CGHC010231722021 2026:CGHC:45680

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 3878 of 2021

Reserved on 1.10.2026

Pronounced on 29.10.2026

SHYNA AJAY
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Date: 2026.10.29 18:44:11 +0530

Omprakash S/o Dayalu, Aged About 40 Years, R/o Village Mudpar, District Durg Chhattisgarh

... Petitioner(s)

versus

1 - State Of Chhattisgarh Through Secretary, Department Of Revenue, Mahanadi Bhawan, Mantralaya, Atal Nagar, New Raipur District Raipur Chhattisgarh

2 Commissioner, Durg Division Durg Chhattisgarh

3 Collector, Durg District Durg Chhattisgarh

4 Sub Divisional Officer (Revenue) Dhamdha, District Durg Chhattisgarh

5 Tahsildar Tahsil Dhamdha, District Durg Chhattisgarh

6 Nayab Tahsildar Up-Tahsil Ahiwara, District Durg Chhattisgarh

7 - Vijay Choubey S/o Lakhan Lal Choubey Aged About 55 Years R/o Nardha, Tahsil Dhamdha, District Durg Chhattisgarh

... Respondent(s)

(Cause Title downloaded from CIS Periphery)

For Petitioner(s)	:	Mr. Mirza Hafeez Baig, Advocate
For Respondent/ State	:	Mr. Anway Tiwari, Panel Lawyer
For Respondent No.7	:	Mr. Kabeer Kalwani, Advocate

SB: Hon'ble Mr. Justice Amitendra Kishore Prasad

C A V Order

1. The petitioner is questioning the legality and validity of the order dated 23.01.2020 passed by the Commissioner, Durg Division, Durg, whereby the Commissioner while entertaining Revenue Revision No.122 A-6 Year 2018-19, has set-aside the orders dated 23.2.2019 and 28.2.2019 passed by the Naib Tahsildar, Ahiwara and remanded the matter to the Naib Tahsildar with directions to (i) comply with the earlier order dated 26.07.2018 passed by the concerned Commissioner (ii) afford a proper opportunity of hearing to the parties after taking documentary and oral evidence on record (iii) consider the objections raised by the Revision Petitioner; and (iv) pass appropriate orders on merits in accordance with law. The petitioner, who is the son of Dayalu (respondent before the concerned Commissioner in the order dated 23.01.2020) has filed this petition inter alia challenging the

impugned order of remand on the ground of maintainability. It is contended that against the order passed by the Naib Tahsildar, a Revenue Appeal lay before the SDO (R). However, instead of filing an appeal, Respondent No.7 directly filed a revision before the Commissioner, which was not maintainable.

2. The father of the petitioner had filed an application under Order 7 Rule 11 of the CPC for rejection of the proceedings before the Commissioner pleading that the Revision was barred as the concerned respondent failed to exhaust the appeal provision under Section 44(1) of the Chhattisgarh Land Revenue Code (in short "the Code"). However, the Commissioner did not consider the application in accordance with law and proceeded to pass the order of remand, which is *ex facie* illegal and without jurisdiction. Hence, after the death of his father, the petitioner stepped into his shoes and preferred this petition, seeking the following reliefs :

> *(i) That, this Hon'ble Court may kindly be pleased to set-aside impugned orders dated 23.01.2020 (Annexure P-1) and dated 12.08.2021 (Annexure P-2) passed by the respondent no. 2, in the interest of justice.*
>
> *(ii) Any other relief which may be suitable in the facts and circumstances of the case, may also be granted.*

3. The facts of the case, as set-forth by the petitioner, are that the father of the petitioner had filed Case No. 15 A-6(A) Year 2014–

