NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 5649 of 2008

Smt. Karan Bai D/o. Mohsai, aged about 43 years, R/o. Village Tildega, Tahsil Pathalgaon, District Jashpur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, Through : the Secretary, Department of Revenue, D.K.S. Bhawan, Raipur (CG)
2. The Chairman, Board of Revenue, Chhattisgarh Bilaspur (CG)
3. Additional Collector, Jashpur, District Jashpur (CG)
4. Sub-Divisional Officer (R), Pathalgaon, District Jashpur (CG)
5. Smt. Mudali Wd/o. Late Raturam, aged about 70 years,
6. Baldev, S/o. Late Raturam, aged about 43 years

   No.5 & 6 both R/o. Village Bandhiyakhar, Tahsil Pathalgaon, District Jashpur (CG)
7. Kartikram, S/o. Munusao, aged about 52 years
8. Ram Prasad S/o. Munusao, aged about 48 years
9. Bedram, S/o. Munusao, aged about 46 years

   No.7 to 9 All R/o. Village Tildega, Tahsil Pathalgaon, District Jashpur (CG)

---- Respondents

For Petitioner	:	Mr.Raghvendra Pradhan, Advocate
For Res.No.1, 3 & 4	:	Mr.Dhiraj Wankhede, G.A.
For Res.No.7 to 9	:	Mr.Sanjay Agrawal, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

08/02/2017

1. Heard.

2. This writ petition has been filed by the petitioner calling in question the order dated 15.4.2008 (Annexure P/1) by which the revision preferred by Ruturam (his legal representatives respondents No.5 and 6) has been allowed by the Board of Revenue by the impugned order.

3. The essential facts which are necessary to decide the question raised at the Bar are as under:-

3.1 Ruturam preferred revision under Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called as "Code") before the Board of Revenue stating inter-alia that he is bhumiswami of the suit land and member of an aboriginal tribe and his land has been grabed by Karan Bai and Ramprasad Sao, therefore, under the provisions contained in Section 170-B of the Code, his land be reverted back to him. The Sub Divisional Officer, Pattalgaon by order dated 26.3.1999 rejected the application holding that transaction is between Ruturam and petitioner-Smt.Karan Bai and both are members of aboriginal tribe and transaction is bonafide and valid. Against which, Ruturam preferred an appeal before the Additional Collector, Jashpur. The Additional Collector, Jashpur by order dated 11.1.2000 dismissed the appeal and affirmed the order passed by the Sub-Divisional Officer, Patthalgaon. Feeling aggrieved against the order of the Additional Collector, Jashpur, Ruturam preferred revision before the Board of Revenue and by order impugned, the Board of Revenue allowed the revision preferred by Ruturam only on the ground that Karan Bai is not a member of aboriginal tribe and transaction is between non-aboriginal tribe and and aboriginal tribe and therefore, transaction is benami and set aside the orders of the Sub-Divisional Officer and the Additional Collector.

4. Mr.Raghvendra Pradhan, learned counsel appearing for the petitioner, would submit that the impugned order is unsustainable and bad in law as the Board of Revenue did not avert to the merits of the matter and merely on the ground that Smt. Karan Bai is not member of aboriginal tribe declared the transaction as benami and set aside the orders of the Sub-Divisional Officer and the Additional Collector.

5. Despite service no one has appeared on behalf of respondents No.5 and 6.

6. I have heard learned counsel appearing for the parties, considered their submissions and also gone through the documents appended with the writ petition with utmost circumspection.

7. The Sub-Divisional Officer, Patthalgaon has rejected the application on the ground that Ruturam and petitioner-Smt.Karan Bai both are members of aboriginal tribe, therefore, provisions contained in Section 170-B of the Code is not applicable and transaction is bonafide, which has been affirmed by the Additional Collector, Jashpur in appeal. The Board of Revenue interfered with the order on the ground that Smt.Karan Bai has ceased to be an aboriginal tribe after her marriage, therefore, transaction is benami and void.

