

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.442 of 2016

Manish Agrawal, S/o Shri Om Prakash Agrawal, aged about 28 years, R/o Village Nipaniya, Tahsil Bilha, Revenue and Civil District Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Revenue and Disaster Management Department, Mantralaya, New Raipur, District Raipur (C.G.)
2. The Collector, Bilaspur, District Bilaspur (C.G.)
3. Sub Divisional Officer (Revenue) Avam Land Acquisition Officer, Bilaspur, District Bilaspur (C.G.)

---- Respondents

For Petitioner:	Mr. Pushpendra Kumar Patel, Advocate.
For State/Respondents:	Mr. Arun Sao, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

20/09/2017

1. Shri Bhaudas was appointed Kotwar of Village Pendridih under Section 230 of the Chhattisgarh Land Revenue Code, 1959 (for short, 'the Code') and the rules made thereunder. He was allotted service land being part of Khasra No.274, area 0.016 hectare for his service tenure. During his service tenure, Shri Bhaudas transferred/sold the said land by registered sale deed dated 9-9-2011 to the petitioner herein. The said land has been acquired by the State Government for the purpose of Bilaspur-Raipur National Highway and award has also been passed on

31-2-2012 in favour of the petitioner determining compensation to the extent of ₹ 4,42,992/-, but when the petitioner claimed compensation, it was not disbursed to him. He filed a writ petition bearing W.P.(C)No.1417/2005 (Manish Agrawal – Versus – State of Chhattisgarh and another) in which this Court directed the State to decide the representation of the petitioner. Thereafter, the Sub Divisional Officer (Revenue), Bilaspur has decided the representation of the petitioner holding that the land allegedly held by the petitioner is service land which is not transferable and, therefore, the petitioner is not entitled for compensation. Feeling aggrieved against the said order passed by the Sub Divisional Officer (Revenue) dated 2-12-2015, the instant writ petition has been filed.

2. Learned counsel for the petitioner submits that the impugned order passed by the learned Sub Divisional Officer (Revenue) is unsustainable and bad in law, as the petitioner has purchased the suit land by registered sale deed after making payment of sale consideration, his name has also been mutated and award has also been passed, and there is no reason not to disburse the amount determined in the award to the petitioner. He further submits that the reason assigned by the Sub Divisional Officer (Revenue) is unsustainable and bad in law in view of the registered sale deed having been executed by Shri Bhaudas, Ex-Kotwar of Village Pendridih in favour of the petitioner.
3. On the other hand, learned State counsel submits that Shri

Bhaudas was holding land in the capacity as Kotwar and therefore he could not have transferred the said land to the petitioner in violation of Section 183 (2) of the Code.

4. I have heard learned counsel for the parties and considered the rival submissions made herein-above.

5. Section 183 (1) and (2) of the Code reads as follows: -

“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.

(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.”

6. Thus, a focused glance of sub-section (2) of Section 183 of the Code would show that the Kotwar while holding service land is obliged not to transfer the service land by sale, gift, mortgage, sub-lease or otherwise except by a sub-lease for a period not exceeding one year, and any transfer made contrary to this provision would be transparently void.

7. Way back, in the matter of **Pahup Singh v. Haridas**¹, G.P. Singh, CJ, speaking for the High Court of Madhya Pradesh has held that transfer of service land in contravention of Section 183(2) of the Code would be void and transferee of service land cannot claim any right on the basis of such transfer and observed as under: -

“3. Section 183(2) of the Land Revenue Code

1 1977 RN 467

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 trial Court was, therefore, wrong in rejecting the plaint."

8. The principle of law laid down in **Pahup Singh** (supra) was followed by this Court in the matter of **Kamini Kumar v. Bhaudas and another**².
9. In view of the statutory provision contained in Section 183 (2) of the Code restraining the holder of service land i.e. Kotwar from transfer of land by sale and thereby making the said transfer void, reverting back to the facts of the case, it would be quite vivid that transfer of service land by Shri Bhaudas in favour of the petitioner in violation of Section 183 of the Code was transparently void and as such, the petitioner has no right to continue in the said service land in violation of Section 183 (2) of the Code and alleged transfer has not conferred any right, title and interest to the petitioner on the said land being in contravention of Section 183 (2) of the Code. Therefore, the

² AIR 2017 (NOC) 206 (Chh)

petitioner has rightly been denied compensation for the said service land in violation of the statutory provisions contained in the shape of Section 183 of the Code.

10.As a fallout and consequence of aforesaid discussion, the petition is liable to be and is accordingly dismissed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma