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HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 8 of 2020

(Arising out of Order dated 10.12.20199 in WPC- 2908 of 2019)

- Bharat Agrawal S/o Vijay Agarwal Aged About 40 Years Resident Of Chakradhar Nagar, Near Water Tank, Raigarh, Tahsil And District Raigarh Chhattisgarh, District : Raigarh, Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh Through Its Secretary, Department of Revenue, Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur, District RaipurChhattisgarh
2. The Board of Revenue Bilaspur Chhattisgarh
3. The Commissioner Bilaspur Division, Bilaspur Chhattisgarh
4. The Collector Raigarh, District Raigarh Chhattisgarh
5. The Najul officer Raigarh, District Raigarh Chhattisgarh
6. The Municipal Corporation Raigarh Chhattisgarh

-----Respondents

For Appellant	:	Shri BP Sharma and Shri ML Sakat, Advocates
For Respondents/State	:	Shri Gagan Tiwari, Dy GA
For Municipal Corporation	:	Shri Sudeep Agrawal, Advocate

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

Per PR Ramachandra Menon,CJ

09.01.2020

1. The judgment dated 10.12.2019 passed by the learned Single Judge in Writ Petition-2908 of 2019 dismissing the Writ Petition, also declining to grant the relief sought for in IA-3 of 2019 filed on 14.11.2019 seeking for permission to move the Government against Annexure P1

order dated 28.01.2012 passed by the Commissioner, Bilaspur Division, is put to challenge in this appeal.

2. Heard Shri BP Sharma and Shri ML Sakat, learned counsel for the appellant/Writ Petitioner, Shri Gagan Tiwari, learned Deputy Government Advocate representing the State and Shri Sudeep Agrawal, learned counsel appearing for the Municipal Corporation.

3. The crux of the grievance projected by the appellant/Writ Petitioner is with regard to the course and events leading to non-granting of renewal of the lease in respect of the property, where a petrol pump was being run by the erstwhile Lessee. It is stated that the petrol pump was in operation till 1972. The rights of the erstwhile Lessee in respect of the land belonging to the Government are stated as transferred by the erstwhile Lessee, to the appellant/Writ Petitioner, as per Annexure P3 executed in April, 2006. But the fact remains that the lease granted in favour of the erstwhile Lessee had come to an end decades ago and it was not renewed thereafter, though possession of the property was stated as continuing with the erstwhile Lessee.

4. Based on Annexure P3, it is the case of the appellant that the possession of the land came to the hands of the appellant/Writ Petitioner. Whether the erstwhile Lessee was having any power to transfer such possession or rights over the land in question with respect to the terms of the original lease, is not a subject matter for consideration for this Court in this appeal. The limited question is with regard to the course and events leading to an application filed by the appellant/Writ Petitioner before the

District Collector for renewal of the earlier lease which was granted in favour of the erstwhile Lessee or to grant a fresh lease in respect of the respective land. The application preferred by the appellant in this regard was considered and it was rejected by the Collector (Nazul Officer) as per Annexure P5 order dated 22.03.2010. This was sought to be challenged by filing an appeal before the Commissioner, where interference was declined and the order of the Collector was affirmed by dismissing the appeal vide Annexure P6 order dated 28.01.2012. Met with the situation, the appellant sought to file a Revision Petition before the Board of Revenue ie the 2nd respondent. It was considered and dismissed by the Board of Revenue vide Annexure P1 order dated 17.07.2015. Nearly after four years, the appellant chose to challenge the said order, by filing a Writ Petition on various grounds.

5. When the matter was pending consideration before this Court, the appellant/writ petitioner realised that the order passed by the Commissioner could have been challenged only by way of a representation before the 'State Government' and not before the Board of Revenue. It was also felt by the appellant that the 2nd respondent /Board of Revenue was having no power/jurisdiction to deal with the order of the Commissioner under any provision of law; which power was conferred only upon the Government. In the said circumstance, IA-3 of 2019 was filed seeking for permission of the Court to approach the Government, against the order passed by the Commissioner, as the appellant/writ petitioner had wrongly approached the Board of Revenue, instead of the Government.

6. Prayer in the IA dated 14.11.2019 is reproduced below:

> "The petitioner herein most humbly prays that he may be permitted to approach the State Government against the order of the Commissioner as the petitioner has wrongly approached the Board of Revenue instead of Commissioner."

