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HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on: 11.8.2017

Order passed on: 14.9.2017

Writ Petition (C) No.2082 of 2007

State of Chhattisgarh through the Secretary, Ministry of Revenue, Govt. of Chhattisgarh, D.K.S. Bhawan, Mantralaya, Raipur (CG)

----Petitioner

Versus

1. Gopal Agrawal, S/o Shri Nanakchand Agrawal, R/o Village Kharora, Tahsil Tilda, Distt: Raipur (CG)
2. Punnilal, widow of late Shri Mehtar Das Panka (Kotwar), Village Naukar, Tahsil, Tilda, District Raipur (CG)
3. Manbodh, S/o Daniram Kumar, Village Naukar (Kotwar), Tahsil Tilda, District Raipur (CG)
4. Nagar Panchayat Kharora, Through C.E.G. Distt.Raipur (CG)

---- Respondents

For Petitioner	:	Mr.Shashank Thakur, G.A.
For Respondent No.1	:	Mr.Manoj Paranjape, Advocate
For Respondents No.2&3	:	Mr. B.P. Sharma, Advocate
For Respondent No.4	:	Mr.Raja Sharma, 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 calling in question legality, validity and correctness of the order dated 18.7.2002 (Annexure P/6) passed by the Board of Revenue in Appeal Case No.154-Two/2002 setting aside the order dated 2.11.2001 passed by the Commissioner, Raipur Division, Raipur and order dated

18.8.99 passed by the Collector, Raipur, this writ petition has been preferred by the petitioner-State Government.

2. Essential facts necessary to determine the correctness of the impugned order are as under:-

2.1 That, Manbodh and Punni Bai were village kotwar of their respective villages appointed by competent authority under Section 230 of the Chhattisgarh Land Revenue Code and Rules made thereunder and they were allotted service land as per rules. Both of them moved an application before the competent authority under Part-3 Clause 20 of the Revenue Book Circular for exchange of the land along with respondent No.1, in which Nayab Tahsildar, Tilda invited objections. Enquiry report was submitted and spot inspection also was conducted and ultimately the Additional Collector, Raipur by order dated 21.12.1998 granted permission to exchange the land between them. In exercise of powers conferred under Part-3 Clause 20 of the Revenue Book Circular, order dated 21.12.1998 reviewed by the Collector by its order dated 18.8.1999 holding that the exchange is not in the interest of the State and public and set aside the order permitting exchange of service land.

2.2 Feeling aggrieved against the order of the Collector setting aside the order exchanging land, respondent No.1 preferred an appeal before the Commissioner, Raipur Division, Raipur. The Commissioner affirmed the order of the Collector and dismissed the appeal.

2.3 Questioning that order, respondent No.1 preferred the revision before the Board of Revenue. The Board of Revenue by its impugned order set aside the order of the Collector and the Commissioner and restored the order exchanging service land.

2.4 Impugning legality, validity and correctness of that order, the instant writ petition has been filed.

3. Mr.Shashank Thakur, learned Government Advocate appearing for the the petitioner / State, would vociferously submit as under:-

(i) That, the “service land” in dispute was allotted to Manbodh and Punni Bai as village kotwar under Section 230 of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called as 'Code') and the rules framed thereunder and as such they are civil servants and unless the lands are de-reserved for any other purpose and thrown up into government pool, the application as framed and filed for exchange of land was not maintainable.

(ii) That, in view of the fact that the land proposed to be exchanged by respondent No.1 was Padat (follow) lands and lands which kotwars (respondents No.2 and 3) were holding were service land, therefore, by virtue of provisions contained in Section 183 (2) of the Code they were holding the land as deemed lessee and as such, the word “otherwise” is employed in Section 183 (2) of the Code would also cover the transfer by way of exchange and therefore, service land cannot be directed to be exchanged by the Collector particularly when the village Kotwar holding the service land is deemed lessee of such service land and by virtue of the provisions contained in Section 105 of the Transfer of Property Act lease involves transfer of right.

(iii) That, under Part-3 Clause 20 of the Revenue Book Circular, only the land which is agricultural land, which is open and available to the government pool as a government land can be exchanged, since the land has already been earmarked and reserved as service land for civil servants/kotwar, such land cannot be directed to be exchanged with a private party/respondent No.1.

