NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

Judgment reserved on 20.02.2020

Judgment pronounced on 28.02.2020

WA No. 203 of 2020

(Arising out of Order dated 02.01.2020 passed by Hon'ble Single Bench

in WPC-4730 of 2019)

- P.S. Chouhan S/o Late D.S. Chouhan, Aged About 82 Years R/o Smriti Bhawan, Near Shahid Chowk, Station Road, Durg Chhattisgarh.............Petitioner

---- Appellant

Versus

1. State of Chhattisgarh Through Collector (Nazul), Durg Chhattisgarho
2. Commissioner Durg Division Durg Chhattisgarho
3. Nazul Officer O/o The Collector Durg Chhattisgarho
4. Sukhbir Singh Raghav, S/o Late Surendra Singh Raghav, Aged About 59 Years R/o 5/6, Mahavir Nagar, Ring Road, Raipur Chhattisgarh

-----Respondents

For Appellant	:	Shri Jitendra Gupta, Advocate
For Respondents-1 to 3/State	:	Shri Ghanshyam Patel, Government Advocate

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Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
CAV Judgment

Per Parth Prateem Sahu, J.

1. Challenge in this appeal is to the order dated 02.01.2020 passed in WPC-4730 of 2019, whereby learned Single Judge dismissed the Writ Petition filed by the appellant observing that the appellant was in occupation of the property uninterruptedly during the period 2002 to 07.

2. Case of the appellant is that, property situated at plot No.6/1 located on Sheet No.15, measuring 2,500 sqft was given on lease to the 4th respondent for a period from 20.04.1982 till 31.03.2002 on rent of Rs.530/-

per annum. Respondent- 4 constructed a building over the said property and sold it to Smt Brajesh Chouhan, wife of the appellant by a registered sale deed on 23.09.1998. By virtue of said registered sale deed, name was also mutated in the revenue records. The appellant moved an application for renewal of lease deed in favour of his wife, Smt Brajesh Chouhan during this period.

3. Document placed on record shows that on the basis of order of mutation in the name of Smt Brajesh Chouhan, she moved an application before Nazul Officer, Durg for extension of period of lease of land only. In the proceedings of renewal of lease period, one LM Pandey has filed an objection mentioning that the sale deed is of Plot No.6/1, wherein Plot No.6/1 is not recorded in the name of seller. Based on that objection, proceedings of review of order dated 14.10.1999 have been initiated and the order of mutation passed earlier has been reviewed. The application of mutation itself was dismissed on the ground that name of the applicant Smt Brajesh Chouhan could not be mutated for plot No.6/1 and by virtue of that order, Revenue record was again recorrected vide order dated 10.09.2002. Said order was challenged before appropriate authorities ie Board of Revenue and vide its order dated 28.03.2005, Board of Revenue held that Additional Collector, Durg has not committed any error in granting permission for review of order of mutation and the appeal was dismissed. Appellant again made an application to Collector/In-Charge Nazul Officer stating sequence of events as to how the plot number referred by respondent- 4 recorded in Revenue records came to be 6/38 in which the additional Collector-cum-Nazul Officer has passed an order

25.07.2006, observing that the order passed by his predecessor Officer was on technical basis and that was also approved by the Board of Revenue and there is no new material placed on record for a new order and it has been directed that the applicant therein to get the sale deed itself corrected. The application for correcting the description of property mentioned in sale deed was submitted before the registering authority which was registered on 26.04.2006 and it was corrected on 29.09.2006. On 22.11.2006, name of Smt Brajesh Chouhan has been mutated in records of plot No.6/38. After mutation, Smt Brajesh Chouhan filed an application dated 29.01.2007 for extension of lease period, which came to be renewed on 30.08.2007. The lease deed was renewed from 01.04.2002 for a period of 30 years, ie till 31.03.2032, yearly arrears of rent of Rs.1,270/- is also added along with other amount calculated for renewal charges.

4. Appellant deposited the said amount and got the lease deed executed in favour of Smt Brajesh Chouhan and thereafter, filed Writ Petition- WPC- 5408 of 2007 for getting refund of amount of Rs.12,720/- towards arrears of lease rent which came to be disposed off on 21.11.2017, relegating the appellant to approach the Collector with a direction to conclude the proceedings within a period of three months.

5. Appellant thereafter submitted application before the Collector (Nazul) in which the ground taken is that as the time from 01.04.2002 till 31.03.2006 lapsed in correcting the revenue entries and therefore, he is not liable for payment of any amount of arrears of rent for a period of 04 years. Nazul Officer vide order dated 28.02.2018, dismissed the application mentioning therein that according to Rules of the State Government, amount of arrears of lease rent is required to be deposited in case of extension/renewal of lease and also that order of calculation of lease rent and its extension/renewal are done in accordance with the rules and it is only after the deposit of amount for extension/renewal of lease as calculated, the lease could be renewed in favour of petitioners/applicants therein. The order of Collector/Nazul Officer was challenged before this Court in WPC-1096 of 2018. The learned Single Judge vide order dated 18.04.2018, disposed off the petition directing the appellant to challenge order of Collector before the Commissioner. Appellant filed proceedings dated 10.05.2018 before the Commissioner, Durg Division, Durg (Annexure P25). The Commissioner has recorded that renewal application for lease has been filed on 20.01.2002 and the authority assessed lease rent to the tune of six times of the earlier annual rent of the lease rent and fixed the yearly lease rent at Rs.3,180/- per annum. Based on lease rent calculation, the Commissioner held that as the lease deed has been renewed from 01.04.2002 for a period of 30 years and the petitioner/appellant was in continuous possession of the property, subject matter of lease, and after calculating the amount of lease rent, lease deed was renewed, demand of refund of arrears of lease rent is not justified and dismissed the appeal/application.

6. Dissatisfied with the order dated 05.09.2019 passed by the Commissioner, Durg Division, Durg, appellant filed Writ Petition (C)- 4730 of 2019 before this Court which came to be dismissed vide order dated 02.01.2020. Learned Single Judge dismissed the Writ Petition upholding order of the Commissioner and also recording that, as the appellant is in continuous uninterrupted possession of property, finding the case of not a strong case, dismissed the Writ Petition.

7. Shri Jitendra Gupta, learned counsel for the appellant submits that when the mutation entry recorded in name of his wife has been set aside and it is only on 22.03.2007, lease has been renewed, Lessee is not liable for payment of arrears of lease rent for the period in which name of his wife was not recorded in revenue records nor the lease deed was renewed in her favour at that time.

8. Per contra, Shri Ghanshyam Patel, learned counsel appearing for the State submits that immediately after purchase of property in 1998, appellant came into possession of property and enjoying the possession of the property, which is subject matter of the lease, uninterruptedly. He also submits that lease deed was renewed from 01.04.2002 to which appellant has not raised any objection and have deposited the amount calculated by the authorities which is pre-condition for renewal of the lease deed then, the appellant cannot challenge the order of fixation/calculation of the arrears of lease rent. He also submits that lease rent assessed by the Nazul Officer was according to the settled guidelines and therefore, impugned order does not call for any interference.

9. We have heard learned counsel for the parties and also perused records.

10. Perusal of records would show that property lease out in favour of respondent- 4 was purchased by Smt Brajesh Chouhan, wife of appellant herein, vide registered sale deed dated 23.03.1998. They came in possession of the said property immediately after date of purchase and moved an application for mutation of name which was also allowed on 14.10.1999 and the name was mutated in the records. When application for renewal of lease deed has been filed, an objection was filed by one LM Pandey, mentioning that the land which was allotted on lease to respondent- 4 was bearing plot No.6/38 and not 6/1 as mentioned in the registered sale deed and also the application for renewal of the lease.

11. After gettings into knowledge about the mistake in mentioning of plot number in the registered sale deed, mutation order was subsequently cancelled after obtaining the permission for review. The cancellation of mutation order was challenged by appellant before Board of Revenue. It upheld the order of reviewing the mutation order. Subsequently, looking to the facts and events, wife of appellant moved an application for correction of sale deed with respect to the plot number which was allowed and thereafter, an application for renewal of lease has been filed before Nazul Officer vide Annexure P16. In that application, applicant has specifically pleaded the rule of renewing a lease and its conditions are agreeable to her and renewal be made in accordance with law. The Nazul Enquiry Officer had assessed lease rent as Rs.3,180/- per year and accordingly, amount of arrears of lease rent for four years has been calculated, which is to be deposited along with other charges of registration. Appellant has deposited the amount and got the lease deed renewed in favour of his wife, Smt Brajesh Chouhan, finally, on 28.03.2007. The renewal of lease was from 01.04.2002.

12. Appellant has not challenged order of assessment of arrears of lease rent made by Nazul Enquiry Officer and deposited the whole amount calculated for renewal of lease, in fact, Smt Brajesh Chouhan agreed to the calculation made by Nazul Enquiry Officer for depositing arrears of lease rent and deposited lease rent as calculated and got lease deed renewed in her favour from back date ie 01.04.2002. Once the acceptance is given for agreeing with the condition for renewal of lease, accepted the amount calculated and deposited the same, then it cannot be permitted again to challenge the same. One other aspect of the case could not be lost sight of, which is recorded by the Commissioner, as well as by learned Single Judge in impugned order that, un-disputedly it is the appellant, who enjoyed the possession of property since the date of its purchase ie from 23.03.1998. The lease deed could not be renewed only due to the technical mistake committed by the wife of appellant himself at the time of execution of registered sale deed. Lease deed renewed in favour of Lessee is also not put to challenge, that the period of lease deed is mentioned wrongly, but the extension period from 01.04.2002 to 31.03.2032 has been accepted by the appellant and therefore, claim and challenge made by appellant is also not sustainable. If when once renewal of lease is accepted from 01.04.2002, then, the Lessee is liable to pay lease rent of the property from that period only. Revenue authorities have clearly recorded that lease rent has been fixed in accordance with Rules/Guidelines that are not put to challenge by appellant by specific pleading that the lease rent cannot be fixed at Rs.3,180/- in view of particular Rule or Guideline issued by the State Government. In fact, he has not argued this point before this Court. He raised argument only with respect to the fact that lease deed has been renewed in the year 2007 and therefore, Lessee is not liable to pay lease rent from the year 2002 to 2006 which is not sustainable for the afore mentioned reasons.

13. For the foregoing reasons, we do no find any tenable ground for interfering with the impugned order.

14. Appeal being devoid of any substance, it is liable to be and is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

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