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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.1597 of 2001

(Arising out of order dated 16-8-2001 in Revision Case No.14/A-23/99-2000 of the learned Commissioner, Bastar Division, Jagdapur)

1. Rajkumar Khatwani, S/o Late Hiralal Khatwani,
2. Manoj Kumar, S/o Late Hiralal Khatwani,
3. Vijay @ Banti, S/o Late Hiralal Khatwani,
4. Sushil Kumar, S/o Late Hiralal Khatwani,
5. Smt. Radha Rani, Wd/o Late Hiralal Khatwani,
6. Kanta Devi, D/o Late Hiralal Khatwani,

All R/o Village Sarona, Teh. Narharpur, District Kanker (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Revenue, Mantralaya, Raipur (C.G.)
2. The Commissioner Bastar, Jagdalpur, Distt. Bastar (C.G.)
3. The Collector, Kanker (C.G.)
4. The Sub Divisional Officer, Kanker (C.G.)
5. The Board of Revenue, Gwalior (M.P.)
6. Smt. Chanda Bai, W/o Late Pinglu Ram, R/o Vill. Sarona, Teh. Narharpur, Distt. Kanker (C.G.)

---- Respondents

For Petitioners: Mr. Manoj Paranjpe, Advocate.
For Respondents No.1 to 4 / State: -
Mr. Shashank Thakur, Govt. Advocate.
For Respondent No.6: Mr. Vishnu Koshta, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

23/10/2017

1. This writ petition is directed against the order passed by the Commissioner in revision ultimately upholding the order passed by the Sub Divisional Officer (Revenue) dated 29-9-1982.

2. Aboriginal tribe Late Pinglu Ram after due permission of the Collector under Section 165(6) of the Madhya Pradesh (Chhattisgarh) Land Revenue Code, 1959 (for short, 'the Code') sold the land to the petitioners on 21-11-1972. Thereafter, the M.P. Amendment Act 15 of 1980 came into force with effect from 24-10-1980 according to which the person in possession of the land of aboriginal was required to notify as to how he has come in possession of the said land. The petitioners being in possession of the land of aboriginal having purchased have notified the information on 13-8-1981 on which some enquiry was made by the Sub Divisional Officer (Revenue) and ultimately, the SDO (R) by order dated 29-9-1982 reverted the land to the aboriginal tribe against which the petitioners preferred appeal before the Collector and the Collector set aside the order of the SDO (R), but the Board of Revenue in revision preferred by the aboriginal tribe, remanded the matter to the Collector. This time, the Collector dismissed the appeal of the petitioners and that has been affirmed by the Commissioner in revision against which this writ petition has been preferred.

3. Mr. Manoj Paranjpe, learned counsel appearing for the petitioners, would submit that the learned SDO (R), has committed illegality in reverting the land to the aboriginal tribe, as no enquiry as contemplated under Section 170B (3) of the Code was conducted

by the SDO (R) affording due and proper opportunity to the petitioners and further the SDO (R) has though competence to look into the validity and correctness of the transaction entered and permission granted under Section 165(6) of the Code, has declined to look into this transaction, yet reverted the land in favour of the aboriginal tribe without holding enquiry which is unsustainable and bad in law.

4. Mr. Vishnu Koshta, learned counsel appearing for LR of respondent No.6, would vehemently oppose the submission of learned counsel for the petitioners and would submit that the learned SDO (R) has given ample opportunity to the petitioners to lead evidence, but they have declined to lead evidence and consequently, finding the transaction illegal, the land has rightly been reverted in favour of the aboriginal tribe which has rightly been affirmed by the Collector and the Commissioner which cannot be interfered with by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

5. The learned State counsel would support the impugned order.

6. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also perused the orders impugned as also the records of the Courts below with utmost circumspection.

7. It is not in dispute that the petitioners have purchased the land from the aboriginal tribe after due permission from the Additional Collector dated 13-11-1972 and sale deed was executed on 21-11-1972 and the petitioners have notified the information to the SDO

(R) in accordance with Section 170-B (1) of the Code on which some enquiry was made and land was directed to be reverted. The SDO (R) has held that the validity of permission granted to sell the land cannot be looked into. In the opinion of the Court, the learned SDO (R) has mistaken in holding so.

8. In the matter of **Panch Ram Sahu and others v. Chairman, Board of Revenue and others**[1], this Court has held that even if the land of aboriginal is sold after due permission of the Collector under Section 165(6) of the Code, the Sub Divisional Officer (Revenue) is entitled to consider the correctness of the transaction so made by the aboriginal tribe in favour of the non-aboriginal tribe and validity of the permission can be looked into and can be decided. In paragraph 14 of the report, this Court observed as under: -

> "14. While considering the question, the Madhya Pradesh High Court in *Gopichand v. State of M.P.*[2] held as under: -
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> > "6. At this stage Shri Deoras submits that the Sub-Divisional Officer being subordinate to the Collector would not be in a position to look into the correctness, validity and propriety of the order passed by the Collector under Section 165(6), therefore, in a case where the lands have been transferred with the permission of the Collector, such proceedings cannot be initiated or continued. I am unable to accept this contention. Section 170-B provides that if proper action is not taken by the transferee, then there would be a presumption of fraud in favour of the aboriginal tribe. Even in a case where a party proves that the land was purchased with the permission, the seller can still prove that the permission was obtained by playing fraud on the Collector. It is not that the correctness, validity or property of the permission is in question or challenge. The

1 2015(5) C.G.L.J. 448
2 1998 RN 103

> S.D.O. only has to convince himself to the fact of exercise of fraud. Fraud may be exercised in a number of ways. A party may be defrauded even before the application for permission is moved. Permission itself may be the result of fraud or the permission may become ineffective, if certain assurances given by the transferee are not fulfilled by him after obtaining permission. In any case, it would be for the S.D.O. to look into the matter." "

9. Thus, in view of the above, the SDO (R) is not powerless to look into the correctness of the transaction (transfer of land) entered into by the aboriginal in favour of the non-aboriginal even with due permission of the Collector. The finding, in this regard, of the SDO (R) is liable to be set aside. Apart from this, while reverting back the land in favour of the aboriginal, as contemplated in Section 170-B(3) of the Code, the SDO (R) is required to make enquiry as may be necessary about all such transactions of transfer and if he finds that the member of aboriginal tribe has been defrauded of his legitimate right, he shall declare the transaction null and void. A careful perusal of the order sheet of the SDO (R) would show that some enquiry has been made, but it appears that no reasonable opportunity has been afforded to the petitioners and even the petitioners have not been allowed to produce their witnesses, as on 19-8-1992, the case was fixed for re-examination and for argument and on 29-9-1982 re-examination was made and argument was heard and order was passed. In the considered opinion of this Court, no due enquiry was made as envisaged under Section 170-B(3) of the Code by the learned Sub-Divisional Officer (Revenue).

10. In view of the aforesaid analysis, the impugned order passed by the SDO (R) further affirmed by the Collector and the

Commissioner are set aside. The matter is remitted back to the SDO (R) to make fresh enquiry on the transaction / sale made by the non-aboriginal tribe in favour of the petitioners and also under Section 170-B of the Code after affording due opportunity of hearing to the parties and pass reasoned order within a period of three months from the date of receipt of a copy of this order.

11. Records of the courts below be sent back forthwith.

12. The writ petition is allowed to the extent indicated herein-above with no order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

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