

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 650 of 2009**

1. Raviram S/o Bijhwar Rawat, aged about 50 years R/o Village Kalkasa
Tahsil Dongargarh, Distt. Rajnandgaon (CG)

----Petitioner

Versus

1. The State Of Chhattisgarh through Collector Rajnandgaon
2. Bulauram, aged about 55 years, S/o Sunheer, R/o At Present Kalkasa,
Tahsil Dongargarh, Distt. Rajnandgaon (CG)
3. Board Of Revenue Through its Member, Circuit Court Raipur
4. Additional Collector Rajnandgaon (CG)
5. Sub Divisional Officer, Dongargarh Distt. Rajnandgaon (CG)

---- Respondents

For Petitioner:	Shri Parag Kotecha, Advocate
For Respondents No. 1 & 3 to 5:	Shri Ajit Singh PL
For Respondent No.2:	Shri Keshav Dewangan, Advocate

Hon'ble Shri Justice Pritinker Diwaker**Order On Board****08/07/2015**

On 25.2.1978 an application was filed by respondent No.2 herein namely Bulauram – a tribal, before the Collector under Section 165 (6) of the M.P. Land Revenue Code (for short the “Code”) stating that he was the owner of the land bearing Khasra Nos. 180, 75, 91, 32/2 and 62/2 total area being 5.73 acres. It is pleaded in the said application that to improve his agricultural position he wanted to sell the said land. On due consideration, vide order dated 28.6.1978, the Collector allowed the application filed by the tribal under Section 165 (6) of the Code and permitted him to sell the land in question to the petitioner. After getting permission from the Collector, entire land was sold by the tribal to the petitioner by a registered sale deed dated 3.7.1978. After

about 23 years of the execution of the sale deed, on 14.9.2001 an application was submitted by the tribal before the Collector stating that in fact about 2.50 acres of land was to be sold to the petitioner but the permission was obtained for selling the entire land and it was agreed that part of the land would be returned to the tribal at the expense of the petitioner. Tribal has further pleaded that in respect of 2.50 acres of land a fraud has been played by the petitioner, that he is in possession of the land in question and therefore the possession thereof be reverted to him (tribal). On 9.10.2001 a report was submitted by the SDO to the Collector mentioning that out of 5.73 acres, 3.81 acres of land was to be kept by the petitioner whereas remaining 1.92 acres was to be returned to the tribal. Report of the SDO further says that the amount was paid by the petitioner only in respect of 3.81 acres of land. SDO has also recorded a finding that the petitioner has failed to return 1.92 acres of land to the tribal and therefore a case has been registered against him.

2. Vide order dated 12.10.2001 passed by the SDO it has been held that as the petitioner had agreed to return 1.92 acres of land to the tribal, it must be done accordingly. However, 3.81 acres of land was directed by the SDO to remain in the name of the petitioner. Order of the SDO was challenged by the tribal before the Additional Collector who on 24.1.2006 has passed the order directing the petitioner to return the entire land to the tribal holding that once a fraud has been played in respect of 1.92 acres of land, as per the provisions of the Code it would be deemed that fraud has been played with respect to remaining 3.81 acres of land also. The order of the Additional Collector was challenged by the petitioner before the Board of Revenue who

vide impugned order dismissed the revision of the petitioner holding that he has to return the remaining 3.81 acres of land also to the tribal and it is this order which is under challenge herein.

3. Counsel for the petitioner submits as under:

(i) that case of the tribal itself is that he has been cheated in respect of 1.92 acres of land and therefore there is no question of directing the petitioner to return remaining 3.81 acres of land;

(ii) that to avoid any further controversy and settle the matter once for all, before the SDO the petitioner has given his consent to return 1.37 acres of land to the tribal but taking the advantage of concession given by the petitioner, the Additional Collector and the Board of Revenue have erred in law in directing the petitioner to return 3.81 acres of land to the tribal;

(iii) that the Additional Collector and the Board of Revenue have exceeded their jurisdiction while directing the petitioner to return the entire land to the tribal;

(iv) that the tribal has moved an application before the SDO after about 23 years and on that count alone his application should have been dismissed.

4. Supporting the order impugned it has been argued by the counsel for the tribal and the State that the impugned order passed by the Board of Revenue is in accordance with law and there is no illegality or irregularity in the same.

5. Heard counsel for the parties and perused the documents on record.

6. True it is that the tribal moved an application with an inordinate

delay of 23 years before the SDO but considering the fact that the said application had been entertained by him as well as the higher revenue authorities thereafter, this Court does not deem it proper to interfere with the said orders on the ground of limitation alone. However, from the application filed by the tribal before the SDO it is apparent that his claim was only with respect to 1.92 acres of land and not 3.81 acres. From the beginning itself the stand of the tribal has been that the permission was obtained by him for the entire 5.73 acres of land but there was an understanding between the tribal and the petitioner that 1.92 acres of land would be returned to the tribal and remaining 3.81 acres would remain with the petitioner. When the tribal himself has not claimed the entire 5.73 acres of land to be returned to him, question of directing the petitioner to return the entire land to the tribal does not arise. Revenue authorities have erred in law in holding that the petitioner has played fraud with the tribal with respect to remaining 3.81 acres of land. Further, considering the fact that before the SDO the petitioner and the tribal both had entered into an agreement regarding return of 1.92 acres of land, it does not lie in the mouth of the tribal to seek return of the entire land. Revenue authorities have further erred in law in directing the petitioner to return 3.81 acres of land to the tribal.

7. It is relevant to note that in the enquiry report dated 9.12.2001 submitted by the SDO no fraud as alleged by the Additional Collector and the Board of Revenue, has been noted.

8. In view of the aforesaid factual position, this Court is of the opinion that the order impugned cannot be made to stand and accordingly it is set aside. Petitioner is held entitled to enjoy his

possession over 3.81 acres of land.

9. Petition thus allowed.

Sd/-

(Pritinker Diwaker)

Judge

Jyotishi