
(2019) 10 CHH CK 0022

Chhattisgarh High Court

Case No: Writ Petition (C) No. 1050 Of 2013

Ajay Kumar Nag

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision: Oct. 3, 2019

Acts Referred:

- Limitation Act, 1963 - Section 5, 14

Hon'ble Judges: Goutam Bhaduri, J

Bench: Single Bench

Advocate: Sachin Singh Rajput, Ramakant Mishra, Sudeep Verma, Sudheer Verma

Final Decision: Allowed

Judgement

Goutam Bhaduri, J

1. In the instant petition, the challenge is to the order dated 29.05.2013 passed by Respondent No.1, the Secretary to the State of Chhattisgarh,

Revenue and Disaster Management, in exercise of power of revision conferred under the Revenue Book Circular Part V, Rule 30 which deals with

Appeal, Revision, Review etc.

2. The petitioner claims his title on the basis of a Will executed by Rani Bala Nandi @ Deepika, wife of Col. Shantipad Nandi. The petitioner contends

that the dispute is relating to land bearing Kh.No.409 admeasuring 2.023 hectares situated at village Temri, Tahsil and District Raipur. It is contended

that initially the land was allotted on lease by the Tahsildar to one Colonel Shantipad Nandi, Son of Nagendra Nath Nandi since he was an Ex-Army

Man. The allotment was made vide order dated 11th October,1973 passed in Revenue Case No. 1306-A/59/1972-1973 under the relevant provisions

of Revenue Book Circular. It is further stated that in the year 1985, the Bhumi Swami rights was conferred to Col. Shantipad Nandi and after death of

Col. Shantipad, the name of his wife Smt. Rani Bala @ Deepika Nandi was recorded in the land revenue records. Copies of respective Rin Pustikas

have been placed on record. It is stated that the said land was bestowed on petitioner who was nephew of the Deepika Nandi by way of Will dated

28.12.2006 thereby he inherited the property after death of Deepika Nandi who died on 28.04.2007 at Raipur. The copy of the will is placed on record.

3. It is contended that over the disputed land which was given to Col. Shantipad Nandi, the agricultural activities were carried out from the initial date

without any interference. It is further case of the petitioner that some of villagers namely Shambhu and others had challenged such grant of Bhumi

Swami right in favour of Rani Bala Nandi wife of Col. Shantipad, whose name was recorded in land records. The challenge was made before the

Sub-Divisional Officer, Raipur. The Sub-Divisional Officer by order dated 04.05.1987 set aside such grant of Bhumi Swami right conferred to

Shantipad Nandi, the initial grantee. Against such order of SDO, an appeal was preferred before the Additional Commissioner, Raipur, by Rani Bala

Nandi, the widow of Shantipad Nandi. The Additional Commissioner in Appeal No.328/A- 6/86-87 rejected the objections filed by the villagers vide

order dated 29.02.1988 and held that the land was rightly allotted to Col. Shantipad Nandi and the appeal was converted into revision. Though it was

held by the Commissioner that the land was allotted to Col. Nandi and the allotment, if any, could have been done by the Collector, however, by setting

aside the order of the SDO dated 04.05.1987 the matter was sent to the Collector to exercise suo motu revision for consideration. The villagers

namely Shambhu, Dhaniram, Pyarelal Satnami, Dujeram, Kartikram, Fodar, Jagdish, Jivrakhan, Hemlal, Kartikram whose contentions were dismissed

by the Addl. Commissioner had filed a Revision before the Board of Revenue at Gwalior. The revision was registered as 203-A/88. The revision

before the Board of Revenue was dismissed on 17.03.1993 holding that since the allotment of land was made under the Revenue Book Circular

(RBC), as such, the revision under the Land Revenue Code before the Board of Revenue would not lie.

4. In the meanwhile, the proceeding before the Collector which was directed to commence suo motu on the direction of the Commissioner continued

for certain period and eventually got dismissed on 05.11.1997. Subsequently, the said revision was again restored in the year 1999 and in the

meanwhile, the objectors/villagers made a statement that they do not want to further prosecute the revision. The said suo-motu revision was

dismissed. Again such revision was restored on the application of complainant in the year 2001 and on 23.06.2001 the orders were passed by the

Addl. Collector whereby it was held that the grant made in the name of Col. Nandi be annulled and the land allotted to him be restored to be recorded

as a grass land in the revenue records. Further more, since certain sale came to light, as a consequence thereof, again an order was passed on

25.06.2001 wherein it was ordered that the sale made in between period by the Power of Attorney Holder Rani Bala Nandi would also be cancelled.

5. Against such order of the Addl. Collector, the appeal was preferred before the Addl. Commissioner, Raipur bearing No.67-A/59 of 2009- 2010.

The Additional Commissioner vide order dated 15.07.2010 (Annexure P-7) allowed the appeal filed by the petitioner and set aside the order dt.

23.06.2001 passed by the Additional Collector as also the consequent order 25.06.2001 and directed to record the name of the petitioner Ajay Kumar

Nag who claimed the possession on the basis of the will in the revenue records.

6. Respondent No.4 Ashok Kumar Yadav against such order filed a revision before the Board of Revenue. The Board of Revenue by order dated

18.10.2010 filed as Annexure P-9 dismissed the revision preferred by respondent No.4 holding that the revision would not lie before the Board of

Revenue as the grant was made under the Revenue Book Circular. Against such order, respondent No.4 filed a petition bearing WP (227) No.

6160/2010 (Annexure P-10) before this Court and this Court by order dated 22.7.2011 dismissed the writ petition holding that the order of the Addl.

Collector dated 23.06.2001 was passed under the Executive Instructions contained in Revenue Book Circular and not under the land Revenue Code,

hence the revision would not lie, thereby affirmed the order of Board of Revenue. However, it was observed that the petitioner (respondent no.4

herein) would be at liberty to challenge the order of Additional Commissioner dated 15.07.2010 before the appropriate forum. Thereafter, respondent

no.4 challenged the order of Commissioner dated 15.07.2010 before the Secretary under the mandate of Revenue Circular wherein the impugned

order dated 29.05.2013 (Annexure P-1) has been passed which is subject of challenge in the instant writ petition.

7. Learned counsel for the petitioner would submit that initially the grant of land was made in the year 1973 in favour of Col. Shantipad Nandi being an

Ex-Army Officer and after his death, it was recorded in the name of his wife Smt. Rani Bala @ Deepika Nandi. It is stated that the Tahsildar

subsequently made a permanent grant in favour of Shantipad Nandi way back in the year 1985. Counsel would further submit that when the order

passed by the SDO canceling the grant of Bhoomiswami Right was subject of challenge before the Addl. Commissioner and the Addl. Commissioner

by order dated 29.02.1998 held that the grant of Bhoomiswami right was made in favour of Shantipad, but sent it to the Collector to exercise the power

of suo- motu revision and pass the order after hearing the parties. It is contended that thereafter during the pendency of litigation, the villagers who

initially objected the grant have challenged the order of Commissioner before the Board of Revenue but that too was dismissed. In the meanwhile, the

main petition though was dismissed in 1997 but was restored in 1999 without hearing to the petitioner and thereafter on 23.06.2001, the power of suo-

motu revision was exercised and subsequently the sale made in between the parties was cancelled by subsequent order dated 25.06.2001 which was

never subject of issue before the Collector.

8. Learned counsel for the petitioner would further submit that exercise of suo-motu power of enquiry has to be made within a reasonable time and

here in this case, when the order of Collector dated 23.01.2001 & 25.06.2001 were subject of challenge before the Addl. Commissioner, the same

was set aside by order dated 15.07.2010. Therefore, counsel would submit that the power of enquiry so exercised over a long gap of period i.e., more

than 7-8 years is not justified and no valid reason shown for that. Assailing the order dated 29.05.2013 passed by the Secretary of the State, he would

submit that the order itself is contradictory and would show that without any valid reason, the suo- motu exercise of power of revision was made, the gap of so many years has not been justified and against the laid down dictum of the Supreme Court which mandates that the revisional power has to be exercised within a reasonable time. The counsel would submit that the order of Secretary, therefore, is completely unjustified and cannot be allowed to sustain.

