AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 153 of 2020

1. Pankaj Kumar Sharma, S/o Late Ramkumar Sharma, Aged About 48 Years, R/o Fingeshwar, Tahsil-Rajim, District Gariyaband Chhattisgarh.

   At Present R/o 287 Samta Colony, Raipur, District: Raipur, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh Through Secretary, Revenue Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Atal Nagar, Naya Raipur, District : Raipur, Chhattisgarh
2. Collector, Gariyaband, District : Gariyabandh, Chhattisgarh
3. Commissioner, Raipur Division, District : Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Manoj Paranjpe, Advocate
For State	:	Mr. Ayaz Naved, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

15.01.2020

1. The challenge in the present Writ Petition is to the order passed by the Board of Revenue, Chhattisgarh in case no. M/Misc./22/12-B-121/05/2019 dated 13.11.2019. Vide the said order, the Board of Revenue allowed the application of the Collector, District Gariyaband granting permission to review the order passed by the Collector dated 18.09.2019 in case No.97/B-121/2014-15.

2. The solitary ground that the petitioner has raised in the present Writ Petition is that the Board of Revenue before allowing the said application of the Collector have not intimated the petitioner who is the

beneficiary of the order dated 18.09.2019 passed by the Collector, District Gariyaband.

3. According to the counsel for the petitioner, it is a case where an application for seeking correction of the land records under Section 115 and 116 of the Chhattisgarh Land Revenue Code was allowed vide order dated 28.11.2011. That subsequently, permission for carrying out correction was granted on 18.03.2015 by the Commissioner-Raipur division. Later on, however, the Collector vide his order dated 12.07.2018 had reviewed the order dated 28.11.2011 suo-moto without any intimation or notice being given to the petitioner. The Collector's order 12.07.2018 was subjected to challenge before the Commissioner -Raipur division in an appeal. The commissioner finally vide his order dated 01.03.2019 allowed the appeal and ordered for setting aside the order dated 12.07.2018. However, liberty was given to the Collector/ State for moving an appropriate application in accordance with law for review of the earlier order dated 28.11.2011. Subsequently, the collector moved a fresh application to the Board of Revenue.

4. The only issue which is to be considered in the present writ petition is whether the Board of Revenue could have entertained the application of the collector and decided the same without issuing notice to the beneficiary i.e. the petitioner. The counsel for the petitioner relied upon a judgment of the Madhya Pradesh High Court (Division Bench) in the case of Bihari Lal Nandlal v. State of M.P. and others, decided on 02.04.2009 and also the judgment rendered by this High Court in WP (227) No. 3225 of 2011, decided on 09.12.2016. Both these orders are directly on the issue as to whether the review application for review of

order of Collector could have been entertained without issuance of notice to the beneficiary.

5. The State counsel opposing the counsel for the petitioner submits that in fact the present impugned order has been passed under Section 51 of the Chhattisgarh Land Revenue Code, 1959 and that order by itself is self explanatory as to the reasons leading to permission being granted for review of the order passed by the Collector. However, on a query being put to the learned State counsel, he candidly accepted that from perusal of the order, it appears that the case itself was registered on 13.11.2019 and it also stood decided on the same day and, therefore, it appears that notice has not been issued to the petitioner herein.

6. According to the learned State counsel taking into consideration the provision of Section 51 (I), it would not be necessary for the authorities granting permission to review for issuance of notice to the beneficiary. The notice would be necessary after grant of permission when the proceedings are taken afresh by the concerned Collector.

7. Given the aforesaid factual matrix of the case and the legal position as it stands, it would be relevant at this juncture to take note of the judgment passed in the case of Bihari Lal Nandlal (supra) wherein in paragraph 11 and 12 taking into consideration the previous judicial pronouncement on the subject, the Division Bench of Madhya Pradesh. High Court held as under:-

> "11. When the power of the review are to be exercised the authority competent to grant sanction for review has not simply to pas an order that petition for grant of sanction is allowed, he has to apply mind to the facts of the case. In the matter of Ravi Narayan Vs. State of M.P. and

others, 2000 RN 161, one of us sitting single has made the following observations:

