

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 458 of 2015

Phool Chand Sethiya (Dead) And Smt. Sajan Bai Sethiya (Dead), Through His Legal Heirs Namely:

- (i) Smt. Sandhya Jain, Age About 58 Years, D/O Late Shri Phool Chand Sethiya,
 - (ii) Smt. Kalpana Karnawat W/O Late Shri Suresh Karnawat Aged About 56 Years
 - (iii) Smt. Pushpa Jain W/O Shri Rajesh Kumar Jain Aged About 51 Years
- All R/O 10, Near J.J. Nursing Home, Malviya Nagar Durg, P.S. Mohan Nagar Durg (C.G.), all of Directors- Navkar Vyapar Udyog Limited, Raipur (C.G.)

---- Petitioner

Versus

- 1. State Of Chhattisgarh, through The Secretary, Government Of Chhattisgarh, Department Of Revenue, Mahanadi Bhawan, Mantralaya, Naya Raipur, P.S. Rakhi, District Raipur, Chhattisgarh.
- 2. Collector, Raipur, Chhattisgarh
- 3. Sub Divisional Officer, Arang-Abhanpur, District Raipur, Chhattisgarh
- 4. Additional Tahsildar Shri Jageshwar Kaushal, Raipur, District Raipur, Chhattisgarh

---- Respondent

For Petitioner	Shri S.S. Rajput, Advocate
For Respondent/State	Shri Sunil Pillai, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

15/05/2015

- 1. In this petition under Article 226 of the Constitution of India, the petitioners have called in question the order passed by the

Collector, Raipur, granting permission to the Sub Divisional Officer (Revenue), Arang-Abhanpur (for short 'the SDO'), for review of the order dated 25-10-2014.

2. Petitioners appear to have purchased different parcels of land situated at village Deopuri, RI Circle, Tahsil & District Raipur on different dates in the year 1987 to 1999. The said lands are *charagan* land of the village, however, the petitioners claim bhoomiswami right over the said lands.
3. By order dated 28-1-2011 passed in WP (227) No.116 of 2010 (**State of Chhattisgarh v. Board of Revenue and Another**) this Court has held that the *charagan* land of the village is Government Nistari land.
4. Similarly, the Supreme Court in **Jagpal Singh & Ors. v. State of Punjab & Ors. (Civil Appeal Nos.1132 of 2011)**, has passed an order directing the Revenue authorities to follow the provisions of law relating to Shamlat Deh lands, which are for the common use of the villagers and it will be the duty of the concerned State Government to enforce the law as they relate to lands of this nature. The Supreme Court further reserved liberty in favour of Gram Sabha or Gram Panchayat to proceed against the unauthorized occupants of such lands and for that the order passed by the Supreme Court will not prevent individuals, authorities or persons affected, from taking appropriate action, in accordance with law, in the event such action proves to be

necessary and any application made shall be disposed of within three months.

5. In the case at hand, the Revenue authorities registered a revenue case and by order dated 30-4-2011 the SDO set aside the earlier order dated 25-10-2008 passed by the Additional Tahsildar, Mandir Hasaud treating the petitioners' name on the subject land. This order of SDO was passed in an appeal preferred by the Gram Panchayat, Deopuri.
6. The order dated 30-4-2011 was challenged by the petitioners by preferring a revision before the Commissioner, Raipur Division, Raipur, wherein the Commissioner remitted the matter back to the SDO vide its order dated 18-3-2014. The SDO, thereafter, passed an order dated 25-10-2014 dismissing the appeal preferred by the Gram Panchayat, Deopuri. It is against this order, the SDO sought permission from the Collector to review the matter, as according to the SDO the matter concerns *charagan* land, which is the Government property.
7. In WP (227) No.116 of 2010 this Court referred to the provisions of Central Provinces Consolidation of Holdings Act, 1928 (Act No.VIII of 1928) and held thus :

