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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 4351 of 2010

1. Rajendra Shankar Shukla S/o Shri Ram Awtar Shukla, aged about 71 years, R/o Malviya Road, Raipur (CG)

---- Petitioner

Versus

1. State Of Chhattisgarh, through Collector, District Raipur (CG).
2. Union Of India Through The Ministry Of Home Affairs, New Delhi

---- Respondent

For Petitioner	Shri Varun Sharma, Advocate
For Respondent/State	Shri Arun Sao, Dy. Adv. General
For Respondent/UOI	Shri Ramakant Pandey, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

13/04/2016

1. In this petition under Article 226/227 of the Constitution of India, the petitioner has prayed for a direction to the respondent No.1 to issue a certificate that the petitioner is in possession of the land and they have not taken over the land since after the date of acquisition with further direction to the respondent No.1 either to withdraw the acquisition of land

since it has not taken possession of the same from the date of acquisition i.e. in the year 1944-45, therefore, the acquisition itself has lapsed or in the alternative to pay the compensation of the land.

2. It is argued on behalf of the petitioner that he is in possession of land bearing Khasra No.186 & 191 admeasuring 38.69 acres, which were subsequently numbered as 189/1 and 191/1 and further separated by numbering as 189/2 & 191/2 admeasuring 4.25 acres. The respondent did not carry out the order made by the Board of Revenue on 22.11.1988 (Annexure P/1), whereby, the Board of Revenue directed that in place of names of deceased, Brijrani Bai & Ram Narayan, the name of the petitioner be recorded. Another order was made by the Board of Revenue on 26.08.1997 (Annexure P/2) for implementing the previous order dated 22.11.1988. The petitioner received a notice of acquisition vide Annexure P/3 for acquisition of Khasra Numbers 189 & 191 having area of 34.44 acres. Thus, the area is reduced by 4.25 acres in comparison to total area of the said khasra numbers admeasuring 38.69 acres.

3. The petitioner, thereafter, enquired about the remaining 4.25 acres of land and obtained certified copies of the mutation

register (Annexure P/4), wherein, it was mentioned in column No.5 that by communication received from the Home Ministry, Government of India dated 02.12.1987, the land has been mutated in the name of Revenue Department, Government of Madhya Pradesh. It was also mentioned in column 5 of Annexure P/4 that Khasra Numbers 189 & 191 were acquired in land acquisition case No.21 of the year 1944-45 for war purposes (*yudh karya*) and the land holders have not received compensation.

4. In the resolution of the concerned Gram Panchayat (Annexure P/5), it is mentioned that an area 7.27 acres bearing Khasra No.189/2 and 2.3 acres bearing Khasra No.191/2 is recorded as *'Samilat Charagan'* in the name of 70 land holders, who are now represented by second/third generation descendants and the number of legal heirs are too many.

5. Based on the above facts, it is argued by the learned counsel appearing for the petitioner that the compensation having not been paid at the time of acquisition in the year 1944-45, the petitioner is either entitled to compensation or the land be returned to him.

6. Learned counsel appearing for the State and Union of India as well would oppose the writ petition and would rely on the order

passed by this Court in **State of Chhattisgarh v. Board of Revenue and Others**[1].

7. I have heard learned counsel appearing for the parties at length and perused the record for thoughtfully considering the issue involved in the writ petition.

8. The record of the State would clearly demonstrate that the area in question was acquired way back in the year 1944-45 during the second world war and was recorded in the name of Central Government, Department of Home Affairs, therefore, when the land was not needed by the Government of India, a communication dated 02.12.1987 was sent to the erstwhile State of Madhya Pradesh for recording the name of Department of Revenue, State of Madhya Pradesh, in the revenue records. It is also recorded in Annexure P/4 that the land holders did not receive the compensation. The recital in column 5 of Annexure P/4 would clearly indicate that the land was acquired during the Second World War. The agriculturists probably refused to receive the compensation, as the land was acquired in the interest of the nation. To succeed in this petition, the petitioner is required to challenge the acquisition proceeding which was finalised in the year 1944-45,

1 WP (227) 116 of 2010 (28-1-2011)

however, there is no whisper about the said acquisition proceedings.

9. This writ petition was filed in the year 2010 for recording the petitioner's name in the revenue record, thus, the petition has been filed after 65 years, therefore, it hopelessly suffers from delay and laches.

