

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.475 of 2005

Aghan Singh, S/o Dasau Ram Gond, aged about 40 years, R/o village Salhebhat, Sub Tehsil Sarona, Distt.Kanker, C.G.

---- Appellant/Plaintiff

Versus

State of Chhattisgarh, through the Collector, Kanker, Distt. Kanker, C.G.

---- Respondent/Defendant

For Appellant: Mr.Vishnu Koshta and Mr.Shobhit Koshta, Advocates
For Respondent: Mr.Salim Kazi, Dy.Advocate General

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

23/07/2019

1. The substantial question of law involved, formulated and to be answered in this plaintiff's second appeal is as under: -

“Whether the findings of both the Courts below that the Patta in favour of the plaintiff of the suit land was not illegally cancelled, is justified in view of the fact that the same was passed without following the procedure prescribed under Section 51 of the Land Revenue Code and without affording an opportunity of hearing to the plaintiff ?”

(For the sake of convenience, the parties would be referred hereinafter as per their status shown in the plaint before the trial Court.)

2. The plaintiff filed a suit for declaration of title and permanent injunction stating inter-alia that patta was granted in his favour by the Naib-Tahsildar, Kanker on 13.8.96, which was illegally revoked by the Sub-Divisional Officer (R.), Kanker suo moto by order dated 28.7.98 in exercise of powers under Section 51 of the Madhya

Pradesh Land Revenue Code, 1959 (hereinafter called as "Code").

On appeal being preferred by the plaintiff against the order of the SDO, the Collector, Kanker by order dated 21.12.98 dismissed the same finding no merit and claimed reliefs as stated-above.

3. Defendant No.1 filed its written statement stating inter-alia that the plaintiff has illegally encroached upon the suit land and patta granted to him has rightly been revoked by the Sub-Divisional Officer and order of the SDO has been affirmed by the Collector, Kanker. The trial Court dismissed the suit holding that the Sub-Divisional Officer has rightly cancelled the order of the Naib-Tahsildar and order of the SDO has rightly affirmed by the Collector. On appeal being preferred by the plaintiff, the first appellate Court affirmed the judgment and decree of the trial Court, against which, this second appeal under Section 100 of the Code of Civil Procedure, 1908 has been filed by the appellant/plaintiff, in which substantial question of law has been formulated and set-out in the opening paragraph of this judgment.
4. Mr.Shobhit Koshta, learned counsel for the appellant/plaintiff, would submit that the order revoking patta granted to the plaintiff by the Sub-Divisional Officer (R.), Kanker on 28.7.98 was clearly in breach of principle of natural justice and both the Courts below are absolutely unjustified in dismissing the suit of the plaintiff.
5. Mr.Salim Kazi, learned Deputy Advocate General for the respondent/defendant, would support the impugned judgment and decree.

6. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and went through the records with utmost circumspection.
7. The plaintiff was granted patta of the suit land on 13.8.96 by the Naib-Tahsildar, Kanker, which was revoked by the Sub-Divisional Officer (R.), Kanker on 28.7.98. Against the order of the SDO, the plaintiff preferred an appeal before the Collector, Kanker questioning that order under Section 44 (1) of the Code. The learned Collector, Kanker by its order dated 21.12.1998 dismissed the appeal finding no merit. Thus, the plaintiff's appeal was dismissed by order of the Collector dated 21.12.1998 and the plaintiff being party to the order dated 21.12.1998 was required to seek cancellation of the order passed by the Collector, which he omitted to do so. In the plaint, neither he sought cancellation of order dated 21.12.1998 nor he sought declaration that order of the Collector is illegal and bad in law.
8. The Supreme Court in the matter of **Jugraj Singh and another v. Jaswant Singh and others**¹ has held as under:-

“11.....We are also satisfied that the appellants were not entitled to a declaration. We have reproduced the paragraph in which the reliefs were asked in the plaint. It will be noticed that they neither asked for the cancellation of the order of the Collector nor for any injunction, two of the reliefs which they were entitled to ask in the case in addition to the declaration. Such a suit would be hit by Section 42 of the Specific Relief Act and we would be quite in a position to deny them the declaration without these specific reliefs. Indeed they had only to ask for the setting aside of the order.”

1 AIR 1971 SC 761

9. It is well settled law that even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations. Ordinarily, such an order will, in fact, be effective inter partes until it is successfully avoided or challenged in a higher forum.

10. The Supreme Court in the matter of State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (Dead) and others² has clearly held that even a void order or decision rendered between parties will be effective inter partes until it is successfully avoided by observing as under: -

“7. ... even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations. Ordinarily, such an order will, in fact, be effective inter partes until it is successfully avoided or challenged in a higher forum. Mere use of the word 'void' is not determinative of its legal impact. The word 'void' has a relative rather than an absolute meaning. It only conveys the idea that the order is invalid or illegal. It can be avoided. ...”

11. The Supreme Court following the principle of law laid down in M.K. Kunhikannan Nambiar's case (supra), in the matter of Krishnadevi Malchand Kamathia and others v. Bombay Environmental Action Group and others³ again held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum. Their Lordships of the Supreme Court observed in paragraphs 17, 18 and 19 as under: -

“17. In *State of Punjab v. Gurdev Singh*⁴ this Court held

2 (1996) 1 SCC 435

3 (2011) 3 SCC 363

4 (1991) 4 SCC 1

that a party aggrieved by the invalidity of an order has to approach the court for relief of declaration that the order against him is inoperative and therefore, not binding upon him. While deciding the said case, this Court placed reliance upon the judgment in *Smith v. East Elloe RDC*⁵, wherein Lord Radcliffe observed: (AC pp. 769-70)

"... An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity [on] its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

18. In *Sultan Sadik v. Sanjay Raj Subba*⁶, this Court took a similar view observing that once an order is declared non est by the court only then the judgment of nullity would operate *erga omnes* i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/competence and therefore, it comes to the conclusion that the order suffers from patent and latent invalidity.

19. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person."

12. Similarly, in the matter of Shyam Sundar Sarma v. Pannalal Jaiswal and others⁷, a three-Judge Bench of the Supreme Court has clearly held that an appeal which is dismissed for default or as barred by limitation is nevertheless an appeal in the eye of the law for all purposes and a decision in the appeal and the same cannot

5 1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855

6 (2004) 2 SCC 377

7 (2005) 1 SCC 436

be treated on par with non-filing of an appeal or withdrawal of appeal.

13. Reverting to the facts of the present case, it is quite vivid that the plaintiff being party to the order of the Collector dated 21.12.1998 (Ex.P-9) ought to have sought declaration/cancellation of that order, but he did not seek declaration/cancellation of that order. The plaintiff's suit as framed and filed was simply for declaration of title and permanent injunction and without seeking declaration/cancellation of order of the Collector, it was not maintainable, as such, both the Courts below are absolutely justified in dismissing the suit. The concurrent finding recorded by two Courts below is the finding of fact based on evidence available on record, in which I do not find any illegality or perversity. The substantial question of law is answered in favour of the defendant and against the plaintiff.

14. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

15. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

B/-