8. The question involved herein is no longer res-intregra and stands decided by the Supreme Court in the matter of **Bhaiji Vs. Sub-Divisional Officer, Thandla and others**[1], in which Their Lordships have clearly held that Section 170-B (1) of the Code would also be applicable to transfer of land by members of aboriginal tribe inter se. It was observed as under:-

> "8. It is well known that some of the aboriginal tribes are nomadic and some indulge into crimes traditionally and historically. The purpose of settling land with the tribals mostly which is done at very concessional rates and at times even without involving an obligation to pay the land revenue, is so done with a view to see that the aboriginals settle at one place abandoning nomadism and picking up tilling the soil as their vocation by settling at one place and earning livelihood by labour and toil. It is also well known that creamy layers have developed and even as amongst socially unprivileged some have acquired affluence. An affluent shrewd tribal may indulge into exploiting his fellow beings. Possibility cannot be ruled out where a non-tribal may manage to have land transferred apparently but not in reality in the name of a tribal and taking advantage of his status, affluence or any other

1 (2003) 1 SCC 692

means, conferring him with capacity to exploit, may till the land to his own advantage depriving the aboriginal tribal from the benefits of the land settled by the State with him. All such cases are taken care of by Section 170-B. The purpose of enacting Section 170-B of the Code is very wide. The object sought to be achieved, as its drafting indicates, is to gather and make available all statistics with the State officials so as to find out how much land belonging to aboriginal tribals is in possession of anyone to whom it does not belong as on the cut off date. The information having been collected the enquiry under sub-Section (3) shall be directed towards finding out the nature of transaction resulting into transfer of land ___ whether such transaction of transfer has resulted in the aboriginal tribal having been defrauded of his legitimate right in the land? Sub- Sections (1), (2) and (3), as enacted in 1980, have to be read as part of one whole scheme. If the submission of Shri Gambhir is correct then the object of enquiry under sub-Section (3) would have been to find out if such transaction of transfer has resulted in an aboriginal tribal having been defrauded of his legitimate right by person not belonging to aboriginal tribe. But that is not so. Nowhere in the entire scheme of sub-Sections (1), (2) and (3) of Section 170-B, as enacted in 1980, there is the least indication of confining the applicability of the provision to such transactions of transfer as were entered into by a member of aboriginal tribe in favour of a member not belonging to aboriginal tribe. No exception has been enacted by the Legislature so as to exclude from the purview of Section 170-B transactions of transfer between two persons both of whom are members of aboriginal tribes. Had it been so, the Legislature would have specifically said so. The language of the Section as drafted in 1980 is clear and unambiguous and does not admit of any doubt so far as this aspect is concerned.

9. Sub-Section (2-A) came to be enacted in 1998. An attempt at placing construction on the language of a statute enacted in the year 1980 and trying to find out its meaning and extent of operation by reference to the words employed

> in drafting a piece of legislation in the year 1998 may not be countenanced by principles of interpretation. Sub-Section (2-A) contemplates a limited category of cases where (i) any person other than a member of an aboriginal tribe is in possession of any land of a bhumiswami belonging to an aboriginal tribe, and (ii) without any lawful authority. The power is conferred on the Gram Sabha. It contemplates a summary and quick remedy for restoration of possession so as to provide quick relief at the hands of a local body to an aboriginal tribe on the twin conditions being satisfied. The very fact that the language employed by the Legislature in 1998 while drafting sub-Section (2-A) is materially different from the language employed by it in 1980 while drafting sub-Sections (1), (2) and (3) of Section 170-B, is rather suggestive of the fact that the Legislature was conscious of the wide scope of the original provision and therefore kept the scope of sub-Section (2-A) confined to a limited category of transactions as the power was being conferred on Gram Sabha. The essential ingredient vitiating the transaction of transfer under Section 170-B as enacted in 1980 is fraudulent nature of transaction resulting in deprivation of legitimate right of an aboriginal tribal while all that is required to be seen for the purpose of sub-Section (2-A) as inserted in 1998 is transfer by an aboriginal tribal in favour of a non-aboriginal tribal and that transfer being without any lawful authority, without regard to the nature of transaction whether it is fraudulent or not. Sub-sections (1), (2) and (3) of Section 170-B employ the expressions 'every person', 'any person' and 'all such transactions of transfer' respectively; Sub- section (2-A) speaks of 'any person, other than a member of aboriginal tribe'. That is a material distinction.”

9. Since Section 170-B of the Code would be applicable even between members of aboriginal tribe, the finding recorded by the Board of Revenue is unsustainable and bad in law. Accordingly, the impugned order is quashed. The matter is remitted to the Board of Revenue to consider the revision afresh on merits as to whether transaction between the petitioner and Ruturam was valid and bonafide transaction or not in accordance with the provisions contained in Section 170-B of the Code. The parties are directed to appear before the Board of Revenue on **6.3.2017**. The Board of Revenue will try to decide the matter within a period of three months from the date of appearance of the parties as the matter is of old one and the impugned order was passed by the Board of Revenue on 15.4.2008.

10. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-