AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 370 of 2003

1. Lalsay (Died) (deleted)

   1 (a). Puni Bai D/o Late Lal Say Aged About 50 Years W/o Shodhan Singh, R/o Village And Thana - Darima, District Ambikapur Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

2. Smt. Lali Kunwar (Died) (Deleted)

3. Smt. Panmeshwari D/o Late Genda Singh Aged About 45 Years R/o Village Bargawa, P.S. And Tehsil Ambikapur, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

4. Chamra S/o Bandhan Kanwar Aged About 45 Years R/o Village Bargawa, P.S. And Tehsil Ambikapur, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

5. Balmukund Singh S/o Bandhan Kanwar Aged About 30 Years R/o Village Bargawa, P.S. And Tehsil Ambikapur, District Surguja Chhattisgarh. (Defendants), District : Surguja (Ambikapur), Chhattisgarh

---- Appellants

Versus

1. Prakasiyus Kerketta S/o Juliys Kerketta Aged About 40 Years Caste - Uraon, R/o Village Bargawa (Bagdhan) P.S. And Tehsil Ambikapur, District Surguja Chhattisgarh. (Plaintiff), District : Surguja (Ambikapur), Chhattisgarh

2. Ghasnin D/o Late Ghuran Kanwar Aged About 40 Years W/o Fagu Basdewa, R/o Village Ambikapur, Court Ward, P.S. And Tehsil Ambikapur, District Surguja Chhattisgarh. (Def.No. 3), District : Surguja (Ambikapur), Chhattisgarh

3. Savitri D/o Ghuran Kanwar Aged About 35 Years W/o Keshwar Singh, R/o Village Bargawa, P.S. And Tehsil Ambikapur, District Surguja Chhattisgarh. (Def. No. 4)., District : Surguja (Ambikapur), Chhattisgarh

4. Parasnath Singh S/o Dilrakhan Aged About 45 Years R/o Village Bargain, P.S. And Tehsil Ambikapur, District Surguja Chhattisgarh. (Def. No. 7), District : Surguja (Ambikapur), Chhattisgarh

5. Bari (died) (Deleted)

6. Bhagwan Das (Died) (Deleted) Through LRs:

   6(A). Ranglal Jaiswal S/o Late Bhagwan Das Aged About 75 Years, R/o Ambikapur (in front of District Court Ambikapur), Welcome Hotel, Ambikapur, Revenue and Civil District- Surguja (CG)

   6(B).Chhedi Jaiswal S/o Late Bhagwan Das Aged About 70 Years
   6(C).Subhash S/o Late Bhagwan Das Aged About 66 Years
   6(D).Sadan S/o Late Bhagwan Das Aged About 60 Years

   R/o of Village – Bargawa, PS and Tehsil-Ambikapur, District- Surguja (CG)

7. State Of Chhattisgarh Through Collector, Surguja, Ambikapur

Chhattisgarh. (Remaining Defendants), District : Surguja (Ambikapur), Chhattisgarh

---- Respondents

For Appellant/Defendant	:	Shri Bharat Rajput, Advocate
For Respondent No.1/Plaintiff	:	Shri Vivek Shrivastava, Advocate
For State	:	Ms. S. Harshita, Panel Lawyer

SB: Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

14/11/2019

1. This appeal is directed against the impugned judgment and decree dated 19.4.2003 passed by learned Additional District Judge, Ambikapur, District- Sarguja in Civil Appeal No.73-A of 2002 by which learned lower Appellate Court has reversed the judgment and decree dated 31.3.2001 passed by learned Civil Judge, Class-II Ambikapur in Civil Suit No.95-A of 1998 and decreed the plaintiff's suit.