4. Mr. B.P. Sharma, learned counsel appearing for respondents No.2 & 3, would submit that:-

(i) Respondents No.2 and 3 hold the service land only gratuitously as village kotwar appointed under Section 230 of the Code, they were not holding the land as lessee and therefore, Section 183(2) of the Code would not be attracted and the land being government land can be exchanged by the competent authority under the provisions of the Revenue Book Circular.

(ii) That, the exchange is not included in Section 183 (2) of the Code. He would rely upon the judgments of the Supreme Court in the matters of **Assistant Collector of Central Excise, Guntur Vs. Ramdev Tobacco Company**[1], **Maria Margarida Sequeira Fernandes Vs. Erasmo Jack De Sequeria (Dead) through LRs.**[2] and **Behram Tejani and others Vs. Azeem Jagani**[3].

(iii) That, the writ petition suffers from inordinate delay and laches and in absence of valid explanation cum sufficient cause; the writ petition deserves to be dismissed on the ground of delay and laches only.

5. Mr.Manoj Paranjape, learned counsel appearing for respondent No.1, would submit that:-

(i) The writ petition as framed and filed suffers from gross delay and laches and delay, which has not been explained properly and after the exchange, respondent No.1 is in possession of the subject land for a fairly long time.

(ii) That, the Commissioner has granted permission for review without hearing the respondents and same is against the well settled principle of law in this regard, therefore, the writ petition deserves to be dismissed.

6. In rejoinder submission, Mr.Shashank Thakur, learned counsel for the petitioner/State, would submit that respondents No.1 to 3 have not challenged the order of Commissioner granting review and that has become final and in absence of challenge

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[1] (1991) 2 SCC 119
[2] (2012) 5 SCC 370
[3] (2017) 2 SCC 759

having been made by respondents No.1 to 3 to order of the Collector that question cannot be considered in this proceeding before this Court. He would further submit delay on the part of the Government is on account of procedural lapses and deserves to be condoned and it has not been seriously challenged by the respondents.

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

8. The first ground raised on behalf of the respondents is that the impugned order was passed by the Board of Revenue on 18.7.2002, whereas the writ petition was filed on 22.3.2007 with a delay of 5 years and there is no acceptable explanation offered by the State to file the writ petition with such a huge delay. After notice, the writ petition was admitted for hearing on 1.2.2011 and thereafter respondent No.1 has filed an application for dismissal of the writ petition on 14.3.2011 on the ground of delay and suppression of fact and return was filed by respondent No.1 on 8.8.2017. The plea of delay deserves to be rejected for twin reasons. Firstly that the respondents did not file any counter affidavit/return answering the Rule Nisi as per Rule 52 of the High Court of Chhattisgarh Rule 2007 and counter affidavit/return was filed when writ petition is listed for final hearing on 8.8.2017 pursuant to the order dated 31.7.2017 and case was heard

and closed for orders on 11.8.2017 and as such the petitioner did not have an opportunity to file rejoinder to explain the delay in filing the writ petition, rather the petitioner was taken by surprise, therefore, the plea of delay and laches cannot be ground to throw out the writ petition as respondent No.1 had filed an application on 14.3.2011 for dismissal of the writ petition on the ground of delay as well as on suppression of fact. Such an application is not entertainable in view of Rule 52 of the Rules of 2007 as respondent No.1 was required to file return supported by affidavit answering the Rule Nisi, which he miserably failed and filed only when the petition was listed for hearing. Such a practice is deprecated.

9. Secondly, the dispute is with regard to 15.16 acres of the land which belongs to the State Government and service land allotted to respondents No.2 and 3 has been directed to be exchanged which is the public property, this Court is of the considered opinion that the writ petition cannot be thrown out on the ground of delay and laches. Accordingly, the ground of delay and laches raised by the respondents is hereby overruled.

10. This would bring me to the next plea raised on behalf of respondents No.2 and 3. Respondents No.2 and 3 were village kotwars at the relevant point of time, they were holding the service lands in accordance with kotwari rules framed under Section 230 of the Code. Respondent No.2

Punnilal was allotted Kh.No.1043/9 area 3.703 hectares and respondent No.3 Manbodh was allotted Kh.No.1043/8 area 0.809 total area 3.763, which is equal to 15.16 acres of land. Respondent No.1 along with respondents No.2 and 3 moved an application for exchange of their lands under part-3 Clause 20 of the Revenue Book Circular, which was recommended by the Tahsildar, but by order dated 11.1.1999 it was rejected by the Additional Collector, Raipur, but in review application filed by respondents No.2 and 3, order has been reviewed and exchange of the land/service land has been permitted by the Additional Collector by order dated 8.6.1990. The said order was reviewed by the Collector with the leave of the Commissioner by order dated 18.8.1999 and order of the Additional Collector dated 8.6.1999 has been set aside and recalled on 21.12.1998. Order of the Collector has been upheld by the Commissioner, but same has been set aside by the Board of Revenue in the revision preferred by respondent No.1, against which, this writ petition has been preferred by the petitioner herein.

