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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 423 of 2016

(Arising out of order dated 15.05.2015 passed in Writ Petition (C) No. 458 of 2015 by the learned Single Judge)

Phoolchand Sethiya (Dead) and Smt. Sajan Bai Sethiya (Dead) Through his legal heirs namely:

1. Smt. Sandhya Jain, age about 59 years, D/o Late Shri Phool Chand Sethiya.
2. Smt. Kalpana Karnawat, aged about 57 years, W/o Late Shri Suresh Karnawat.
3. Smt. Pushpa Jain, aged about 52 years, W/o Shri Rajesh Kumar Jain.

All resident of 10, Near JJ Nursing Home, Malviya Nagar, Police Station, Mohan Nagar, Durg, District Durg, Chhattisgarh.

---- Appellants

Versus

1. State of Chhattisgarh, through the Secretary, Govt. of Chhattisdgarh, Department of Revenue, Mahanadi Bhawan, Mantralaya, Police Station, Rakhi, Naya Raipur, Chhattisgarh.
2. The Collector, Raipur, Chhattisgarh.
3. The Sub Divisional Officer, Arang-Abhanpur, District Raipur, Chhattisgarh.
4. The Additional Tehsildar, Shri Jageshwar Kaushal, District Raipur, Chhattisgarh.

---- Respondents

For Appellants	: Shri Manoj Paranjpe and Shri Janardan Prasad Pandey, Advocates.
For Respondent/State	: Shri R.K.Gupta, Deputy Advocate General.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, J.

Judgment on Board

Per Thottathil B. Radhakrishnan, Chief Justice

18/08/2017

1. This appeal is by the Petitioners in Writ Petition (C) No. 458 of 2015. We have heard the learned counsel for the Appellants and the learned Deputy Advocate General for the State.

2. Through Annexure A/23 proceedings dated 21.11.2014, the Sub Divisional Officer (Revenue); for short, 'the SDO'; proceeded to review the earlier order issued by that officer on 25.10.2014, which is Annexure A/17. For that purpose, the SDO was granted permission by the Collector, which is a statutory exercise required to be carried out to satisfy the proviso to sub-section (1) of Section 51 of the Land Revenue Code, 1959; for short, 'the Code'. The Appellants challenged the said proposal of the SDO before the learned Single Judge through the writ petition, fundamentally projecting certain facts situation referable to earlier proceedings touching the lands in question. We would make requisite reference to those facts as we proceed with this judgment.

3. It appears that the proceedings were initiated to include the land in question in the register of the "Wajib-ul-arz" lands in terms of Section 242 of the Code. Those proceedings, initiated sometimes in 1991, was carried forward and even subjected to two rounds of appeal. That ultimately led to a revision before the Board of Revenue, which was decided as per Annexure A/6, order of 31.12.2001 holding that the lands cannot be recorded as Wajib-ul-arz.

4. Thereafter, the Petitioners applied for mutation of the land in their names stating that they are Bhumiswami of the land by virtue of the relevant provisions of the Code. It appears that writ petition was also filed seeking directions to conclude those matters. The Tahsildar, following directions by the Collector, issued Annexure A/9 ordering mutation in the name of the Petitioners and for correction of the records. That was challenged by the Sarpanch of Village-Deopuri before the SDO, who in turn set aside the mutation order, as per Annexure A/11 dated 30.04.2011 making reference to the decision of the Apex Court in **Jagpal Singh v. State of**

Punjab (Civil Appeal No. 1132 of 2011). The Appellants carried that matter to the Commissioner in the form of a revision after first moving the Apex Court seeking certain clarifications. The net effect of Annexure A/12 and the subsequent order issued by the Hon'ble Supreme Court in IA No. 16 of 2011 is that the Appellants have to seek their remedy from the appropriate authority in accordance with the decision of the Board of Revenue. We may pause here to say that much was attempted to be stated during the submissions by learned counsel for both the sides as to what would be the effect of the use of certain phrases in the order of the Hon'ble Supreme Court. Though it was attempted to be projected that there is a direction to give effect to the decision and the directions of the Board of Revenue, the fact of the matter remains that all that the Board of Revenue had done through Annexure A/6 order dated 31.12.2001 was to hold that the lands cannot be recorded as "Wajib-ul-arz". There was no consequential direction, as such, in the operative portion of the said decision of the Board of Revenue. We think that, having regard to the nature of the order that would ultimately be passed herein, it would be appropriate for us to dissuade from stating any further on the contents and quality of the decision of the Board of Revenue rendered through its Annexure A/6 order dated 31.12.2001.

5. As regards the proceedings for mutation which stood against the Appellants with the allowing of the Sarpanch's appeal, the matter went up to the Commissioner before whom the orders of the Hon'ble Supreme Court were also produced. The Commissioner, making reference to the orders of the Apex Court, remitted the matter with direction to pass appropriate orders in the light of the clarification available through the Supreme Court's order as regards the applicability of the **Jagpal Singh's** case. Thereupon, the SDO passed Annexure A/17 order on 25.10.2014 dismissing the appeal of the Sarpanch, thereby affirming the order for mutation in favour of the Appellants. This means that the order of Tahsildar granting mutation in favour of the Appellants was to stand. It was thereafter that, as per Annexure A/23, the SDO proceeded to review the earlier order (Annexure A/17) issued on 25.10.2014. This initiation of proceedings for review was challenged before the learned Single Judge. The writ petition was dismissed. Hence, this appeal.

