

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.115 of 2013

(Arising out of order dated 8-10-2010 in Misc. Case No.M/13/Misc./126/2010 of the learned Board of Revenue Chhattisgarh, Bilaspur)

1. State of Chhattisgarh, Through the Collector, P.S. Chakradhar Nagar, District Raigarh (C.G.)
2. The Tahsildar, Raigarh, P.S. Chakradhar Nagar, District Raigarh (C.G.)
3. The Sub Registrar, Raigarh, P.S. Chakradhar Nagar, District Raigarh (C.G.)

(Respondents)/
(Non-applicants)/
---- Petitioners

Versus

1. Pawan Chauhan, S/o Late Shri Chintaram Chauhan, R/o Village Dhimarapur, P.S. City Kotwali, Raigarh, Tahsil and District Raigarh (C.G.)
(Applicant)

2. Dhaniram, S/o Duba,
3. Bodharam, S/o Duba,
4. Tara, S/o Duba,
5. Hara, S/o Duba,
6. Kora, S/o Duba,
7. Nidra, S/o Duba,

No.2 to 7 are by caste Kharia, R/o Atarmuda Bade, P.S. Chakradhar Nagar, Tahsil and District Raigarh (C.G.)

8. The Board of Revenue, Chhattisgarh, Bilaspur.

---- Respondents

For Petitioners/State: Mr. Arun Sao, Deputy Advocate General.
For Respondent No.1: Mr. Harsh Wardhan Jaiswal, Advocate on behalf
of Mr. Kamal Kishor Patel, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

23/08/2018

1. The short question involved in the writ petition is, whether the Board of Revenue has power and jurisdiction under Section 8 of the Chhattisgarh Land Revenue Code, 1959 (for short, 'the Code') to consider and grant application for permission to sell the land under Section 165(6)(ii) of the Code, in light of the fact that Section 8 of the Code only confers administrative jurisdiction to the Board of Revenue?
2. Pawan Chauhan – respondent No.1 herein is said to have entered into agreement to sale with respondents No.2 to 7 on 5-6-2010 for purchase of their land situated at Village Bade Atarmuda, Patwari Halka No.13, Tahsil and District Raigarh, total area 0.817 hectare, and thereafter, on 6-10-2010, made an application under Section 8 of the Code before the Board of Revenue stating inter alia that the said sellers – respondents No.2 to 7 belong to Kharia caste and they can sell the land without leave of the Collector and the restriction imposed by the Collector for selling the land is also illegal and therefore permission be granted to sell the land relaxing the ban imposed by the Collector. The Board of Revenue without notice to the State and the Tahsildar as impleaded in the said application, straightway, on 8-10-2010, allowed the application relaxing the ban imposed by the Collector on 7-7-2006 granting permission for sale of land in favour of respondent No.1 under Sections 165(6) & (7) of the Code and also directed furnishing of 22 point information and given direction to the Deputy Registrar for

registration of land. Feeling aggrieved against that order, the instant writ petition has been filed questioning that order holding that under Section 8 of the Code, the Board of Revenue does not have any judicial jurisdiction to entertain directly the application under Section 8 and to grant permission under Sections 165(6) & (7) which has been statutorily conferred to the Collector to grant permission. Even otherwise, relaxation against the ban cannot be given in exercise of administrative jurisdiction under Section 8 of the Code, that too without notice to the State and its authorities which is absolutely without jurisdiction and without authority of law, as such, the order impugned deserves to be set aside.

3. Mr. Harsh Wardhan Jaiswal, learned counsel appearing for respondent No.1, would submit that respondents No.2 to 7 do not belong to aboriginal caste, they have not been included in the aboriginal caste, therefore, the learned Board of Revenue is absolutely justified in granting the application and no jurisdictional error has been committed by the Board of Revenue in granting permission. He would also submit that powers of superintendence given to the Board under Section 8 of the Code are very wide and are similar to those given to this Hon'ble Court under Article 227 of the Constitution of India.

4. I have heard learned counsel for the parties and considered the rival submissions and went through the record with utmost circumspection.

5. The question for consideration is, whether the power of the Board of Revenue under Section 8 of the Code is akin to the power of the

High Court under Article 227 of the Constitution of India?

6. Article 227 of the Constitution of India provides as under: -

“227. Power of superintendence over all courts by the High Court.—(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may—

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts, and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.”

