

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.685 of 2015

Veerendra Kumar, S/o late Vidyadhar Sharma, aged about 40 years, R/o Village Virgaon, P.S. & Post Mungeli, Tahsil Mungeli, Civil & Revenue District Mungeli, C.G.

(Decree Holder)
---- Petitioner

Versus

1. Guruvachan, S/o Khorbahra, aged about 48 years,
2. Chhotelal, S/o Khorbahra, aged about 30 years,

Respondent No.1 & 2 are R/o Village Kanchanpur, P.S. & Post Mungeli, Tahsil Mungeli, Civil & Revenue District Mungeli, C.G.

(Judgment Debtors)
---- Respondents

For Petitioner:	Mr. Manoj Paranjpe, Advocate.
For Respondents:	None present, though served.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

20/10/2016

1. Judgment and decree was granted by the trial Court in favour of the petitioner / decree holder on 13-4-1999. In execution petition, the petitioner filed application for attachment of the immovable property of the judgment debtors / respondents on 29-9-2014. The said application has been rejected holding that such an attachment is barred by the provisions contained in Section 165(7)(b) of the Chhattisgarh Land Revenue Code, 1959 (for short 'the Code of 1959') against which this writ petition under Article 227 of the Constitution of India has been filed in which though the respondents have been served, but no one is present and no

representation is made on their behalf despite due service of notice to them.

2. Mr. Manoj Paranjpe, learned counsel appearing for the petitioner / decree holder, would submit that bar created under Section 165(7) (b) of the Code of 1959 is attracted when the land is comprised in a holding of the bhumiswami belonging to a tribe. In fact, the executing court ought to have made enquiry with regard to holding of the respondents bhumiswami before rejecting the application which they have not held.
3. I have heard learned counsel for the parties and perused the order impugned.
4. In order to consider the plea raised at the Bar, it would be appropriate to notice clause (b) of sub-section (7) of Section 165 of the Code of 1959.

(7) Notwithstanding anything contained in sub-section (1) or in any other law for the time being in force-

(a) *** *** ***

(b) no land comprised in a holding of a bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6) shall be liable to be attached or sold in execution of any decree or order;

(c)*** *** ***

Provided that nothing in this sub-section shall apply where a charge has been created on the land by a mortgage."

5. Meaning of the word "holding" has been defined under Section 2(1) (i) of the Code of 1959 which states as under: -
 - (i) "holding" means-
 - (i) a parcel of land separately assessed to land

revenue and held under one tenure; and

(ii) in reference to land held by a tenant a parcel of land held from a bhumiswami under one lease or set of conditions;"

6. Thereafter, meaning of the word "holding" has been considered by a Full Bench of the M.P. High Court in a decision in the matter of

Ramsingh v. Shankarlal¹ which states as under: -

"9. The word 'holding' has been defined both in [Section 2](#) (1) (i) and Section 58-A of the Code. [Section 2](#) (1) of the Code says that unless there is anything repugnant to the subject or context the words referred to in clauses (a) to (z-5) shall have the meaning as is given in the various clauses of the sub-section. This clearly shows that unless there is any repugnancy in the subject or the context all the words in this section, wherever they occur in the Code, shall mean as they are defined in it. Only in [Section 58-A](#) it has been added, by way of an explanation, that for the purposes of that section 'holding' shall mean as stated in clause (b) of the said explanation. In view of these provisions it would be clear that the word 'holding' occurring in [Section 165](#) (7) of the Code will have to be given that meaning only as is given in [Section 2](#) (1) (i), subject however to the condition that no repugnancy in the subject or context arises. It has, therefore, to be seen as to what is the meaning of the word 'holding' as given in [Section 2](#) (1) (i) of the Code.

10. [Section 2](#) (1) (i) says that 'holding' means a parcel of land separately assessed to land revenue and held under one tenure; and in reference to land held by a tenant a parcel of land from a Bhumiswami under one lease or set of conditions. Thus, according to this definition, the requirements of a holding, as defined above, are that-

- (1) It should be a parcel of land;
- (2) It should be separately assessed to land revenue;
- (3) It should be held under one tenure;
- (4) In case the land is held by a tenant from a Bhumiswami then it should be a parcel of land under one lease or set of conditions.

1 1972 M.P.L.J. 405

If, these requirements are present, then any land in a given case will have to be treated as holding for the purposes of [Section 165](#) (7) of the Code.

11. 'Land' has been defined in [Section 2](#) (1) (k) as a portion of earth's surface. The word 'parcel' has not been defined by the Code and, therefore, while construing this word the Court has to take its natural and grammatical meaning viz. a little part or a portion of a whole. 'Parcel of land', therefore, would mean a piece or portion of the earth's surface with separate ascertainable identity. Further, if any portion of earth's surface, so identifiable as parcel of land, is separately assessed to land revenue under the provisions of the Code then it will have to be treated as holding irrespective of the area of such a portion of land.

12. The second requirement is that it i.e., the parcel of land, should be held under one tenure. The dictionary meaning of the word 'Tenure' is the fact of holding tenement; the condition under which a tenement is held from a superior; the title by which the property is held; the relations, right and duties of a tenant to the landlord; the terms of holding (vide Oxford English Dictionary). The word 'tenure' though has not been defined in the Code yet the words 'tenure holder' have been defined in [Section 2](#) (1) (z) as a person who holds lands from the State Government and who is or is deemed to be a Bhumiswami under the provisions of the Code. Section 157 of the Code says that there shall be only one class of tenure holders from the State to be known as Bhumiswami. Thus, if a parcel of land is held in Bhumiswami rights from the State Government the holder becomes the tenure holder of that parcel of land and will be entitled to all the rights and be subject to all the liabilities provided by the Code."

7. A careful perusal of the aforesaid judgment would show that "holding" means a parcel of land, it should be separately assessed to land revenue, it should be held under one tenure and in case the land is held by a tenant from a bhumiswami then it should be a parcel of land under one lease or set of conditions. If these

requirements are satisfied then only a land in a given case will have to be treated as holding for the purposes of Section 165(7) of the Code of 1959.

8. A careful perusal of the order impugned would show that the trial Court did not make any enquiry as to whether the land of the judgment debtor is a holding for the purpose of Section 165(7) of the Code of 1959 and straightway rejected the application. In the considered opinion of this Court, such a course is not permissible. The order impugned is set aside and the executing court is directed to hold enquiry and consider as to whether the land of the respondents / judgment debtors is a holding within the meaning of Section 165(7)(b) of the Code of 1959 and then only pass fresh order in accordance with law after hearing both the parties. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this order before the executing court.
9. The writ petition is allowed to the extent indicated herein-above.
No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge