

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1525 of 2016**

- Dhaneshwar S/o. Kunjbihari Kolta, (Non Tribal), Aged About 90 Years
R/o. Village : Ranisagar, (Nanak Sagar), Tahsil : Basna, District :
Mahasamund (Chhattisgarh) **---- Petitioner**

Versus

1. State Of Chhattisgarh Through : The Secretary, Revenue Department,
Mahanadi Bhawan, Mantralaya, New Raipur, Police Station : Rakhi,
District : Raipur (Chhattisgarh)
2. The Commissioner, Raipur Division, Raipur, District Raipur (Chhattisgarh)
3. The Collector, Mahasamund, District Mahasamund (Chhattisgarh)
4. The Sub Divisional Officer, Mahasamund, District Mahasamund
(Chhattisgarh)
5. Krutika Wd/o. Narayan, Aged About 70 Years By Caste : Binjhar
(Aadiwashi), R/o Village Nanaksagar, Tahsil : Basna, District :
Mahasamund (Chhattisgarh).....Non- Applicant No. 1
6. Basanti D/o. Narayan, Aged About 45 Years By Caste : Binjhar
(Aadiwashi), R/o Village Nanaksagar, Tahsil : Basna, District :
Mahasamund (Chhattisgarh).....Non- Applicant No. 2
7. Bhatara D/o. Narayan, Aged About 42 Years By Caste : Binjhar
(Aadiwashi), R/o Village Nanaksagar, Tahsil : Basna, District :
Mahasamund (Chhattisgarh).....Non- Applicant No. 3
8. Patwari S/o. Narayan, Aged About 45 Years By Caste : Binjhar
(Aadiwashi), R/o Village Nanaksagar, Tahsil : Basna, District :
Mahasamund (Chhattisgarh).....Non- Applicant No. 4

---- Respondents

For Petitioner	:	Shri P.K.Patel, Advocate
For Respondent No.1 to 4	:	Shri Shashank Thakur, G.A.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****17/08/2016**

Assail in the writ petition is to the order passed by the Commissioner,

Raipur Division on 11.05.2016 whereby the appellate order passed by the Collector, Mahasamund on 28.09.2015 has been affirmed and the order passed by the S.D.O (Revenue), Mahasamund, Camp Saraipali on 16.03.1989 has been maintained.

2. Admittedly, the petitioner is a non-tribal and has purchased the land by registered sale deed dated 11.12.1973 from one Narayan, son of Baidar belonging to Binjhawar tribal community. In the sale deed, the amount of consideration was mentioned as Rs.2000/-. After insertion of Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (for brevity 'the Code of 1959') any person, who is in possession of land which earlier belonged to a member of Scheduled Tribe Community, was required to submit information before the concerned Sub-Divisional Officer (Revenue) as to the manner in which he is in possession of the property belonging to the tribal. The petitioner having failed to submit the information within a period of two years from the date of insertion of Section 170-B of the Code of 1959, the Sub-Divisional Officer (Revenue) has passed the order on 16.03.1989 directing reversion of land in favour of Narayan. The order was assailed by the petitioner before the Collector, Mahasamund, which was allowed on 31.01.2000. The respondents No. 5 to 8 thereafter preferred a revision before the Commissioner, Raipur Division, which was allowed on 05.08.2014 and the matter was remitted back to the Additional Collector for deciding the same afresh after making enquiry and passing order on merits.

3. On remand, the Collector, Mahasamund issued notices to the parties and recorded their statements. On completion of enquiry, the Collector passed the order on 28.09.2015 on the findings that as per his own statement, the petitioner has advanced loan of Rs.400-500/- to Narayan, which he could not repay, therefore, the sale deed was executed by Narayan. It was thus concluded that

Narayan did not pay any consideration but he was made to execute the sale deed as he failed to repay the loan to the petitioner. These findings of fact have been affirmed by the Commissioner, Raipur Division in the impugned order.

4. It is argued that the S.D.O. (Revenue) has passed the order without providing any opportunity of hearing to the petitioner and no enquiry was made to ascertain whether the transaction was entered by committing fraud upon a tribal holder, therefore, the order passed by the S.D.O. (Revenue) is not sustainable and for the same reason the appeal and revisional orders also deserve to be set aside. In addition, it is argued that the petitioner having purchased the property after obtaining permission from the Collector, the transaction is not vitiated.

5. Per contra, learned counsel for the State would support the impugned order and would refer to the findings recorded by the Collector and the Commissioner, Raipur Division.

6. It may be true that in the beginning the order passed by the S.D.O. (Revenue) was only based on non-submission of information within a period of two years, therefore, it was passed without making any enquiry. However, when this order was affirmed by the Collector and respondents No. 5 to 8 thereafter preferred a revision application before the Commissioner, the matter was remitted back to the Collector for making an enquiry and passing orders on merits. At that stage, the petitioner did not challenge the order passed by the Commissioner to complain that the enquiry should have been made by the S.D.O. (Revenue) and not by the Collector. The petitioner having failed to challenge the order passed by the Commissioner is not allowed to raise the plea of lack of enquiry because he has participated in the enquiry conducted by the Collector without any demur.

7. The petitioner has produced the permission granted in his favour by the Collector, Raipur on 27.11.1973 for executing the subject sale deed in his favour, however, the permission granted by the Collector appears to be in a format wherein blank spaces have been filled up, which goes to demonstrate that the Collector has granted such permission mechanically without enquiring the matter from the concerned tribal holder.

8. Section 170-B has been inserted in the Code of 1959 in order to save the tribals from fraud and mischief played by any person who does not belong to the tribal community. Any permission granted by the Collector under Section 165 (6) of the Code of 1959 for sale of land by a tribal holder would hold good, if the transaction is not vitiated by fraud. However, if after obtaining the permission the tribal member has been cheated and subjected to fraud inasmuch as he has not been paid adequate amount of consideration or the sale deed has been executed to legalize any loan or mortgage transaction, such permission would not save the transaction or would not condone the fraud committed on the tribal holder.

9. In the case at hand, the permission granted by the Collector mentioned that the tribal holder is permitted to sell the land to the petitioner for a sum of Rs.2,000/-, whereas in his statement before the Collector the petitioner himself admitted that he had advanced loan of Rs.400-500/- to the tribal holder, which he could not repay, therefore, the sale deed was executed by the tribal holder in his favour. Thus, despite permission granted by the Collector, the transaction was accentuated with fraud and was not a simple case of sale of land.

10. In the matter of **B.K.Muniraju v. State of Karnataka and others**¹, the Supreme Court held in para 22 thus:

1 (2008) 4 SCC 451

“**22.** It is settled law that a writ of certiorari can only be issued in exercise of extraordinary jurisdiction which is different from appellate jurisdiction. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals or authorities in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice. In regard to a finding of fact recorded by an inferior tribunal or authority, a writ of certiorari can be issued only if in recording such a finding, the tribunal/authority has acted on evidence which is legally inadmissible, or has refused to admit an admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. It is needless to mention that a pure error of fact, however, grave cannot be corrected by a writ. ”

11. In the case at hand also, concurrent orders have been passed by the Additional Collector and the Commissioner recording a finding of fact against the petitioner which is not open to interference by this Court in exercise of writ jurisdiction under Article 226 of Constitution of India.

12. The petition has no substance and it is dismissed as such.

Sd/-
Judge
(**Prashant Kumar Mishra**)