

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 3343 of 1997**

1. Tejram, S/o lt. Loknath Teli, aged about 40 years
2. Sethram, S/o lt. Loknath Teli, aged about 36 years
3. Gajanan, S/o lt. Loknath Teli, aged about 28 years

All the petitioners are non-tribals and residents of village Kudumkela, Tahsil Gharghoda, District Raigarh, M.P.

---- Petitioner

Versus

1. Hatau, S/o Dokramanjhi, aged about 60 years, (Tribal), resident of village Kudumkela, Tahsil Gharghoda, District Raigarh, M.P.
2. Ayasram, S/o Atmaram Kavar, aged about 45 years, (Tribal) resident of Village Kudumkela, Tahsil Gharghoda, District Raigarh, M.P.
3. Dhan-sai, S/o Sadharam Teli, aged about 46 years, (non-tribal) resident of village Kudumkela, Tahsil Gharghoda, District Raigarh, M.P.
4. Sub Divisional Officer (Civil) Gharghoda, District Raigarh.
5. The Collector, Raigarh, M.P.

---- Respondent

For Petitioners : None.

For Respondents 4 & 5 : Shri Bhaskar Payashi, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****17/12/2015**

1. This writ petition under Article 226 and 227 of the Constitution of India challenges the proceeding initiated by the Sub Divisional Officer (Revenue), Gharghoda under Section 170-B of the CG LR Code, 1959 (for short 'the Code').

2. The land originally belonged to Hatau, Son of Dokramajhi. His father sold the land to Ayasram, Son of Atmaram Kavar, respondent No.2 prior to 1976. Both of them belonged to ST community, therefore, permission from the Collector was not sought under Section 165 (6) of the Code. Ayasram obtained permission to sell the land to non-tribal vide order dated 16.1.1976 issued by the Collector, Raigarh. Thereafter sale deed was executed in favour of Dhan Singh on 22.1.1976. The petitioners had purchased the land from Dhan Singh (Dhan Sai) by a sale deed dated 19.2.1977.
3. Proceeding for violation of Section 165(6) of the Code was initiated by the SDO (Revenue), Gharghoda, however, the same was closed vide order dated 11.3.1979 on the ground that Hatau and Ayasram both belonged to ST community, therefore, permission under Section 165 (6) was not required. In the year 1989, proceeding under Section 170-B of the Code was initiated, however, in this proceeding, Hatau was not made party. By order dated 18.1.1989, the SDO (Revenue) Gharghoda again closed the proceeding on the ground that Dhan Singh has purchased the land after obtaining permission from the Collector, Raigarh. In April, 1997, Hatau moved an application under Section 170-B of the Code before the SDO (R) Gharghoda. Since the earlier proceeding was also initiated under the same provision, the SDO (Revenue) sought permission from the Collector, Raigarh to review the order and initiate fresh proceeding under Section 170-B of the Code. The Collector accorded permission to review the proceeding and thus, the present impugned proceeding has been initiated.
4. Notwithstanding the fact that none appears on behalf of the petitioners, this Court proceeded to hear the writ petition because it is pending since last more than 18 years.
5. Challenge to the proceeding has been made on the ground that the second order passed by the SDO (Revenue) Gharghoda on 18.1.1989 being under the same jurisdiction, fresh proceeding is not at all warranted and in-fact, it suffers from *res judicata*.

6. Having heard learned State counsel, it would appear to this Court that principle of *res judicata* would apply when all the parties were same or were litigating under the same title and not when the order was passed without impleading or hearing one of the necessary party. Admittedly, Hatau was never made a party and thus was never given any opportunity of hearing by the SDO (Revenue) who passed the order on 18.1.1989, therefore, principle of *res judicata* may not apply in the facts and circumstances of the present case.
7. For the foregoing, the writ petition is disposed of with a direction to the SDO (Revenue) Gharghoda to complete the proceeding under Section 170-B of the Code at the earliest. The SDO shall issue fresh notice to all concerned parties, obtain their reply and afford them proper opportunity of hearing including opportunity to adduce evidence. The SDO shall thereafter decide the matter in accordance with law. It is made clear that this Court has not expressed any opinion on the merits of the case and the SDO shall decide the matter on its own merits, without being influenced by any of the observations made in this order.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve