Judge**

Pathak/kishore