The above prayer was considered by the learned Single Judge while dealing with the merits of the Writ Petition and it was held that the Writ Petitioner was virtually sleeping over the rights if any, as to the order passed by the Board of Revenue and as such, the Writ Petition filed with an inordinate delay of more than four years could not be entertained. Reliance was placed on the law declared by the Apex Court in various rulings such as, **State of Uttaranchal and Another Vs Shiv Charan Singh Bhandari and Others[1], Uttranchal Forest Development Corporation and another Vs Jabar Singh and others[2], New Delhi Municipal Council Vs Pan Singh and others[3]**, **P.S.Sadasivaswamy Vs State of Tamil Nadu[4]** and **Chennai Metropolitan Water Supply and Sewarage Board and Others Vs T.T.Murali Babu[5];** in this regard.

7. We are aware that, even much before the above decisions, the Supreme Court had declared the law in this regard, as to laches on the part of the party, as per the verdict reported in **AIR 1970 SC 470 (Rabindranath Bose & Ors. v. The Union of India & Ors.),** holding that the power vested upon this Court in exercise of the discretionary jurisdiction under Article 226 of the Constitution of India will not be extended to a

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1 2013 (12) SCC 179
2 (2007) 2 SCC 112
3 (2007) 9 SCC 278
4 (1975) 1 SCC 152
5 2014 (4) SCC 108

person who was simply sleeping on an arm-chair, unmindful of his rights and liberties. But here, the question is whether the challenge against the order passed by the 'Board of Revenue', in the Writ Petition was virtually pressed by the petitioner, seeking interference of this Court or not.

8. Going by the pleadings and prayers, supplemented by the prayer raised in IA-3 of 2019 as mentioned above and as per submissions made across the Bar, the case of the appellant is that the 'Board of Revenue' does not have the power to deal with the merits of the order passed by the Commissioner; which power is conferred exclusively only upon the State Government. In the said circumstance, since the parties cannot confer jurisdiction upon an authority by agreement, which position is settled as per law declared by the Apex Court, the order passed by the 2nd respondent/Board of Revenue, is a nullity and the said order is liable to be treated as not in existence. This being the position, interference of the Court was not necessary in the Writ Petition and the appellant/Writ Petitioner could have approached the Government against the order passed by the Commissioner, if it was maintainable otherwise, in accordance with law. It was accordingly, that IA-3 of 2019 was filed to have the matter disposed off.

9. It is relevant to note from the contents of the IA, that the appellant had not sought to set aside Annexure P1 order of 2nd respondent/ Board of Revenue, so as to facilitate or enable the appellant/Writ Petitioner to move the Government. Whether the appellant could approach the Government without setting aside the said order by the Board of Revenue and whether such a challenge could be raised after 4-5 years of the order passed by

the Commissioner, whether any period or limitation was specified in making such attempt and whether it was factually or legally tenable or entertainable, are all matters to be considered by the Government; if any proceedings are filed in this regard.

10. Coming to the factual aspects, Shri Sudeep Agrawal, the learned counsel appearing for the Municipal Corporation submits that the lease between the Government and the erstwhile Lessee came to an end more than 4-5 decades ago. It is pointed out that, on cessation of the lease as above and since there was no renewal, the license given by the Distributor-Petroleum Company also came to an end. The property was re-possessed and handed over to the Municipal Corporation; the constructions in the property were demolished; new constructions have been effected by the Municipal Corporation and 3rd party rights have been created therein. This being the position, there cannot be any interference at this stage, submits the learned counsel.

11. It is submitted by the learned counsel for the appellant that the above steps pursued by the Municipal Corporation were sought to be resisted by the appellant, although it was not fruitful. Anyhow, these are matters which can be considered only by the Government and this Court need not consider such aspects, when interference of this Court is not sought for by the appellant.

12. In the above circumstances, this Court is of the view that the Writ Petition can be closed without prejudice to the right of the petitioner/ appellant to move such other appropriate authority, if at all any enabling

provision is there with reference to the actual facts and figures, relevant provisions of law and also the prevailing situation as on date. It is ordered accordingly. Circular No. एफ 4-07 /सात-1/ 2019 dated 11.09.2019 is stated as existing in favour of the appellant/Writ Petitioner; with regard to which, we are not expressing any opinion. We make it clear that we have not observed or declared as to the existence of any right for the appellant/Writ Petitioner and it is for the Government to consider all the relevant aspects in accordance with law; if any proceedings are filed; including on the question of delay, whether it is maintainable before the Government and whether there was any transferable right for the erstwhile Lessee over the property in question.

13. With the above observation, we modify the verdict passed by the learned Single Judge and dispose off the appeal and the Writ Petition; virtually granting the relief to the limited extent as sought for in IA-3 of 2019 in WPC-2908 of 2019, filed on 14.11.2019, also making it clear point blank, that we have not considered and decided the merits of the case, legal or factual, as contended by the parties on both the sides.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

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