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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (227) No. 127 of 2013

1. State of Chhattisgarh, Through the Collector, P.S. Chakradhar Nagar, District Raigarh (C.G.)
2. The Tahsildar, Raigarh, P.S. Chakradhar Nagar, District Raigarh (C.G.)
3. The Sub Registrar, Raigarh, P.S. Chakradhar Nagar, District Raigarh (C.G.)

----Petitioners/non-applicants.

Versus

1. M/s Shyamli Infraventure Pvt. Ltd. Through its Director Dhruv Agrawal, S/o Shri Sadhu Ram Agrawal, R/o Gajanandpuram, Raigarh, P.S. City Kotwali, Tahsil & District Raigarh (C.G.)
2. Kuntala Bai, Wd/o Chhabiram,
3. Bhagat Ram, S/o Ramsai
4. Ghurai, S/o Ramsai,

   No. 2 to 4 by Caste – Sawara (aboriginal Tribe), R/o Village Gopalpur, P.S. Chakradhar Nagar, Raigarh, Tahsil and District Raigarh (C.G.)
5. The Board of Revenue, Chhattisgarh, Bilaspur

---- Respondents.

For Petitioners : Shri Arun Sao, Dy. Advocate General
For Respondent No. 1 : Shri Kamal Kishore Patel, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

28/08/2018

(1) Learned counsel appearing for the petitioners would submit that the issue raised in this writ petition is squarely covered with the decision rendered by this Court in Writ Petition (Art. 227) No. 115 of 2013 (**State of Chhattisgarh & others Vs. Pawan Chauhan & others**), decided on 23.08.2018, in which this Court has held as under:-

> " 25. The Code clearly confers the jurisdiction to the Collector under Section 165(6)(ii) of the Code to grant permission, therefore, the jurisdiction has to be exercised by the Collector only, neither the authority higher than Collector nor any

other authority including the Board of Revenue can exercise that power. The Collector is one of the revenue officers mentioned in Section 11 of the Code. Whereas the Board of Revenue is not a Revenue Officer, but it is a Revenue Court, neither the Board of Revenue nor any member of the Board of Revenue is Revenue Officer. It is thus, clear that the Board of Revenue is a Revenue Court as provided under Section 31 of the Code. However, the Revenue Officers mentioned in Section 11 of the Code are both Revenue Officers and Revenue Courts. The Board being only a Revenue Court can administratively supervise the working of Revenue Officer under the provisions of the Code subject to its appellate and revisional jurisdiction, but under Section 8 of the Code no original jurisdiction of judicial revision has been conferred to the Board of Revenue, it is only administrative in nature. As such, the order passed by the Board of Revenue directly entertaining the application and granting that application in exercise of power which has not been statutorily conferred to him is absolutely without jurisdiction, as there is no semblance of jurisdiction conferred to the Board of Revenue under Section 8 of the Code to grant application under Sections 165(6)(ii) and 165(7) of the Code.

26. In the matter of **Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and others v. Director General of Civil Aviation and others**[1], the Supreme Court while relying upon the earlier judgments held that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and observed as under:-

> “27. Similar view has been reiterated by this Court in *Commr. of Police v. Gordhandas Bhanji*[2], *Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia*[3] and *Pancham Chand v. State of H.P.*[4] observing that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme.
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> 28. In view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even a senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner.”

27. There is yet another reason for not upholding the order. Even the Board of Revenue has relaxed the ban imposed by the Collector under its jurisdiction. The Board of Revenue has no business to lift the ban imposed by the Collector under the provisions of law, it could have been relaxed by the competent authority, if applied for by the aggrieved person, and in the manner provided under the law. The Board of Revenue has exercised the jurisdiction not vested in it and exceeded its authority by not only granting permission which has been conferred to the Collector under Sections 165(6)(ii) and 165(7) of the Code, but also further exceeded the jurisdiction by lifting / relaxing the ban imposed and by directing the competent authority to furnish 22 point information and further directing the Deputy Registrar to register the sale deed. In the considered opinion of this Court, the order passed by the Board of Revenue granting permission under Section 165(6)(ii) of the Code and relaxing the

1 (2011) 5 SCC 435
2 AIR 1952 SC 16
3 (2004) 2 SCC 65 : AIR 2004 SC 1159
4 (2008) 7 SCC 117 : AIR 2008 SC 1888

ban deserves to be and is hereby quashed being wholly without jurisdiction and without authority of law. Consequently, registration of sale deed, if any, is also quashed.

28.The writ petition is allowed to the extent sketched herein-above. No order as to cost(s)."

(2) In view of above, the writ petition is allowed in terms of paragraphs 25 to 28 of the decision rendered by this Court in Writ Petition (Art.) No. 115 of 2013 (**State of Chhattisgarh & others Vs. Pawan Chauhan & others**), decided on 23.08.2018, impugned order dated 08.10.2010 is quashed and subsequent action, if any, is declared void.

(3) Certified copy, as per rules.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-