2. The respondent- plaintiff filed a suit seeking a declaratory relief of title and permanent injunction on the pleadings, inter alia, that the property in dispute was purchased by the plaintiff by a registered sale deed from Parasnath Singh and Bari, defendants No. 7 & 8, for a valid consideration of Rs.60,000/- vide sale deed dated 20.1.1995 and after obtaining possession, he had been enjoying possession and continuing with agricultural activity. According to the plaintiff, defendants No. 7 & 8 had tittle over the property in dispute but later on, Sub Divisional Officer held enquiry and then passed an order on 22.2.1996 directing return of land to defendant No.1- Lalsai, defendant No.2- Genda and defendant No.5- Chamra. The plaintiff pleaded that in respect of the property which belong to Lalsai, Ghuran and Bandhan and was sold by them to Dilrakhan, later on, an enquiry under Section 170-B of the Land Revenue Code had already made and an order was passed by SDO way back on 5.12.1985.

The proceedings were closed. When fresh application was filed after about a decade by Lalsai and successor of Ghuran and Bandhan raising some dispute, though the SDO sought permission of the Collector, Sarguja, to review its earlier order dated 5.12.1985, the matter remained pending and in the meantime, order was passed in purported exercise of review jurisdiction. On such pleadings, the plaintiff sought a declaration of his title, permanent injunction as also a declaration that order passed by the SDO in the concerned revenue case on 22.2.1996 be declared null and void.

3. The plaintiff's suit was resisted by the appellant-defendant stating that transaction out of which the vendor of the plaintiff claimed to have succeeded to the property and thereafter sold it to the plaintiff were all fraudulent transactions and it was essentially a *benami* transaction. Dilrakhan was not true purchaser but it was Bhagwandas on whose behalf, purchase was made in the name of Dilrakhan.

4. Learned trial Court framed as many as ten issues. Issue No.9 was tried as a preliminary issue as to whether the Civil Court had jurisdiction to try the suit. This consideration had taken place in view of the provision creating bar as contained in Section 257 (*I*-1) of the M.P. Land Revenue Code, 1959. Vide order dated 28.7.1998, learned trial Court recorded a finding that it had jurisdiction to try the suit. However, despite having held that it had jurisdiction, at the end of trial, learned trial Court held that the plaintiff failed to prove its case and dismissed the same. Aggrieved by judgment and decree, the plaintiff, preferred an appeal. Learned lower appellate Court recorded a finding in favour of plaintiff- appellant. One of the main consideration which weighed with the learned lower appellate Court was that in respect of the property in question, involving an identical issue as to whether the transaction between Dilrakhan and Lalsai, Ghuran and Bandhan was hit by Section 170-B of the Land Revenue Code, an order was passed way back on 5.12.1985 by SDO. However, after about a decade, again, Lalsai and successor of Ghuran and Bandhan filed a fresh application seeking similar inquiry in respect of which, the SDO could not

have again inquired the matter except by way of review, that too, after obtaining due permission to review its own order under Section 51 of Land Revenue Code, by the Collector. Learned lower appellate Court was of the view that without seeking such permission, it was outside the jurisdiction of the SDO to re-initiate and re-inquire the whole matter which was already examined and in respect of which it had already passed an order. On such consideration, learned lower appellate Court set aside the judgment and decree of the trial Court and decreed the suit of the plaintiff.

5. This appeal was admitted on the following substantial questions of law :-

> "(i) Whether, the Civil Court was having no jurisdiction to entertain the instant suit in which a judgment was passed under Section 170-B of the M.P. Land Revenue Code and the same was not challenged on the grounds of nullity and jurisdiction ?
>
> (ii) Whether, the finding of the appellate Court in absence of pleading that the transaction in question was benami can be justified ? "

6. Learned counsel for the appellant-defendant contended that the suit of the respondent-plaintiff itself was not maintainable in view of express bar created under Section 257 (*I*-1) of the Land Revenue Code. He would argue that the express bar created under the law completely ousts the jurisdiction of the Civil Court and it had no jurisdiction whatsoever to examine legality and validity and correctness of the order passed on 22.2.1996 by the SDO. According to him, even alleged illegality that the SDO reviewed its own order dated 5.12.1985 without seeking permission of the Collector could not be made a ground because such ground could always be raised by way of appeal as provided under the Land Revenue Code itself, against the order passed by the SDO. Learned counsel for the appellant would further argue that the finding of learned lower appellate Court that the SDO reviewed its earlier order is factually incorrect because the order passed by the trial Court clearly shows that the order which was

