

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2695 of 2016**

- Tirath Ram Kenwat S/o Shri Fagawa Kenwat Aged About 65 Years R/o Village-Jamli, Tahsil & Police Station-Chhura, District-Gariyabandh, (Chhattisgarh).

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Collector Gariyabandh, District-Gariyabandh, (Chhattisgarh).
2. Chhattisgarh Rajya Anusuchit Janjati Aayog Raipur, Through Its Secretary, 61 Jalvihar Colony, Raipur, District-Raipur, (Chhattisgarh).
3. The Tahsildar Chhura, District-Gariyabandh, (Chhattisgarh).
4. Shri Surtiya Ram Gond, Village-Jamil Tahsil & Police Station-Chhura, District-Gariyabandh, (Chhattisgarh).
5. Premnarayan Pal S/o Inderman Pal Aged About 45 Years R/o Tulsi "baadera" Tahsil And District-Raipur, (Chhattisgarh).

---- Respondents

For Petitioner	:	Shri Basant Dewangan, Advocate
For Respondents-State	:	Shri Shashank Thakur, GA for the State

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****03/11/2016**

1. Challenge in this petition is to the order passed by the Chhattisgarh State Schedule Tribe Commission (for short 'the Commission') on 27.03.2014 recommending that the auction of land belonging to the tribal holder being in violation of Section 165 (7) (b) of the Chhattisgarh Land Revenue Code, 1959 (for short 'the Code, 1959'), the land should be reverted back to the tribal holder and the revenue records deserves to be corrected.

2. It is argued that an application under Section 170-B of the Code, 1959 was moved by the tribal holder before the Sub-Divisional Officer (R), Gariyaband in the year 1997, wherein an order was passed on 20.07.1998 closing the matter on the ground that when the land has been auctioned by the co-operative authorities in the recovery proceedings initiated by the primary credit co-operative society, the provisions contained under Section 170 (B) of the Code, 1959 is not attracted.
3. In the considered opinion of this Court, the order passed by the SDO (R), Gariyaband on 20.07.1998 is patently illegal in view of the law laid down by this Court in the matter of **Usha Mirani and Another Vs. State of Chhattisgarh and others {WP No.1111 of 2002, decided on 16th September, 2010}**, affirmed by the Division Bench vide order dated 17.10.2012 in **Writ Appeal No.421/ 2010 {Usha Mirani & Another Vs. State of Chhattisgarh & Others}**. In the said case, the following has been held in para 9 to 13:-

“9. Admittedly, the land sold in auction belonged to the original tribal holder Parmeshwar Kanwar, therefore, by virtue of the above quoted provision contained in Section 165 (7) (b) of the Code, auction of the land belonging to a tribal holder was not permissible in law. Thus, the Sub-Divisional Officer has not committed any illegality by holding that the subject transaction is hit by Section 165 (7) of the Code and the appellate and the revisional orders passed by the Additional Collector and the Additional Commissioner, respectively, affirming the order of the Sub-Divisional Officer, are also in accordance with law.

10. Once it is found that the auction itself was contrary to the provisions of law, the provisions contained in Section 170-B of the Code would be attracted because the non-tribal member has come into possession of the land belonging to a tribal in violation of the provisions of law. The fact that the petitioners have not purchased it from the tribal holder, but have purchased the same in an auction would not make much difference because the

attachment and auction of the subject land was in violation of Section 165 (7) (b) of the Code.

11. In the matter of **Mangilal and another Vs. Chand Mohammad, 1994 Revenue Nirnaya 35**, a single Bench of High Court of Madhya Pradesh has taken a similar view.

12. The argument raised by learned counsel for the petitioners that since there was no objection by the holder of the land and also that the petitioners being subsequent purchasers, the provisions contained in Section 170-B of the Code would not be attracted, has no substance because in view of express bar under Section 165 (7) of the Code, the consent of the tribal holder, even if treated as correct, would not make the provision of law inoperative. It is settled law that there is no estoppel against operation of law.

In the matter of **Shiva Vs. Anandram and others, 1989 Revenue Nirnaya 247**, a Single Bench of High Court of Madhya Pradesh has held that in a case where provision contained in Section 165(7) of the Code has been violated, failure of the holder of the land to raise objection in executing Court does not operate as constructive *res judicata* and such objection can be raised even in a collateral proceeding. In **Shiva vs. Anandram and others** (supra), the High Court of Madhya Pradesh has relied on the full Bench judgment of the High Court of Madhya Pradesh in the matter of **Ramsingh vs. Shankerlal, 1972 JLJ 275**.

13. The Courts below have not committed any illegality by directing reversion of the land in favour of the tribal holder, i.e., respondent No.5.”

4. The Commission has been constituted under the Chhattisgarh Rajya Anusuchit Janjati Ayog Adhiniyam, 1995 to act for the welfare of the tribal population. Although it cannot pass any order as if the Commission itself is a revenue authority but the Commission can always recommend in favour of a tribal holder for taking action in accordance with law, therefore, the revenue authorities have committed an error in straightway mutating the name of the tribal holder without drawing any fresh revenue proceeding and hearing the petitioner.

5. In view of the aforesaid, the matter is remitted back to the SDO (R), Gariyaband to initiate fresh proceeding under Section 170-B of the Code, 1959, issue notice thereof to the petitioner record evidence of the parties and thereafter decide the matter in accordance with law.
6. The writ petition stands disposed of with the above observation. The SDO (R), Gariyaband shall complete the proceedings within a period of six months from the date of submission of certified copy of this order. Registry is directed to forthwith transmit copy of this order to the SDO (R), Gariyaband. Learned Government Advocate shall also sent certified copy of this order to the concerned revenue officer.

Sd/-

Judge
Prashant Kumar Mishra

Ashu