7. Article 227 of the Constitution of India provides that every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. Clause (2) of Article 227 provides that the High Court may call for returns from such courts; and make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts.

8. In the matter of Waryam Singh and another v. Amarnath and another¹, the Supreme Court has held that the power of superintendence conferred upon the High Court by Article 227 was not confined to administrative superintendence only, but included the power of judicial revision also, even where no appeal or revision lay to the High Court under the ordinary law. As such, Article 227 of the Constitution gives wider powers to the High Court to correct serious irregularities or illegalities to ensure justice which cannot ordinarily be done in its normal revisional powers in civil or criminal proceedings.

9. The supervisory jurisdiction under Article 227 of the Constitution of India is a part of basic structure of the Constitution and same cannot be limited or fettered by Act or State Legislature {see Constitution Bench judgment of the Supreme Court in the matter of Madras Bar Association v. Union of India and another² (para-108)}, whereas power of superintendence conferred on the Board under Section 8 of the Code is only a statutory power and as such, it cannot be held akin to the power of the High Court under Article 227 of the Constitution of India.

10. In the erstwhile Madhya Bharat State, the Board of Revenue was constituted under the M.B. Board of Revenue Ordinance, 1948 dated the 15th January, 1948. Similarly, in the former Central Provinces, the Board of Revenue was constituted under the C.P. and Berar Board of Revenue Ordinance, 1949. In the former Madhya Pradesh, the provisions of the Ordinance were enacted as

1 AIR 1954 SC 215

2 (2014) 10 SCC 1

the C.P. and Berar Board of Revenue Act, 1949, which was later on repealed by the M.P. Land Revenue Code, 1954. On the eve of the formation of the new Madhya Pradesh State, three Boards of Revenue were functioning for the Mahakoshal, Madhya Bharat and Vindhya Pradesh regions and these three Boards were integrated by notification dated the 1st November, 1956. Exercising the powers under Section 8 of the Madhya Pradesh Land Revenue Code, 1954, the Government of the new Madhya Pradesh State constituted the Board of Revenue for the new State. This Board was exercising different powers and discharging different functions in the different regions according to the regional laws. By virtue of sub-sections (2) and (3) of Section 8 of the M.P. Land Revenue Code, 1954, the Board of Revenue functioning immediately before the 2nd October, 1959, was deemed to be the Board of Revenue constituted under this Code. Section 3 of the Madhya Pradesh Land Revenue Code, 1959 states as under: -

“3. Constitution of Board of Revenue—(1) There shall be a Board of Revenue for Madhya Pradesh consisting of a President and two or more other members as the State Government may, from time to time, think fit to appoint.

(2) The Board of Revenue as constituted and functioning for the several regions of this State immediately before the coming into force of this Code, hereinafter in this Chapter referred to as the existing Board, shall with effect from the date of coming into force of this Code, be deemed to be the Board of Revenue for Madhya Pradesh constituted under this section.

(3) The President and members of the existing Board shall be the first President and members respectively of the Board of Revenue for Madhya Pradesh.”

11. At this stage, it would be appropriate to consider the report of the

Select Committee in which following observations appear about the Board of Revenue: -

“The Committee noted that the Bill as drafted entrusted the Board of Revenue with judicial and administrative powers. It was explained to the Committee that the functions entrusted to the Board were primarily judicial but an enabling provision was made with a view to obviate difficulty in cases it was later on considered necessary to entrust superintendence of administrative side also to Board. The Committee sees no objection to this. The Committee considered that in case the Board decides to sit at different places in the State on circuit there shall be a provision for enabling it to do so, considering the expanse of the State. A new clause 3-A (section 4 of the Code) has been inserted to serve this object.”

12. At this stage, it would also be appropriate to notice Section 8 of the Code constituted under Section 3(2), which has been conferred the power of superintendence. Section 8 of the Code states as under: -

“8. Powers of superintendence of Board.—The Board shall, in respect of all matters subject to its appellate or revisional jurisdiction, have superintendence over all authorities in so far as such authorities deal with such matters and may call for returns.”

13. A careful perusal of the aforesaid provision would show that the Board of Revenue has been conferred the power of superintendence in respect of all matters subject to its appellate or revisional jurisdiction and the said Board would exercise the power of superintendence over all authorities in so far as such authorities deal with such matters and also empowered to call for returns. It is not an unqualified provision and confers administrative jurisdiction to the Board subject to its appellate or revisional jurisdiction.