earlier passed by the SDO on 5.12.1985 was not passed after due and proper enquiry and even the statement of Lalsai was not recorded. These were the patent illegality and irregularity which were noted by the SDO while passing order dated 22.2.1996. He would further submit that in any case, SDO had applied for grant of permission to review its earlier order dated 5.12.1985, as required under Section 15 of the Land Revenue Code and that would be sufficient compliance of the requirement of law of seeking permission. If the Collector sits over the matter, it cannot be said that SDO had no jurisdiction. He would further argue that in any circumstance, the enquiry in the second round was entirely different as compared to enquiry made earlier and, therefore, there was no need to seek permission from the Collector.

7. On the second substantial question of law, it has been argued that learned lower appellate Court had no jurisdiction to enter into the enquiry with regard to nature of transaction as to whether it was *benami* or not. Such issue are not within the domain of Civil Court and only ground on which the jurisdiction of the Civil Court may be arrived at was, as settled and laid down in plethora of decisions by the Supreme Court, as the scope and ambit of jurisdiction of Civil Court as against express bar of jurisdiction, is extremely limited and the Civil Court could not enter into any inquiry which ordinarily may be gone into only by the SDO or other revenue Courts. In support of his submissions, learned counsel for the appellant-defendant placed reliance upon decision of this Court in the case of **Smt. Nanbutia & Anr. Vs. Smt. Manglinbai & Ors.** 2011 (11) C.G.L.J. 275.

8. On the other hand, learned counsel for the respondent-plaintiff would submit that the learned lower appellate Court committed no illegality in holding that the plaintiff was entitled to decree as prayed for because it was found that the SDO, in respect of the same subject matter, had already passed an order in enquiry under Section 170-B of the Land Revenue Code, as back as on 5.12.1985, which had attained finality. Ten years thereafter, Lalsai filed another application, this time bringing along

with him, the successor of Ghuran and Bandhan. He would also argue that subsequent proceedings were only in the nature of seeking review of earlier order which could not be done without prior permission of the Collector. As, admittedly, no permission was granted though sought, the entire proceedings were without jurisdiction. This fundamental defect in the order and proceedings of the SDO, render it vulnerable in civil proceedings, notwithstanding the provision creating express bar under Section 257 (*l*-1) of the Land Revenue Code. In support of his submissions, learned counsel for the respondent-plaintiff placed reliance in **Rajendra Kumar Agrawal** and another **Vs. State of M.P. and Ors,** 2011 (4) MPLJ 646 and **Dhanajiram & Anr. Vs. Praveen Kumar & Ors.** (2014) 2 C.G.L.J. 334.

9. On the first substantial question of law, as to whether the suit filed by the plaintiff was barred under the law, it is appropriate to look into relevant provision contained in the Land Revenue Code creating bar against jurisdiction of the Civil Court. Section 257 (*l*-1) of the Code is extracted as below :-

> **"257. Exclusive jurisdiction of revenue authorities.** - Except as otherwise provided in this Code, or in any other enactment for the time being in force, no Civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the State Government, the Board, or any Revenue Officer is by this Code, empowered to determine, decide or dispose of, and in particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the following matters :-
>
> xx xx xx
>
> [(*l*-1) any matter covered under Section 170-B.]
>
> xx xx xx

10. From perusal of the aforesaid provision, it is clear that ordinarily, no Civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the State Government, the Board, or any Revenue Officer is, by the Land Revenue Code, empowered to determine, decide or dispose of, any matter covered under Section 170-B of the Land Revenue Code. Therefore, it is clear that ordinarily, the jurisdiction of the Court in matters and orders passed under Section 170-B of the Land Revenue Code or any matter covered thereunder would be barred. However, the legal position with regard to ouster of jurisdiction of the Civil Court despite bar created under Section 257 (*l*-1) was considered by coordinate Bench of this Court in the case of **Dhanajiram** (supra). Principles laid down in number of judgments of the Supreme Court were noted.