10. The Supreme Court in **Yunus (Baboobhai) A Hamid Padvekar v. State of Maharastra**[2] has held that :

> "Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party."

11. There is yet another reason why the petitioner is not entitled for any relief in this petition because the document Annexure-P-5 clearly records that the land situated at Khasra No.189/2 admeasuring 7.27 acres and 2.3 acres in Khasra No.191/2 has been contributed by 70 villagers for the *'Samilat Charagan'* (grazing land for the village). The said 70 land holders are now represented by second and third generation descendants and their numbers are too many.

2(JT 2009 (3) SC 487)

12. In **Board of Revenue** (supra), this Court while dealing with the rights of the parties, who have contributed for making a *'Samilat Charagan'* of the village has held thus :

> 6) On a reading of the order passed by the Board of Revenue it would appear that direction for deletion of the entry "charagan" in the revenue records has been ordered only on the ground that no document has been submitted to demonstrate that the consent of the owner was taken before making entry of the word "charagan" in the revenue records.
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> 7) The petitioner has filed copies of the consolidation proceedings drawn by the Consolidation Officer under the provisions of the Act as Annexure-P-3. The revenue order sheet of the said consolidation proceedings records that on 27.07.1939, 67 permanent holders of Mouja Chamar Puraina moved application for consolidation of their agricultural holdings. The Consolidation Officer registered the case, drawn the proceedings, prepared a programme of consolidation for the year 1942 and thereafter issued proclamation as required under the rules of consolidation framed under Section 29 of the Act. The scheme of consolidation was made final on 11.05.1943. At page 33 of the paper book, application signed by the villagers has been placed on record and at page 37 of the paper book the proclamation is available. At page 38 of the paper book the order passed by the Consolidation Officer on 03.05.1943 is available in which it is mentioned that the total number of permanent holders in the village are 77. As earlier noted, 67 permanent holders moved

the application for consolidation. Father of respondent No.2 namely, Ramprasad is one of the signatory whose thumb impression is available at page 34 of the paper book. The final order regarding confirmation of scheme of consolidation is at page 39 of the paper book. Thus, it would clearly appear that consolidation proceeding was duly drawn and completed under the provisions of the Act.

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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 encumbranced. 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, the writ petition deserves to be and is hereby allowed. The impugned orders Annexure-P-1 & 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.

13. Learned State counsel has placed before this Court certified copies of the revenue records, which are made part of the record of the writ petition. The khasra entries of the year 1991 onwards pertaining to relevant khasra numbers carries the following entries:

189/1	Brijrani Bai *'Samilat Charagan'*
189/2	Government of Madhya Pradesh, Revenue Department

190/2	Government of Madhya Pradesh, Revenue Department
191/1	Brijrani Bai *'Samilat Charagan'*
191/2	Government of Madhya Pradesh, Revenue Department

Similar entries have been maintained in the *khasra panchshala* of the subsequent years.

14. It is, thus, absolutely clear that the relevant khasra numbers are either recorded in the name of Government of Madhya Pradesh, Revenue Department, now represented by the Government of Chhattisgarh or as *'Samilat Charagan',* therefore, considering the case from whatever angle, the petitioner is not entitled to obtain the land or compensation for the same.

15. Even if the petitioner has wrongly been granted the compensation in some earlier land acquisition proceedings, wherein the land was acquired for the benefit of the Chhattisgarh Housing Board, the illegality cannot be perpetuated inasmuch as the Constitution does not recognize the negative equality or similar treatment, which would perpetuate illegality (See: **Basawaraj v. Land Acquisition Officer[3])**.

3 (2013) 14 SCC 81

16. The plea raised by the petitioner claiming title over the land on the strength of the orders passed by the Board of Revenue deserves outright rejection inasmuch as the Board of Revenue cannot confer title on any person. The Board of Revenue was also not made aware of the acquisition for war purposes made in the year 1944-45 nor the issue of *'Samilat Charagan'* land being the Government land was ever raised. If an order is passed for carrying petitioner's name in place of Brijrani Bai, the remaining entry for such khasra numbers mentioning *'Samilat Charagan'* is not scored off or wiped out in view of the law laid down by this Court in **Board of Revenue** (supra).

17. As a sequel, the writ petition, *sans* merit, is liable to be and is hereby dismissed, leaving the parties to bear their own costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri