NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 470 of 2020

- Sarpanch Gram Panchayat Dendri Block and Tehsil Surajpur District Surajpur Chhattisgarh Through Maanti Singh W/o Madar Sai Aged About 42 Years Sarpanch, Gram Panchayat Dendri Janpad Panchayat and District Surajpur Chhattisgarh, District : Surajpur, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh : Through Under Secretary Revenue Department, Mantralaya Mahanadi Bhawan, New Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. The Commissioner Surguja Division Surguja Ambikapur District Surguja Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh
3. The Collector Surguja Ambikapur District Surguja Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh
4. Naib Tehsildar, Pilkha Chhetra, Vishrampur, District Surajpur Chhattisgarh, District : Surajpur, Chhattisgarh
5. Rambhagat Sharma S/o Late Ram Avatar Sharma, Aged About 58 Years, R/o Village Ketka Road Surajpur, District Surajpur Chhattisgarh, District : Surajpur, Chhattisgarh

---- Respondents

For Petitioner – Shri Nishikant Sinha, Advocate.
For State/respondents No.1 to 4 – Shri Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order on Board

06-01-2021

1. The petitioner seeks indulgence of this Court against the order passed by respondent No.2, the Commissioner, dated 03-09-2020 (Annexure-P/6) dismissing the second appeal on erroneous ground of not having jurisdiction.

2. It is submitted by learned counsel for the petitioner that the petitioner was aggrieved by the order dated 28-10-2016 passed by the Collector District Surajpur granting lease of the landed property under question to respondent No.5. An appeal was preferred against this order before the Commissioner Surguja Division who is respondent No.2 and the respondent No.2 has passed the impugned order and summarily dismissed the appeal on the ground that the petitioner/appellant has not quoted the provisions under Revenue Book Circular Part-IV Serial No.3 clause 30(1) in the appeal memo and instead the

appeal has been filed under Section 44 of the Chhattisgarh Land Revenue Code, 1959 (in short 'the Code, 1959'), therefore, the appeal is not maintainable.

3. It is submitted by learned counsel for the petitioner that the C.G. Land Revenue Code is parent enactment. Clause (e) of Section 44(1) of the Code, 1959 empowers the Commissioner to hear appeal against the order passed by the Collector, whereas, the Revenue Book Circular is a compilation of circulars and orders issued by the Government and Government authorities time to time. Any such mention regarding the procedure of hearing the appeal in such circular does not give a separate jurisdiction to the Commissioner and therefore, such provisions in the Circular can be quoted only as guideline. The jurisdiction and power to hear appeal of a Commissioner is drawn originally from the Code, 1959. Hence, the order passed is illegal, arbitrary and liable to be set aside and prayer has been made to quash the same.

4. Learned counsel for the State/respondents No. 1 to 4 opposes the submission and submits that respondent No.2, i.e., the Commissioner Surguja Division has not committed any error in passing the impugned order. The question of jurisdiction was raised by the opposite party and the same has been decided by invoking the inherent power under Section 32 of the Code, 1959. Hence, the present petition is without any substance.

5. Heard learned counsel for the parties and perused the documents.

6. Considered on the submissions and also perused the documents filed along with the petition. The order passed by the Collector Surajpur dated 28-10-2016 mentions that allotment of land to respondent No.5 has been made in compliance with the provisions of Revenue Book Circular Part IV, Serial No.3.

7. The Revenue Book Circular, Part IV, Serial No.3 is a circular dated 22-02-1984 numbered 16-1-84-Seven-2-A, in which it is mentioned that the allotment of Government land for agricultural purposes shall be made in

accordance with this circular. The Circular includes other guidelines laid down to be followed while making such allotment.

The 'word' Government lessees has been defined under Section 181 of the Code, 1959 that 'every person who holds land from the State Government or to whom a right to occupy land is granted by the State Government.' Section 182 of the Code, 1959 further mentions that 'A Government lessee shall, subject to any express provisions in this Code, hold his land in accordance with the terms and conditions of the grant, which shall be deemed to be a grant within the meaning of the Government Grants Act, 1895. These provisions in the Code, 1959 clearly show that the State has authority to grant lease of agricultural land and the same authority is exercised by the Collector of a District following the guidelines of Revenue Book Circular Part IV, Serial No.3. Hence, lease order passed by him is an order passed under the provisions of this Code. Therefore, the provisions under the Revenue Book Circular are only supplements to the authority of the Collector which he exercised under the Code, 1959. Section 44(1) of the Code, 1959 provides appellate powers to Commissioner. Clause 30(1) of Part IV, Serial No.3 of Revenue Book Circular is supplement to the powers of Commissioner to hear appeals against orders of Collector.

8. According to the discussion made herein-above, it is found that the Commissioner exercises the jurisdiction of the Appellate Authority under Section 44(1) of the Code, 1959 and the provisions in Revenue Book Circular are only instructions and directions to be followed in the exercise of such powers. Therefore, the reason assigned for dismissal of appeal by respondent No.2 appears to be improper and it would simply mean that respondent No.2 has refused to exercise the jurisdiction of appeal vested in it in accordance with law, therefore, respondent No.2 has not acted within the parameters of law enacted. Hence, the present petition deserves to be allowed.

9. Accordingly, the writ petition is allowed. The impugned order in the appeal passed by respondent No.2 is set aside. The appeal proceeding is restored before respondent No.2 and respondent No.2 is directed to give opportunity of hearing to the parties concerned and decide the appeal in accordance with law.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Aadil