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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (PIL) No. 51 of 2015**

1. Nitin Ahuja S/o Sukhdeo Ahuja, aged about 31 Years, Sanjay Ward, Bhatapara, P. S. Bhatapara, District Balodabazar-Bhatapara (Chhattisgarh)
2. Roshan Verma, S/o Manohar Verma, aged about 48 Years, R/o Village Devri, P. S. Bhatapara, District Balodabazar-Bhatapara (Chhattisgarh)
3. Bahoran Lal, S/o Itwari Verma, aged about 60 Years, K. K. Ward, Bhatapara, P. S. Bhatapara, District Balodabazar-Bhatapara (Chhattisgarh)
4. Shiv Kumar Tandan, S/o Jula Ram Tandan, aged about 42 Years, R/o Village Sendari, Post Bijaradih, Tahsil & P. S. Bhatapara, District Balodabazar-Bhatapara (Chhattisgarh)

---- Petitioners**Versus**

1. State of Chhattisgarh, Through The Secretary, Revenue Department, Mahanadi Bhawan, Mantralaya, Raipur (Chhattisgarh)
2. Registrar of Public Trust, Sub Division Bhatapara, District Balodabazar-Bhatapara (Chhattisgarh)
3. Sub Division Officer (Revenue), Bhatapara, District Balodabazar-Bhatapara (Chhattisgarh)
4. Tahsildar, Bhatapara, District Balodabazar-Bhatapara (Chhattisgarh)
5. Anup Kumar Agrawal S/o Late Ram Murty Agrawal, aged about 50 Years
6. Swarup Kumar Agrawal, S/o Late Ram Murty Agrawal, aged about 37 Years
7. Bharat Kumar Agrawal, S/o Late Ram Murty Agrawal, aged about 33 Years
8. Kishore Kumar Agrawal, S/o Late Ram Murty Agrawal, aged about 53 Years

No.5 to 8 are R/o Bhatapara, Tahsil Bhatapara, District Balodabazar-Bhatapara (Chhattisgarh)

9. Commissioner, Raipur Division, District Raipur (Chhattisgarh).

---- Respondents

For Petitioners	: Shri Raghavendra Pradhan, Advocate.
For Respondent/State	: Shri Y.S.Thakur, Additional Advocate General.
For Respondents No.5 to 7	: Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice.

13/09/2017

1. The four Writ Petitioners have filed this matter as a Public Interest Litigation in relation to the lands which they allege are unlawfully brought under the cover of Janak Nandini Trust under the control of Respondents No.5 to 8 and that the entries are obtained in the revenue records accordingly. They plead that the official respondents be directed to constitute a High Level Committee to find out such Government lands and restore the same in the name of the Government and its possession. This relief is sought for with relation to those lands which according to the Petitioners have vested in ceiling and also the property of Janak Nandini Trust. According to the Petitioners, all such lands have to be brought under the possession of the Government.
2. Heard the learned counsel for the Petitioner, the learned Additional Advocate General and the learned counsel for the Respondents No. 5 to 7.
3. We note that, after hearing the learned counsel for the parties, this Court had minuted on 30.06.2016 as follows:

"The grievance of the Petitioners is that Dau Kalyan Singh who was a big landlord (Maalgujar) died leaving behind no legal representative except two widows and after their death, all the lands belonging to Dau Kalyan Singh were vested in the State Government vide order dated 24.2.1984.

The contention of the Petitioners is that thereafter some of the lands which of Dau Kalyan Singh have been transferred to various private individuals.

The stand of the State is reflected in Paragraphs-5 and 6 of the return filed by the Deputy Collector-cum-Sub Divisional Officer, Bhatapara, District Baloda Bazar-Bhatapara, which reads as follows:

"5. At the outset it is respectfully submitted that the custom of Malgujari had already come to an end prior to the Re-organisation of the State of Chhattisgarh. There is no information available regarding the Malgujar of Tarega Raj which falls under the Constituency Bhatapara. Dau Kalyan Singh was residing in Village Tarega and as per the records available of Misal Bandobast of the

year 1928-29 the name of Rai Bahadur Dau Kalyan Singh has been registered as owner and occupier of the land. The details of the land in different villages are annexed herewith as Annexure-R-1. That upon bare perusal of the Annexure-R-1, it is crystal clear that out of 12120.55 Hectares, land admeasuring 157.66 Hectares has been vested with the government as per the Ceiling Act in the year 1978 and further after the death of the Malgujar Rai Bahadur Dau Kalyan Singh and his two wives namely Smt. Sajawati and Janak Nandani the Tahsildar Bhatapara found that there is no successor of Dau Kalyan Singh or both the wives of Dau Kalyan Singh and no one is paying the revenue rent (Lagan) and therefore passed the order dated 24/02/1984 whereby the entire land, as above has been vested with the government as government land.

6. It is respectfully submitted that the records pertaining to the present case i.e. vesting of land with the government, ceiling case etc. were not in possession of the answering respondents/State authorities, however, the answering respondents/State are trying their level best in searching those records. The answering respondents undertake that as soon as the records were traced the same will be produced before the Hon'ble Court without any further delay."

We are shocked to note that District Collector of the area states that records pertaining to the case are not in possession of the Government. Once the lands were vested in the State Government vide order dated 24.2.1984, the records should be with the State itself. This affidavit was filed on 15.2.2016 and more than four months have elapsed. We would expect that if the records were not traceable at that time, they should have been traced by now.

