

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 1487 of 2010

Jagesar, S/o. Chainu Satnami, aged about 65 years, R/o. Village-Khalari, Tahsil – Balod, District- Durg (C.G.)

---- Petitioner

Versus

1. Chairman Revenue Board, Chhattisgarh, Bilaspur, Circuit Court at Raipur (C.G.)
2. Hirdayram, S/o. Laxman Sahu, aged about 73 years,
3. Brijlal, S/o. Laxman Sahu, aged about 65 years,
4. Jairam, S/o. Laxman Sahu, aged about 62 years,
5. Salik, S/o. Laxman Sahu, aged about 58 years,
6. Budhu, S/o. Chainu Satnami, aged about 68 years,
7. Ramesar, S/o. Chainu Satnami, aged about 60 years,
8. Bise, S/o. Chainu Satnami, aged about 57 years,
All are R/o. Village- Khalari, Tahsil – Balod, District -Durg (C.G.)
9. Baldeo (dead), S/o. Chainu Satnami, through : his legal representatives.
- 9.1 Baiyan Bai, W/o. Baldeo, aged about 70 years
- 9.2 Mehattar Ram, S/o. Baldeo, aged about 50 years,
- 9.3 Madanlal, S/o. Baldeo, aged about 35 years,
- 9.4 Triveni, D/o. Baldeo, aged about 32 years,
- 9.5 Jamuna, D/o. Baldeo, aged about 30 years,
All are R/o. Pakurbhat, Tahsil – Balod, District – Durg (C.G.)
10. Ramdayal, S/o. Chainu Satnami, aged about 73 years, R/o. Village – Kharude, Tahsil – Gunderdehi, District – Durg (C.G.)

-----Respondents

For Petitioner : Mr. Praveen K. Dhurandhar, Advocate

For Respondent No.2, 3, 4 & 5 : Mr. Ratan Pusty, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

17/11/2020

1. This petition under Article 227 of the Constitution of India has been filed being aggrieved by the order of Revenue Board, Chhattisgarh, Bilaspur, Circuit Court – Raipur, passed in Revenue Appeal No.RN/05/R-B-121/264/06 dated 06.10.2009, whereby the appeal filed by the petitioner has been dismissed..
2. The background of the case is this that after a series of civil litigation, which ended by the order of High Court of Madhya Pradesh in S.A. No. 122 of 1978 decided on 29.06.1984, Naib Tahsildar, Dallirajhara complied with the same and made entries in the revenue records accordingly. The petitioner filed objection, on which a revenue case was registered and his objection was dismissed by the order dated 24.03.1990, against which, an appeal was preferred before the Court of S.D.O., Balod, which was allowed and the case was remanded back to the Court of Naib Tahsildar. Naib Tahsildar again passed the order of dismissal against the petitioner dated 27.03.1993. The appeal preferred against this order before the S.D.O. was dismissed by the order dated 16.08.1996. Appeal was then preferred against order of S.D.O. dated 16.08.1996, before the Additional

Commissioner, Raipur Division, which was dismissed in default on 03.08.1998, due to the non-appearance of the petitioner.

3. The petitioner then filed an application for restoration, which was registered a Case No. 124-B/121/1999-2000. The Additional Commissioner by order dated 12.01.2000, dismissed the application for restoration, on the ground that the application was time barred and no satisfactory reasons were assigned by the petitioner for condonation of delay. This order was then challenged in revenue appeal, before the Board of Revenue, Chhattisgarh, Bilaspur, which has been dismissed vide impugned order dated 06.10.2009.
4. It is submitted by the learned counsel for the petitioner that the learned Board has erroneously dismissed the appeal preferred by the petitioner, where the appeal had been only with respect to the order passed on restoration application. This observation made was erroneous that the petitioner has availed remedy under Section 35 (4) of C.G. Land Revenue Code and therefore, the appeal was not maintainable under Section 44 of the Land Revenue Code. The only consideration needed was whether the restoration application filed by the petitioner was fit to be allowed or not, which has not been done, therefore, the impugned order is erroneous for the reason that the Board of Revenue has failed to exercise the jurisdiction, which is liable to be quashed.
5. Counsel for the respondents No.2 to 5 submits that the petitioner and the private respondents had been litigating since the year

1972, which culminated in the form of writ petition before the High Court and by order passed by the High Court in W.P. 172/1978, the dispute was settled. It was in compliance of that order passed by the High Court of Madhya Pradesh, the revenue entry has been made by the Naib Tahsildar, which was challenged by the petitioner in an erroneous manner only for the purpose of harassing the private respondents. The proceeding initiated by the petitioner was not at all maintainable even then it has continued before the revenue Courts. No error has been committed by the Revenue Board in passing the impugned order. Therefore, it is prayed that the petition be dismissed.

6. In reply, it is submitted by the counsel for the petitioner that the impugned order suffers from perversity as it was not at all considered that the ground of rejection of application for restoration was proper or not, therefore, the Revenue Board has not exercised its jurisdiction, the case is required to be remanded back to the Board of revenue. Reliance has been placed on the judgment of Supreme Court in case of **M/S. Pepsi Foods Ltd. & Anr. vs Special Judicial Magistrate & Ors**, reported in **(1998) 5 SCC 749**.
7. Considered on the submissions and perused all the documents present on record.
8. In the matter **Dr. Ram Sharan Lal Tripathi Vs. State of C.G.**, passed in **W.P.(C) No.2113 of 2015 decided on 01.12.2015**, the Single Bench of this Court had discussed in detail and held that

the Board of Revenue is not a civil Court but it is a revenue authority established under C.G. Land Revenue Code, therefore, the writ petition under Article 226 of the Constitution of India for issuance of writ of certiorari to annul the order passed by the revenue authorities, whereas under Article 227 of the Constitution of India shall not be maintainable.

9. On perusal of the impugned order, it is found that although, the respondent No.1 has discussed the merits of this case, but at the same time, respondent No.1 has in the later part of paragraph-5 of the impugned order, expressed its agreement with the reasons for dismissal of the restoration application filed by the petitione., Hence, it can not be said that the order passed is arbitrary and without touching the merits of the case. The merits of the case had been, whether the restoration application filed by the petitioner deserves to be allowed and the same has been answered by the respondent No.1 in the impugned order by affirming the view of the Additional Commissioner. Hence nothing can be said that the respondent No.1 has failed to exercise the jurisdiction vested in it and apart from that there also appears to be a issue of maintainability of the present petition. Hence, there is no reason for the present petition to be allowed, which is dismissed and disposed off accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge