

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 4111 of 2006**

1. Surja Bai widow of Milan Ram
2. Shri Ram S/o Dewar Gond
3. Samman Ram S/o Sumru Ram Gond
4. Ashadhu Ram S/O Bishram Dhobi
5. Rohidas S/o Agnu Ram Gond
6. Ratan Lal S/o Chaitu Ram Gond

All R/o Village Gitpahar Patwari Halka No.14 Tahsil – Charama, District – Kanker (CG)

---- Petitioners

Versus

1. State Of Chhattisgarh Through the Secretary, Revenue Department DKS Bhawan Raipur
2. Collector, Kanker, District – Kanker
3. Mangtu Ram S/o Jetu Ram Gond R/o Gitpahar Tahsil – Charama, District – Kanker (CG)

---- Respondents

For Petitioners	:	Shri Vishnu Koshta, Advocate
For Respondent / State	:	Shri Chandresh Shrivastava, Panel Lawyer
For Respondent No.3	:	Shri R.S.Patel, counsel for respondent No.3

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

16/02/2017

This case is de-linked from WP No.4110/2006 and WP No. 4316 of 2006.

This petition, under Article 227 of the Constitution of India, has been

preferred by the petitioners aggrieved by order dated 22/05/2006 passed in revision by the State Government by which, the revision petition of respondent No.3 has been allowed, cancelling order of allotment in favour of the petitioner and directing allotment in favour of respondent No.3.

2. A large chunk of land admeasuring 76.86 acres situated in Village – Gitpahar, Tahsil – Charama, District – Kanker was declared surplus by the competent authority under the provisions of Madhya Pradesh Ceiling on Agricultural Holding Act, 1960 (for short 'the Act of 1960'). The Sub-Divisional Officer, Revenue being the competent authority initiated process for allotment of surplus land to landless persons. Applications were invited. Proposal of gram panchayat was also obtained and thereafter, the Tahsildar submitted a report dated 12/06/2000 before the Sub-Divisional Officer, Revenue which was accepted, leading to allotment of land in favour of the petitioners and many other persons. Respondent No.3 and some other persons who were aggrieved because they were not allotted any land, raised their grievance. Respondent No.3 herein, filed an appeal before the Collector which was dismissed by the Collector vide order dated 25/09/2000. Aggrieved by the order of the Collector, the petitioner preferred revision before the Revenue Commissioner. As the office of the Revenue Commissioner was abolished, the Board of Revenue having no authority to hear the revision, the revision was transmitted to the State Government. The State Government, upon perusal of the record, found that in the matter of allotment of surplus land under the provisions of the Act of 1960, provisions of the Act and Rules made therein were not followed. However, while declaring that the allotment in favour of the petitioner was illegal, the State Government proceeded to issue allotment of land to respondent No.3 giving rise to this petition.

3. Learned counsel for the petitioner submits that even though due and proper

procedure was followed in the matter of allotment of land under the provisions of the Act of 1960 and Rules made therein, in the matter of allotment of surplus land to landless persons, the Government perversely recorded finding contrary to record. He submits that as per the provisions contained in relevant rules, applications were invited, proposal was obtained from gram panchayat. The gram panchayat passed resolution after making its own enquiry with regard to entitlement and preference of the applicants and submitted a list of proposed allottees to the Tahsildar. The Tahsildar obtained report from Patwari, verified entitlement of applications and proposing preference list as per the provisions provided under Section 35 of the Act of 1960, submitted his report to the Sub-Divisional Officer on 12/06/2000. The Sub-Divisional Officer also applied its mind to the records and having been satisfied that the proposal was in accordance with the Act and Rules, accepted the same. On appeal being preferred, the Collector also applied its mind. It is further contended that respondent No.3 was already holding a parcel of land, therefore, he could not be treated as landless person. According to learned counsel for the petitioner, whether respondent No.3 was holding the land as encroacher or as valid allottee, he was rightly not treated as landless person. Therefore, there was no illegality. Once respondent No.3 was not found eligible for allotment, at his instance, procedure for allotment could not be questioned and there was no occasion for any of the authorities, including the State Government, to hold that procedure was not followed because under any circumstance, allotment could be made to respondent No.3. He further submits that infact, respondent No.3 never submitted any application. Therefore, for this reason also, no order could be passed against the petitioners in application / appeal/ revision of respondent No.3.

4. Learned State counsel submits that allotments have been made according

to the procedure prescribed and it is for the Court to decide the legality and validity of the same.

5. Learned counsel for respondent No.3 submits that the allotments were made in blatant violation of the procedure prescribed under the Rules prescribed for allotment, framed in exercise of powers provided under Section 35 of the Act of 1960. The Tahsildar acted mechanically on the basis of list submitted by the gram panchayat without verifying and without following the procedure prescribed in Rule 8 of the relevant rules. No hearing was conducted nor any objections considered and straightway some proposal was made by the Tahsildar on 12/06/2000 and forwarded to the Sub-Divisional Officer who also mechanically accepted the same.

6. In order to appreciate rival submissions of the parties, it is apposite to examine the relevant provisions of law under the Act of 1960 and Rules made thereunder. Under the statutory scheme of the Act of 1960, the lands which have been declared surplus under the provisions of the Act could be allotted to the landless persons as provided under Section 35 of the Act of 1960 which reads as follows -

“35. Allotment of surplus land vesting in the State Government under this Act -

1. Subject to the provisions of this Act and the rules framed thereunder surplus land vesting in the State under Section 12 shall be allotted in Bhumiswami rights to the persons mentioned hereunder in the order of priority as indicated therein on payment of a premium equivalent to the compensation payable in respect of such land -

- (i) agricultural labourers -
- (a) belonging to Scheduled Castes and Scheduled Tribes;

and

(b) others ;

(ii) joint farming society, the members of which are agricultural labourers, or landless persons whose main occupation is cultivation or manual labour on land, or a combination of such persons;

(iii) better farming society, the members of which are agricultural labourers, or landless persons whose main occupation is cultivation or manual labour on land, or a combination of such persons;

(iv) freedom fighters;

(v) displaced tenants subjects to the provisions of Section 202 of the Madhya Pradesh Land Revenue Code, 1959;

(v) holders holding contiguous land;

(vii) joint farming society of agriculturists;

viii) better farming society of agriculturists;

(ix) any other co-operative farming society subject to the condition that land (including the land as owner or tenant individually by members) shall not exceed the area equal to the number of members multiplied by the ceiling area;

(x) an agriculturist holding land less than the ceiling area:

Provided that unless the State Government otherwise directs surplus land consisting of compact area shall be either reserved for Government farm or allotted to co-operative societies or any other public purpose.

[*Explanation 1* -- For the purpose of clause (iv), "freedom fighter" means a person who by reason of his taking part in

any national movement for independence prior to the 15th August, 1947--

- (i) had been awarded capital punishment; or
- (ii) had to suffer imprisonment or detention for a period exceeding six months; or
- (iii) had been permanently incapacitated on account of injuries inflicted upon his person in firing or lathi charge; or
- (iv) had to suffer loss of property, whether wholly or partly or loss of employment or loss of his means of livelihood, and includes his principal heir where such person –
 - (a) was hanged in execution of the capital punishment; or
 - (b) died during the course of imprisonment or detention.

Explanation II -- For the purpose of Explanation I, "principal heir" means the eldest son of the deceased or, if there is no son of the deceased or, if there is no son surviving, such other heir of the deceased, as the Collector may declare to be the principal heir.]

(2) The premium payable under sub-section (1) may be paid by the allottee either in a lump sum within six months of the commencement of the agricultural year next following the date of allotment or in twenty equal instalments, the first instalment being payable on the commencement of the agricultural year next following the date of allotment. If the premium is paid in instalments the unpaid balance of such premium shall carry interest at the rate of 3 per centum per annum with effect from the date on which the first instalment falls due.

[(3) Where the land allotted under sub-section (1) is an orchard other than banana gardens and vine yards, the allottee shall maintain the orchard intact.]”

The provision provides for an order of priority indicated herein above and as amongst agricultural labourer, scheduled caste and scheduled tribe are at the top of the priority list. Respondent No.3 is a person belonging to Scheduled Tribe and on this aspect, there is no dispute amongst the parties.

7. The procedure required to be followed in the matter of allotment is prescribed under the Rules framed vide notification No.3129-4320-XXVIII – 63 dated 13/11/1964 published in M.P. Rajpatra, Part IV (Ga). Rule 6 provides that surplus land shall be allotted by the Sub-Divisional Officer while Rule 7 requires an allottee to pay full land revenue assessed on the land in question from the next agricultural year. Rule 8 provides for the procedure to be followed. The said rule being relevant for the purpose of this case, is quoted herein below -

“8. The following procedure shall be followed in respect of allotment of surplus land vested in the State Government under these rules -

(i) Immediately on receipt of the copy of the statement in Form I, the Patwari shall issue a proclamation in Form III in the village in which the land is situate inviting applications within 15 days from the date of issue of the proclamation. All such applications shall be made to the Tahsildar in Form IV, in case of an individual, and in Form V in case of a society and shall each be affixed with a Court – fee stamp of the value of Rupee 1.

(ii) After the date fixed for the receipt of applications, the Tahsildar shall prepare a list of all applications stating in brief the particulars of land applied for by each and forward it to the Gram Panchayat or Gram Sabha, as the case may be, with a notice in Form VI, asking it to furnish within 15 days of the date of the receipt of the list, on the suitability or otherwise of the

applicants for the allotment of land. The Gram Panchayat or the Gram Sabha, shall send its recommendations to the Tahsildar within such period. The Tahsildar shall visit each village, if possible, or suitable centre, one week after the notified date of receipt of such reports and whether a report is received or not, he shall hold a meeting of the residents of the village in which the land to be allotted is situated, on the date and at the place to be announced by beat of drum at least three days before the meeting. If the land to be allotted is situated in an uninhabited village, such meeting shall be held in any one of the neighbouring village after giving wide publicity in respect thereof in other neighbouring villages also.

(iii) On the date and at the place announced for the meeting the Tahsildar shall read out the list of the applicants and particulars of land applied for to the people assembled and explained in short the principles of the allotment contained in the foregoing rules. The Tahsildar shall then invite the opinion of the people assembled on the applications by show of hands. He shall note on the applications whether they carry the unanimous verdict of the people in favour of the allotment or are recommended by the majority. If there is no unanimous verdict or recommendation of the majority, the Tahsildar shall try to find out whether any agreement can be reached among the applicants themselves in the matter of allotment. Failing such agreement he shall make recommendations on the applications, due considerations to the report, if any, of the Gram Panchayat or Gram Sabha. In all cases, however, the Tahsildar shall decide any objection summarily.

(iv) The Tahsildar shall call the individuals or the representatives of the society, as the case may be, and ascertain from them whether the amount of premium will be paid by them in a lump sum or in instalments and shall mention the wishes so ascertained in his report to the Sub-Divisional Officer.

(v) The Sub-Divisional Officer may accept the proposal of the Tahsildar, or, for the reasons to be recorded in writing, may make such modifications therein as he may deem fit, and pass orders accordingly within one week of the date of receipt of the proposal from the Tahsildar.

Provided that any person who had preferred a claim or objection may apply in writing to the Sub-Divisional Officer for a hearing upon which the Sub-Divisional Officer shall hear him before passing final orders.”

8. From the aforesaid rule, it is clear that the Tahsildar is required to play an important role in making appropriate enquiry as to who are the persons eligible and entitled for allotment of land as per the provision embodied in Section 35 of the Act of 1960. Though gram panchayat has a role to play, its recommendation is not binding on Tahsildar as would be clear from the composite reading of various clauses of Rule 8. The Tahsildar is required to visit village, hold meeting of the residents by giving advance notice to be announced by beat of drum atleast three days before the meeting, reading out list of applicants, particulars of the land applied for to the people assembled and explaining in short, principles of allotment, inviting opinion of the people assembled, noting of the applications whether carrying unanimous verdict of the majority or are recommended by the majority and then try to find out whether agreement can be reached among the applicants themselves. In case, there is no agreement, the Tahsildar is required to make recommendations upon due consideration of the report of the gram panchayat. The Tahsildar is enjoined with the duty to decide objections summarily. According to the provisions contained therein, the Sub-Divisional Officer may accept proposal of Tahsildar or for the reasons to be recorded in writing, may make such modifications therein as he may deem fit and pass orders accordingly. It is also

provided that any person, who had preferred a claim or objection may apply in writing to the Sub-Divisional Officer for a hearing, upon which, the Sub-Divisional Officer shall hear him before passing final orders.