9. Learned counsel for the petitioner would further submit that though the statutory limit does not apply in case of grant of land by the revenue circular, but there cannot be unreasonable delay. Reliance is placed in Mohamad Kavi v. Fatmabai Ibrahim 1998(1) MPWN Note 26 (Supreme Court); Ranveer Singh v. State of Madhya Pradesh AIR 2011 M.P. 27, Paras 33, 36 and Rambharosi Sharma v. State of M.P. & others . With respect to the status of respondent No.4 by referring to Annexure P-12, he would submit that since the application of respondent no.4 for the same land was dismissed, he was held to be stranger and he has no locus standi to challenge the order. Therefore, the entire proceeding at the behest of respondent no.4 was void ab-initio. Consequently the order Annexure P-1 is liable to be set aside.

10. Counsel for respondent no.4 would submit that respondent no.4 is also an Ex-Army personnel and is also resident of village Temri. He stated that he filed an application for grant of lease of subject land for agricultural activity in the year 2006. His application was duly forwarded by Zila Saink Kalyan Karyalay. Since the disputed land was recorded as government land in the year 2006, respondent no.4 was also lawfully entitled for grant of lease over the land. It is stated that the respondents had made an enquiry and it was revealed that the grant made in favour of Ex-Army Colonel Mr. Nandi was bad and was cancelled. It is further contended that since the petition of respondent no.4 was rejected in 2010 on the ground that the said land is no more a government land which was declared by order of Commissioner, there was no necessity to challenge the same and accordingly, the said order of the Addl. Commissioner was challenged by respondent No.4 before the Board of Revenue. Subsequently the same having been

dismissed, the writ petition was filed before this Court and on the basis of liberty granted to the petitioner since the grant was made under the Revenue

Book Circular the revision was preferred before the Secretary of the State.

11. It is further contended that on the date of execution of will on 28.12.2006, late Deepika Nandi was not owner of the disputed land since in between

23.06.2001 and 15.07.2010 i.e., the date of initial order of cancellation of grant in favour of Col. Nandi never existed and the disputed land was

recorded as Government land. So the alleged Will will not convey any right to the petitioner. Further arguments have also been advanced that the

petitioner was not resident of village Temri, therefore, the orders of the Collector dated 23.06.2001 and 25.06.2001 are well merited. He further

submits that initial grant made in favour of the petitioner late Col. Shantipad Nandi was only for 5 years and the permanent grant of Bhoomi Swami

Rights in the year 1985 was illegal. It is further submitted that respondent no.4 being an Ex-Army man is also entitled for the land, therefore, his right

to get the land as per the policy of the Government has to be given effect to.

12. Learned State Counsel would submit that the order under challenge is well merited which do not call for any interference. He submits that

respondent no.4 has not been granted any land and if respondent no.4 makes a fresh application that would be suitably considered. It is stated that the

order impugned would reflect that all the facts have been taken care of and after evaluating the elaborate discussion, the orders have been passed,

therefore, the petition has no merit and is liable to be dismissed.

13. Heard learned counsel for the parties and also perused the documents filed along-with the petition.

14. In order to appreciate the facts in proper perspective the respective original revenue cases were called for inspection. It is the common case of

the petitioner as also the State that grant of lease was made in favour of Col. Shantipad, Ex-Service Man in exercise of power conferred under

Revenue Book Circular. Part IV of the Revenue Book Circular allows the grant of land and Chapter V deals with Appeal and the Appeal Committee.

As per Rule 30(1), against the order of grant when it is made by the Tahsildar or by Naib Tahsildar, appeal would be made to the Up-Khand Adhikari

(Sub-Divisional Officer) and when it is made by the Collector, then appeal would lie to the Commissioner against such order. Rule 30(2) speaks that

right to file an appeal would vest to the person who has an adjacent land in the concerned Gram Panchayat, who has filed an application for grant of

the land in question or a person who has been especially permitted, but could not file an application for land at the time of initial allotment. The

Collector and the Commissioner are vested with the power to hear an appeal, to call for a record for hearing and pass an order. No second appeal is

provided. Sub-Rule (5) Rule 30 says that any interested party can file an appeal to the Commissioner against the order of Collector and the revision

can be filed before the State Government against the order of Commissioner passed in appeal. The State Government, the Commissioner or Collector

have also been given the suo-motu power to test the veracity of any grant and verify the records.

