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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (227) No. 234 of 2009

Order reserved on 21.09.2017

Order passed on 13.10.2017

State of Chhattisgarh, Through: The Secretary, Department of Revenue, D.K.S. Bhawan, Mantralaya, Raipur (C.G.)

---- Petitioner

Versus

Gopal Rao (died) through Legal heirs

1. Vinod Kumar, S/o Late Gopal Rao Shesh,
2. Mukund Rao, S/o Late Gopal Rao Shesh,
3. Milind Kumar, S/o. Late Gopal Rao Shesh,

   (Respondents No. 1 to 3 are resident of Tatyapara, Raipur (C.G.)

4. Jyoti Kiran, D/o Gopal Rao Shesh, R/o Anand Van, Wardha, Distt. Chandrapur (Maharashtra)
5. Sunanda, D/o Gopal Rao Shesh, R/o A.T.I. Campus Shayan, Mumbai (Maharashtra)
6. Madhuri, D/o Gopal Rao Shesh, R/o Jawahar Nagar, Durg (C.G.)
7. The Board of Revenue, Bilaspur Circuit Court, Raipur (C.G.)

---- Respondent

For Petitioner : Mr. Arun Sao, Deputy Advocate General.
For Respondents : Mr. B.P. Sharma & Mr. Hari Agrawal, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

(1) Invoking jurisdiction of this Court under Article 227 of the Constitution of India, the petitioner herein calls in question the legality,

validity and correctness of the order dated 25.03.2008 passed by Board of Revenue, Bilaspur, Circuit Court Raipur in Agriculture Ceiling Case No. 165B/90(3) 74-75 whereby the Board of Revenue has passed the impugned order closing the ceiling case against respondents No. 1 to 4 under the provisions of the Chhattisgarh Ceiling of Agriculture Holding Act, 1960 (hereinafter referred to as “Act, 1960”)

(2) Shri Arun Sao, learned Deputy Advocate General for the State would submit that the Division Bench of this Court in Misc. Petition No. 4184 of 1988 (**Vinod Kumar & others Vs. The Board of Revenue and others**) has given certain findings and in light of those findings and observations , Board of Revenue ought to have decided the case but the Board of Revenue has decided the case ignoring the same, which is contrary to the judgment of this Court. He has drawn attention of this Court to paragraphs 6, 9, 13 & 14 of order to demonstrate that only limited remand was made and the excess land i.e. 67.28 acres of land has already been affirmed by the Division Bench and which has also been declared not in excess in favour of land holder by the Board of Revenue and, therefore, the matter be remitted back to the Board of Revenue to decide the matter afresh in light of observations made by the Division Bench of this Court in M.P. No. 4184/1988.

(3) Opposing the submissions raised by learned Deputy Advocate General, Shri B.P. Sharma, learned counsel appearing for the respondents would submit as under:

(i) The impugned order has been passed on 25.03.2008 whereas writ petition has been filed on 14.01.2009 there-against and, therefore, the writ petition is liable to be dismissed on the ground of delay and laches and false declaration has been made in column No. 4 of the writ petition.

(ii) The said lands fall within the territorial jurisdiction of two districts i.e. Durg and Raipur and the District Collector, Raipur has complied with the order of Board of Revenue and the name of the respondents have been recorded and, thereafter, subject land has been sold to different persons and sale deeds have been filed before this Court without making them party in the matter and, therefore, the matter cannot be adjudicated as third party rights have already been created *whereas* the then Collector, Durg has not complied with order and this writ petition has been filed for quashing the entire order and, therefore, the writ petition as framed and filed by the State of Chhattisgrh is not maintainable and is laible to be dismissed.

(iii) The Division Bench of this Court in M.P. No. 4184/1988 has remitted the matter to the competent authority for fresh decision in light of the observations made in the judgment and in accordance with law, which includes finding in paragraph 3, 4 & 10 of the arguments advanced on behalf of the respondents, therefore, it was wholesale remand and not the limited remand to be considered and decided and, therefore, the Board of Revenue has rightly closed the ceiling case against respondents No. 1 to 4 holding that no land in excess of ceiling limit was found and accordingly held that previously declared excess land of 102.59, which has been vested in the State Government be reverted back and recorded in the name of respondents herein and, therefore, the writ petition is liable to be dismissed.