11. Exchange of land is permissible by the provisions contained in Revenue Book Circular. It only provides guidelines. It has no force of law.

12. It is well settled law that the Revenue Book Circular is a compilation of executive orders and not law, these are the guidelines per se do not partake of the character of statute, such guidelines in absence of the

statutory backdrop are advisory in nature and they per se do not confer any legal right. (See **State of U.P. v. Rakesh Kumar Keshari**[4] **and Poonam Verma v DDA**[5].) The M.P. High Court in the matter of **Ramcharan and others v. State of M.P. and others**[6] has held that Revenue Book Circulars have not been framed under the authority of any statute.

13. In the matter of **Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and others v. Director General of Civil Aviation and others**[7] it has been held by Their Lordships of the Supreme Court that an executive order is to be issued keeping in view the rules and executive business, though the executive order may not have the force of law but it is issued to provide guidelines to all concerned, and it has further been held in paragraph 22 as under: -

> "22.Thus, it is evident from the above that executive instructions which are issued for guidance and to implement the scheme of the Act and do not have the force of law, can be issued by the competent authority and altered, replaced and substituted at any time. The law merely prohibits the issuance of a direction, which is not in consonance with the Act or the statutory rules applicable thereunder."

14. Similar is the law laid down by the Supreme Court in the matter of **Syndicate Bank v. Ramachandran Pillai**[8] in which it has been held as under: -

[4] (2011) 5 SCC 154
[5] (2007) 13 SCC 154
[6] 1997 RN 141
[7] (2011) 5 SCC 435
[8] (2011) 15 SCC 398

> "Guidelines/executive instructions not statutory in character, are not law. They confer no legal right to seek a direction in a court of law for compliance with such guidelines even if there has been any violation or breach of such non-statutory guidelines. An order validly made in accordance with a statute cannot be interfered with, even if there has been any transgression of any guidelines, except where it is arbitrary or mala fide or in violation of any statutory provision."

15. In view of that, it is held that the Revenue Book Circular is compilation of Executive Instruction and provides guidelines to all concerned and has no force of law.

16. At this stage, it would be appropriate to consider the status of kotwars as to whether kotwar is holding a civil post or only village kotwar under the Code.

17. Appointment of Kotwar, Duties and remuneration are governed under the provisions of Section 230 & 231 of the Code, 1959. The said provisions are reproduced hereunder for ready reference:-

> **"230. Appointment of kotwars and their duties.-**(1) For each village or group of villages, there shall be appointed, in accordance with rules made under section 258, one or more kotwars for the performance of such duties as may be prescribed:
>
> Provided that in the Madhya Bharat region the duties of kotwars under this section shall be performed by the Police Chowkidars who shall, on the coming into force of this Code, be deemed to be kotwars under this section, and be subject in all respects to the control of Revenue Officers.
>
> (2) Every person who at the coming into force of this Code holds the post of a village watchman in the Bhopal and Sironj regions or of a chowkidar in the Vindhya Pradesh region shall be deemed to be a kotwar under this section.
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> **231. Remuneration of kotwars.-**The State Government may, by general order, subject to such restrictions, terms and conditions as may be

> mentioned therein, fix the remuneration of Kotwars either prospectively or retrospectively but such retrospective effect shall not be from a date earlier to the 1st March, 1982.”

18. By various notifications issued by the State Government, Rules regarding appointment, punishment and removal of Kotwar and their duties have been framed. Under the said Rules, the appointment of Kotwar is made by Tehsildar or Nayab Tehsildar, who are empowered by the concerned Collector. In the event of vacancy in the office of Kotwar, preference is given to the near relatives of the Ex-Kotwar, other things being equal. A Kotwar is liable to be suspended or dismissed, like a government servant, by the appointing authority.