15. The relevant part of Revenue Book Circular which deals with Appeal and Appeal Committee are reproduced herein below.

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16. The reading of Scheme of the filing of appeal, revision, review etc., would show that no statutory period has been prescribed. Therefore, it would

be relevant to examine the aspect as to how the courts have dealt with to count period of limitation in respect of the revenue cases under the Land

Revenue Code. The decision of the Supreme Court in Mohamad Kavi versus Fatmabai Ibrahim reported in 1998(1) MPWN 26 prescribed that when

the period of limitation is not provided under the statute then it has to be started within a reasonable time and in such case it was held that even one

year would be unreasonable period for the purpose. Likewise in Sardar Singh v. Randheera 1994 Revenue Nirnay 392 while dealing with a case of

Land Revenue, the High Court held that suo-motu revisional power cannot be exercised after a lapse of period of more than 8 years. In such a case,

the ratio laid down in State of Gujrat Vs. Patel Raghav Nath AIR 1969 SC 129 7 was considered which was with respect to Bombay Land Revenue

Code wherein section 21 of the Bombay Code conferred power for recording of any enquiry and proceeding with a view to exercise suo-motu

powers. There was no limitation prescribed in the Bombay Code. Likewise here in the State of Chhattisgarh, the Revenue Circular is existing and no

limitation is prescribed. Their Lordship of Supreme Court held that reasonable guide in case of suo- motu power is to be followed wherein the period

of one year was taken as a reasonable guide and any order passed after that period would be taken as having been passed belatedely. Similarly, in

case of Rambharosi Sharma v. State of M.P. 2002 Revenue Nirnay 452 considering the provisions of section 50 of the Land Revenue Code, the Court held that power of suo-motu revision which was exercised after 7 years of the order was illegal.

17. Since no limitation has been prescribed in the Revenue Circular with respect to power of revision, consequently the facts of this case would be tested on such deemed statutory reasonability laid down by Supreme Court. The initial reading of the order of the State would show that grant of land on lease was made in favour of Col. Shantipad in the year 1972-1973. In subsequent order of the Collector dated 23.06.2001 it is recorded that pursuant to the order passed by the Tahsildar on 28.09.1985 in mutation Proceeding No.263, the land was recorded as a Bhoomi Swami land in favour of Col. Shantipad. The said order was challenged by few of the villagers namely Shambu, Dhani Ram, Dujo Ram, Fodar, Jadish, Hemlal etc., before the SDO, Raipur by filing an appeal. The SDO in Appeal No.18-A/6 of the year 1986-1987 held that the objectors/villagers should have also been heard since they claim that they came in possession and directed that fresh enquiry be made and fresh orders be passed. The SDO further observed that grant was in the year 1973-1975 and though Col. Nandi was said to be in possession, but since the villagers claim that they came in possession, the order dated 04.05.1987 was passed and set aside the grant in favour of Col. Nandi.

18. The said order of SDO dated 04.05.1987 was subject of challenge before the Additional Commissioner in Appeal No.328-A/6/year 86-87. The copy of the original record of revenue case when examined shows that it contains the copy of the order passed by the Commissioner wherein by operating para it was held that the order of SDO was set aside and the case was sent to the Collector/Additional Collector to exercise the suo motu power of revision and directed that after hearing the parties on merits, the orders may be passed. Thereafter, the proceeding before the Addl. Collector started. The original case file on inspection shows that it started in the month of April, 1988. Hence, apparently, it appears that at the first instance the Bhoomi Swami Right was conferred to Col. Shantipad Nandi on 28.09.1985. The exercise of power of suo motu revision was ordered in

the year 1988. In the order of the SDO dated 04.05.1987 too, there is nothing on record to arrive at any conclusion that when it was started. Even the original record of the case file does not contain such order. Therefore, in between the grant of Bhoomiswami right in favour of Col. Nandi in the year 1985 and the order directing exercise of suo-motu revision, no plausible explanation exists on record as to how the delay took place and how such delay was condoned.

19. In the order of the State Government (Annexure P-1), it has been observed that on 28.09.1985, the grant was made in favour of Col. Nandi and thereafter on 29.02.1988 when the suo motu revision was allowed, the State Govt., has held that there is no unreasonable delay. It is not clear that under what circumstances it has been held that there was no unreasonable delay as in similar situation had there been the proceedings drawn under the Land revenue Code, the law of limitation would be applicable. Only by an observation by State that the delay is not unreasonable, the same cannot be accepted to be a gospel truth. The delay in exercise of suo-motu power has to be explained. The observation that intermediate period litigations were pending cannot be accepted as omnibus statement that since the litigation was pending before some authorities, therefore, it would be enough to condone the delay. If the said proposition is accepted, it would be against the principles of law laid down by the Supreme Court of unreasonableness.