We further direct that a fresh affidavit be filed on behalf of the State by the Commissioner, Raipur who shall file the affidavit after verifying the report and inform this Court how the lands of Dau Kalyan Singh vested in the State are being dealt with.

Since the records are old, we grant further eight weeks time for the purpose."

4. On noticing that the official Respondents apparently stated that the records are not in possession of the State Government, a further order was issued on 07.09.2016, as follows:

"On 30.6.2016, we had passed a detailed order and we were shocked to note that the District Collector of the area

states that the records pertaining to the case are not in possession of the State Government. The lands as per the version of the State vested with it on 24.2.1984. Therefore, all records should be available with the State Government. The first affidavit showing that records were not available was filed on 15.2.2016 and more than 6½ months have lapsed but the records are not traced out. On 30.6.2016, we had granted two months' further time, still the records have not been produced and prayer has again been made for grant of more time to furnish the records.

As prayed for, we grant six weeks' further time to furnish the records.

In case the records are not produced before this Court by the next date of hearing, the Commissioner, Raipur Division, Raipur shall appear in person before this Court on the next date of hearing to explain why the records are missing and what steps have been taken to trace out the records."

5. The Collector and the other officials were present in the Court on 19.10.2016 and on that day, the following order was minuted:

"The Collector, alongwith other officials are present in person before this Court. He submits that he has ordered a high level enquiry in the matter and has given six months time to complete the enquiry.

In our view, six months time is very long and we reduce the time for conducting the enquiry to four months. We hope and expect that by the next date, complete details are placed before this Court on the affidavit of the Collector.

Learned counsel for the Petitioners states that his clients are having certain records and information.

The Petitioners are free to apprise the Collector with all the informations available with them."

6. Pursuant to the enquiry mentioned of in the aforequoted order, a report was available. The Commissioner, Revenue Division, Raipur, is the jurisdictional superior officer. Therefore, that authority was impleaded as an additional Respondent on 01.05.2017 and an order was issued, *inter alia*, requiring the Commissioner to consider the report and place an affidavit before this Court as to whether the Commissioner is satisfied that the said report is in order and sufficient enough to resolve the dispute relating to the lands in question. The relevant portion of the said order dated 01.05.2017 reads as follows:

"The Commissioner, Raipur Revenue Division is impleaded as additional respondent. The learned Dy. Advocate General takes notice for the said officer.

Going by the submissions of the learned counsel for the

petitioner and the learned Dy. Advocate General, it is seen that a committee constituted under the order of the Collector has prepared a report. Let the Commissioner, Raipur Revenue Division consider that report and place an affidavit before this Court as to whether the Commissioner is satisfied that the said report is in order and sufficient enough to resolve the dispute relating to the lands in question. The Commissioner may also verify the said report, if necessary by cross-checking with the requisite documents and report to this Court as to whether any government land has been found to be involved or encroached upon. If the Commissioner deems it fit, the entire records and the materials submitted before the committee, may also be called for and considered by the Commissioner."

7. The Commissioner has thereafter filed an affidavit sworn to on 01.09.2017 stating that the Commissioner, Raipur Division who is deponent of the affidavit has examined the enquiry report of the Collector, District Balodabazar-Bhatapara alongwith relevant documents and that the Commissioner had also heard the necessary parties on the subject report. The Commissioner, Raipur Division has thereupon prepared a report, which is placed on record alongwith that affidavit. The said report is dated 31.08.2017 and is Annexure D/1 to the affidavit sworn to by Shri Brajesh Chandra Mishra, Commissioner, Raipur Division on 01.09.2017.

8. With the aforesaid materials on record, we notice that the plea of the Petitioner is that the lands which should be identified and treated as Government lands, either on account of ceiling laws or as relatable to the entries in the revenue records, or otherwise, are essentially in the hands of the private Respondents in this writ petition. This is not an issue which can be decided in proceedings under Article 226 of the Constitution, having regard to the contrasting contentions of the private parties. However, it is definitely within the domain of the revenue authorities to take a final decision on the issue as to whether the lands in question are Government lands and if so, whether they are required to be secured in terms of the title and/or possession in terms of and in accordance with the relevant laws and following due process. Since the materials on record disclose that the lands involved have large extent and may even have ramifications referable to the title of Ala Rai Bahadur Dau Kalyan Singh @ Mattu Lal Bani, who is stated to have been the then Malguzar of his time and was holding the lands, it is appropriate that the entire records in relation to

the case in hand, which are available through the enquiry reports and the materials submitted therewith, are considered by the Board of Revenue and due decision is rendered by the Board of Revenue in accordance with law. Needless to say that such action has to be expeditious.

9. In the result, this writ petition is ordered directing that Respondents No. 1 and 9 shall ensure that the entire facts and factors relating to this matter and all materials including all the reports upto the report of the 9th Respondent-Commissioner referred to above are placed before the Board of Revenue for consideration within a period of one month from the date of receipt of a copy of this judgment. The Board of Revenue shall thereupon, advertent to and considering all facts, factors and materials, take a final decision on all relevant issues within an outer limit of six months therefrom, after hearing the necessary parties. If the Petitioners desire to avail opportunity of hearing before the Board of Revenue, they may mark their appearance in the office of the Board of Revenue at the earliest and place a request in that regard.

10. The writ petition is ordered accordingly.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Sharad Kumar Gupta)
JUDGE