

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No.1066 of 2002**

1. Smt. Yamuna Bai Wd/o. Late Yadram, aged about 55 years
2. Ram Kumar S/o Late Yadram, aged about 38 years,
3. Smt. Meena Nayak W/o. R.P. Nayak, D/o Late Yadram Patel, aged about 35 years

All R/o Village-Kharwani (Bade), Tahsil Sarangarh, District Raigarh (CG)

4. Baburam S/o Gosai Ram, aged about 46 years, By Caste-Aghariya, R/o Village – Kharwani (Bade), Tahsil – Sarangarh, District Raigarh (CG)

----Petitioners**Versus**

1. The State of Chhattisgarh, through the Secretary, Revenue Department, Raipur (CG)
2. The Sub-Divisional Officer, Sarangarh, Distt. Raigarh (CG)
3. The Additional Commissioner, Bilaspur Division, Bilaspur (CG)
4. Awadh Ram S/o Bhaddar Gond, aged about 30 years, r/o village Kharwani (Bade), Tehsil Sarangarh, Distt. Raigarh (CG)

---- Respondents

For Petitioners	:	Mr.A.K.Prasad, Advocate
For Res.No.1 to 3	:	Mr.Dheeraj Wankhede, Govt. Advocate
For Respondent No.4	:	None present

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****20/09/2017**

1. By way of this writ petition, the petitioners call in question the legality, validity and correctness of the order dated 19.4.2002

(Annexure P/9) passed by the Additional Commissioner, Bilaspur Division, Bilaspur, in Revision Case No.101/A-23/99-2000, whereby respondent No.3/Additional Commissioner has set aside the order dated 14.6.2000 (Annexure P/8) passed by the Additional Collector, Raigarh in Appeal Case No.25/A-23/99-2000 and restored the order dated 15.2.2000 (Annexure P/7) passed by the Sub-Divisional Officer (R.), Sarangarh, in Revenue Case No.2/A-23/99-2000 under Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (hereinafter referred to as "Code") reverting the land in favour of respondent No.4.

2. Mr.A.K.Prasad, learned counsel appearing for the petitioners, would submit that the subject land was declared as "*Lawaris*" in the year 1948, which was ultimately settled in favour of great grandfather of petitioner No.2 on 4.7.1949 by the Tahsildar, Sarangarh and appeal against that order was dismissed. Civil suit filed by father of petitioner No.4 was decreed on 15.7.1963. Against that judgment and decree, first appeal was filed by forefathers of respondent No.4, which was dismissed by the Additional District Judge, Raigarh vide judgment dated 22nd September, 1969. Second Appeal being SA No.731 of 1969 filed before the High Court of Madhya Pradesh was also dismissed vide judgment dated 30.12.1976 and possession of forefather of the petitioners was confirmed.

Thereafter, an application under Section 170-B of the Code was filed by Budhni (grandmother of respondent No.4) before the Sub Divisional Officer (R), Sarangarh in the year 1981. The Sub Divisional Officer (R), Sarangarh dismissed the same holding that transaction was made prior to 2.10.1959, therefore, provisions of Section 170-B of the Code are not applicable. Again repeat application under Section 170-B of the Code was filed by respondent No.4 before the Sub Divisional Officer (R), Sarangarh. By order dated 15.2.2000, the Sub Divisional Officer (R), Sarangarh allowed the application, which was set aside by the Additional Collector, Raigarh by order dated 14.6.2000 holding that in the instant case, provisions of Section 170-B of the Code would not be applicable as transaction was prior to 2.10.1959 and forefathers of the petitioners were in possession of the land in question prior to 2.10.1959, but the Additional Commissioner, Bilaspur Division, Bilaspur has set aside the order passed by the Additional Collector, Raigarh and restored the order passed by the Sub Divisional Officer (R.), Sarangarh by the impugned order, which is unsustainable and bad in law.