11. One of the leading decision on the point as laid down by the Supreme Court in the case of **Dhulabhai Vs. State of M.P**. (AIR 1969 SC 78) was examined. In the case of Dhulabai, the Supreme Court laid down several tests with regard to interference of Civil Court in proceedings relating to exclusive jurisdiction by the Special Tribunal/Revenue Authorities and held as under :-

> "(1) Where the statute gives a finality to the orders of the special Tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.
>
> (2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may

be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund' of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the

> assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.
>
> (7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply. "

12. The other decision which was considered, was in the case of **State of Andhra Pradesh Vs. Manjeti Laxmi Kantha Rao** (dead) by LRs and Ors. (2000) 3 SCC 689, wherein it was held as below :-

> "5. The normal rule of law is that civil courts have jurisdiction to try all suits of civil nature except those of which cognizance by them is either expressly or impliedly excluded as provided under Section 9 of the Code of Civil Procedure but such exclusion is not readily inferred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the civil courts to try civil suit. The test adopted in examining such a question is (i) whether the legislative intent to exclude arises explicitly or by necessary implication, and (ii) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it. In Dhulabhai & Ors. vs. The State of Madhya Pradesh & Anr., 1968 (3) SCR 662, it was noticed that where a statute gives finality to the orders of the Special Tribunals jurisdiction of the civil courts must be held to be excluded if there is

> adequate remedy to do what the civil courts would normally do in a suit and such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. "

13. Another decision of MP High Court in the case of **Dhumaniya Vs. Harisingh and Ors.** (2001 RN 85) was also considered in Dhanajiram's case, wherein it was also held as under:-

> "22. The civil Court has gone into the questions which were required to be decided by the SDO and as a matter of fact, decided by the SDO. The matters which are required to be decided by the SDO are not final as against the order of the SDO there is further appeal and revision provided under the Code. The orders thus passed are final and the jurisdiction of civil Court is barred u/s. 257(l-1) of the Code. Thus, the Courts below could have seen only to the extent whether basic fundamental principles of the judicial process have been followed or not by the competent authority passing the order and the jurisdiction of the civil court is limited as laid down in the case of *Dhulabhai* (supra) and case must fall within the parameter of the tests mentioned in para 19 of this order. The Courts below have not considered the material such as the voters list which was referred to by the SDO and also the lease deed filed by the respondent, granted to Luraiya Sahariya."

14. From survey of the aforesaid decision, the settled legal position appears to be that even though, ordinarily, jurisdiction of the Civil Court may be ousted in view of express bar created under the law, such exclusion may not be come in the way of exercise of ordinarily jurisdiction of the Civil Court where the provision of particular Act have not been complied with or the statutory Tribunal has not acted in conformity with fundamental principles of judicial procedure. In the decision of the coordinate Bench in the case of **Dhanajiram** (supra) after survey of aforesaid decision, it was held as under :

> "12. In view of the aforesaid legal position inspite the bar created under section 257 (1) (L-1) of the Code against orders passed by the Revenue Authorities under Section 170-A and 170-B of the Code in their exclusive jurisdiction even then the civil Court had jurisdiction to entertain and consider the matter up to the extent whether the authority concerned has complied with the prescribed procedure or not while holding the enquiry and passing the order. But such jurisdiction is limited as laid down in the case of *Dhulabhai* (supra). The civil Court cannot consider the questions decided by such revenue authorities on merits under their exclusive jurisdiction. Thus, it is held that the Civil Court has jurisdiction to entertain such suit upto the afore stated extent."

15. Therefore, the well settled legal position would be that even though, there exists a bar created in Section 257 (*l*-1) of the Land Revenue Code against order passed by Revenue Authority under Section 170-B of the Land Revenue Code, the Civil Court will have jurisdiction to entertain and consider the matter only up to limited extent to see whether the authority concerned has complied with the provision or not while dealing with the enquiry or passing the order. Further, in view of the Supreme Court decision in the case of **Manjeti Laxmi Kantha Rao** (supra), the Civil Court

will have jurisdiction to examine those cases where the provision of particular Act have not been complied with or where challenge is made on the ground that the statutory Tribunal has not acted in conformity with fundamental principles of judicial procedure.