14. The term 'subject to' has been considered by the Supreme Court in the matter of Ashok Leyland Ltd. v. State of T.N.³ and the

³ (2004) 3 SCC 1

Supreme Court held as under: - (SCC p. 36, para 79)

“79. ... 'Subject to' is an expression whereby limitation is expressed. The order is conclusive for all purposes.”

The Supreme Court further noticed the dictionary meaning of 'subject to' stating as under: - (SCC p. 38, paras 92-93)

“92. Furthermore, the expression 'subject to' must be given effect to.

93. In Black's Law Dictionary, 5th Edn. at p. 1278, the expression 'subject to' has been defined as under:

'Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for. *Homan v. Employers Reinsurance Corpn.*, 345 Mo 650 : 136 SW 2d 289, 302' “

15. Similarly, the term 'subject to' has also been dealt with and considered by the Supreme Court in the matters of S.N. Chandrashekar v. State of Karnataka⁴ and CCE v. Saurashtra Chemicals Ltd.⁵.

16. From the above-stated analysis, it is quite vivid that the power of superintendence conferred to the Board of Revenue under Section 8 of the Code is subject to its appellate or revisional jurisdiction, meaning thereby that the power of superintendence by the Board under Section 8 of the Code would generally not be exercised where a party has remedy by way of appeal or revision and did not avail of it. The power of superintendence has to be exercised sparingly in extraordinary case, where the interest of justice required and certainly it cannot be exercised to usurp the jurisdiction vested exclusively in the Subordinate Revenue Officer over which the Board of Revenue has the power of

4 (2006) 3 SCC 208

5 (2007) 10 SCC 352

superintendence under Section 8 of the Code.

17. In the matter of Pest Control (India) Pvt. Ltd. v. Pest Control (India) Pvt. Ltd. Employees' all India Union and others⁶, the Bombay High Court defining the scope of supervisory jurisdiction held as under: -

“9. The main challenge to the above order is on the ground that the Industrial Court acted patently beyond its limited supervisory jurisdiction in taking upon itself the task of reappreciating the entire evidence and passing a fresh order as if it was the original authority or an authority sitting in appeal over the order of the Labour Court. The jurisdiction of the Industrial Court under section 44 of the Act, according to the petitioner, is very limited. It is only supervisory in nature. In the instant case, the Industrial Court went far beyond its powers and in that view of the matter itself the impugned order is liable to be set aside and quashed.”

18. In the matter of Hameed Kunju v. Nazim⁷, the Supreme Court has held that in exercise of jurisdiction under Article 227 of the Constitution of India, the Court should not decide the writ petition like original court and observed as under: -

“26. In any case, in our considered view, the executing court having seized of the applications filed by the respondent, there was no justification on the part of the High Court to have entertained the writ petition and decided them like an original court. All that the High Court, in such circumstances, could do was to request the executing court to dispose of the pending applications (IAs) filed by the respondent on their respective merits leaving the parties to challenge the orders once passed on such applications by filing appeal, before the appellate authorities. It was, however, not done.

40. In so doing, the High Court failed to see that the High Court curtailed the judicial powers of the trial Court in passing appropriate order on such applications. The High Court had no jurisdiction to issue directions to the trial court to pass a particular order by either allowing the

⁶ 1993 SCC OnLine Bom 86

⁷ (2017) 8 SCC 611

application or rejecting it. All that the High Court could do in such case was to remand the case and leave the trial court to pass appropriate orders on the application(s) in exercise of its judicial discretion.”

19. The next question would be, whether the Board of Revenue is justified in directly entertaining the application under Section 8 of the Code, for permission to sell the land.

20. In this case, the Board of Revenue has exercised the power conferred under Section 165(6)(ii) of the Code, which states as under: -

“(6) Notwithstanding anything contained in sub-section (1) the right of Bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe by the State Government by a notification in that behalf, for the whole or part of the area to which the Code applies shall—

(i) xxx xxx xxx

(ii) in areas other than those specified in the notification under clause (i), not be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe without the permission of a Revenue Officer not below the rank of Collector, given for reasons to be recorded in writing.

Explanation.-For the purposes of this sub-section the expression “otherwise” shall not include lease.”

21. In the aforesaid provision, power has been given to the Collector to grant permission for reasons to be recorded in writing, to the aboriginal tribes.