9. The aforesaid statutory scheme provides for a very comprehensive and detailed enquiry before the list of eligible persons is proposed by the Tahsildar and then forwarded to the Sub-Divisional Officer. At this stage also, the Sub-Divisional Officer may not accept and may modify the same. Lastly, any person who preferred the objection, may make representation to the Sub-Divisional Officer and the Sub-Divisional Officer is required to decide the same. Detailed provisions for elaborate enquiry have been made with intention to ensure that surplus lands are allotted to the eligible persons only, applying the principles of allotment specified in Section 35 of the Act of 1960 and there is no favoritism, nepotism or grabbing of land by those, who are already possessed of land in their hand. As far as submission that respondent No.3 having occupied a piece of land, could not be treated as landless person is concerned, the contention is liable to be rejected. Section 35 of the Act of 1960 provides *inter alia* that surplus land vesting in the State under Section 12 shall be allotted in Bhumiswami rights to the persons mentioned thereunder in the order of priority as indicated on payment of premium equivalent to the compensation payable in respect of such land. The first category is of agricultural labourer divided in two classes. One belonging to scheduled caste and scheduled tribe and the other class being other than scheduled caste and scheduled tribe. The class of persons standing at the top of the priority list are agricultural labourers. It does not talk of whether they should or should not be landless. Infact, that may be a criteria if land is to be allotted amongst persons of the same class but it cannot be said that a person holding a land would be disqualified for being allotted land under the scheme of Section 35 of the Act of

1960. Even if it is accepted that respondent No.3 was holding land in Bhumi Swami rights, as against any persons who does not stand along with him in his category, he would have a priority over the person in the category indicated in Clause (ii) to (x) of Section 35 (1) of the Act of 1960.

10. The State Government, in its order, has recorded a finding that in the matter of allotment of surplus land, the procedure prescribed under the law was not followed. This Court has examined the original records which contains order sheets prepared by the Tahsildar, his report dated 12/06/2000, applications submitted by large number of applicants, proposed list etc. In this entire record, this Court could not find any record of proceedings to show that after receipt of recommendation from gram panchayat, the steps, as required under clause (ii), (iii), (iv), (v) were followed. Infact, in report dated 12/06/2000, Tahsildar has not made any mention of it. What is reflected from the record is that after receipt of proposal from gram panchayat, the Tahsildar mechanically accepted and proceeded to make report which was submitted before the Sub-Divisional Officer also, only for being mechanically accepted.

11. During the course of hearing, an argument was advanced that infact, respondent No.3 did not file any application for allotment of the land. This argument is bereft of any foundational facts pleaded in the petition. This Court would not enter into roving enquiry on the basis of an argument raised before this Court without factual foundation in pleadings.

12. Respondent No.3 has made serious allegations that persons belonging to scheduled tribe like him were ignored and even those, who did not belong to scheduled tribe and scheduled caste were distributed land by the concerned officer. These allegations are very serious and requires enquiry by the State

Government. Having appreciated the submission and recorded finding of fact, the finding recorded by the State Government are not perverse or contrary to the records. However, once the State Government found that proper enquiry was not made and procedure was not followed, as prescribed under the rules referable to Section 35 of the Act of 1960, there was no justification to straightway direct allotment of land to respondent No.3. The only proper order that could be passed by the Government was to direct proper enquiry and decide the eligibility of the applicants including the petitioner and respondent No.3. There is no finding that the petitioners in the case were not eligible for allotment. The procedural impropriety alone was made a basis by respondent No.2 to invoke revisional jurisdiction to decide allotment in favour of the persons. Therefore, in view of above consideration, the impugned order dated 22/05/2006 to the extent it directs allotment of land to respondent No.3, is held illegal and to that extent, it is set aside.

13. Resultantly, the petition is partly allowed. The matter shall be duly enquired into by the competent authority on the basis of records of the case. All relevant material, recommendation of the gram panchayat, procedure of allotment, suitability and desirability, depending upon the extent of land held by individual applicants of the case, shall be taken into consideration.

14. Before parting with the matter, I must also place on record serious allegations by respondent No.3 that though huge chunk of land was available for allotment to the applicants and 81 persons who were found eligible, the authority chosen to allot the land only in favour of about 35 persons. The records examined by me do not show reasons for not allotting land to eligible persons. There are allegations that other lands which were encroached upon were not allotted because influential and powerful people are illegally occupying the land.

This must be a matter of enquiry by the competent authority. If surplus lands are available and there are poor persons who have already applied for allotment, who are not possessed of any land and the land is not required for any other public purpose, instead of allowing the land lay barren, all endeavor should be made to make allotments. The Collector shall take due interest to make an enquiry whether in respect of the land which were declared surplus and yet not allotted to anybody, there is any encroachment and what steps were taken by the Tahsildar and Sub-Divisional Officer to ensure removal of encroachment as early as possible. If upon final exercise, the petitioners are not found eligible for allotment, the premium amount or any other amount which was deposited by them will have to be refunded.

Sd/-
(Manindra Mohan Shrivastava)
Judge