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(2024) 03 CHH CK 0019

In the Chhattisgarh High Court

Case No : Writ Petition (227) No.142, 606 Of 2015

State Of Chhattisgarh — APPELLANT

Vs

Krishna Kumar Gupta — RESPONDENT

Date of Decision : 07-03-2024

Acts Referred:
Chhattisgarh Land Revenue Code, 1959 — Section 11, 12(3), 32, 44, 51, 51(1)

Citation : (2024) 03 CHH CK 0019

Hon'ble Judges : Arvind Singh Chandel, J

Bench : Single Bench

Advocate : Vivek Sharma, Vedant Sadangi, Rajeev Shrivastava,

Final Decision : Dismissed

Judgement

1. Since the parties and the land in question are common in both the writ petitions, they are heard and decided together.

2. Writ Petition (227) No.142 of 2015 has been preferred by the State seeking following reliefs:

?i. This Hon?ble Court may kindly be pleased to issue an appropriate writ by setting aside the order dated 5th October, 2006 passed by the Board of Revenue in Revenue Appeal Case No.211/A-6/2004-05.

ii. Issue any other order or orders, writ or writs, direction or directions as this Hon?ble Court may deem fit in the facts and circumstances of the case in favour of the petitioner and against the respondents.

iii. Cost of the petition be allowed.?

3. Writ Petition (227) No.606 of 2015 has been preferred by Krishna Kumar Gupta [Respondent in Writ Petition (227) No.142 of 2015] seeking following reliefs:

?(A) Set aside/quash the impugned order dated 05.06.2015 (ANNEXURE P/1) of

Board of Revenue, Bilaspur, passed in Revenue Case No.R.W./13/R/A-4/236/2015, by which Collector Raigarh has been permitted to review the order dated 10.01.2008 of Additional Collector Raigarh passed in Revenue Case No.1/A-4/2007-08, and/or

(B) That any other relief which this court thinks fit in the interest of justice & equity.?

4. Facts of the case of both the writ petitions as per their pleadings, in short, are that one Seth Paluram Dhananiya was the Karta of Hindu Undivided Family consisting of himself and his sons. The property in question, i.e., the land bearing Nazul Sheet No.32, Plot No.11 area admeasuring 73038 Square Feet situated at Raigarh was initially in the name of one Dr. Baldev Prasad Mishra who sold the property to one Kirodimal Lohariwala vide registered sale deed dated 13.8.1941. The name of Kirodimal Lohariwala was also entered into the government record. Subsequently, Kirodimal Lohariwala sold the land in favour of Paluram Dhananiya, the head of Hindu Undivided Family. Paluram Dhananiya constructed a temple within the suit premises known as Sewa Kunj and established a deity by the name of Gowrishankar. Paluram Dhananiya executed deeds of endowment to the said deity on 6.8.1953 and 26.3.1955.

5. In the year 1961, when the Municipalities Act, 1961 was enacted and Raigarh town was declared as Municipality, the reassessment of Nazul land was undertaken and revenue case was also registered with respect to the suit property in the Court of Nazul Officer, Raigarh. In the reassessment proceedings, Paluram Dhananiya was represented and after his death his son Bhagirathi appeared and he submitted an application on 13.6.1966. The Assistant Superintendent of Land Records recommended for grant of lease for a period of 30 years and on the basis of said recommendation, decision was taken to grant lease in favour of Gowrishankar Ji for a period of 30 years. Information was sent to Sarvakars of Gowrishankar Temple for registration of lease deed, but, they did not express interest. Hence, by order dated 2.2.1968, the lease granted in favour of Gowrishankar Temple was cancelled.

6. Meanwhile, the Income Tax Department did not accept the land and building in the name of Gowrishankar Temple and assessed the income tax taking the property to be of Joint Hindu Family Property of Paluram Dhananiya. Being aggrieved by the assessment order of the Income Tax Department, Krishna Kumar Gupta, Shyam Sunder Gupta and Gopal Das Gupta, Sarvakars of Gowrishankar Ji Maharaj Deity preferred a civil suit, being Civil Suit No.1-A of 1974 before the District Judge, Raigarh. The suit was decided by the District Judge on 31.7.1978 concluding that the property in question was the Joint Hindu Family Property and Paluram Dhananiya alone had no right to make a gift in the shape of deed of endowment and as such the endowment deeds were held to be fictitious executed only to avoid tax liability. Being aggrieved by the said judgment in the civil suit, Krishna Kumar Gupta and others preferred an appeal being First Appeal No.203 of 1978 before the High Court of Madhya Pradesh

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which was also dismissed by the High Court and it was held that the property in question is the Joint Hindu Family Property of Paluram Dhananiya. Against the said judgment, a Special Leave Petition was also preferred before the Supreme Court which was dismissed on the ground of non-compliance of the necessary directions.

7. After the death of Paluram Dhananiya and his sons, Krishna Kumar Gupta became the Karta of Paluram Dhananiya Hindu Undivided Family and he applied for mutation of the said property in the name of Hindu Undivided Family. That application for mutation was allowed by the Tahsildar, Raigarh vide order dated 18.11.1996 (Annexure P13 in WP227 No.142 of 2015) and the name of Krishna Kumar Gupta was recorded in the revenue record. Thereafter, on the basis of report of Nazul Officer, the Collector on 28.7.2001 suo motu took up the matter in revision and set aside the order dated 18.11.1996 (Annexure P14 in WP227 No.142 of 2015) and directed Krishna Kumar Gupta for filing a fresh application for mutation. Accordingly, a fresh application was filed by Krishna Kumar Gupta. Then the Nazul Officer, Raigarh vide order dated 18.7.2005 (Annexure P15 in WP227 No.142 of 2015) dismissed the said mutation application. This dismissal order was challenged by Krishna Kumar Gupta before the Board of Revenue. The Board of Revenue vide the impugned order dated 5.10.2006 (Annexure P1 in WP227 No.142 of 2015) allowed the appeal and directed for mutation of name of Krishna Kumar Gupta, Karta of Paluram Dhananiya Hindu Undivided Family in the revenue record. The said order of the Board of Revenue has been assailed by the State of Chhattisgarh before this Court in a writ petition, being Writ Petition (227) No.142 of 2015.

8. Meanwhile, Krishna Kumar Gupta made an application for renewal of the lease dated 22.9.1967. Vide order dated 10.1.2008 (Annexure P6 in Writ Petition 227 No.606 of 2015), the said lease has been renewed. Thereafter, the Collector, Raigarh moved an application before the Board of Revenue on 25.2.2015 for grant of permission to review the order dated 10.1.2008 of the Nazul Officer (Additional Collector) on various grounds. The Board of Revenue vide order dated 5.6.2015 (the impugned order in WP227 No.606 of 2015) allowed the application of the Collector and permitted to review the order dated 10.1.2008. Hence, Writ Petition (227) No.606 of 2015 has been preferred before this Court by Krishna Kumar Gupta.

9. With regard to the order passed by the Board of Revenue dated 5.10.2006, Learned Counsel appearing for the State argued that the order passed by the Board of Revenue was passed without jurisdiction. As per Section 44 of the Chhattisgarh Land Revenue Code, 1959 (henceforth ?1959 Code?), against the order passed by the Nazul Officer, first appeal would lie before the Collector and against the order passed by the Collector, second appeal would lie before the Commissioner, but, in the case in hand, bypassing the mechanism provided in 1959 Code, Respondent Krishna Kumar Gupta directly preferred the appeal before the Board of Revenue and the same has been erroneously entertained by

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the Board of Revenue. He further submitted that finding of the Board of Revenue is also perverse. He submitted that after closing of the arguments in the appeal for orders, certain documents were filed by Krishna Kumar Gupta and relying on those documents the Board of Revenue passed the order which is not permissible in law.

10. Learned Counsel appearing for Respondent Krishna Kumar Gupta in Writ Petition (227) No.142 of 2015 submitted that the writ petition preferred by the State is hopelessly time barred. The order has been passed by the Board of Revenue on 5.10.2006 and the writ petition was preferred by the State on 25.2.2015. Therefore, the writ petition preferred by the State is hopelessly time barred and no sufficient reason has been given by the State explaining the reason for delay and the writ petition on this ground only is liable to be dismissed. He further submitted that earlier one Babu Lal Agrawal, one of the tenants of Paluram Dhananiya challenging the impugned order dated 5.10.2006 passed by the Board of Revenue preferred a petition, being Writ Petition (C) No.5003 of 2008 in which the State was also a party. The petition was dismissed by this Court vide order dated 10.9.2008. Thus, the order of the Board of Revenue has been affirmed by this Court. Therefore, the present writ petition, i.e., Writ Petition (227) No.142 of 2015 will be barred by principle of constructive res judicata. It was further argued by the Learned Counsel that in paragraph 5 of the impugned order, the Board of Revenue entertained the appeal directly exercising the power under Section 32 of 1959 Code. Since the Collector was one of the interested parties before the Nazul Officer and the Nazul Officer had entertained the mutation application on the direction of the Collector, the Board of Revenue rightly entertained the appeal. Reliance was placed on Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project, (2008) 17 SCC 448, State of Madhya Pradesh v. Bherulal, (2020) 10 SCC 654, State of U.P. v. Nawab Hussain, (1977) 2 SCC 806 and Ram and Shyam Company v. State of Haryana, (1985) 3 SCC 267.

11. So far as the order dated 5.6.2015 passed by the Board of Revenue is concerned, Learned Counsel appearing for Petitioner Krishna Kumar Gupta in Writ Petition (227) No.606 of 2015 submitted that the impugned order has been passed by the Board of Revenue on the application of Collector who is one of the interested parties in the present subject matter. The order dated 10.1.2008 regarding renewal of Nazul Patta was passed by the Nazul Officer who was an officer of the rank of Additional Collector, therefore, if the Additional Collector is officially subordinate to the Collector then the Nazul Officer should have moved an application to the Collector for permission to review his own order dated 10.1.2008 and if the Additional Collector is not a subordinate to the Collector and is equal in rank then the Additional Collector himself should have moved an application before the Board of Revenue for permission to review his own order dated 10.1.2008, but, it has not been done. Therefore, on this ground only, the impugned order passed by the Board of Revenue is totally illegal and contrary to Section 51 of 1959 Code.

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12. Learned Counsel appearing for the State/Respondents in Writ Petition (227) No.606 of 2015 submitted that the Collector, Raigarh has preferred the application as per the provision contained in Section 51 of 1959 Code read with Clause 30 of Chapter 4-3 of the Revenue Book Circular which has been rightly entertained by the Board of Revenue. He further submitted that the Nazul lease dated 22.9.1967 has been cancelled vide order dated 2.2.1968, therefore, at the time of passing the order dated 10.1.2008 Nazul lease dated 22.9.1967 was not in existence, therefore, the same could not be renewed. Thus, the Board of Revenue rightly permitted the Collector to review the order dated 10.1.2008.

13. So far as the contention raised by Learned Counsel for the State with regard to the order dated 5.10.2006 passed by the Board of Revenue is concerned that this order passed by the Board of Revenue is without jurisdiction, it was the contention of Learned Counsel that as per Section 44 of 1959 Code an appeal would lie before the Collector then the second appeal would lie before the Commissioner and bypassing both the authorities the Board of Revenue directly entertained the appeal which is not permissible. A bare perusal of the order dated 5.10.2006 of the Board of Revenue shows that the appeal has been entertained by the Board of Revenue invoking the inherent power under Section 32 of 1959 Code. In paragraph 5 of the impugned order it has been mentioned that since the order dated 18.11.1996 passed by the Tahsildar has been suo motu reviewed by the Collector on 28.7.2001 and as per the direction issued by the Collector, the Nazul Officer, Raigarh passed the order dated 18.7.2005 whereby he dismissed the mutation application preferred by Krishna Kumar Gupta. It is also mentioned in the order that since the Collector appointed an officer-in-charge before the Nazul Officer and the officer-in-charge filed his written statement, therefore, it was concluded by the Board of Revenue that the Collector was the interested party, therefore, the Board of Revenue invoking the inherent power under Section 32 of 1959 Code directly entertained the appeal. Thus, entertaining the appeal directly sufficient reason has been assigned by the Board of Revenue. Therefore, I do not find any substance in the argument raised by Learned Counsel for the State in this regard.

14. Another argument raised by Learned Counsel for the State was that after closing of the arguments in the appeal for orders the Board of Revenue entertained some documents which has been filed by Krishna Kumar Gupta and on the basis of said documents the impugned order has been passed which is also not permissible. Paragraph 3 of the impugned order dated 5.10.2006 also shows that after hearing the final arguments on 12.9.2006 some documents were submitted by Krishna Kumar Gupta which has been relied by the Board of Revenue while passing the impugned order. The impugned order further shows that the documents which have been filed by Krishna Kumar Gupta were provided to the Government Advocate and thereafter the documents were taken on record and relying on the documents in paragraph 7 of the order it was opined by the Board of Revenue that the land in dispute was first purchased by Kirodimal Lohariwala from Dr. Baldev Prasad Mishra and subsequently Paluram

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Dhananiya purchased the said land through registered sale deed dated 23.11.1941 and in the missle bandobast also in the year 1941-42 the name of Paluram Dhananiya was mutated, which was not challenged by any one. Thus, it is clear that the documents were duly provided to the Government Advocate and were taken on record and thereafter relying on the said documents the impugned order has been passed. The documents annexed with the present writ petitions further show that vide the judgment and decree dated 31.7.1978 the District Judge recorded a finding that the land in dispute belongs to Krishna Kumar Gupta which was affirmed by the High Court also. Thus, further arguments raised by Learned Counsel for the State that the Board of Revenue, without any jurisdiction, decided the title of Krishna Kumar Gupta is also not sustainable.

15. So far as the order dated 5.6.2015 passed by the Board of Revenue is concerned, it was the contention of Learned Counsel for Petitioner Krishna Kumar Gupta in Writ Petition (227) No.606 of 2015 that the order dated 10.1.2008 has been passed by the Additional Collector and if the Additional Collector is a subordinate to the Collector then under the first proviso to sub-section (1) of Section 51 of 1959 Code, he should have moved the application before the Collector for permission to review and if the Additional Collector is not a subordinate to the Collector then the Additional Collector himself should have moved an application before the Board of Revenue for review of his order, but, in the case in hand, the Collector moved the application for review of the order which is not a competent authority to move the said application for permission to review the order. In counter, it was the contention of Learned Counsel for the State that as per the relevant provisions of 1959 Code, the Nazul Officer in the State possesses powers conferred on any revenue officer. Therefore, the question of competency or jurisdiction of Additional Collector with regard to moving of an application for permission to review his own order does not arise. The Collector preferred the application as per the provisions contained in Section 51 of 1959 Code read with Clause 30 of Chapter 4-3 of the Revenue Book Circular.

16. At this stage, it would be appropriate to reproduce Section 51 of 1959 Code, which reads thus:

?51. Review of orders.?(1) The Board and every Revenue Officer may, either in its/his own motion or on the application of any party interested review any order passed by itself/himself or by any of its/his predecessors in office and pass such order in reference thereto as it/he thinks fit;

Provided that?

(i) if the Commissioner, Commissioner, Land Records, Collector or District Survey Officer thinks it necessary to review any order which he has not himself passed, he shall first obtain the sanction of the Board, and if an officer subordinate to a Collector or District Survey Officer proposes to review any order, whether passed by himself or by any predecessor, he shall first obtain the sanction in writing of the authority to whom he is immediately subordinate;

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17. From a bare perusal of the above-quoted provision it is clear that the Board and every Revenue Officer has a power to review any order passed by itself/ himself and if in the case of Collector any order which he has not himself passed then he shall first obtain sanction of the Board of Revenue and if the officer subordinate to the Collector wants to review any order whether he himself had passed that order or it was passed by his predecessor in office he shall first obtain sanction of the authority to whom he is immediately subordinate.

18. Undisputedly, the order dated 10.1.2008 has been passed by the Nazul Officer who was an officer of the rank of Additional Collector. As contended by Learned Counsel for the State the officer who was working as a Nazul Officer was vested with powers of a Revenue Officer. ?Revenue Officers? are defined in Section 11 of 1959 Code, wherein name of Collector finds place at Serial No.5 and name of Additional Collector finds place at Serial No.6, i.e., below the Collector. Further, sub-section (3) of Section 12 of 1959 Code provides that unless the State Government otherwise directs all Revenue Officers in a district shall be subordinate to the Collector. Therefore, being a Revenue Officer, the Additional Collector is a subordinate to the Collector. Thus, if the Additional Collector wants to review his own order or the order passed by his predecessor in office then he shall first obtain sanction of the authority to whom he is immediately subordinate, i.e., the Collector/Commissioner. Therefore, in the case in hand, the Collector is not the competent authority to make an application before the Board of Revenue for grant of permission to review the order passed by the Additional Collector dated 10.1.2008. Thus, it is clear that the application for grant of permission to review the order dated 10.1.2008 was submitted by the wrong authority as the Collector was not empowered to do so. But, the Board of Revenue entertained the application and granted permission to review the order dated 10.1.2008 which is not permissible and on this ground only the order dated 5.6.2015 is liable to be set aside.

19. In the result, Writ Petition (227) No.142 of 2015 moved by the State is dismissed and order dated 5.10.2006 passed by the Board of Revenue is affirmed. Writ Petition (227) No.606 of 2015 preferred by Krishna Kumar Gupta is allowed and order dated 5.6.2015 passed by the Board of Revenue is set aside.

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