20. The subsequent part is about the suo-motu Revision Case No. 22-A/59 of 2000-2001. The order sheets and documents are perused. As has been averred by the parties that few of the villagers who filed the revision before the Revenue Board, the photocopy of the order of the Board of revenue of Revision No.203/2/88 filed by Shambhu,, Dujo Ram, Fodar, Jagdish, Hemlal etc., is on record which shows that the said revision was dismissed on 17.03.1993.

21. Now reverting back to the order sheet, it shows that even after 17.03.1993, this fact did not come before the Additional Collector who was exercising power of suo-motu revision. The order sheet would show that on 05.11.1997, the said proceeding of suo motu revision was dismissed for want of appearance of the parties as no one appeared on the date of dismissal including earlier 4 dates. Thereafter, again it was restored on

29.06.1999. Reading of such order dated 29.06.1999 would show that without any notice to the petitioner, the said revision was restored after a period of almost two years. No notice was given either to the Col. Shantipad Nandi or his wife or to the petitioner. Therefore, in between, the gap of 2 years again occurred and after restoration, the notices were issued. When the authorities were exercising jurisdiction under the Land Revenue Code or Revenue Book Circular, the nature of proceeding as was adopted cannot be legalized.

22. The order sheet would further show that on 20.03.2001, the objectors stated that they do not want to further continue the proceeding, therefore, the case was closed but again it was opened on 27.03.2001. Thereafter on 03.05.2001, the order sheet records that the case is presented and placed for reading. Subsequently, the orders were passed on 23.06.2001 & 25.06.2001 whereby the order of grant of land and subsequent sales have been set aside. The reading of series of order sheets would reflect that even when the case was dismissed in the year 1997, it was again restored after a period of almost 2 years in 1999. The order sheets are completely silent as to what was the reason to condone the delay or to restore the same.

Though these proceedings were continued under the Revenue Circular, it is expected that the authority shall at-least follow the minimum statutory obligation which runs parallel to cases of like nature under the Land Revenue Code and the proceeding which decides the right of the parties cannot be at the whims of any particular officer. The discretion cannot be used in such uncontrolled manner as the factum of limitation plays vital part in the litigation and created rights of parties. When the Revenue Book Circular is silent with respect to limitation, the authorities should have followed the guidelines/ratio of law issued/laid down by the Supreme Court. It is a settled proposition that the Courts are guided by precedents in absence of specific law. The authority who is in hold of power to decide a particular issue cannot be allowed to use uncontrolled discretion while deciding a case.

23. The order of the additional Collector, thereafter was subject of challenge by the present petitioner. The Additional Commissioner by order dated 15.07.2007 (Annexure P-7) set aside the order of the Additional Collector on the ground that it is not legally passed. The Addl. Commissioner held that

the power of exercise of suo-motu revision was beyond the reasonable period and rules of natural justice were not followed. When such findings are examined as against the order sheets of the Additional Collector, the facts are fortified. It shows that in the year 1997 after dismissal it was restored in 1999, therefore, the restoration of suo motu power would relate back to the eventual grant which was made in the year 1985. The order sheet further shows that on 03.05.2001, the case was fixed for hearing and the date was given on 21.06.2001 and thereafter directly on 23.06.2001 the orders have been passed.

24. A perusal of order sheet would reflect that no opportunity of hearing was given to the petitioner and the final orders were passed initially on 23.06.2001 and though the Addl. Collector became functus officio after the final orders were passed again on 25.06.2001 passed another order. The order sheet, therefore, would only lead to draw a presumption that the Addl. Collector exercised unfettered discretion shelving the law and procedure.

These facts were fortified by the order of Additional Commissioner who set aside the order of Addl. Collector. Respondent no.4, in the meanwhile, claimed for grant of land and the Addl. Collector by order dated 12.10.2010 (Annexure P-12) held that respondent no.4 would be a stranger since after the order of Additional Commissioner, the land was restored back to the Petitioner Ajay Nag who claimed the property on the basis of will.