19. Rule 8 of the Rules describes the duties of the Kotwar, which includes the following:-

> **“**8. It shall be the duty of the Kotwar**-**
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> • to reside in his village or, if he is in charge of more than one village in such village as is appointed for his residence by the Tehsildar, and not to absent himself without proper leave except when such absence is due to the performance of any of the duties imposed on him by or under these rules;
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> • to carry out all the orders of the Patel or Gram Panchayat or Gram Sabha entrusted with the duties of Patel under Section 229, read with Section 232 of the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959), in the discharge of his duties whether under the Code or otherwise and to assist him as also all the Government Officers in the due performance of their official duties;
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> • to report to the Patel or Gram Panchayat or Gram Sabha entrusted with the duties of Patel under Section 229 read with section 232 of the Madhya Pradesh Land Revenue Code, 1959 (No.20 of

1959), of misuse of Nistar rights or of Government property and encroachment in the common lands of the village and to assist the Patel or Gram panchayat or Gram Sabha in their protection and use according to rules;

• to report breaches of rules pertaining to Reserved Forests, Nistar Forests and the provisions of the Indian Arms Act, 1878, the Madhya Pradesh Game Act, 1935 and Wild Birds and Animals Protection Act, 1912 and the rules framed thereunder;

• to arrest and convey to the police or any other competent authority Police Station or outpost of the circle, any person who in his view, commits a non-bailable and cognizable offence or who has been proclaimed as an absconder;

• to assist in the private defence of person or property in accordance with Section 97 of the Indian Penal Code, 1860 (XIV of 1860), and in the arrest and conveyance to the Police Station, or outpost of the circle of any person liable to arrest under this Section or under Section 59 of the Code of Criminal Procedure, 1898 (V of 1898);

• to report immediately to the Patel of the village (if present in the village at the time) and then to the officer in charge of the Police Station or outpost of the circle-
(a) the permanent or temporary residence within the village of any notorious receiver or vendor of stolen property;
(b) the resort to any place within or the passage through the village of any person whom he knows or reasonably suspects to be a thug, robber, escaped convict or proclaimed offender and the movements of wandering gangs through or in the vicinity of his village,
(c) the commission of, or intention to commit any non-bailable offence within or near the village or any offence punishable under Sections 143, 144 or 145, 147 and 148 of the Indian Penal Code, 1860 (XIV of 1860), in the village;
(d) the departure from his home of any convict or non-convict suspect whose name has been entered in the police surveillance register together with the destination (if known);
(e) the advent in his village of any suspicious stranger together with any information which can

be obtained from questioning him regarding his antecedents and place of residence.

(f) the occurrence in or near village of any sudden or unnatural death or of death under suspicious circumstances;

(g) the commission of, or intention to commit any act which, if committed would be an offence punishable under any of the following Sections of the Indian Penal Code, 1860 (XIV of 1860), namely:-

302, 304, 382, 393, 394, 395, 396, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460

(h) any matter likely to affect the maintenance of order or the prevention of crime or the the safety of person or property respecting which the District Magistrate, by general or special order made with the previous sanction of the State Government, has directed him to communicate information;

- to report immediately to the Patel of the Village or Gram Panchayat or Gram Sabha entrusted with the duties of Patel under Section 229 read with Section 232 of the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959), (if present in the village at the time) and then to the officer-in-charge of the Police Station or out post of the circle, the occurrence of any cases of plague, cholera, small-pox, cerebro-spinal meningitis, chickenpox, diptheria, dysentery, influenza, leprosy, measles, pneumonia, epidemic relapsing fever, typhoid or enteric fever, typhus fever, tuberculosis of lungs, yellow fever or lathyrism;

- to report to the officer-in-charge of the Police Station or outpost of the circle, at such period as may be prescribed by the Collector the occurrence of all births and death within the village;

- if directed to do so by the Collector, to report deaths of village cattle from disease or poisoning or the attacks of wild animals;

- to attend the Police Station or outpost of the circle on such date as may be prescribed by the Collector and to obey the orders of the officer-in-charge of such Police Station or outpost in all Police matters;

- upon payment of the fee fixed according to rules made under the Central Provinces and Berar Panchayat Act, 1946 to serve the summons and notices issued by a Gram Panchayat or a Nyaya

Panchayat constituted under that Act;

• to assist on demand any officer of the Irrigation Department in identifying any labourer resident in the village to whom such officer proposes to make an advance of money, and also, if required to witness any agreement entered into by such labourer with the Irrigation Department;

• to report promptly to the Station Master of the nearest Railway Station or any other responsible official of the Railway staff available at the nearest Railway Station, any unusual occurrences, like excessive rains, unexpected heavy floods, overflowing of reservoirs, failure of irrigation works, very heavy flow through bridges, impounding of water on the upstream side, etc., or any other type of natural calamities likely to cause harm to the Railway track;

• to report to the nearest office of the Madhya Pradesh Electricity Board, about the general condition of the Sections of grid lines which lie within his jurisdiction."

20. Under Section 231 of the Code, Rules have been framed regarding remuneration of Kotwars. It provides that the remuneration shall be fixed by the Collector at settlement. Thus, remuneration of Kotwar is paid from the Government Treasury.

21. In the matter of **The State of Assam and others Vs. Kanak Chandra Dutta**[9], the Constitution Bench while considering the meaning and scope of the word "civil post *vis a vis* Mauzadar" working in Assam Valley, which is a post akin to a Kotwar in the State of Chhattisgarh has held thus in para 9, 10 & 11:-

> **"9.** The question is whether a Mauzadar is a person holding a civil post under the State within Art. 311 of the Constitution. There is no formal definition of "post" and "civil post". The

[9] AIR 1967 SC 884

sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Art. 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State. See marginal note to of Art. 311. In Art. 311, a member of a civil service of the Union or an all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State. See the marginal notes to Arts. 309, 310 and 311. <u>The heading and the sub-heading of Part XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person said to be holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post</u>.

10. In the context of Arts. 309, 310 and 311, a post denotes an office. A person who holds a civil post under a State holds “office” during the pleasure of the Governor of the State, except as expressly provided by the Constitution, see Art. 310. <u>A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post</u>. Art. 310(2) contemplates that a post may be abolished and a person holding a post may be required to vacate the post, and it emphasises the idea of a post existing apart from the holder of the post. A post may be created before the appointment or

> simultaneously with it. A post is an employment, but every employment is not a post. A casual labourer is not the holder of a post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed to the post.
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> 11. Judged in this light, a Mauzadar in the Assam Valley is the holder of a civil post under the State. The State has the power and the right to select and appoint a Mauzadar and the power to suspend and dismiss him. He is a subordinate public servant working under the supervision and control of the Deputy Commissioner. He receives by way of remuneration a commission on his collections and sometimes a salary. There is a relationship of master and servant between the State and him. He holds an office on the revenue side of the administration to which specific and onerous duties in connection with the affairs of the State are attached, an office which falls vacant on the death or removal of the incumbent and which is filled up by successive appointments. He is a responsible officer exercising delegated powers of Government. Mauzadars in the Assam Valley are appointed Revenue Officers and ex-officio Assistant Settlement Officers. Originally, a Mauzadar may have been a revenue farmer and an independent contractor. But having regard to the existing system of his recruitment, employment and functions, he is a servant and a holder of a civil post under the State."

22. It is well settled law that the post of Kotwar under the Code is a Civil Post for the purpose of Article 311 of the Constitution of India. Way-back in the year 1965, Division Bench of M.P. High Court in case of **Hira Vs. State**[10] has held that kotwar under the code is a Civil Post for the purpose of Article 311 of the Constitution of India and held as under:-

[10] 1965 RN 307 (C N 82)

> "….But as a Chowkidar before the Code or as a kotwar thereafter he, no doubt, held a civil post. The term 'civil post' for the purpose of Article 311 of the Constitution has to be taken to mean a post which is not a military post. The object in using that term is to exclude members of defence services and persons holding posts connected with defence. Jagannath Prasad v. State of U.P. (MANU/SC/0330/1961: AIR 1961 SC 1245)."

23. The aforesaid principle of law has been further followed in the matter of **Dinesh Vs. Board of Revenue and others**[11] holding kotwar appointed under the Code is a civil post and is entitled to avail protection of Article 311 of the Constitution of India.

24. Thus, the case of kotwar appointment and work are governed by statutory provisions as noticed hereinabove and he holds the office in the state of revenue establishment of district with specific nature of the duties defined under the Rules framed in exercise of statutory powers and thus, in view of law laid down by the Supreme Court and the High Court of Madhya Pradesh in **Kanak Chandra Dutta, Hira and Dinesh** (supra), it is held that kotwar holds a civil post and also entitled for protection of Article 311 of the Constitution of India. It is held accordingly.

25. This would bring me to the provisions contained in Section 183 of the Code which provides as under:-

> "183. **Service land**-(1) Any person holding land on the condition of rendering service as village servant shall cease to be entitled to such land if he diverts such land to non-agricultural purposes.