(4) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

(5) At this stage, it would be appropriate to notice the order dated 21st June, 2005 passed by the Division Bench of this Court in Misc. Petition No. 4184 of 1988, by which the matter was remitted back to the competent authority for fresh decision in accordance with the observations made in the judgment and in accordance with law. Paragraph 15 of the judgment states as under:-

> "**15.** In the result, the impugned orders passed by the competent authority as well as the Board of Revenue are set aside and the matter is remitted back to the competent authority for fresh decision in accordance with the observations in this judgment and in accordance with law. There is no order as to costs."

(6) A careful perusal of the order dated 21st June, 2005 would show that this Court has directed the competent authority for fresh decision in accordance with the observations in the judgment and in accordance with law.

(7) At this stage, it would also be appropriate to notice paragraphs 6,

9, 13 & 14 of the order dated 21st June, 2005, which read thus:-

> "**6.** We have persued the copy of the Khasra Panchshala annexed to writ petition as Annexure P-5 and we find that although the land in Khasra No.256 is to the extent of 7.90 acres, Khasra No.256 has been bifurcated into Khasra No.256 measuring 3.95 acres and Khasra No.256/1 measuring 3.96 acres and Khasra No. 256 has been recorded in the name of Gopal Rao and Khasra No.256/1 has been recorded in the name of Gajanand Raod. This appears to have been ignored by the competent authority.
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> **9.** We have perused the document Annexure P-6 and we find that in the said document Khasra Nos. 2/4, 4/4, 225/2, 256/2 have been recorded in the name of late Gopal Rao and in the said Annexure P-6 the extent of area held by late Gopal Rao in each of these Khasras has also been mentioned, but Khasra Nok.496/6 measuring area of 2.20 acers has not been mentioned. This aspect of the matter will have to be looked into by the competent authority and the competent authority.
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> **13.** We find that the document (Annexure P-6) produced is a copy of the Khasra Panchshala relating to the lands held by late Gopal Rao and in the said document the name of the Phasal (crop) against the said Khasra numbers 340/3, 225/2, 256/2 and 357/1 have not been mentioned whereas the name of Phasal (crop) against Khasra No.2/4, 265/2, 269/4, 397/14, 499/3, 499/4,611/1,630,610/3,710/4 and 710/3 has been mentioned. Hence, a further enquiry should be made by the competent authority with regard to the classification of the land in respect of which the petitioners have made a claim in their objections that the said land are actually

Kothar land and not the agricultural land and only if the competent authority comes to a clear finding on merits that the land is agricultural land including the same in the extent of land held by late Gopal Rao as on the appointed day.

14. Finally, Mr. Shrivastava submitted that late Gopal Rao has made a claim that an area of 28.02 out of different Khasra numbers had been given on gift to his daughter namely Jyoti Kiran. No registered gift deeds have been produced before us in proof of the aforesaid claim. But since we are remitting the matter back to the competent authority, the competent authority will give an opportunity to the petitioners to produce materials to show that an area of 28.02 acres or any lesser area was transferred by way of gift by late Gopal Rao to her daughter Jyoti Kiran before the appointed day."

(8) A careful persual of the impugned order would show that the Board of Revenue did not consider the observations made especially in paragraphs 6, 9, 13 & 14 and has decided the case on merits despite clear direction of the Division Bench of this Court in Misc. Petition No. 4184/1988 to decide the case afresh in accordance with the observations made in the judgment pertaining to paragraphs 6,9, 12, 13 & 14 of the order and, therefore, the matter deserves to be remitted back to the Board of Revenue for fresh consideration.

(9) So far as question of limitation is concerned, the Board of Revenue has passed the order dated 25.03.2008 *whereas* the instant writ petition was filed on 09.01.2009, thus, the delay is not inordinate, as it has been filed within reasonable time from the date of order passed by the Board

of Revenue. I do not find any merit in this ground. Likewise, the writ petition has been filed by the State Government through Secretary, Department of Revenue and the Deputy Collector has filed affidavit in support of writ petition as Officer-in-Charge on behalf of the State Government and the instant petition has been filed by the State of Chhattisgarh, therefore, it cannot be said that it has been filed by the Deputy Collector, Durg.

(10) In view of above, the writ petition is allowed. Impugned order dated 25.03.2008 is set aside. The matter is remitted back to the Board of Revenue for hearing and disposal in accordance with law keeping in view the observations made in paragraphs No. 6, 9,13 & 14 of the order dated 21st June, 2005 passed in Misc. Petition No.4184/1988.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-