(2011) 02 CHH CK 0026

In the Chhattisgarh High Court

Case No : Writ Petition (227) No. 5725 of 2010

Rampyara Sahu and Another APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 24-02-2011

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 49(3)

Citation : (2011) 2 CGLJ 321

Hon'ble Judges : Nawal Kishore Agarwal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.K. Agarwal, J.—With consent of the parties, matter is heard finally.

2. Instant petition is directed against the order dated 27th July, 2009 passed in Revenue Revision No. RN/05/R/A-6/763/07 whereby the Board of Revenue allowed the revision preferred by the Respondent No. 2 mainly on the ground that the order of remand passed by the Sub Divisional Officer and affirmed by the Additional Collector was contrary to the provisions of Section 49(3) of the C.G. Land Revenue Code, 1959.

3. Shri Verma, learned Counsel for the Petitioners drawn the attention of this Court on the order of the Sub Divisional Officer (Annexure P-5) dated 23-7-2005 which shows that in fact, the matter was not remanded by the Sub Divisional Officer and in fact the order passed by the Tehsildar was set aside but while sending the copy of it to the Tehsildar, it has been directed to pass final order after giving opportunity to both the parties. This part has been considered by the Board of Revenue as part of the order which in fact is not part of the order.

4. Shri Kesharwani, learned Counsel appearing for the Respondent No. 2 would submit that in fact, the second part of the order by which copy has been sent to the Tehsildar is part of the order whereby the matter has been remanded to the Tehsildar.

5. I have heard learned Counsel for the parties and perused the order impugned.

6. From a bare perusal of the order passed by the Sub Divisional Officer, which has been affirmed by the Additional Collector would reveal that vide impugned appellate order the Sub Divisional Officer has dismissed the order passed by the Tehsildar but while sending copy of it to the Tehsildar, a further direction has been given for passing final order in the case after hearing both the parties. Same has been treated by the Board of Revenue as remand order. In fact, it is only administrative direction issued by the Sub Divisional Officer to Tehsildar which is subsequent to passing of the order, therefore, learned Board of Revenue has erred in allowing the revision on the ground that the matter has been remanded by the Sub Divisional Officer.

7. In view of the above, the petition deserves to be and is hereby allowed. The impugned order is set aside. The matter is remitted back to the Board of Revenue to decide the matter afresh in the light of above observation in accordance with law on its own merit.