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HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.186 of 2000

1. State of Chhattisgarh, through Collector, Bastar, Now Collector, Dantewada.

2. Sub-Divisional Officer, Revenue, Konta Head Quarter, Sub-Divisional Office Sukma, Distt. Dantewada.

---- Appellants

Versus

1. Smt. Indrawati, W/o Omprakash, D/o Madanlal Sharma, aged 44 years, R/o Sukma, Tahsil Konta, Distt. Bastar at present Distt. Dantewada.

2. Parsath Adhikari, Krishi Upaj Mandi Dodara, Konta Head Quarter, Sukma, Distt. Bastar.

3. Secretary, Shri N. L. Bhandari, Krishi Upaj Mandi, Dondra Konta Head Quarter, Tahsil Konta, Distt. Bastar At present Distt. Dantewada.

---- Respondents

For Appellants / State:	Mr. Arun Sao, Deputy Advocate General and Mr. Ashish Surana, Panel Lawyer.
For Respondent No.1:	Mr. Anurag Dayal Shrivastava and Mr. Alok Dewangan, Advocates.
For Respondent No.3:	Mr. K.P.S. Gandhi, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

29/08/2018

1. The substantial questions of law involved, formulated and to be answered in this defendants' (appellants') second appeal are as under: -

> “1. Whether the suit of the plaintiffs itself was maintainable in light of the fact that the plaintiffs had filed the suit challenging the order of the SDO when simultaneously they have also preferred an appeal before the Court of Commissioner wherein the Commissioner has also upheld the order of the SDO?

2. Whether the findings arrived at by the trial Court as well as the first Appellate Court granting right on the plaintiffs over the suit property is perverse and illegal?"

(For the sake of convenience, the parties would be referred hereinafter as per their status shown in the plaint before the trial Court.)

Brief facts

2. The plaintiff / respondent No.1 herein brought an action seeking declaration of her title and permanent injunction over the suit land bearing Khasra No.1057/2, area 5 acres, situate at Village Sukma, Tahsil Konta, Distt. Dantewada, after declaring the order of the Sub-Divisional Officer dated 18-4-1991 (Ex.P-7) as void, stating inter alia that she was granted *patta* over the suit land on 20-6-1981 in a revenue case vide Ex.P-1 and obtained possession of the same and enjoying the same without interruption, but all of a sudden, the Sub-Divisional Officer (Revenue), Konta, by order dated 18-4-1991, in a revenue case, declared the same as void and illegal vide Ex.P-7. It was also pleaded that the plaintiff questioned the order of the Sub-Divisional Officer before the Commissioner, Bastar Division, Jagdalpur unsuccessfully vide Ex.P-9. It was further pleaded that the exercise of *suo motu* revisional jurisdiction to revoke the order granting *patta*, without following the procedure and without giving opportunity of hearing in exercise of alleged jurisdiction under clause 30 of S.No.3 of Part-IV of the Revenue Book Circular, is illegal and bad in law, and the suit be decreed accordingly.

3. The defendants/State filed its written statement stating inter alia that the subject land was allotted to the plaintiff in illegal manner

and without following the procedure prescribed under the law and possession of the suit land was handed-over to the Krishi Upaj Mandi Samiti on 25-6-1994, and maintainability of the suit was also questioned to be not maintainable, as the order of the Commissioner dismissing the appeal of the plaintiff as time barred was not challenged.

Finding of trial court and first appellate court

4. The trial Court after appreciating oral and documentary evidence on record, came to a specific conclusion that the *patta* allotted to the plaintiff was illegally cancelled by the Sub-Divisional Officer vide Ex.P-7 and granted decree in favour of the plaintiff and also restrained the State from interfering with her possession. Questioning the judgment & decree granted by the trial Court, the Krishi Upaj Mandi / respondents No.2 and 3 herein preferred first appeal before the first appellate Court, but they remained unsuccessful leading to filing of second appeal before this Court under Section 100 of the Code of Civil Procedure, 1908 in which substantial questions of law formulated have been set out in the opening paragraph of this judgment.

Submission of parties

5. Mr. Arun Sao, learned Deputy Advocate General, ably assisted by Mr. Ashish Surana, learned Panel Lawyer, appearing for the State / appellants, would submit that the judgment & decree granted by the trial Court decreeing the suit and affirmed by the first appellate Court are unsustainable and bad in law, in view of the fact that the

plaintiff has only questioned the order of the Sub-Divisional Officer revoking her *patta* vide Ex.P-7, but deliberately did not question the order of the Commissioner, Bastar Division, Jagdalpur affirming the order of the Sub-Divisional Officer Ex.P-7 and as such, the order of the Sub-Divisional Officer was affirmed by the order of the Commissioner, therefore, it was imperative for the plaintiff to question the order of the Commissioner. Thus, in absence of challenge to the order of the Commissioner Ex.P-9, the suit as framed and filed is not maintainable in law. He would alternatively submit that even otherwise, the order of the Commissioner Ex.P-9, affirming the order of the Sub-Divisional Officer, has become final and therefore on the principle of finality, the order of the Commissioner has to be successfully avoided to overcome the order of the Sub-Divisional Officer. He would further submit that both the Courts below have granted decree in favour of the plaintiff on wholly perverse and illegal ground, as the trial Court itself has recorded a finding that the plaintiff has not proved that the *patta* was granted to her in accordance with law. Therefore, both the substantial questions be answered in favour of the State / appellants herein and suit be dismissed by setting aside the judgment and decree of the trial Court as affirmed by the first appellate Court.

6. Mr. Anurag Dayal Shrivastava, learned counsel appearing for the plaintiff / respondent No.1 herein, while supporting the judgment & decree of both the Courts below, would submit that the principle of

merger would not apply, as, in the instant case, the learned Commissioner dismissed the appeal filed by the plaintiff on the ground of limitation finding no sufficient cause in the application for condonation of delay in preferring the appeal. He would further submit that the Sub-Divisional Officer has not been conferred with any revisional jurisdiction under Section 50 of the Chhattisgarh Land Revenue Code, 1959 and clause 30(a) of S.No.3 of Part-IV of the Revenue Book Circular also has not conferred any jurisdiction to the Sub-Divisional Officer to exercise the revisional power. Therefore, the order of the Sub-Divisional Officer has rightly been declared void by the trial Court which has rightly been affirmed by the first appellate Court. As such, the substantial questions be answered against the defendants and in favour of the plaintiff and the second appeal be dismissed accordingly.

7. I have heard learned counsel for the parties and considered their rival submissions and went through the records with utmost circumspection.

Answer to First Substantial Question of Law

8. It is established on record that the Sub-Divisional Officer (Revenue), Konta by its order dated 18-4-1991 vide Ex.P-7 revoked the patta (Ex.P-1) granted in favour of the plaintiff finding that it was not granted to her in accordance with law and thereafter, the plaintiff taken-up the matter in appeal before the Commissioner, Bastar Division, Jagdalpur, but the said appeal was dismissed by the learned Commissioner as barred by limitation finding no sufficient

cause in the application for condonation of delay. The question is whether in that case, the order of the Sub-Divisional Officer has merged into the order of the Commissioner.

9. The doctrine of merger is based on the principle that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by inferior Court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding nevertheless its finality is put in jeopardy. Once the superior Court has disposed of the lis before it either way – whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior Court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the Court, tribunal or the authority below. (See **Kunhayammed and others v. State of Kerala and another**[1].)

10. The Constitution Bench of the Supreme Court in the matter of **Collector of Customs, Calcutta v. East India Commercial Co. Ltd., Calcutta and others**[2] has held that after the disposal of appeal, the operative order is the order of the appellate authority whether it has reversed the original order or modified it or confirmed it. Relevant extracts from paragraphs 4 and 5 of the report state as under: -

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1 AIR 2000 SC 2587
2 AIR 1963 SC 1124

