AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 1843 of 2002

Ganga Ram aged about 58 years, S/o Late Roop Singh, R/o. Village – Singhanpuri, Tahsil and District – Kawardha (CG)

---- Petitioner

Versus

1. The State Of C.G. through the Principal Secretary, Department of Revenue, DKS Bhawan, Raipur (CG)
2. The Additional Commissioner, Raipur Division, Raipur (CG)
3. Collector, District Kawardha (CG)
4. Sub-Divisional Officer (Revenue) Kawardha, Distt.-Kawardha (CG)
5. Shatrughan Singh S/o. Samaru Gond R/o. Village – Hathidob, Tahsil and District – Kawardha (CG)
6. Patiram S/o. Shri Roop Singh
7. Rajkunwar widow of Shri Roopsingh

   Both resident of Village – Singhanpuri, Tahsil and District – Kawardha (CG)

---- Respondents

Shri Varun Sharma, counsel for the petitioner/s.
Ms. Sunita Jain, Panel Lawyer for the State / respondents 1 to 4.
None for other respondents.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

15/09/2017

By this petition, under Article 226 / 227 of the Constitution of India, the petitioner has assailed legality and validity of order dated 13/08/2002 passed by the Additional Commissioner, Raipur Division, Raipur whereby the order passed by the Collector in the year 1995 has been reversed and order passed by the Sub-

Divisional Officer on 17/06/1994 has been affirmed directing return of land under Section 170-B of the Land Revenue Code.

2. Facts necessary for decision of the controversy involved in the petition are that one Smt. Rupautin Bai, widow of Samaru, sold her land admeasuring 2.52 acres situated in khasra no.16/1, Village – Hathidob, Tahsil – Kawardha to one Roop Singh, father of the petitioner vide registered sale deed dated 31/08/1967 after getting permission for sale vide order dated 25/08/1967 of the Collector – Durg in exercise of powers under Section 165 (6) of the Land Revenue Code. Rupautin Bai, during her life time, did not raise any dispute in the matter nor re-claimed possession nor raised any allegation of she having been defrauded of any of her legitimate right. After the death of Rupautin, sometimes in the year 1994, it was informed by the Patwari of the concerned area that there is no information of the said sale transaction on record by the purchaser and therefore, he reported the matter to the Sub-Divisional Officer. Taking cognizance of the said report, the Sub-Divisional Officer, Kawardha initiated enquiry under Section 170-B of the Land Revenue Code and passed an order on 17/06/1994 directing return of land in favour of respondent No.5, son of Rupautin, the original vendor. Aggrieved by the order passed by the Sub-Divisional Officer, the petitioner preferred an appeal before the Collector which was eventually allowed vide order dated 09/03/1995. Aggrieved by the said order, revisional jurisdiction of the Commissioner was successfully invoked by respondent No.5 – Shatrughan Singh. The Commissioner set aside the order of the Collector and affirmed the finding of the Sub-Divisional Officer directing return of the land. It is this order, which is under challenge.

3. Learned counsel for the petitioner focused his submission on two issues. Firstly, even prior to coming into force of provisions contained in Section 170-B of the Land Revenue Code, legality and validity of the sale transaction was

challenged by Shatrughan Singh by filing Civil Suit and the Trial Court dismissed the Suit vide judgment decree dated 12/02/1980. As the matter was already adjudicated upon by the Court of law, which had competence and jurisdiction to decide the issue at the time when the suit was filed and the judgment was passed, it could not be nullified merely because there was an amendment and insertion of Section 170-B of the Land Revenue Code. The disputes which were already concluded under a judicial order could not be allowed to be reopened in a subsequent proceedings under the law particularly, when the enquiry was centered on the allegations of fraud.

Secondly, it is contended that even if it is assumed that the Sub-Divisional Officer had jurisdiction to invoke powers under Section 170-B of the Land Revenue Code, in the absence of there being any material much less finding that the deceased, original vendor - Rupautin Bai was defrauded of her legitimate rights, no order of return of land could be passed only on the ground of petitioner failing to inform the authority of such acquisition of land within a period of two years from the date of insertion of Section 170-B of the Land Revenue Code. In support of his submission, learned counsel for the petitioner places reliance upon decision of the Supreme Court in the case of **Bhaiji v. Sub-Divisional Officer, Thandla and ors., 2003 (1) SCC 692** and **Atmaram v. State of Madhya Pradesh, 1995 MPLJ 633.**

4. State counsel would submit that the dispute is between the petitioner and private respondent No.5 – Shatrughan Singh and the orders have been passed by the Sub-Divisional Officer in exercise of powers under Section 170-B of the Land Revenue Code.

5. As far as the first ground relating to maintainability of Section 170-B proceedings are concerned, it is noted that the civil suit which was filed by

Shatrughan Singh before the Civil Court was for declaration that the sale transaction is null and void on the ground of competence of his mother to sell the land. Though the order of the Trial Court is not on record, copy of order dated 10/10/1992 passed by the Appellate Court reveals that the enquiry by the Trial Court was limited to the issue of legality of the sale on the pleadings that the deceased Rupautin Bail had no title to execute the sale deed. The order does not show that any issue of fraud had arisen for consideration before the Trial Court or that the Trial Court having examined the oral and documentary evidence, recorded any finding on that issue.