6. The learned counsel for the Appellants made reference to various factual aspects and argued that the Board of Revenue's order (Annexure A/6) having become final, the contents thereof included the finding that the Appellants are the Bhumiswamis and therefore, there was no reason whatsoever for the SDO to order re-opening by way of review and that there is no ground whatsoever to modify the order for mutation. He further argued that the power of review under Section 51 of the Code does not include the power to re-hear but is circumscribed by the limited grounds available for review. He proceeded to contend that on an examination of materials on record, it can be seen that there is no jurisdictional fact whatsoever for the SDO to review the earlier order and re-open the proceedings on a ground referable to a factual issue; that is to say, as to whether the lands are grazing fields (*Shamilat Charagan*).

7. Per contra, the learned Deputy Advocate General for the State argued that the facts of the case, as reflected through the materials, clearly show that the resultant situation is deprivation of around 15 acres of grazing field which, as a matter of fact, was classified as such in terms of the consolidation proceedings which had preceded the coming into force of the Code. He further argued that the Board of Revenue's order (Annexure A/6) is being misinterpreted and there is no finding therein to the effect that the Appellants are Bhumiswamis. He also argued that the Sarpanch's appeal was one projecting the legal and community rights of the villagers and therefore, such representative action should have been permitted to be taken to its logical end through the proceedings for review which has been lawfully initiated.

8. The question whether the lands are grazing lands *(Shamilat Charagan)* appears to be a jurisdictional fact, which is made the foundation for initiating the proceedings for review in terms of sub-section (1) of Section 51 of the Code. The assertion or denial of such a fact would necessarily call for an adjudication to decide on such issue, which is germane to answer the question of jurisdiction. Therefore, even if that were to be the foundational jurisdictional fact, it would be in the realm of mixed questions of facts and law, which cannot be decided in this appeal in writ jurisdiction, merely on the basis of certain statements in any documents including Annexure A/6 order of the Board of Revenue. We would not be justified in doing so. However, this is an issue which would be germane for consideration while the officer who is proceeding to exercise the review power is hearing the proceedings for review. It may also be relevant when the decision on the application for review may subsequently be subjected to judicial review, if that becomes necessary.

9. The fact of the matter remains that as regards the stand of the Appellants on the applicability of the directions of the Apex Court in **Jagpal Singh** (supra), they have obtained certain orders from the Apex Court which are referred to above. There are other crucial factors which may have bearing on the facts of the case. When a particular statutory authority has decided to proceed with its power of review, it would not be advisable to pre-conceive and load the said adjudicating process with views and opinions which may be relied on and referred to by the authority concerned, with reverence and obedience due in any multi-tier and hierarchical system, be it administrative, quasi-judicial or judicial. We make this very cautious statement in the light of the fact that the impugned judgment contains reference to even **Jagpal Singh** (supra) and other different precedent laws. We should caution the SDO that if he were to further proceed with the review proceedings, he shall not be guided by the contents of the impugned judgment as if they provide the route map through which the review jurisdiction shall be proceeded with.

10. Reverting to Section 50(1) of the Code which provides for review of the orders, the power of review is seen conferred on different authorities. When such power of review is to be exercised by the officer below the rank of the Collector, it has to be done only with the prior sanction of the Collector. The Collector's action of granting or refusing permission to proceed with the review is not a seal of approval in the form of a caveat, thereby giving a pre-decisional node to allow or negative the proposal for review. It is only a clearance to proceed with the review, meaning thereby that the power of review may be considered for exercise. This means that the authority proceeding to exercise the review power, in this case, the SDO, will have to ensure that the power of review is strictly confined to the limits prescribed by sub-section (2) of Section 51 of the Code which says that no order shall be reviewed except on the grounds provided for in the Civil Procedure Code. Such power of review under Section 51 of the Code is thus limited to the grounds of review provided in Section 114 and Order XLVII of the Civil Procedure Code. The power of review could be exercised only on the grounds provided in those provisions of the Civil Procedure Code; and, not otherwise or beyond.

11. In the aforesaid view of the matter, we clarify that we have not expressed anything on the merits or demerits of the claim of the proceedings for review initiated *suo-moto* by the SDO or in the defence that would be pitted before the SDO by the writ appellants. This would also include their opportunity to plead that the proposal for review is itself not sustainable in view of the absence of any jurisdictional fact and even if any jurisdictional factual issue is being looked into, they stand concluded by the earlier proceedings. The representative of the Government will also be entitled to present materials appropriately on the basis of the requisite revenue records. Since the order proposed to be reviewed is one that was passed on the appeal filed by the Sarpanch of the village Deopuri, the SDO will issue notice to the said Gram Panchayat to facilitate requisite participation as that Panchayat may desire.

12. To pave way for further proceedings before the SDO in terms of Annexure A/23 dated 21.11.2014, the impugned judgment is vacated and this writ appeal is ordered directing that the 3rd Respondent-SDO will decide on Annexure A/23 proposal for review strictly in conformity with sub-section (1) of Section 51 without losing note of the limits of jurisdiction in terms of sub-section (2) of that Section. This shall be done after providing adequate opportunity to the Appellants and also to the Revenue to place requisite materials for consideration of the SDO. However, let the final decision be taken within a period of four months from the date of receipt of a copy of this judgment.

13. The writ appeal is ordered accordingly.

Sd/-	Sd/-
(Thottathil B. Radhakrishnan) **CHIEF JUSTICE**	(Sharad Kumar Gupta) **JUDGE**

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