

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2104 of 2014**

1. M/S SHRIJAN BUILDERS (Registered Partnership), Through-Partner Ashok Kumar Agrawal, aged about 49 years, S/o Shri R B Agrawal - Sarvamangla-Bhawan, Niharika Road Korba – 495 677
2. M/S H.M. BUILDERS AND DEVELOPERS, (A registered Partnership Firm), Through-Partner Harish Parsai, Aged about 54 years, S/o Late Shri B.L. Parsai, 3-Indira Commercial Complex Transport-Nagar KORBA-495 677

----- Petitioner**Versus**

1. STATE OF CHHATTISGARH, Through: - Principal - Secretray Revenue Department Govt. of Chhattisgarh, MAHANADI BHAWAN, NAYA-RAIPUR, RAIPUR-492001 Tah. & Distt.-Raipur (CG)
2. SMT. SUHAG BHEDIYA DISTRICT REGISTRAR Tahsil-Road Near Tahsil-Office KORBA-495677 Tah. & Distt.-KORBA (CG)
3. SMT KIRAN KHALKHO SUB-REGISTRAR KATGHORA-495445, Tah. - Katghora District-KORBA (CG)

----- Respondents

For Petitioners : Shri V.G. Tamaskar, Advocate.
 For Respondent/State : Ms. Smiti Sharma, Deputy Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**C A V Order****Passed On** : 01.05.2015

1. The petitioners have preferred this writ petition for issuance of writ of mandamus commanding the respondents to register all the sale deeds

executed by the petitioners within Korba district.

2. Facts of the case, briefly stated, are that the petitioners are colonizers and builders. They claimed to have purchased the lands from ab original tribes after obtaining permission from the Collector as required under Section 165 (6) of the CG Land Revenue Code, 1959 (henceforth 'the Code') and thereafter they have developed the lands and done plotting for sale of the lands to intending purchasers. On an earlier occasion, the Sub-Registrar refused to register the sale deeds whereupon an appeal was preferred before the District Registrar, Korba who refused to interfere with the order. Thereafter the petitioners preferred revision application under Section 50 of the Code before the Additional Commissioner, Bilaspur Division and the said Commissioner by its order dated 1.3.2013 set aside the order passed by the Registrar and directed for return of the sale deeds in favour of the purchasers. The Korba Builders and Developers Association thereafter preferred WP(C) No.684/2014 seeking direction to respondents 2 and 3 therein to register all the sale deeds executed by the members of the petitioners' association. This Court refused to issue any direction on the ground that grievances ventilated in the petition appear to be general in nature and the High Court cannot issue a blanket order. This Court observed that if in any individual case, any particular builder approaches the Registering Authority, the Registering Authority shall consider the matter in accordance with law and it will be open for the individual builder to submit before the Registering Authority by relying

upon the order passed by the Commissioner in the case of M/s Sarjan Builders. The petitioners thereafter submitted the sale deed (Annexure-P/3) for registration, however, the sale deed was returned by the Sub-Registrar after making endorsement that the concerned area being scheduled area under the Code, permission from the Collector is required before execution and registration of the sale deed.

3. Learned counsel for the petitioners has argued that once the Additional Commissioner, Bilaspur Division has passed an order in the earlier case, the principle laid down therein is binding, therefore, the Sub-Registrar should have registered the documents rather than returning the same. He would submit that the petitioners have sought permission before purchasing the lands from tribal holders and thereafter the lands have been diverted, therefore, the provision of Section 165 (6) of the Code is not attracted and as such, the Sub-Registrar is not justified in returning the sale deed for want of permission to sale the lands.
4. Per contra, learned State counsel would submit that the petitioners have alternative remedy of preferring appeal before the Registrar under Section 72 of the Registration Act and thereafter to file suit under Section 77 of the said Act, therefore, the writ petition is not maintainable.
5. Indisputably, the lands are situated in Korba district which is scheduled area as notified under the Vth Schedule of the Constitution of India. The petitioners are not seeking any permission to execute the sale deeds

presumably on the ground that the provision of Section 165 (6) of the Code deals with agricultural land whereas the petitioners after having purchased the lands from tribe with due permission from the Collector and thereafter having converted the land as diverted land, the said provision under Section 165 (6) of the Code is not attracted. However, permission to execute the sale deeds for non-agricultural land is required under Section 165(6-a) of the Code, which reads thus:-

“Notwithstanding anything contained in sub-section (1), the right of a bhumiswami other than a bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6), in the land excluding the agricultural land shall not be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to aboriginal tribe without the permission of the Collector given for reasons to be recorded in writing:

Provided that every such transfer effected [after the 9th day of June, 1980 but before the 20th April, 1981] which is not in accordance with the provisions herein contained shall, unless such transfer is ratified by the Collector in accordance with the provisions hereinafter contained, be void and shall be of no effect whatsoever, notwithstanding anything contained in this Code or any other law for the time being in force.”

6. The provision contained under Section 6-a has been added by a Notification No.F-16-1-81-XXV, dated 15th April, 1981 published in the MP Gazette dated 20th April, 1981, issued in exercise of powers conferred by sub-paragraph (1) of paragraph-5 of Vth Schedule to the Constitution of India and thus, it applies to the scheduled areas of the State including Korba district.

7. The effect of insertion of Section 6-a by notification dated 15.4.1981 is that the right of non-tribal Bhoomiswami in the land excluding the agricultural land shall not be transferred or to be transferable either by way of sale or otherwise to person not belonging to an original tribe without the permission of the Collector given for the reasons to be recorded in writing.
8. In view of the statutory provisions, the Sub-Registrar is fully justified in returning the sale deeds, as no permission has been sought from the Collector before executing the sale deeds. The Sub-Registrar is duty bound under the law to see that execution and registration of sale deed does not violate any express provision of law.
9. Reliance placed by learned counsel for the petitioners on the previous order passed by the Additional Commissioner and by this Court in WP(C) No.684/2014 is misplaced because, as has been rightly argued by learned State counsel, the Commissioner is not an authority under the scheme of the Registration Act to entertain an appeal or revision against the order passed by the Sub-Registrar or Registrar. The order has been passed in inherent lack of jurisdiction. Such an order is *non est* and the writ Court is not bound to issue any direction to any other authority to follow the order which has been passed without jurisdiction. It is trite law that objection regarding inherent lack of jurisdiction can be raised at any point of time.
10. Learned counsel for the petitioners has also argued that few sale deeds

have been allowed to be registered by the Sub-Registrar, therefore, by refusing to register all the present sale deeds, the Sub-Registrar is acting arbitrarily and in violation of Article 14 of the Constitution of India.

11. This argument deserves to be rejected at once on the principle that the writ Court does not enforce negative equality.

12. In **Basawaraj & Anr. Vs. The Spl. Land Acquisition Officer**¹, it has been held thus:-

“8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible.”

13. For the foregoing, the writ petition is sans substance, it deserves to be and is hereby dismissed.

J U D G E

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¹ AIR 2014 SC 746