NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on 26/07/2018

Order Delivered on 17/08/2018

WP227 No. 5338 of 2009

- Haridas Manikpuri S/o Shri Bisahudas Manikpuri, Aged about 51 years, R/o Village Amaldihi, Tahsil Lormi Distt. Bilaspur C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through : Collector, Bilaspur, C.G.
2. Vallabh Ram Patel S/o Shri Ala Ram Patel, Sarpanch, Village Amaldihi, Tahsil Lormi, Distt. Bilaspur, C.G.
3. Chhatrapal Kushwaha S/o. Anil Kushwaha, Age- 28, R/o. Village Kotwar-Amaldihi, P.O. Gondkhami (Bazar), Tah & P.S – Lormi, District- Mungeli, C.G.

---- Respondents

For Petitioner	:	Shri Parag Kotecha, Advocate.
For Respondents	:	Shri M. K. Bhaduri, Advocate.
For Respondent No.1/ State	:	Shri Dilman Rati Min, Dy, GA.

Hon'ble Shri Justice Parth Prateem Sahu

CAV Order

1. By the instant writ petition, the petitioner/claimant is challenging the legality and validity of the impugned order dated 28.02.2009 passed by the Board of Revenue, Bilaspur, C.G whereby the execution filed by respondent No.2 was allowed.

2. Brief facts of the case, are that the petitioner was appointed as Kotwar of Village- Amaldihi, Tahsil Lormi, District, Bilaspur, (now Mungeli) C.G. On 25.06.2004 respondent No.2 (Sarpanch) moved a complaint before Tahsildar against the petitioner making allegations against him that he had sold the land alloted to him as service land to number of persons of the village. Tahsildar took cognizance of the complaint and vide order dated 30.11.2004 rejected the complaint filed by respondent No.2.(Sarpanch). After rejection of complaint, respondent No.2 preferred an appeal before the Sub-Divisional Officer under the provisions of Section 44 (1) of C.G. Land Revenue Code, 1959 (in short the Code, 1959). The Sub-Divisional Officer vide order dated 13.09.2006 remanded back the case to the Court of Tahsildar for considering the matter afresh after holding enquiry under Section 230 and Rules framed thereunder. After receiving the case on remand, the Tahsildar considered the earlier material on record, also considered the subsequent complaint and arrived at a conclusion that the petitioner has committed misconduct and accordingly passed an order of his termination/removal from the post of “Kotwar” vide its order dated 31.05.2007.

3. Feeling aggrieved by the order passed by Tahsildar dated 31.05.2007 the petitioner preferred an appeal before the Sub-Divisional Officer which was dismissed vide order dated 17.9.2007 against which petitioner preferred a second appeal as per provisions of Section 44 (2) of the Code, 1959 and the same has been allowed by the Commissioner vide order dated 24.9.2008 setting aside the orders passed by the Sub-Divisional Officer and Tahsildar on the grounds mentioned therein. Respondent No.2 challenged the order dated 24.9.2008 passed by the

Commissioner, Bilaspur Division, Bilaspur before the Board of Revenue by filing a revision. The Board of Revenue vide order Annexure P-2 allowed the revision and set aside the order passed by the Commissioner. Hence this petition.

4. The petitioner has assailed the order passed by the Board of Revenue on the ground that the complainant has no authority to file an appeal or revision before any authority as the matter relates to the service and is in between the appointing authority and the petitioner. Another ground urged by the petitioner is that the Sub-Divisional Officer has committed gross illegality in remanding the case to the Tahsildar vide its order dated 13.09.2006 because in view of the provisions of Section 49 (3) of the Code, 1959**.** He submits that the Sub-Divisional Officer was not having jurisdiction to remand the case being an Appellate Authority. Thus, all the subsequent proceedings taken place in pursuance of the order of remand passed by the S.D.O stand vitiated.

5. Learned counsel appearing for the respondents supports the impugned order and submits that as there is specific finding that the petitioner has committed misconduct under the provisions of Section 230 of Chhattisgarh Land Revenue Code and Rules framed thereunder.

6. Board of Revenue rightly set aside the order passed by the Commissioner and affirmed the orders of Tahsildar and S.D.O (Revenue) in its revisional jurisdiction.

7. Learned counsel for the State also supports the impugned order.

8. To appreciate the arguments raised by the counsel for the petitioner with regard to the jurisdiction of the Sub-Divisional Officer in remanding

the case to subordinate authority it would be beneficial to have a look to Section 49 of the Code of 1959 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:
>
> Provide 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.
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> Sub-sec. (3) of Section 49 :-
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> After hearing the parties, the Appellate Authority may confirm vary or reverse 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.”

9. From a bare perusal of the aforementioned section it is apparent that Sub-section 3 was amended w.e.f. 23.11.2002 to the effect that the appellate authority may confirm, vary or reverse the order appealed against, or may take such additional evidence as it may consider necessary for passing its order. However, the appellate authority shall not have power to remand the case for disposal by any Revenue Officer subordinate to it.

10. In case in hand, the First appeal has been preferred by the respondent after coming into the force of amended provisions of sub-section (3) of

Section 49 of the Code of 1959 and thereafter, on 13.09.2006 when the appellate Court i.e. Sub-Divisional Officer passed the order of remand and sent back the case to Tahsildar for taking decision afresh. Since the Sub Divisional Officer was not having jurisdiction to pass such an order of remand in the light of amended provision of Section 49 (3), therefore, the order passed by the appellate Court is without jurisdiction and being so, it is non-est in the eyes-of-law. Any order passed by any authority for which, he is not having jurisdiction then such a ground can be raised at any time and at any stage of the proceedings.

11. In view of the above, as the order passed by the appellate Court I,e., Sub-Divisional Officer on 13.09.2006 is without jurisdiction, therefore, the same is liable to be set aside and in effect all other orders passed in consequences thereof i.e. Board of Revenue, Commissioner and Tahsildar are also liable to be set aside.

12. In the result, the writ petition is allowed. Impugned order alongwith order of Commissioner, order of S.D. O, dated 17.09.2007, order of Tahsildar dated 31.05.2007 and order dated 13.09.2006 are hereby set aside. The matter is remitted back to the Court of Sub-Divisional Officer (Revenue) to consider and decide the appeal filed on 07.02.2005 by respondent No.2. strictly in accordance with law keeping in mind the provisions of Section 49 of the Code, 1959. The appellate authority may provide an opportunity of hearing to all the parties to the appeal before deciding the appeal on merits. The petitioner will be at liberty to raise all the grounds as urged in this petition before the appellate authority.

13. As interested parties are represented by their respective advocates they are directed to appear before the Court of Sub-Divisional Officer (Revenue) on 18th September 2018.

14. Records be sent back forthwith.

15. In consequence of the above order the petitioner may be allowed to work on post of “kotwar” which he was discharging prior to the passing of order dated 31.05.2007.

Sd /-

(Parth Prateem Sahu)
Judge

Jamal