

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.241 of 2008****Judgment Reserved on :12.02.2020****Judgment Delivered on:20.02.2020**

Shashikant, S/o Chhedilal Jaiswal, Aged about 50 years,
R/o Bamnidih, Tahsil Champa, Distt. Janjgir-Champa,
Chhattisgarh

----- Appellant/Defendant No.1**Versus**

1. Mitthulal S/o Ghasia Kalar, Aged about 45 years, R/o
Bamnidihi, Tahsil Champa, Distt. Janjgir-Champa,
Chhattisgarh

----- Respondent No.1/Plaintiff

2. State of Chhattisgarh through the Collector,
Janjgir, Distt. Janjgir-Champa, Chhattisgarh

----- Defendant No.2

For Appellant/Def.No.1 : Mr.Rajeev Shrivastava, Advocate

For Res.No.1/Plaintiff : Mr.Somnath Verma, Advocate

For Respondent No.2 : Mr.Akash Pandey, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Judgment**

1. The substantial question of law involved, formulated
and to be answered in this second appeal preferred
by defendant No.1 is as under:-

“Whether the Lower Appellate Court was not
justified in cancelling the allotment order
of the suit land (Ex.-D/12) in favour of the
appellant/defendant No.1?”

[For the sake of convenience, the parties would
be referred hereinafter as per their status shown
in the suit before the trial Court].

2. Plaintiff-Mittulal initially filed a suit for permanent injunction and by way of amendment dated 24.9.2003 introduced the amendment seeking relief of declaring the order of the Sub-Divisional Officer (Revenue), Champa dated 5.12.2002 (Ex.D-1) as null and void on the ground that that it is without jurisdiction and without authority of law.
3. Defendant No.1 filed his written statement and denied the averments made in the plaint and prayed for dismissal of the suit.
4. The trial Court upon evaluation and after appreciation of oral and documentary evidence available on record, by its judgment and decree dated 12.12.2007, dismissed the suit. On appeal being preferred, the first appellate Court partly allowed the appeal and set aside patta (Ex.D-12) granted in favour of defendant No.1 pursuant to the order dated 5.12.2002 (Ex.D-1) passed by the Sub-Divisional Officer (Revenue), Champa. Questioning the judgment and decree passed by the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellants/defendant No.1, in which substantial question of law has been framed by this Court, which has been set-out in opening paragraph of this

judgment.

5. Mr. Rajeev Shrivastava, learned counsel for the appellant/defendant No.1, would submit that the first appellate Court is absolutely unjustified in setting aside the patta granted by the Naib-Tahsildar in favour of defendant No.1 vide Ex.D-12 without cancelling/setting aside the order dated 5.12.2002 (Ex.D-1) passed by the Sub-Divisional Officer (Revenue), Champa duly affirmed by the appellate authority. He would further submit that even after holding that the plaintiff is not entitled for grant of patta the first appellate Court is unjustified in granting opportunity even to the plaintiff and even otherwise, the order of the Collector, Janjgir-Champa affirming the order of the Sub-Divisional Officer (Revenue), Champa was not challenged by the plaintiff, as such, the impugned judgment and decree deserves to be set aside.

6. On the other hand, Mr. Somnath Verma, learned counsel for respondent NO.1/plaintiff, would submit that the defendant's claim on the basis of unregistered sale deed having been purchased from Dayadas he has failed to establish his title over the suit land and the Sub-Divisional Officer without conducting any enquiry straightway directed for grant of patta in

favour of defendant No.1, which has rightly been set-aside by the first appellate Court and same is in accordance with law and the defendant could not have claimed and granted patta as his claim is based on having been purchased from Dayadas.

7. I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove thoughtfully and also went through the records with utmost circumspection.

8. By order dated 5.12.2002 (Ex.D-1), patta granted in favour of the plaintiff/respondent No.1 was set-aside by the Sub-Divisional Officer (R.), Champa and it was directed that bhumiswami right be granted to the appellant/defendant No.1, against which, plaintiff-Mitthulal preferred appeal before the Collector, but the Collector by order dated 25.2.2003 (Ex.D-2) dismissed the same holding it to be not maintainable. Said order of the Collector has not sought to be challenged in civil suit by the plaintiff and only order of the SDO (Ex.D-1) was sought to be challenged by amending the plaint. He ought to have also challenged the order of the Collector though it has been dismissed as not maintainable. It is pertinent to mention here that in compliance of the order of SDO (Ex.D-1), patta

(Ex.D-12) was granted in favour of defendant No.1 by the competent authority. The suit filed by the plaintiff was dismissed by the trial Court, but the first appellate vide impugned judgment and decree only revoked Ex.D-12 and granted opportunity to the parties to invoke Section 244 of the Chhattisgarh Land Revenue Code, 1959 for grant of patta.

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 others**¹ 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.

1(1996) 1 SCC 435

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 others² 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*³ this Court held 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*⁴, 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."

2(2011) 3 SCC 363

3(1991) 4 SCC 1

41956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855

18. In *Sultan Sadik v. Sanjay Raj Subba*⁵, 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. Reverting to the facts of the present case, it is quite vivid that though the order of the Sub-Divisional Officer was seriously questioned by the plaintiff in appeal preferred before the Collector, but it was dismissed as not maintainable by the Collector and it was not challenged further, but the plaintiff, for the reasons best known to him, even did not brand the order of the Collector as illegal or invalid, though it has not the effect of merger

but it has definitely the effect of confirming the order of the Sub-Divisional Officer. The Collector is one of the senior revenue officers under Section 11 of the Chhattisgarh Land Revenue Code, 1959 and the order of the Sub-Divisional Officer has been affirmed by the Collector, and it is a legal and valid order binding on the parties to lis (plaintiff) unless it is successfully avoided, specially when the Supreme Court in M.K. Kunhikannan Nambiar's case (supra) and Krishnadevi Malchand Kamathia (supra) has clearly held that even an invalid or illegal order has to be avoided successfully or to be challenged in a higher forum.

13. In view of above, the judgment and decree of the first appellate Court is set aside and that of the trial Court is restored. The substantial question of law is answered accordingly.

14. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

15. Decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)

Judge

B/-