> “19. The scheme of Section 51 of the Code is that in case the Commissioner, Settlement Commissioner, Collector or Settlement Officer wants to review an order passed by him he can do it without seeking any sanction from the Board but if he/they want to review an order passed by any predecessor sanction of the Board is a condition precedent. But in case of any officer subordinate to a Collector or Settlement Officer whether he has passed the order himself or wants to review an order passed by his predecessor, he is bound to seek written sanction from the authority to whom he is immediately subordinate.
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> 20. The opening word of Sections 50 and 51 of the Code would clearly provide that the powers of revision and review can be exercised by the authority on his own motion or on an application by the aggrieved party. What should be the period of limitation for exercising suo motu revisional powers has been considered in number of cases while considering the revisional powers.
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> 21. A power of Review is vested in the Court so that the said Court can correct the wrong which has been committed by it. It may be a case where the same Court/Authority after learning about the wrong committed by it wants to correct the wrong. It can exercise the powers either on an application or suo motu. In case of a revision the Superior Court invested with powers of revision wants to correct the wrong committed by his subordinate. The Superior Court may exercise these powers suo motu or on an application by the aggrieved party. The powers in fact are such which can be exercised by the same Court or by the Revisional Court because each of the Court wants to correct the wrong. In case of review the anxiety is of the same Court while in the case of revision the anxiety is of the Superior Court. While granting permission for review the authority is not required to give a mechanical sanction. The order must show application of mind. It must appear from the order that the authority was not swayed away, but the order must show that it has considered the facts and after application of the mind has granted the permission. In the present case, when the papers were placed before the Collector seeking

> sanction for review, the Collector simply said 'agreed with the recommendations' in the opinion of this Court such observation shows absolute and utter non-application of mind. If would not be proper for an authority to say that agreeing with the recommendations, he was granting permission for review. The order passed by the Collector is not in accordance with law. True, it is that no form is prescribed for granting the sanction nor particular words are to be used for granting sanction but such an order, granting sanction, would not meet any requirement of law."

> 12. It is further to be seen that a Division Bench of this Court in the matter of Shaheed Anwar Vs. Board of Revenue and another, 2000 RN 76, has observed that under Section 51 Proviso 1 of M.P. Land Revenue Code, 1959 sanction for review by Board or any other Revenue Officer cannot be granted without any notice to and hearing other side. A juxtapose reading of the judgment in the matters of RaviNarayan and Shaheed Anwar (supra), would spell out that review for sanction cannot be granted without affording an opportunity of hearing to the other side and the review cannot be made mechanically. The scheme of Section 51 and the principles of natural justice if are taken up together they will make it clear that opportunity of hearing is to be granted to the other side so that it may convince the Sanctioning Authority that case on hands is not worth grant of sanction for review. He can also convince the authority that because of the lapse of time the authority should not now exercise the powers of review or granting the sanction. The other side can well convince the authority that the case on hands is not such where absolute illegality has been committed and possibility of the other view would not justify grant of sanction for review."

8. It would also be relevant to take note of the judgment of this Court in the case of Kailash Mishra (supra) wherein again taking into consideration the aforesaid judgment of the Division Bench of the Madhya Pradesh High Court, this High Court has affirmed the order of Board of Revenue, where the Board of Revenue has set-aside the order of the Collector granting permission to Sub-Divisional Officer to review on the ground of notice having not been issued to the concerned

beneficiary. This Court in paragraph 11 and 12 of the judgment has held as under:

> “11. In the present case, the Board of Revenue by its order impugned has rightly set aside the order of the Collector granting permission to the Sub Divisional Officer to review its earlier order dated 20.7.2006, as the Collector neither noticed respondent No. 4 nor heard him. The Board of Revenue has rightly held that without giving an opportunity of hearing and without noticing respondent No. 4, permission could not have been granted, but the Board of Revenue instead of remitted the matter to the Collector, Surguja, Ambikapur to pass an order after giving an opportunity of hearing to respondent No. 4 has set aside the order in toto and thereby committed legal error and as such the impugned order deserves to be set aside.
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> 12. Therefore, the order impugned is partly set aside and the matter is remanded back to the Collector, Surguja Ambikapur who would hear the petitioner and respondent No. 4 on the question of granting permission to review the order dated 20.7.2006 and pass an order afresh within a period of three months from the date of first hearing of the parties that is fixed on 3.1.2017.”

9. Given the aforesaid legal position as it stands, this Court is of the opinion that from the plain reading of the impugned order Annexure P-1 dated 13.11.2019, it clearly reflects that the application moved by the Collector, District: Gariyaband seeking permission to review his order was in fact registered itself on the same date and the concerned authorities, that is the Board of Revenue proceeded and decided the application on the same day itself. This by itself sufficient to draw an inference that notice to the petitioner has not been issued by the Board of Revenue. The order of the Board of Revenue further also reveals that they have proceeded with the said application considering it to be only mere technical procedure which is required as per Section 51 of the Chhattisgarh Land Revenue Code.

10. Given the said facts entertained, this Court is of the opinion that the application to the order of the Board of Revenue accepted in granting permission to the collector, therefore, is bad in law as the same has been decided without issuance of notice to the petitioner or granting an opportunity of hearing to the petitioner on the question whether permission to review could had been granted or not.

11. Accordingly, the impugned order being not sustainable, the same deserves to be and is accordingly set aside and the matter stands remitted back to the Board of Revenue for proceeding further with the matter after issuance of notice to the petitioner and then thereafter pass an order on its own merits.

12. The Writ Petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Rahul