“8. Section 6 of the Act makes provision regarding application for consolidation of holdings. Sub-section (4) thereof provides that if any scheme of consolidation of holdings is confirmed, it shall be binding on the applicants and those who have agreed to the consolidation of their holdings and on any persons who may subsequently be entitled to hold or occupy the land affected by the scheme. Section 11 of the Act makes provision regarding

confirmation of the scheme and Section 12 of the Act provides for correction of record of rights after the consolidation is confirmed. Under Section 15 of the Act, provision has been made that no instrument is necessary in order to give effect to a transfer involved in carrying out any scheme of consolidation of holdings. Sections 21, 22, 25, 26 and 27 of the Act are germane for the present petition and are reproduced hereunder for ready reference:

21. A permanent holder shall have the same rights in the holding or land allotted to him in pursuance of a scheme of consolidation as he had in his original holding.

22. (1) If the holding of any permanent holder brought under the scheme of consolidation is burdened with any lease, mortgage or other incumbrance, such lease, mortgage or other incumbrance shall be transferred and shall attach to the holding allotted to him under the scheme or to such part of it as the consolidation officer, subject to any rules that may be made under section 29, may have appointed in preparing the scheme; and, thereupon, the lessee, mortgagee or other incumbrancer, as the case may be, shall cease to have any right in or against the land from which the lease, mortgage or other incumbrance has been transferred.

(2) Notwithstanding anything contained in section 13, the consolidation officer shall, if necessary, put any lessee or any mortgagee or other incumbrancer entitled to possession, by warrant, into possession of the holding or part of a holding to which his lease, mortgage or other incumbrance has been transferred under sub-section (1).

25. No appeal shall lie from any order passed under this Act or the rules made thereunder or from any order passed by the consolidation officer under sections 13, 36, 46, 47, 93, 94, 98 and 100 of the Central Provinces Tenancy Act, 1920.

26. The State Government may, at any time, for the purpose of satisfying itself as to the legality or propriety of any order passed by any officer under this Act, call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit:

Provided that it shall not vary or reverse any order affecting any question of right between private persons

without having given to the parties interested notice to appear and to be heard in support of such order.

27. No civil court shall entertain any suit instituted, or application made, to obtain a decision or order in respect of any matter which the State Government or any officer is, by this Act, empowered to determine, decide or dispose of.”

9. On a perusal of the above quoted provision of the Act it would be apparent that when the holding of any permanent holder is burdened with an encumbrance, he shall cease to have any right in or against the land from which the encumbrance has been transferred meaning thereby that when charagan is mentioned in the revenue record as a result of confirmation of consolidation, such encumbrance is binding on the holder of the land and he ceases to have any right in or against the land so encumbered. It is further apparent that the order confirming the scheme of consolidation is not appealable as provided under Section 25 of the Act but is revisable under Section 26 of the Act and further that no civil Court has jurisdiction to challenge any action taken by the State Government or any officer in exercise of powers under the Act.

10. From the above, it would be clear that firstly application under Section 237 of the Revenue Code submitted by respondent No.2 was not maintainable before the Commissioner, Raipur Division and further that in view of provision contained in Section 22 of the Act, the holder of the land ceases to have any right once the consolidation is confirmed and the word “charagan” is entered in the revenue record in pursuance to the confirmation of consolidation scheme.

11. The Board of Revenue has acted with gross and manifest illegality while allowing the revision preferred by respondent No.2. The Board of Revenue has not at all referred to the proceedings under the Act though the memo submitted by Collector, Raipur (Annexure-P-6) clearly referred that consolidation proceeding was drawn and the land was included in Samilat Charagan on the basis of consent accorded by the land holders.

12. For all the foregoing reasons, this writ petition deserves to be and is hereby allowed. The impugned orders Annexure-P-1 and Annexure-P-2 are set aside. Revenue records shall continue to mention the word Samilat Charagan over the subject Nistari Government land. There shall be no order as to costs.”

8. In view of the above and for the fact that by the impugned order the Collector has only accorded permission to review the matter wherein the petitioners would be noticed and afford opportunity of hearing to them, no case for interference is made out.
9. As a sequel, the writ petition, being devoid of merit, is liable to be and is hereby dismissed. However, it is observed that, before proceeding to pass any order in review, the SDO shall provide proper opportunity of hearing to the petitioners.

Gowri

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