[11] 1998 RN 343

> (2) A transaction by which a village servant attempts to transfer his interest in his service land by sale, gift, mortgage, sub-lease or otherwise except by a sub-lease for a period not exceeding one year, shall be void.
>
> (3) If the holder of such land dies, resigns or is lawfully dismissed, the land shall pass to his successor in office.
>
> (4) The right of the holder in such land shall not be attached or sold in execution of a decree nor shall a receiver be appointed to manage such land under section 51 of the Code of Civil Procedure, 1908 (V of 1908)."

26. A focused glance of sub-section (2) of Section 183 of the Code would show that any transaction by which the kotwar attempts to transfer his interest in his service land by sale, gift, mortgage, sub-lease or otherwise except by a sub-lease for a period not exceeding one year, shall be void. It is clear that no transfer can be made by kotwar by way of sale, gift, mortgage, sub-lease or otherwise except by a sub-lease for a period not exceeding one year. The word "otherwise" used in sub-section (2) of Section 183 of the Code is significant. The instances of transfer are stated in Section 183(2) of the Code. However, they are not exhaustive and for showing that there may be some other transfers besides the instances of transfers stated, in my opinion, the word "otherwise" has been used. In fact the word "otherwise" has been given an extended meaning to include above-mentioned four kinds of transfers and other modes of transfer which are not covered by either sale, gift, mortgage, sub-lease, but in which there is a transfer of land.

27. The word, "otherwise" has been interpreted by the Supreme Court while construing the provisions of Sections 5 and 6 of the Bombay Land Requisition Act, 1948, in the matter of **Smt. Lila Vati Bai v. State of Bombay**[12]. The facts of that case show that petitioner Shrimati Lilavatibai is the widow of Dharamdas who was a tenant of the premises in question Dharamdas died in November 1953 leaving behind him surviving his widow and daughter. The petitioner alleged that she had been occupying the premises in question as a member of her husband's family since 1938 and that the tenant aforesaid had at no material date ceased to occupy the premises. She also alleged that one Narottamdas Dharamsay Patel was a mere lodger who was occupying a portion of the premises by leave and licence of her husband and in fact Narottamdas had vacated the portion in his occupation some time in the year 1953. On behalf of the State it was alleged that Dharamdas had vacated the premises in October, 1952 and had handed over the possession of the premises to the said Narottamdas Patel. It was denied that petitioner was residing in the premises at the time of her husband's death in November, 1953. On 27th January, 1954, an order was passed under Section 6 sub-section (4), clause (a) of the Bombay Land Requisition Act, 1948, by the Government of Bombay to requisition the said premises for a public purpose, because on enquiry it was found that the premises had become vacant in the

[12] AIR 1957 SC 521

month of October, 1952. The petitioner challenged the validity of the order of requisition stated above The High Court of Bombay dismissed her petition. The petitioner moved the Supreme Court challenging the vires of the Act as also the legal efficacy of the order impugned.

28. The Supreme Court considered the contention raised on behalf of the petitioner how the word "otherwise" used in Explanation (a) to Section 6 should be construed. It was observed as follows:-

> "11. It was contended on behalf of the petitioner that Explanation (a) to Section 6 quoted above contemplates a vacancy when a tenant (omitting other words not necessary) ceases to be in occupation upon termination of his tenancy, eviction, or assignment or transfer in any other manner. The argument proceeds further to the effect that in the instant case admittedly there was no termination, eviction, assignment or transfer and that the words "or otherwise" must be construed as ejusdem generis with the words immediately preceding them; and that therefore on the facts as admitted even in the affidavit filed on behalf of the Government there was in law no vacancy. In the first place, as already indicated, we cannot go behind the declaration made by the Government that there was a vacancy. In the second place, the rule of ejusdem generis sought to be pressed in aid of the petitioner can possibly have no application. The Legislature has been cautious and thorough-going enough to bar all a venues of escape by using the words "or otherwise". Those words are not words of limitation but of extension so as to cover all possible ways in which a vacancy may occur. Generally speaking, a tenant's occupation of his premises ceases when his tenancy is terminated by acts of parties or by operation of law or by eviction by the landlord or by assignment or transfer of the tenant's interest. But the Legislature, when it used the words "or otherwise" apparently intended to cover other cases which may not come within the meaning of the preceding clauses, for example, a case where the tenant's occupation has ceased as a result of trespass by a third party. The Legislature, in our opinion, intended to cover all possible cases of

> vacancy occurring due to any reasons whatsoever. Hence, far from using those words ejusdem generis with the preceding clauses of the explanation, the Legislature used those words in an all inclusive sense."