> "(4) The question therefore turns on whether the order of the original authority becomes merged in the order of the appellate authority even where the appellate authority merely dismisses the appeal without any modification of the order of the original authority. It is obvious that when an appeal is made, the appellate authority can do one of three things, namely, (i) it may reverse the order under appeal, (ii) it may modify that order, and (iii) it may merely dismiss the appeal and thus confirm the order without any modification. It is not disputed that in the first two cases where the order of the original authority is either reversed or modified it is the order of the appellate authority which is the operative order and if the High Court has no jurisdiction to issue a writ to the appellate authority it cannot issue a writ to the original authority. The question therefore is whether there is any difference between these two cases and the third case where the appellate authority dismisses the appeal and thus confirms the order of the original authority. It seems to us that on principle it is difficult to draw a distinction between the first two kinds of orders passed by the appellate authority and the third kind of order passed by it. In all these three cases after the appellate authority has disposed of the appeal, the operative order is the order of the appellate authority whether it has reversed the original order or modified it or confirmed it. …
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> (5) It is this principle, viz., that the appellate order is the operative order after the appeal is disposed of, which is in our opinion the basis of the rule that the decree of the lower court merges in the decree of the appellate court, and on the same principle it would not be incorrect to say that the order of the original authority is merged in the order of the appellate authority whatsoever its decision – whether of reversal or modification or mere confirmation. ..."

11. The Supreme Court has also carved out an exception to the aforesaid principle of merger in the matter of **Chandi Prasad v. Jagdish Prasad**[3] in following terms: -

> "28. … when an appeal is dismissed on the ground that delay in filing the same is not condoned, the doctrine of merger shall not apply."

12. The principle of law laid down by the Supreme Court in **Chandi**

3 (2004) 8 SCC 724

Prasad (supra) has been followed with approval in the matter of State of **Kerala and another v. Kondottyparambanmoosa and others**[4] holding that when a higher forum entertains an appeal or revision and passes an order on merit, the doctrine of merger would apply and it would not apply when the appeal or revision is dismissed on the ground that delay in filing the same is not condoned.

13. The Constitution Bench of the Supreme Court in the matter of **S.S. Rathore v. State of Madhya Pradesh**[5] has held that the distinction made between courts and tribunals as regards the applicability of doctrine of merger is without any legal justification and observed as under: -

> "14. The distinction adopted in *Mohammad Nooh* case[6] between a court and a tribunal being the appellate or the revisional authority is one without any legal justification. Powers of adjudication ordinarily vested in courts are being exercised under the law by tribunals and other constituted authorities. In fact, in respect of many disputes the jurisdiction of the court is now barred and there is a vesting of jurisdiction in tribunals and authorities. That being the position, we see no justification for the distinction between courts and tribunals in regard to the principle of merger. …"

14. Reverting to the facts of the present case applying the principle of law laid down by Their Lordships of the Supreme Court, in the instant case also, it is not in dispute that the appeal preferred by the plaintiff was dismissed by the learned Commissioner on the ground that delay in filing the appeal is not condoned, therefore, in light of the decision of the Supreme Court in **Chandi Prasad** (supra)

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4 (2008) 8 SCC 65
5 (1989) 4 SCC 582
6 State of Uttar Pradesh v. Mohammad Nooh, 1958 SCR 595: AIR 1958 SC 86

followed by the decision in **Kondottyparambanmoosa's** case (supra), the principle of merger would not apply and it cannot be held that the order of the Sub-Divisional Officer has merged into the order of the Commissioner dismissing the appeal on the ground of delay in filing the appeal.

15. Now, the question would be, whether the plaintiff's suit was maintainable without questioning the order of the Commissioner Ex.P-9 affirming the order of the Sub-Divisional Officer, though not on merits, as admittedly, the order of the Commissioner affirming the order of the Sub-Divisional Officer was passed on 27-6-1994 and the suit was filed on 23-12-1994, after the dismissal of appeal on 27-6-1994. The plaintiff has filed the suit, as stated herein-above, after the dismissal of appeal by the learned Commissioner only questioning the order of the Sub-Divisional Officer (Ex.P-7) to be null and void, even the order of the Commissioner has not been branded by the plaintiff to be illegal or invalid or void. It has already been held that though the principle of merger would not apply in the instant case, as the appeal was dismissed by the learned Commissioner by not condoning the delay in filing the appeal, but yet, the order of the Commissioner has become final and thereby the order of the Sub-Divisional Officer has also attained finality.

16. It is well settled law that even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations. Ordinarily, such an order will, in fact, be effective inter partes until it is successfully avoided or challenged in a higher

forum.

17. The Supreme Court in the matter of **State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (Dead) and others**[7] has clearly held that even a void order or decision rendered between parties will be effective inter partes until it is successfully avoided by observing as under: -

> "7. … even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations. Ordinarily, such an order will, in fact, be effective inter partes until it is successfully avoided or challenged in a higher forum. Mere use of the word 'void' is not determinative of its legal impact. The word 'void' has a relative rather than an absolute meaning. It only conveys the idea that the order is invalid or illegal. It can be avoided. ..."

18. The Supreme Court following the principle of law laid down in **M.K. Kunhikannan Nambiar's** case (supra), in the matter of **Krishnadevi Malchand Kamathia and others v. Bombay Environmental Action Group and others**[8] again held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum. Their Lordships of the Supreme Court observed in paragraphs 17, 18 and 19 as under: -

> "17. In *State of Punjab v. Gurdev Singh*[9] this Court held that a party aggrieved by the invalidity of an order has to approach the court for relief of declaration that the order against him is inoperative and therefore, not binding upon him. While deciding the said case, this Court placed reliance upon the judgment in *Smith v. East Elloe RDC*[10], wherein Lord Radcliffe observed: (AC pp. 769-70)

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7 (1996) 1 SCC 435
8 (2011) 3 SCC 363
9 (1991) 4 SCC 1
10 1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855

> "… An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity [on] its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

18. In *Sultan Sadik v. Sanjay Raj Subba*[11], this Court took a similar view observing that once an order is declared non est by the court only then the judgment of nullity would operate *erga omnes* i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/competence and therefore, it comes to the conclusion that the order suffers from patent and latent invalidity.

19. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person."

19. Similarly, in the matter of **Shyam Sundar Sarma v. Pannalal Jaiswal and others**[12], a three-Judge Bench of the Supreme Court has clearly held that an appeal which is dismissed for default or as barred by limitation is nevertheless an appeal in the eye of the law for all purposes and a decision in the appeal and the same cannot be treated on par with non-filing of an appeal or withdrawal of appeal.

20. Reverting to the facts of the present case, it is quite vivid that

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11 (2004) 2 SCC 377
12 (2005) 1 SCC 436

though the order of the Sub-Divisional Officer was seriously questioned by the plaintiff, but the plaintiff, for the reasons best known to her, even did not brand the order of the Commissioner as illegal or invalid, though it has not the effect of merger but it has definitely the effect of confirming the order of the Sub-Divisional Officer. The Commissioner is one of the senior revenue officers under Section 11 of the Chhattisgarh Land Revenue Code, 1959 and the order of the Sub-Divisional Officer has been affirmed by the Commissioner, and it is a legal and valid order binding on the parties to lis (plaintiff) unless it is successfully avoided, specially when the Supreme Court in **M.K. Kunhikannan Nambiar's** case (supra) and **Krishnadevi Malchand Kamathia** (supra) has clearly held that even an invalid or illegal order has to be avoided successfully or to be challenged in a higher forum.

21. In the instant case, the plaintiff even did not question the order of the Commissioner to be invalid or illegal and even did not think it proper to avoid, which was imperative for the plaintiff to also seek declaration of the order of the Commissioner to be illegal and invalid in addition to seeking the relief of declaration that the order of the Sub-Divisional Officer is illegal and void, as the order of the Commissioner has affirmed the order of the Sub-Divisional Officer giving finality to the order of the Sub-Divisional Officer. The plaintiff cannot be allowed to maintain a suit merely questioning the order of the Sub-Divisional Officer leaving the order of the Commissioner as it is which has the effect of giving finality to the order of the Sub-

Divisional Officer, particularly the order of the Commissioner dismissing the appeal is valid, effective and binding between the parties. Thus, in my considered opinion, the suit filed by the plaintiff only questioning the order of the Sub-Divisional Officer (Ex.P-7) without questioning the order of the Commissioner (Ex.P-9), though the suit was filed after the dismissal of appeal by the Commissioner, is not maintainable and the question of law framed in this regard is answered in favour of the appellants – State / defendants and is answered accordingly.

Answer to Second Substantial Question of Law

22. In the suit filed by the plaintiff, the plaintiff herself has admitted that Section 162 has been deleted from the Madhya Pradesh Land Revenue Code, 1959 with effect from 23-4-1964 and as such, land allotment cannot be made under the provisions of the said Code and it can be done only under the provisions of the Revenue Book Circular, and she was granted 5 acres of land vide Ex.P-1. On complaint being made, the Collector by its oder dated 9th September, 1983, authorised the Sub-Divisional Officer (Revenue) to examine the matter and to pass necessary order in which the plaintiff was noticed and upon enquiry, the Sub-Divisional Officer found that the plaintiff as well as her four brothers, each of them have been allotted 5 acres of land i.e. total 25 acres of Government land have been allotted to the plaintiff and her four brothers without following the due procedure of law, and thereby it has been decided to revoke the *patta* granted to the plaintiff.

23. Mr. Anurag Dayal Shrivastava, learned counsel appearing for the plaintiff / respondent No.1 herein, has vehemently contended that the power exercised by the learned Sub-Divisional Officer vide Revenue Book Circular – Part IV clause 3(3), was not invokable, as the Sub-Divisional Officer was not authorised to invoke any revisional power under the said provision, therefore, invocation of said jurisdiction to revoke the patta is unsustainable and bad in law.

24. It is not in dispute that the Collector by order dated 9th September, 1983, which is clearly recorded in Ex.P-7, has authorised the Sub-Divisional Officer to look into the complaint pursuant to the report submitted by the Sub-Divisional Officer on 27-5-1982, thereafter finding that huge Government land (25 acres) was allotted to the plaintiff and her family members illegally, the Sub-Divisional Officer has exercised the power and revoked the *patta*. The plaintiff though has challenged the order of the Sub-Divisional Officer revoking her *patta*, but had not questioned the order of the Collector dated 9th September, 1983 by which the Collector has authorised the Sub-Divisional Officer to look into the illegality in granting the *patta*, as it is the finding of the Sub-Divisional Officer that 25 acres of Government land in prime locality was allotted to the plaintiff and her four brothers unauthorisedly. Once the Collector has authorised the Sub-Divisional Officer, the Sub-Divisional Officer is empowered to act under the instructions of the Collector being his superior authority and under the authority of the Collector, the Sub-Divisional Officer has enquired the illegality in

grating *patta* and thereby he has revoked the patta granted in favour of the plaintiff. The plaintiff ought to have questioned the order of the Collector by which the Sub-Divisional Officer was authorised to exercise the power to look into the complaint of granting *patta* of huge Government land in favour of private persons including the plaintiff.

25. The *patta* was granted by the allotment officer / Tahsildar under the provisions of the Revenue Book Circular, which is only executive instruction. The plaintiff maintained appeal before the Commissioner when her *patta* was revoked by the Sub-Divisional Officer. The Sub-Divisional Officer is an appellate authority under the Chhattisgarh Land Revenue Code, 1959 against the order of the revenue officer subordinate to it under Section 44(1) of the said Code and in the present case, he examined the allotment made by the Tahsildar, an officer subordinate to him, under the Revenue Book Circular being authorised by the Collector in the larger public interest and to protect the State largesse which cannot be branded as without authority of law, especially when the authority of the Collector was not questioned by the plaintiff.

26. Apart from this, mere mentioning of incorrect provision of law would not denude the Sub-Divisional Officer or any authority to exercise the power which he has exercised by the authorisation of the Collector. In view of the above, in the considered opinion of this Court, this question is also answered in favour of the defendants / State and against the plaintiff.

27. Resultantly, I answer both the questions of law against the plaintiff and in favour of the State / defendants and as a fallout, the decree granted by the trial Court as affirmed by the first appellate Court is hereby set aside. Consequently, the plaintiff's suit would stand dismissed. Parties are left to bear their own cost(s).

28. The second appeal is allowed to the extent sketched herein-above.

29. A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.186 of 2000

State of Chhattisgarh and another

Versus

Smt. Indrawati and others

Head Note

Principle of merger would not apply where the appeal is dismissed by not condoning the delay in filing the appeal.

विलयन का सिद्धान्त लागू नहीं होगा जब अपील दाखिल करने में हुए विलम्ब को माफ न करते हुए अपील खारिज की गई हो।