6. The object of enactment of insertion of Section 170-B under the Land Revenue Code by an amendment brought into force in w.e.f. 24/10/1980 came up for consideration before the Division Bench of the High Court of Madhya Pradesh in the case of **Dhirendra Nath Sharma v. State of Madhya Pradesh, 1985 MPLJ 786**. The legislative scheme was explained as below -

> "11. The substance of the meaning of Sections. 170-A and 170-B may be mentioned at this stage. Sub-section (1) of Section 170-A lays down that the Sub-Divisional Officer, on his own motion or on an application on or before 31st Dec. 1978 made by a transferor of agricultural land belonging to a tribal, shall enquire into the *bona fide* nature of such transfer effected in any manner including accrual of right of occupancy tenant at any time, during the period commencing on the 2nd Oct. 1959 and ending on the date on which the 1976 Amendment came into force. Sub-section (2) then lays down that if the Sub-Divisional Officer is satisfied as a result of an enquiry that such transfer was not bona fide, he may notwithstanding anything contained in this Code or any other enactment set aside such transfer and restore the land to the transferor; or where such land has been diverted for non-agricultural purposes, he shall fix the price of such land and direct payment of the deficiency in the amount to be paid to the

transferor within a period of six months. In short, Section 170-A was enacted to enable the Sub-Divisional Officer to enquire into the *bona fide* nature of all transfers made of agricultural land belonging to a tribal during the period commencing on 2nd Oct. 1959 when the Code came into force and ending on the date on which the amendment of 1976 came into force, on his own motion or on an application made by the transferor up to 31st Dec. 1978.

12. Section 170-B was inserted later for the same purpose with a view to cover the remaining transfers of agricultural land belonging to tribals under which they had been exploited resulting from their unequal bargaining capacity at the time of the transaction. By enacting Section 170-B, a duty was cast on every person in possession of agricultural land, which belonged to a tribal at any time between 2nd Oct 1959 and the date of commencement of the Amendment Act of 1980 to notify the Sub-Divisional Officer within the period specified in the prescribed manner all the information as to how he had come in possession of such land. Obviously, the provisions enacted in Section 170-A for initiation of the proceedings was not found sufficient and, therefore, such a provision became necessary to ensure that every such transaction of transfer of land belonging to a tribal at any time after 2nd Oct. 1959 when the M.P. Land Revenue Code, 1959 came into force was brought to the notice of the Sub-Divisional Officer to enable examination of its validity on the basis of information supplied by the person in possession. Sub-section (3) provides that on the receipt of such information, the Sub-Divisional Officer shall make such enquiry as may be deemed necessary about all such transactions of transfer and if he finds that the tribal transferor has been defrauded, the transaction shall be declared null and void and an order would be made revesting the agricultural land in the tribal transferor or his legal heirs, as the case may be. The order contemplated by sub-section (3) is to be passed only as a consequence of a finding reached after due enquiry that in the transaction of transfer, the tribal transferor had been defrauded of his legitimate right. Unless such a conclusion is

reached, no question arises of declaring the transaction null and void and passing an order revesting the agricultural land in the tribal transferor or his legal heirs.

13. Sub-section (2) of Section 170-B merely lays down a rule of evidence. It says that where the person in possession fails to notify the information, as required by Sub-section (1) within the specified period, it shall be presumed that such person has been in possession of the agricultural land without any lawful authority and the land shall revert to the transferor or his legal heirs, as the case may be. Obviously, the presumption arising by virtue of sub-section (2) is based on the ground that if the person in possession has nothing to say nor show that his possession is under any lawful right and that the same is not derived as a result of a transaction defrauding the tribal transferor, the logical consequence must follow to presume that the transfer was void. The rule of evidence contained in sub-section (2) providing for such a presumption obviously dispenses with any further enquiry in such a case and the final order contemplated by sub-section (3) is required to be made taking into account this presumption arising under Sub-section (2)."

The statutory scheme of Section 170-B again came up for consideration before the High Court of Madhya Pradesh in the case of **Atmaram (supra)** wherein the High Court interpreted provisions as below -

"9. As explained in Dhirendra Nath Sharma's case, even in a case governed by Sub-section (2) of Section 170-B of the Code, there must be show cause notice and enquiry. In reply to show cause notice, it is open to the vendee in possession to aver that his possession is by lawful authority. It must be open to him to adduce evidence in support of his contention that his possession is by lawful authority. If the S.D.O. is satisfied on the materials before him either produced by the vendee or received from other sources that the vendee's possession is based on lawful authority, the presumption is rebutted. That is

> the end of the operation of Sub-section (2). It is important to know that the presumption has nothing to do with the aspect whether the document is obtained by fraud or other unfair means or whether the document is substantially unfair and constitutes fraudulent transaction affecting legitimate rights of the tribals. The presumption is confined only to one aspect in a narrow compass namely. Whether the possession is without lawful authority."