29. The Constitution Bench of the Supreme Court in the matter of **Kavalappara Kottarathil Kochuni @ Moopil Nayar and others Vs. The States of Madras & Kerala and others**[13] have been held as under:-

> “50. ....The word "otherwise" in the context, it is contended, must be construed by applying the rule of ejusdem generis. The rule is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. But it is clearly laid down by decided cases that the specific words must form a distinct genus or category. It is not an inviolable rule of law, but is only permissible inference in the absence of an indication to the contrary. On the basis of this rule, it is contended, that the right or the custom mentioned in the clause is a distinct genus and the words "or otherwise" must be confined to things analogous to right or contract such as lost grant, immemorial user etc. It appears to us that the word "otherwise" in the context only means "whatever may be the origin of the receipt of maintenance". One of the objects of the legislation is to by-pass the decrees of courts and the Privy Council observed that the receipt of maintenance might even be out of bounty. It is most likely that a word of the widest amplitude was used to cover even acts of charity and bounty. If that be so, under the impugned Act even a payment of maintenance out of charity would destroy the character of an admitted sthanam which ex facie is expropriatory and unreasonable.”

30. In the matter of **M. V. Elisabeth and others v. Harwan Investment and Trading Pvt. Ltd.**[14] Their Lordships of the Supreme Court have held as under:-

> “99. ....The word ‘otherwise’ literally means in a different way. ....”

[13] AIR 1960 SC 1080
[14] 1993 Supp(2) SCC 433

31. The Ninth Judges Bench of the Supreme Court in the matter of **S. R. Bommai and others v. Union of India and others**[15] has held as under:-

> "35. ....The expression 'otherwise' is of very wide import and cannot be restricted to material capable of being tested on principles relevant to admissibility of evidence in courts of law. ...."

32. Recently, Their Lordships of the Supreme Court in the matter of **Animal Welfare Board of India v. A. Nagaraja and others**[16] have held as under:-

> "39. Section 11(1)(a) uses the expressions "or otherwise", "unnecessary pain or suffering", etc. Beating, kicking, etc. go with the event so also torture, if the report submitted by AWBI is accepted. Even otherwise, according to AWBI, the expression "or otherwise" takes in Jallikattu, bullock cart race, etc. but, according to the State of Tamil Nadu, that expression has to be understood applying the doctrine of ejusdem generis. In our view, the expression "or otherwise" is not used as words of limitation and the legislature has intended to cover all situations, where the animals are subjected to unnecessary pain or suffering. Jallikattu, bullock cart races and the events like that, fall in that expression under Section 11(1)(a). The meaning of the expression "or otherwise" came up for consideration in *Lila Vati Bai v. State of Bombay* (AIR 1957 SC 521) and the Court held that the words "or otherwise" when used, apparently intended to cover other cases which may not come within the meaning of the preceding clause. In our view, the said principles also can be safely applied while interpreting Section 11(1)(a)."

33. The Supreme Court in the matter of **R & B Falcon (A) Pty. Limited Vs. Commissioner of Income Tax**[17] explained the meaning of term otherwise as under:-

> "22. A statute, as is well known, must be read in its entirety. What would be the subject matter of tax is contained in sub-sections (1) and (2). Sub- section (3), therefore, provides for an exemption. There

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15 (1994) 3 SCC 1
16 (2014) 7 SCC 547
17 (2008) 12 SCC 466

> cannot be any doubt or dispute that the latter part of the contents of sub-section (3) must be given its logical meaning. What is sought to be excluded must be held to be included first. If the submission of learned Solicitor General is accepted, there would not be any provision for exclusion from payment of tax any amenity in the nature of free or subsidized transport.
>
> 23. Thus, when the expenditure incurred by the employer so as to enable the employee to undertake a journey from his place of residence to the place of work or either reimbursement of the amount of journey or free tickets therefor are provided by him, the same, in our opinion, would come within the purview of the term “by way of reimbursement or otherwise”.
>
> 24. The Advanced Law Lexicon defines "otherwise".
> "By other like means; contrarily; different from that to which it relates; in a different manner; in another way; in any other way; differently in other respects in different respects; in some other like capacity."
>
> 25. "Otherwise" is defined by the Standard Dictionary as meaning 'in a different manner, in another way; differently in other respects'; by Webster, “in a different manner; in other respects”.
>
> 26. As a general rule, “otherwise” when following an enumeration, should receive an ejusdem generis interpretation (per CLEASBY, B. Monck v. Hilton, 46 LJMC 167, The words 'or otherwise', in law, when used as a general phrase following an enumeration of particulars, are commonly interpreted in a restricted sense, as referring to such other matters as a are kindred to the classes before mentioned, (Cent. Dict.)"

