

W.P. No. 15656 of 2012

28.09.2012

Shri Mahendra Pateriya, learned counsel for the petitioner.

Smt. Sharda Dubey, learned PL for the respondents.

The petitioner's counsel is heard on the question of admission.

The petitioner has filed this writ petition under Article 226 of the Constitution of India, (the same appears to be covered under Article 227 of the Constitution of India) for quashment of order dated 28.2.2012, (Ann. P-7) passed by the Collector, Narsinghpur in Revenue Appeal No. 44-B/121/10-11 affirming the order dated 29.1.2010, (Ann. P-5) passed by the Sub Divisional Officer, Narsinghpur in Revenue Case No. 49/B-121/ 09-10 whereby after holding guilty to the petitioner to violate provision of 247 (7) of the Madhya Pradesh Land Revenue Code, in short "The Code", to carry out the illegal mining from the alleged land, penalty of Rs.13,44,000/- has been imposed on him. According to the order of SDO such order has been passed under Section 222 and 247 (7) of the Code under the powers sub delegated by virtue of Section 24 (2) of the code, vide gazette notification of the State of M.P. dated 5th of October 2001 bearing notification no. F-2/38-seven – Sa-6/2000, dated 20.9.01.

After taking me through the petition as well as papers placed on record, petitioner's counsel has argued the matter at length for admission of this petition alongwith other questions on merits. He also raised the question that the impugned order has been passed by the SDO without having any authority according to spirit of Section 247 (7) of the Code. Such order could have been passed only by the Collector. In view of aforesaid notification of

the State on making certain query, petitioner's counsel argued that inspite having authority to impose penalty the same is not in accordance with law and therefore the appellate authority – Collector was bound to set aside the order, (Ann. P-5) of the SDO by order (Ann. P-7) but the same has been passed under wrong premises. In support of his contentions, he also placed his reliance on decisions of Division Bench of this Court dated 21.3.2012 passed in Writ Appeal No. 1320/2011 (Rajeev Agrawal Vs. State of M.P. and others) and the order order of Single Bench of this Court 23.4.2012 passed in W.P. No. 790/2012 ((Nirnidhi Marketing Pvt. Ltd. Vs. State of M.P. and others) and the order dated 18.4.2012 passed in W.P. No. 804/2012, ((Nirnidhi Marketing Pvt. Ltd. Vs. State of M.P. and others) and prayed for admission and allowing this petition. Photocopies of the aforesaid orders referred by the petitioner's counsel are taken on record.

Having heard the counsel, keeping in view his arguments, after perusing the papers placed on record alongwith the earlier orders of this court, I am of the considered view that on availability of alternate forum to the petitioner to file the statutory second appeal under Sub Section 2 of Section 44 of the Code this petition either under Article 226 or 227 could not be entertained to examine the merits of the matter. So far aforesaid cited cases are concerned, it is suffice to say that in any of the cited cases the provisions of availability of alternate forum of Second Appeal under Section 44 (2) of the Code has not been considered and answered. So in such premises, such orders are not helping to the petitioner in the present scenario of the case at hand.

As ready reference, I would like to mention the concerning part of Section 44 (2) of the Code. The same is read as under:-
Section 44 (2)

44. Appeal and appellate authority (1)

(a).....,(b).....,(c).....,(d).....,(e).....,(f).....(g).....,

(2) Save as otherwise provided a second appeal shall lie against every order passed in first appeal under this Code or the rules made thereunder -

In view of the aforesaid availability of alternate forum to the petitioner to file the second appeal against the order Annexure P-7 of the Collector by ignoring the provision of statutory appeal this petition could not be entertained either under the superintending jurisdiction of this Court under Article 227 of the Constitution of India or under extraordinary jurisdiction of this court enumerated under Article 226 of the Constitution of India. Consequently without expressing any opinion on merits of the matter, this petition is hereby dismissed on the aforesaid technical ground of availability of alternate remedy to the petitioner but by extending a liberty to the petitioner to file the Second Appeal before the Court of Commissioner against the order of Collector, (Ann. P-7).

Office is directed to return the certified copy of this order, (Ann. P-7) by retaining its photocopy on record to the petitioner's counsel enabling him to file the aforesaid second appeal before the Commissioner.

It is also observed that on filing the appropriate application under Section 14 of the Limitation Act, the petitioner shall be entitled to get exclusion of the period of limitation to file the appeal which has been spent by him in prosecuting the present petition.

At this stage considering the oral prayer of the petitioner's counsel, it is observed that on filing the aforesaid appeal before the Court of Commissioner, the same shall be considered and adjudicated by such authority after extending the opportunity to either side within 60 days from the date of filing the same.

C c as per rules.

(U.C. Maheshwari)
Judge

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