2015 against respondent No. 7- Vijay Choubey, before the Naib Tahsildar, Ahiwara. The Naib Tahsildar, Ahiwara, after affording sufficient opportunity of hearing to both the parties and examining the documents produced by them in support of their claims, passed a final order dated 23.02.2019 on merits. Respondent No. 7 being aggrieved by the said order dated 23.02.2019 and 28.2.2019, directly preferred Revenue Revision Case No. 122 A-6 Year 2018–2019 before Respondent No. 2 – the Commissioner, Durg Division, Durg (CG), instead of filing a Revenue Appeal before Respondent No. 4- Sub Divisional Officer (Revenue), Damdha, District Durg (CG). The father of the petitioner (late Dayalu) filed an application under Order 7 Rule 11 of the CPC before Respondent No. 2 challenging the maintainability of the revision petition. During pendency of the proceedings, the father of the petitioner passed away on 14.01.2020 due to illness. Despite the demise of the sole contesting party, Respondent No. 2 proceeded to pass the final order on 23.01.2020 without substituting the legal heirs or providing them an opportunity of hearing, rendering the order a nullity in the eyes of the law as it was passed against a deceased person. The order dated 23.01.2020 was never served upon or communicated to the petitioner or the other legal heirs. Immediately upon coming to know of the said order and obtaining a certified copy thereof, the petitioner filed Review Petition Case No. 17 B-121 Year 2020–21 before Respondent No. 2 to set aside the order on the ground that it was passed against a deceased party. However, Respondent

No. 2, without obtaining the requisite sanction from the higher authority/Board of Revenue and without affording a proper opportunity of hearing to both parties, confirmed its earlier order dated 23.01.2020 vide the impugned order dated 12.08.2021. Hence, this Petition.

4. Mr. Mirza Hafeez Baig, learned counsel for the petitioner submits that the impugned order dated 23.01.2020 and the subsequent order dated 12.08.2021 passed by the Commissioner are palpably illegal, arbitrary and unsustainable in law. He submits that firstly, the impugned order was passed against a deceased person i.e. Late Dayalu (father of the petitioner), who had passed away on 14.01.2020, prior to passing of the said order. Thus, an order passed against a dead person, without bringing his legal representatives on record, is a nullity in the eyes of law. Secondly, while the Revenue Case was pending before the learned Commissioner, the father of the petitioner was proceeded against ex-parte through the subsequent order sheets dated 10.10.2019 and 24.10.2019. Moreover, on 24.10.2019, the matter was heard finally and reserved for final orders, to be pronounced on 14.11.2019. This vital aspect was completely ignored by the Commissioner while passing the impugned order of remand, which makes the proceedings per se illegal and in violation of the principles of natural justice. To buttress this submission, learned counsel places reliance upon the judgment of the High Court of Madhya Pradesh passed in **Sarja Bai & Others Vs. Prasuti Bai & Others (1984 R.N.333)**, wherein it has been categorically held

that an order passed against a deceased person without substituting his legal representative(s) is invalid and non-est. Thirdly, Respondent No. 7 directly challenged an appealable order by way of a Revision, which was not maintainable in view of the alternative remedy of a First Appeal available under Section 44(1) of the Code. Therefore, since the impugned order suffers from lack of jurisdiction, non-joinder of necessary legal representatives and unmaintainability, it is an absolute nullity and is liable to be set aside.

5. On the other hand, Mr. Anway Tiwari, learned counsel appearing for the State as well as Mr. Kabir Kalwani, learned counsel for Respondent No. 7 submit that the impugned order(s) is perfectly just, legal and proper and does not call for any interference by this Court. They submit that Late Dayalu, father of the petitioner, filed an application for correction of revenue records before the Tahsildar, Ahiwara, which was allowed vide order dated 11.07.2016. The said order was initially challenged in Revision before the Collector, Durg, which came to be dismissed vide order dated 26.11.2016. Thereafter, the said order of the Collector was assailed before the Commissioner, Durg, in exercise of revisional jurisdiction. The learned Commissioner allowed the revision vide order dated 26.7.2018 and remanded the matter to the Tahsildar, Ahiwara, with a direction to decide the objection of Respondent No. 7 afresh after affording both parties an opportunity to adduce oral and documentary evidence and thereafter, to pass an appropriate order in accordance with law. They submit that in

pursuance of the order of remand dated 26.07.2018, the Tahsildar, Ahiwara, again allowed the application for correction of revenue records filed by Late Dayalu vide orders dated 23.02.2019 and 28.02.2019. Aggrieved thereby, Respondent No. 7 preferred a Revision before the Commissioner, Durg. During the pendency of these proceedings, Late Dayalu was very much alive and duly represented by his counsel. During the course of proceedings, as the matter could not be heard on 10.10.2019, it was adjourned to 24.10.2019 for final hearing. On 24.10.2019, the final arguments were effectively concluded and the matter was reserved for pronouncement of order on 14.11.2019. He submits that on both the dates (on 10.10.2019 & 24.10.2019), no appearance was marked on behalf of father of the petitioner. However, on 14.11.2019, final order could not be passed due to administrative exigencies. Subsequently, Late Dayalu passed away on 14.01.2020. However, as the factum of his death was not brought to the notice of the Commissioner by either party, the Commissioner proceeded to pronounce the final order on 23.01.2020. They submit that the Review Petition filed thereafter by the present petitioner was dismissed vide order dated 12.8.2021. Learned counsel further submit that no order on merits determining rights *inter se* was passed by the learned Commissioner against the deceased party. On the contrary, the Commissioner only set aside the orders of the Tahsildar dated 23.02.2019 and 28.02.2019 on the ground of denial of adequate opportunity of hearing and remanded the matter to the concerned

Tahsildar with directions to afford full opportunity to both the parties to adduce oral and documentary evidence and decide the matter afresh on merits in accordance with law. They submit that since no adverse finding or order on merits was passed against any person dead or alive and the matter has merely been relegated to the original authority for fresh adjudication in accordance with the principles of natural justice, the impugned order cannot be termed a nullity. In view of the above, the petition, being devoid of merit, is liable to be dismissed.

6. I have heard learned counsel for the parties and have also perused the documents annexed with the petition.

7. Evidently, by the impugned order, the matter has been remanded to the concerned Tahsildar for deciding the application for mutation afresh, after affording due opportunity of hearing to the parties and permitting them to adduce oral as well as documentary evidence and thereafter to pass appropriate order in accordance with law. So far as the objection regarding the availability of an alternative statutory remedy is concerned, the existence of an alternative remedy is a rule of discretion and not an absolute bar, particularly where the Court seeks to address a failure of natural justice or where relegating the parties to an alternative forum after long pending litigation would cause grave prejudice. In the present case, the dispute has already traversed through four to five rounds of litigation. Initially, the application was filed before the Tahsildar, thereafter assailed before the

Collector and subsequently carried to the Commissioner, where an order of remand was passed earlier. Upon fresh decision by the Tahsildar, the matter was again challenged before the Commissioner, who, after due consideration of all legal aspects, remanded the matter for fresh adjudication. In these circumstances, relegating the parties to an alternative remedy at this distance of time is not justified, particularly when the matter has been pending before this Court since 22.09.2021 and nearly five years have elapsed. Furthermore, the impugned order is only an order of remand and does not determine the substantive rights of the parties on merits.

8. In **Harbanslal Sahnia & Another Vs. Indian Oil Corpn. Ltd. & Others** reported in **(2003) 2 SCC 107**, the Hon’ble Supreme Court categorically held that the rule of exclusion of jurisdiction due to the availability of an alternative remedy is a rule of discretion and not one of compulsion. The Hon'ble Supreme Court affirmed that an alternative remedy does not operate as a bar where there is a failure of the principles of natural justice. In the instant case, the record demonstrates a clear infraction of the principles of natural justice, as the concerned parties were denied a reasonable opportunity of being heard, thereby necessitating the order of remand. In that view of the matter, the objection raised by the petitioner that the Commissioner ought not to have entertained the subject application is devoid of merit and is not in accordance with law.

9. So far as the death of Late Dayalu (father of the petitioner) is concerned, it is undisputed that the matter was reserved for final order after conclusion of hearing on 24.10.2019, to be pronounced on 14.11.2019. Subsequently, late Dayalu passed away on 14.01.2020, an event which could not immediately be brought to the notice of the Commissioner. Ultimately, eight days thereafter, the final order was pronounced on 23.01.2020. Since the order was not an adjudication on merits, but a procedural order of remand passed to ensure that both parties are granted an opportunity to adduce oral and documentary evidence, no prejudice was caused to either side.

10. In **N.P. Thirugnanam (Dead by LRs.) Vs. R. Jagan Mohan Rao and others,** reported in **(1995) 5 SCC 115**, the Hon'ble Supreme Court specifically considered whether proceedings abate on account of the death of a party occurring between the conclusion of hearing and the pronouncement of judgment, holding in Paragraph 3 as under:

> ***3.*** *Rule 6 of Order 22 provides that:*
>
> *"6. No abatement by reason of death after hearing.— Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place."*
>
> *In the face of the explicit language in Rule 6 of Order 22, there can be no abatement by reason of the death*

of any party between the conclusion of the hearing and the pronouncement of the judgment. It may be pronounced, notwithstanding the death, and shall have the same force and effect as if the judgment had been pronounced before the death took place. Therefore, the contention that the judgment and decree of the appellate court is a nullity is devoid of substance.

11. Further, in the matter of **Vikram Bhalchandra Ghongade Vs. State of Maharashtra and Others** reported in **2025 SCC OnLine 2360,** the Hon'ble Supreme Court reiterated this settled principle, observing in Paragraph 11 as under:

11. *It is not in dispute that the suit filed by the predecessors of the appellant was decreed on 14.08.2006. The trial Court declared the original plaintiffs as owners of the suit land that had been allotted to Mr. Arjun Thakre. The plaintiffs were held entitled to receive possession of the said lands. The subsequent allotment of the same land in favour of defendant Nos. 3 to 5 was held to be illegal. The defendant No. 3 did not choose to challenge this decree. It is only the defendant Nos. 4 and 5, who preferred an appeal under Section 96 of the Code. During pendency of that appeal, the defendant No. 4 expired on 27.10.2006, while the defendant No. 5 expired on 20.09.2010. The record indicates that the appeal was heard on 28.09.2010. As per the provisions of Order XXII Rule 6 of the Code, if a party expires between the conclusion of hearing and pronouncement of the judgment, the same does not result in abatement of such proceedings and the judgment on being pronounced, would have the same force and effect as if it had been pronounced before the death of such party took place. In view of the fact that the defendant Nos. 4 and 5 had died prior to the appeal being heard on*

28.09.2010, it is evident that the proceedings in the said appeal are not saved by the provisions of Order XXII Rule 6 of the Code. In effect, the appeal was decided notwithstanding the death of both the appellants, who had preferred the appeal.

12. In the light of the aforesaid authoritative pronouncements, this Court is of the considered view that the proceedings neither abated nor can the impugned order(s) be held to be null and void merely due to the death of the father of the petitioner prior to pronouncement of order. The order would have had the same force and effect as if it had been pronounced before the death of the father of the petitioner. Even otherwise, a perusal of the record shows that no adverse order determining substantive rights either in favour of or against the petitioner was passed. The impugned order only remands the matter to the concerned Tahsildar to decide the matter afresh on merits, after granting full opportunity of hearing and liberty to adduce oral and documentary evidence to all parties. Thus, on this count as well, the impugned order(s) suffers from no legal infirmity.

13. In view of the foregoing discussion, this Court is of the opinion that the Commissioner committed no illegality in remanding the matter vide the impugned order. However, considering that an interim stay of the order dated 23.01.2020, was granted by this Court on 23.9.2021 and the matter has remained pending here for over five years, it is in the interest of justice that the proceedings before the revenue authority be concluded expeditiously.

14. Accordingly, the Petitioner and Respondent No. 7 are directed to appear before the concerned Tahsildar / Naib Tahsildar, Ahiwara **on 25.11.2026**. The Tahsildar, Ahiwara is directed to hear the matter afresh after affording reasonable opportunity of hearing to both the parties, granting them opportunity to adduce oral and documentary evidence and thereafter pass appropriate orders on merits in accordance with law, preferably within a period of 90 days from the date of receipt of a certified copy of this order.

15. It is made clear that this Court has not expressed any opinion on the merits of the case and the Tahsildar/Naib Tahsildar, Ahiwara, would be at liberty to decide the matter independently in accordance with law.

16. Till the final decision is taken by the Tahsildar/Naib Tahsildar, Ahiwara within the stipulated period of 90 days, the interim order dated 23.9.2021 passed by this Court with respect to the subject property, shall continue to operate.

17. With the aforesaid directions/observations, the Writ Petition stands finally disposed of.

Sd/-

(Amitendra Kishore Prasad)
Judge

Shyna Ajay

WPC No. 3878 of 2021

HEAD NOTE

Death of a party occurring between the conclusion of hearing and pronouncement of judgment, does not cause abatement of the suit or appellate proceedings. A judgment pronounced under such circumstances operates with full force and effect as if it had been pronounced prior to the demise of the party.