34. Thus, transfer by way of exchange of the service land is covered by the word “otherwise” employed by the legislature by sub-section (2) of Section 183 of the Code. There is one more reason for holding so. The village kotwar holding service land is entitled to sub-lease the service land for a period not exceeding one year and has conferred the status deemed lessee to the kotwar holding service land. Therefore,

by virtue of sub-section (2) of Section 183 of the Code, kotwar holding service land is prohibited from exchanging service land and exchange so made in contravention of Section 183(2) of the Code shall be void.

35. Way back, in the matter of **<u>Pahup Singh Vs. Haridas</u>**[18] the High Court of Madhya Pradesh has held that the transfer of service land in contravention of Section 183(2) of Code of 1959 is void and transferee of service land cannot claim any right on the basis of such transfer and held as under:-

> "3. Section 183(2) of the Land Revenue Code provides that a transaction by which a village servant attempts to transfer his interest in his service land by sale, gift, mortgage, sub-lease or otherwise except by a sub-lease for a period not exceeding one year shall be void. It may be assumed that the defendant is a village servant and that his land which was given to the plaintiff for cultivation is his service land. As a result of the operation of section 183(2); the transaction by which the plaintiff got the right to cultivate the defendant's land for three years was void. The plaintiff, therefore, could not claim to cultivate the land. Indeed, the plaintiff in his suit did not claim that he had a right to cultivate the land and he has not sued for possession of the land. All that the plaintiff claims is the repayment of loan. The loan transaction is not wiped out by section 183(2). The plaintiff's suit being merely for repayment of the balance amount of loan, is not hit by section 183(2). The trail Court was, therefore, wrong in rejecting the plaint."

36. The judgment of **<u>Pahup Singh</u>** (supra) has been followed by this Court in the matter of **<u>Kamini Kumar Vs. Bhaudas and another</u>**[19].

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[18] 1977 RN 467
[19] AIR 2017 (NOC) 206 (CHH)

37. The Division Bench of this Court in the matter of **<u>Chamru Ram Karma Vs. State of Chhattisgarh</u>**[20] has clearly held that exchange of agricultural land under the Revenue Book Circular must confirm the procedure prescribed by law and held as under:-

> "It also clearly indicates that without taking care of larger public interest and without ensuring that public interest is not compromised, valuable land belonging to the State having a high commercial value have been exchanged, as held by us above, there was no proper publication of the notice. Not only was the notice defective, but the notice was not even published in a legal manner. The land which has been been transferred in favour Respondents No.5 to 8 all adjoins their own lands and this has enabled them to raise a huge commercial complex at the cost of public."

38. The last submission of Mr.Sharma is that possession of kotwar over the service land is permissive and he has no right over the land and as soon as the kotwar loses his kotwari or removed from kotwari, he can be thrown out from service land placed reliance upon the judgments of the Supreme Court in the matters of **Maria Margarida Sequera Fernandes** and **Behram Tejani** (supra). The aforesaid decisions are clearly inapplicable to the facts as in these cases the Supreme Court has considered the rights of the persons who are employed as caretaker or agent and they hold the property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long possession as it has already been held that kotwar is a civil servant holding

[20] AIR 2017 Chhattisgarh 22

the post under the State and has protection of Article 311 of the Constitution of India. So far as the possession of service land is concerned, he holds the land as deemed lessee till the end of his service tenure. Therefore, these decisions are inapplicable to the facts of the present case.

39. Thus, exchange of service land is also in contravention of Section 183(2) of the Code and is void.

40. As a fallout and consequence of the above-stated discussion, the impugned order passed by the Board of Revenue deserves to be and is accordingly set aside and it is directed that respondent No.1 shall deliver the vacant possession of the subject land to the Collector, Raipur within 45 days from the date of order and the said land will be mutated in the name of the State Government and land of respondent No.1, if any, in the possession of kotwar/ex-kotwar shall be returned to him.

41. The writ petition is allowed to the extent sketched hereinabove. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-