Thereafter, the record would show that respondent no.4 has filed revision before the Board of Revenue vide Annexure P-9 and the Board of Revenue on 18th October, 2010 has dismissed the revision by holding that since the original grant was made under the Revenue Circular, the regular revision u/s 50 of the Land Revenue Code would not lie. The said order was subject of challenge by Annexure P-10 before the High Court in W.P(227)

No.6160/2010 wherein this Court by order dt.22.7.2011 has held that the order of Board of Revenue is correct as the grant was made under the Revenue Book Circular. Consequently, the Revenue Board cannot exercise the revisional jurisdiction against the orders passed by the authorities. In the said order it was observed that the petitioner (respondent No.4 herein) would be at liberty to challenge the order of Addl. Commissioner dated 15.07.2010.

25. Thereafter, respondent no.4 has filed a revision before the State Authorities. Nothing has been placed on record by respondent no.4 along-with reply to show as to when the revision was filed whether any application to condone the delay in filing the revision was filed or not and how the delay was condoned. Even the order of the State Government dated 29.05.2013 is also silent about the condonation of delay. The power of revision by the State Government has been exercised and the deemed condonation of delay has been made though no order of condonation of delay is on record. The State has also not filed any such order. Annexure P-11 though reflects that it is a copy of the application filed under clause 30(3) Part 4 Sr.No.3 of the Revenue Book Circular along-with application u/s Section 5 read with section 14 of the Limitation Act, but it is not clear from the order dated 29.05.2013 whether the same was considered or not thereby delay was condoned by speaking order or not. The order of the High Court on the basis of which revision was filed before the State Government would show that while the writ petition was dismissed, the delay was not condoned and only the liberty was granted to respondent no.4 to approach the appropriate forum. Consequently, the order dated 15.07.2010 was subject of revision before the State. The impugned order dated 29.05.2013 also does not touch upon the fact that whether any opportunity of hearing was given to the petitioner or not. Nothing has been placed on record either by the respondent or by the State. The Secretary has held that the Will granted in favour of the petitioner was not registered, therefore, it cannot be given effect to for the reason that it does not contain any local witness. The said finding on the Will by the Secretary of the State cannot be accepted as the Will is not required to be registered under the Succession Act and it is also not mandatory that in a Will, local witnesses have to sign. Therefore, such proposition is against the mandate of The Indian Succession Act, 1925 and The Indian Evidence Act, 1872.

26. In view of the above discussion, the order of the Secretary of the State dated 29.05.2013 (Annexure P-1) has failed to take into account the issue of limitation and has also not been able to appreciate the fact how the rules of natural justice herein were followed by the Addl. Collector and further

exceeded his jurisdiction to hold the Will as sham and bogus. The Secretary also failed to notice the discrepancies and illegality of the order sheet of the Addl. Collector as to how the case was restored on 29.06.1999 after its dismissal on 05.11.1997 without condonation of delay. Further it also failed to notice that before Addl. Collector the case was directed to be placed for study on 03.05.2001 and the date was given on 21.06.2001. The order sheet of 21.06.2001 does not exist instead the final order of 23.06.2001 comes to fore and subsequent order dated 25.06.2001 was passed. This Court, after careful scrutiny of the order sheets of original case file, is of the view that serious discrepancies and illegality exist in the order of Addl. Collector and its continuation, which the Secretary failed to notice. The said illegality goes to the root of issue as rule of audi alteram partem is defeated and thereby was rightly pointed out by the Additional Commissioner who held in favour of the petitioner. Consequently, the order (Annexure P-1) cannot be sustained and it is set aside. In the result, the order of the Commissioner dated 15.07.2010 is restored.

27. Respondent no.4 appears to be an Ex-Army man and similarly Col. Shantipad Nandi to whom the grant was made was also an Ex-Army personnel. It appears that because of pendency of proceedings/ litigation, respondent no.4 has not been benefited with any grant as are being made to the Ex-Service men by the State. Therefore, respondent no.4 shall be at liberty to file a fresh application to the State for grant of land to him. On such an application being filed, the State shall consider and decide to grant the land to respondent no.4 according to the existing policies within a reasonable time.

28. In view of the foregoing discussion/observations, the petition is allowed to the above extent. The records of original revenue case be returned forthwith to the respective authorities. No order as to cost.