3. On the other hand, learned State Counsel would support the impugned order.
4. I have heard learned counsel appearing for the parties,

considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

5. It is not in dispute that the land in dispute was settled in favour of forefathers of the petitioners on 4.7.1949 and appeal against that order was dismissed. Suit filed by forefathers of the petitioners was decreed on 15.7.1963 and it has been upheld in first appeal and second appeal also. Application filed by Budhni (grandmother of respondent No.4) under Section 170-B of the Code was dismissed on 8.7.1983 holding that provisions of Section 170-B of the Code are not applicable as forefathers of the petitioners were in possession of the land prior to coming into force of the Code. Thereafter, respondent No.4 filed repeat application under Section 170-B of the Code before the Sub Divisional Officer (R.), Sarangarh. This time, the Sub Divisional Officer (R.), Sarangarh allowed the application, which was set aside by the Additional Collector, Raigarh finding that transaction was prior to 2.10.1959, therefore, provisions of Section 170-B of the Code are not applicable and in revision, the Additional Commissioner has set aside the order of the Additional Collector and restored the order of the Sub Divisional Officer (R.), Sarangarh.
6. Since the petitioners are in possession of the land in dispute

prior to commencement of the provisions of Section 170-B of the Code i.e. before 2.10.1959, provisions of Section 170-B of the Code are not applicable in the present case.

7. This matter was referred to the Division Bench of this Court and the Division Bench of this Court in Yadram (Dead) through L.Rs. Smt. Yamuna Bai & others Vs. State of C.G. and others¹ has answered the question on 23.1.2015 as under:-

“17. In the present case, law is amended with limited retrospective effect. Plain reading of Section 170-B of the Code as amended covers the transaction made between 2-10-1959 till 24-10-1980 and not the transaction made prior to 2-10-1959. The language of Section 170-B of the code is plain and unambiguous and it is not permissible to deploy rules of interpretation to attribute any other meaning to the words used by the legislature, that those which naturally flow from it. If the plain words of Section 170-B of the Code are interpreted in such a way as to assign its meaning other than what is written in it, that is, if the Section is read to apply to transactions done prior to 2-10-1959 despite specific stipulation in the Section that it will apply to transactions done on and after 2-10-1959, then such an interpretation will create new obligations and duties disturbing the vested rights which, normally, should not be done by resorting to interpretation. Therefore, on the face of the plain and unambiguous wordings of Section 170-B of the Code, we are unable to subscribe to any view other than the one that it is restricted in its application to the transactions done between 2-10-1959 to 24-10-1980 only.

18. Yet another aspect of the matter is that while deciding Smt. Ramkunwar (supra), the learned Single Judge has not considered the dictum of the

¹ 2015 (5) C.G.L.J. 402 (DB)

co-ordinate Bench in Parwati Bai (supra). Therefore also, the interpretation accorded to Section 170-B of the Code that it applies to transactions prior to 2-10-1959 in Smt. Ramkunwar (supra) won't be a good law as the same suffers from vice of being a judgment *per incuriam* as the same has been passed in ignorance of earlier co-ordinate Bench ruling. (See Siddharam Satlingappa Mhetre v. State of Maharashtra and others²).

19. In view of the legal opinion we have formed regarding the applicability of Section 170-B of the Code, we answer the question referred that the provisions of Section 170-B of the Code and Act No.15 of 1980 (with effect from 24-10-1980) will apply in respect of transaction involving transfer / acquisition of right by a non-tribal over a land, before such acquisition of title or interest or transfer, belonged to member of tribe who has been declared to be an aboriginal under sub-section (6) of Section 165 of the Code from the commencement of the Chhattisgarh Land Revenue Code, 1959 i.e. 2-10-1959 till commencement of the Amendment Act, 1980 i.e. 24-10-1980."

8. In view of the aforesaid legal position, I do not have slightest hesitation in holding that learned Additional Commissioner, Bilaspur Division, Bilaspur has committed illegality in setting aside the order of the Additional Collector, Raigarh and restoring the order of the Sub-Divisional Officer (R.), Sarangarh.
9. The petitioners acquired title and interest over the suit land prior to 2.10.1959, therefore, as per principles of law laid down by Division Bench of this Court in **Yadram (dead)** (supra) that amending provisions of Section 170-B of the Code and Act of 1980 (with effect from 24.10.1980) will not be

applicable since transaction is prior to 2.10.1959, the impugned order dated 19.4.2002 (Annexure P/9) passed by the Additional Commissioner, Bilaspur Division, Bilaspur is hereby quashed.

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

Sd/-

(Sanjay K.Agrawal)
Judge

B/-