NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 516 of 2019

(Arising out of order dated 19.09.2019 passed by the learned Single Judge in Writ Petition (C) No. 93 of 2017)

- Ghuneshwar son of Bodh Singh, aged about 54 years, R/o Village Kurmibhouna, Tahsil Gharghoda, District – Raigarh (C.G.)

---- Appellant

Versus

1. Raigarh Iron Industries Limited, Punjipathara, Through : Kamal Kishore Bhartiya (Agrawal), R/o. Raigarh, District Raigarh (C.G.)
2. Sushila Devi wife of Ramashish Rajput, R/o Gharghoda, Tahsil Gharghora, District Raigarh (C.G.)
3. State of Chhattisgarh, Through : The Collector, Raigarh, District Raigarh (C.G.)

---- Respondents

For Appellant	:	Shri Anoop Majumdar and Shri Sumit Singh Rathore, Advocates
For Respondent No.1	:	Shri Manoj Paranjpe, Advocate
For Respondent/ State	:	Shri Gagan Tiwari, Deputy Advocate General

---

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per, P.R. Ramachandra Menon, Chief Justice

14/11/2019

1. Challenge is against the verdict passed by the learned Single Judge, whereby interference was declined in view of the turn of events, particularly, as to the passing of final order by the Tahsildar enabling mutation in favour of the 1st Respondent, which could be challenged by way of appeal. The dispute raised was with regard to non-consideration of the preliminary objection by the Tahsildar with reference to Section 165 of

the Land Revenue Code (for short, 'the LRC'), which, earlier, was left to be decided at the time of final hearing.

2. The sequence of events is as follows :

3. The learned counsel for the Appellant submits that the property involved herein was purchased by the Appellant way back in the year 1981. Though the property was comprised in scheduled area, according to the Appellant, it being an agricultural land, no prior permission of the Collector in terms of Section 165 of the LRC was necessary. Later, it was found that the property was caused to be sold by the LRs of the erstwhile owner to the 1st Respondent herein, as per the sale deed executed on 20.10.2004, pursuant to which an application was filed for mutation by the purchaser before the Naib Tahsildar. On coming to know about the same, the Appellant raised an objection that the property actually belonged to the Appellant and no mutation could be affected, as no title had passed on to the 1st Respondent / purchaser. It was pointed out that no permission of the District Collector was necessary, in terms of Section 165 of the LRC, as the property concerned was an agricultural land situated in a scheduled area. The said question, though was insisted to be decided as a preliminary issue, it was not acceded to by the Tahsildar who held as per order dated 23.08.2006 that, it may be considered at the time of final hearing. Met with the situation, the Appellant moved the appellate authority by filing necessary proceedings and after hearing, the order passed by the Tahsildar was set aside and a verdict was passed in favour of the Appellant. This was sought to be challenged by filing necessary proceedings by the 1st Respondent herein before the Commissioner. After

analyzing the facts and figures, the Commissioner came to a finding that the Collector was not correct in turning the position upside down and accordingly, the order passed by the District Collector was set aside and the order of the Naib Tahsildar was restored, which is virtually to the effect that the point raised by the Appellant as to the applicability of Section 165 of the LRC could be decided at the time of final hearing in the proceedings pending before the Tahsildar.

4. It is brought to the notice of this Court that the order passed by the Commissioner was sought to be challenged by filing Writ Petition (C) No. 93/2017 by the Appellant herein, where interference was declined and the writ petition was dismissed. This is sought to be challenged in the present writ appeal.

5. In the meanwhile, the Tahsildar, before whom the petition for mutation was pending, proceeded with further steps with regard to the relief sought for and since there was no interim order interdicting the Tahsildar from pursuing the matter, merit of the issue was considered and an order was passed on 06.12.2016; virtually granting the relief in favour of the 1st Respondent for effecting mutation. The Appellant sought to challenge it by filing Writ Petition (C) No.795 of 2017, which was dismissed on 31.08.2017. Though the same was sought to be challenged by way of Writ Appeal No.384 of 2017, it did not turn to be fruitful and the appeal was also dismissed, in view of the fact that the Appellant was having alternate remedy by way of appeal.

6. The learned counsel appearing for Respondent No.1 points out that the Appellant herein, in view of the turn of events, has already moved the

appellate authority and appeal is pending. The learned counsel also points out that the version as given by the Appellant/writ petitioner in the writ petition and also in writ appeal does not disclose the full facts and figures insofar as the Appellant himself had preferred a petition way back in the year 1988 i.e. nearly 'seven' years after purchase of the property on 16.01.1981, seeking for permission of the District Collector under Section 165 of the LRC. The said application was rejected by the District Collector on 31.05.1988 holding that prior permission was required to effect the conveyance which was not sought for and obtained and hence the relief sought for in the year 1988 could not be acceded to. The Appellant moved the Commissioner by filing Revenue Case No. 101/A-21/1987-88. The said revision petition came to be rejected on 21.08.1989, upholding the order passed by the Collector. Though the Appellant moved the Board of Revenue, the same did not yield any positive result and the petition was dismissed on 31.05.1988. Being aggrieved, the Appellant filed OS No. 4A/2005 in the Court of the City Civil Judge No.1. The suit came to be dismissed for default and no further steps have been taken so far. The Appellant has not challenged the order passed by the Board of Revenue by pursuing any other proceeding and hence it has become final.

7. While so, based on the facts and figures, necessary entries were made by the revenue authorities in the revenue records inserting the name of Sushila Devi and others (legal heirs of the deceased owner) and it was accordingly, that the property was purchased from the LRs by the 1st Respondent as per the sale deed executed on 20.10.2004. The petition for effecting mutation having being found as correct and sustainable with reference to the rights and liberties, final order was passed by the

Tahsildar in favour of the 1st Respondent, which however stands subjected to challenge and is pending consideration in appeal filed before the SDO, by the Appellant herein.

8. Shri Anoop Majumdar, the learned counsel for the Appellant submits that when the matter was considered by the Commissioner (against the order passed by the District Collector in favour of the Appellant) with regard to the question raised with reference to the applicability of Section 165 of the LRC, some observations have been made to the effect that Section 165 of the LRC will be applicable to the case in hand. Insofar as such an observation has been made, the statutory appeal now preferred against the final order passed by the Tahsildar and pending before the Appellate Authority can only be rendered meaningless, as the said authority is always bound by the observations and order passed by the Commissioner. It was in the said circumstance that the matter was sought to be challenged before the learned Single Judge, which unfortunately was not properly considered and hence the grievance in the appeal.

9. Shri Manoj Paranjpe, the learned counsel appearing the 1st Respondent submits that the idea and understanding of the Appellant is not correct and no such specific observations or findings have been made by the Commissioner in the order which was subjected to challenge in the writ petition. The Commissioner has only referred to the facts and events and nothing else. In view of the pendency of the appeal, all these aspects could be considered i.e. the questions on facts as well as law and hence the learned Single Judge has rightly declined interference, submits the learned counsel.

10. After hearing both the sides, we are of the view that this is not a fit case where interference is to be called for. Since the statutory appeal is pending consideration before the Appellate Authority, it is quite open for the Appellant to raise all questions on facts as well as in law and it is for said authority to have it considered, in accordance with law, passing appropriate orders on all counts. It is made clear that in the course of such exercise, the Appellate Authority will not be bound by any observations stated as made by the higher authorities in the earlier round of proceedings with reference to Section 165 of the LRC and the matter shall be finalized untrammeled by such observations, if any. Both the sides are at liberty to substantiate their case before the Appellate Authority as aforesaid.

With the above observation, the appeal stands dismissed.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Chandra