16. Applying the aforesaid principles, if the case in hand is looked into, this Court finds that the main plank of challenge to the order passed by the SDO on 22.2.1996 was that in respect of the same property, earlier an inquiry under Section 170-B had already been made by the SDO and an order was passed on 5.12.1985 closing enquiry without passing any order of return of property. After almost ten years of the said order, again Lalsai along with successors of Ghuran and Bandhan filed fresh application seeking similar enquiry in respect of the same property in respect of which proceedings were earlier drawn and closed. Apparently, this could not be done without seeking permission of the Collector, as provided under Section 51 of the Land Revenue Code. Such permission was mandatory and could not be avoided by the SDO. The power of review by revenue Court or SDO could be exercised only in the manner provided under Section 51 of the Land Revenue Code and not otherwise. The SDO does not possess any inherent jurisdiction to review its own order. Power of review has been conferred on it under the provision of statute and but for such provision, it had no jurisdiction to review its own order. In such a case, the exercise of revisional jurisdiction could be undertaken only in accordance with the provision contained in Section 51 of the Land Revenue Code and not otherwise. In this regard, M.P. High Court, in the case of **Rajendra Kumar Agrawal** (supra), held that power to review is a creature of statute and does not exist till it is provided by the statute and further that if the conditions on which the power of review has to be exercised are specified by the statute then on fulfillment of those conditions alone, the power of review could be exercised. In para-7 of the said report, it was held as below :

> "7. The power to review is a creature of statue and does not exist till it is provided by the statute. It is equally settled that if the conditions, in which

> power of review has to be exercised are specified by the statue then on fulfillment of those conditions alone, the power conferred, becomes annexed with a duty to be exercised in that manner. (See: *Official Liquidator Vs. Dharti Dhan (P) Ltd.*, AIR 1977 SC 740). It is also well settled legal proposition that where the statute prescribes a mode of doing of certain thing in certain way that thing must be done in that way and not at all. [*Ramchandra Keshav Adke Vs. Govind Joti Chavare and Ors*, AIR 1975 SC 915 = (1975) 1 SCC 559 and *State of Maharashtra Vs. Bharat Fakira Dhiwar*, (2002) 1 SCC 622]"

17. In the present case on facts, it is crystal clear that when the second round of proceedings were initiated, SDO sought permission of the Collector. This fact is clearly borne out from the reading of order dated 22.2.1996 of the SDO, the order of the trial Court as well as order of learned lower appellate Court. However, there is nothing to show that on permission sought, such permission of review was actually granted in favour of the applicant. Apparently, the SDO until permission was granted to review, could not have re-opened the matter and reviewed its earlier order and pass any other order on the new application. The SDO, without awaiting or getting permission granted by the Collector, proceeded to again inquire into that very matter which was subject matter in enquiry held earlier and passed a fresh order on 22.2.1996. Learned lower appellate Court, in this background of admitted facts, held that order passed by the SDO was in excess of its jurisdiction. That was, therefore, a permissible ground on which, the Civil Court could have invoked jurisdiction to declare the order of the SDO void and inoperative in law despite there being a bar of jurisdiction created under Section 257 (*l*-1) of the Land Revenue Code. In other words, as held by the Supreme Court in the case of **Manjeti Laxmi Kantha Rao** (supra), the jurisdiction of the Civil Court would not be ousted

to examine legality and validity of order passed by the Tribunal where the provisions of particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.

18. Therefore, the first question of law has to be answered against the appellant-defendant that the Civil Court had jurisdiction to entertain the suit, as the challenge to order passed by the SDO was based on absence of jurisdiction.

19. In view of the above finding, it is not necessary for this Court to examine the second substantial question of law.

20. In the result, appeal fails and is hereby dismissed. Parties to bear their respective cots. Let an appellate decree be drawn accordingly.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Praveen