7. Their Lordships in the Supreme Court also had an occasion to examine the object of such enactment in the case of **Bhaiji (supra)**. It was held as below -

> "7. Challenge to vires of Section 170-B abovesaid along with Section 170-A was laid before a Division Bench of the High Court of Madhya Pradesh in *Dhirendra Nath Sharma Vs. State of Madhya Pradesh & Anr.,* AIR 1986 MP 122. Justice J.S. Verma (Acting CJ, as His Lordship then was) speaking for the Division Bench, upheld the constitutional validity of Section 170-A and Section 170-B both. The history of legislation resulting in enactment of Section 170-B has been succinctly set out by the Division Bench in paras 2 to 4 of its judgment and it is not necessary to restate the same hereat and if needed the reference can be had to the reported decision. Suffice it to observe that the Division Bench, by tracing the legislative history, concluded vide para 10 that the impugned provisions form a part of the principles of distributive justice by avoidance of illegal transactions of transfers of agricultural lands by members of the aboriginal tribes who were unequals and the legislation is also in implementation of the directive principle contained in Article 46 of the Constitution, which enjoins the State to protect the Scheduled Castes and Scheduled Tribes from all social injustice and from all forms of exploitation. It is true that the Division Bench of the High Court has made a reference to illegal transactions of transfers of agricultural land by members of the aboriginal tribes to non-tribals in these transactions. But that is so because the Division Bench was

> dealing with the petition filed by a non-tribal and did not have occasion to examine the transfers as amongst tribals *inter se*."

8. If the aforesaid legislative intendment of Section 170-B is kept in forefront for consideration, it is clear that even in a case where legality and validity of sale transaction involving an aboriginal tribe was examined by the Civil Court prior to insertion of Section 170-B of the Land Revenue Code, it would not come in the way of holding an enquiry under Section 170-B of the Land Revenue Code as the purpose and object of enquiry is not to examine the legality of the transaction from the angle of title of the parties but the enquiry would be as to whether aboriginal tribe has been defrauded of its legitimate right. Therefore, even if in a case of sale transaction involving an aboriginal tribe, there may not be any illegality in the sale transaction yet if there is material available on record that the aboriginal tribe was defrauded of its legitimate right, an order of return of land could always be passed. This conclusion has been drawn in the back ground of objective sought to be achieved by enacting such a piece of Social Welfare Legislation to protect aboriginal tribe against fraudulent transaction resulting in deprivation of land which is his source of livelihood. Therefore, first contention is not acceptable to the Court.

9. However, there is considerable force in the submission that there was no occasion for the Sub-Divisional Officer and the Commissioner to direct return of land without their being any finding much less any material of deceased original vendor-Rupautin Bai having been defrauded of her legitimate right. After going through the orders passed by the Sub-Divisional Officer and Commissioner, it is clear that there is no finding that the original vendor was defrauded of her legitimate right. The enquiry is based on legal aspect as also title. It is an important circumstance, that Rupautin during her lifetime, never raised objection to

the sale transaction of 1967 so also her husband – Samaru. It was only when at the instance of respondent No.5, son of Rupautin and Samaru, the Patwari sent a report in the year 1994 to the Sub-Divisional Officer, the Sub-Divisional Officer and the Commissioner appear to be swayed by the singular circumstance that the original purchaser i.e. father of the petitioner namely Roop Singh, failed to inform the Sub-Divisional Officer regarding sale transaction in 1967 with Rupautin Bai, the original vendor. That by itself, would not lead to the conclusion that the transaction was tainted by fraud on legitimate rights of the vendor. In the case of **Atmaram (supra)**, this issue came up for consideration and it was held as below -

> "10. Petitioners herein filed statements before the S.D.O. referring to the sale deeds under which the tribal vendors parted with their rights and possession in favour of the vendees and also mentioned that the sale deeds were registered after obtaining permission from the District Collector as contemplated under Section 165(6) of the Code. Of the two sale deeds produced before us, we find that one refers to permission granted by the District Collector. In the circumstances, the S.D.O. could have required the petitioners to prove their contention that their possession is traceable to the registered sale deeds contained after securing permission from the District Collector, as required by law. That was not done. The S.D.O. did not do so. He did not even advert to the question whether the presumption under Sub-section (2) is rebutted by the petitioners. He proceeded on the basis that once it is seen that the petitioners did not notify the information to him as required under Sub-section (1) within the period prescribed possession of the petitioners not must be regarded as without any lawful authority and he did not consider the contentions raised by the petitioners. It is necessary that the S.D.O. considers the contentions and records finding in that behalf before deciding whether possession of the land should revert to the person to whom it originally belonged."

10. Except the consideration that there was failure on the part of the purchaser – Roop Singh to notify as required under Section 170-B of Land Revenue Code, there is no material much less any finding of deceased vendor having been defrauded of her legitimate right. Therefore, irresistible conclusion is that the order passed by the Commissioner and the Sub-Divisional Officer are in excess of jurisdiction and unsustainable in law. Therefore, the order passed by the Commissioner is set aside. No further orders are required to be passed because it is found that the petitioner is continuing in possession under an interim order passed by this Court on 04/10/2002.

11. The petition is accordingly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Deepti