22. It is the basic principle of law long settled, that, if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in the matter of Taylor v. Taylor⁸, which

⁸ (1876) 1 Ch D 426

was followed by Lord Roche in the matter of Nazir Ahmed v. King Emperor⁹, who stated as under: -

“Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.”

23. Similar is the proposition laid down in the matter of State of U.P. v. Singhara Singh and others¹⁰ in which the Supreme Court has clearly held that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that the other methods of performance are necessarily forbidden.

24. A power under a statute has to be exercised in accordance with the provisions of the statute and in no other manner. (See J.N. Ganatra v. Morvi Municipality, Morvi¹¹ and Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala and others¹².)

25. The Code clearly confers the jurisdiction to the Collector under Section 165(6)(ii) of the Code to grant permission, therefore, the jurisdiction has to be exercised by the Collector only, neither the authority higher than Collector nor any other authority including the Board of Revenue can exercise that power. The Collector is one of the revenue officers mentioned in Section 11 of the Code. Whereas the Board of Revenue is not a Revenue Officer, but it is a Revenue Court, neither the Board of Revenue nor any member of the Board of Revenue is Revenue Officer. It is thus, clear that the Board of Revenue is a Revenue Court as provided under Section 31 of the Code. However, the Revenue Officers mentioned in Section 11 of

9 AIR 1936 PC 253 (2)

10 AIR 1964 SC 358

11 (1996) 9 SCC 495

12 (2002) 1 SCC 633

the Code are both Revenue Officers and Revenue Courts. The Board being only a Revenue Court can administratively supervise the working of Revenue Officer under the provisions of the Code subject to its appellate and revisional jurisdiction, but under Section 8 of the Code no original jurisdiction of judicial revision has been conferred to the Board of Revenue, it is only administrative in nature. As such, the order passed by the Board of Revenue directly entertaining the application and granting that application in exercise of power which has not been statutorily conferred to him is absolutely without jurisdiction, as there is no semblance of jurisdiction conferred to the Board of Revenue under Section 8 of the Code to grant application under Sections 165(6)(ii) and 165(7) of the Code.

26. In the matter of Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and others v. Director General of Civil Aviation and others¹³, the Supreme Court while relying upon the earlier judgments held that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and observed as under:-

“27. Similar view has been reiterated by this Court in *Commr. of Police v. Gordhandas Bhanji*¹⁴, *Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia*¹⁵ and *Pancham Chand v. State of H.P.*¹⁶ observing that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates

13 (2011) 5 SCC 435

14 AIR 1952 SC 16

15 (2004) 2 SCC 65 : AIR 2004 SC 1159

16 (2008) 7 SCC 117 : AIR 2008 SC 1888

the constitutional scheme.

28. In view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even a senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner.”

27. There is yet another reason for not upholding the order. Even the Board of Revenue has relaxed the ban imposed by the Collector under its jurisdiction. The Board of Revenue has no business to lift the ban imposed by the Collector under the provisions of law, it could have been relaxed by the competent authority, if applied for by the aggrieved person, and in the manner provided under the law. The Board of Revenue has exercised the jurisdiction not vested in it and exceeded its authority by not only granting permission which has been conferred to the Collector under Sections 165(6)(ii) and 165(7) of the Code, but also further exceeded the jurisdiction by lifting / relaxing the ban imposed and by directing the competent authority to furnish 22 point information and further directing the Deputy Registrar to register the sale deed. In the considered opinion of this Court, the order passed by the Board of Revenue granting permission under Section 165(6)(ii) of the Code and relaxing the ban deserves to be and is hereby quashed being wholly without jurisdiction and without authority of law. Consequently, registration of sale deed, if any, is also quashed.

28. The writ petition is allowed to the extent sketched herein-above. No order as to cost(s).

29. A copy of this order be sent to the Chief Secretary, State of Chhattisgarh, as well as the Principal Secretary (Revenue) for

information and further needful action including onward circulation to the Board of Revenue.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.115 of 2013

State of Chhattisgarh and two others

- Versus -

Pawan Chauhan and seven others

Head Note

Power of the Board of Revenue under Section 8 of the Chhattisgarh Land Revenue Code, 1959, is only administrative in nature subject to its appellate and revisional jurisdiction.

छत्तीसगढ भू-राजस्व संहिता, 1959 की धारा 8 के अन्तर्गत राजस्व मण्डल की शक्ति इसकी अपीली तथा पुनर्विलोकन के क्षेत्राधिकार के अधीन केवल प्रशासनिक प्रकृति की है।

