

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.834 of 2015

(Arising out of order dated 1-10-2015 passed by the Commissioner, Durg Division, Durg, in Revision Case No.143 A-91B(3) Year 2014-15)

Baleshwar @ Ashish Dewangan, S/o Omprakash Dewangan, aged about 29 years, R/o Village Sankra, Tahsil Berla, District Bemetara (C.G.)

(Revisioner)
---- Petitioner

Versus

1. State of Chhattisgarh, through Collector, Bemetara, District Bemetara (C.G.)
2. Sub Divisional Officer/Competent Officer, Saja, District Bemetara (C.G.)
3. Tahsildar, Berla, District Bemetara (C.G.)

---- Respondents

For Petitioner:	Mr. H.B. Agrawal, Senior Advocate with Mrs. Prabha Sharma, Advocate.
For Respondents/State:	Mr. Arun Sao, Deputy Advocate General.
For Interveners:	Mr. Ravi Kumar Bhagat, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

07/09/2017

1. The petitioner herein calls in question the order passed by the Commissioner, Durg Division, Durg, in Revision Case No.143 A-91 B(3) Year 2014-15, on 1-10-2015 by which the learned Commissioner has affirmed the order dated 13-8-2015 passed by the Sub Divisional Officer (Revenue), Saja in Revenue Case No.2629/A-91B(3)/Year 1974-75.

2. Brief facts of the case are as under:-
3. In a proceeding initiated under the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (for short, 'the Act of 1960'), the competent authority declared 146.91 acres of land in excess of holding of the original holder. The said original holder preferred appeal before the Additional Collector and the appellate authority who remanded the matter back to the competent authority for passing order afresh which was again redetermined and the competent authority by order dated 28-2-1979 held that total 133.87 acres of land was in excess and it was directed to be vested in the State under Section 12 of the Act of 1960 against which the original holder preferred an objection before the competent authority which was rejected and total 103.99 acres of land of Village Sankra and 29.88 acres of land of Village Tilai, total 133.87 acres, was directed to be vested in the State and also directed for correction of revenue records. Thereafter, the original holder has prayed for an option that 48.01 acres of land may be taken in place of 103.99 acres of land from Village Sankra and 85.86 acres of land may be taken in place of 29.88 acres of land from Village Tilai, and the State Government allowed the area to be changed. However, the land holder taking advantage of not recording the name of State in lands of Village Tilai, out of 85.86 acres of land, sold 71.16 acres which was vested in the State as per his option. As per the complaint made against the original land holder, the Tahsildar seized the crops against which appeal was preferred before the Sub Divisional Officer (Revenue) and the said

appeal was dismissed by the SDO. The original land holder preferred revision before the Additional Commissioner, Raipur Division, Raipur and the Additional Commissioner by order dated 7-5-2012, set aside the order of the Sub Divisional Officer (Revenue). In the meanwhile, on 1-2-2014, original holder Dukalu Ram died. Against the order dated 7-5-2012, the State Government preferred a revision before the Board of Revenue and the Board of Revenue passed order dated 1-6-2015 setting aside the order passed by the Additional Commissioner and also the order dated 21-10-1983 passed by the competent authority and remitted the matter back to the competent authority for deciding the matter afresh by a speaking and reasoned order. In compliance of the order dated 1-6-2015, on 13-8-2015, the competent authority has passed order afresh whereby as provided under the Act of 1960, a fresh determination for vesting of Government land of original holder Dukalu Ram as on the appointed day i.e. 7-3-1974 was determined. The petitioner did not file any option, therefore, under Section 12 of the Act of 1960, 133.87 acres of land was directed to be vested in the State. The petitioner preferred revision before the Commissioner, Durg Division, Durg which has been dismissed by the impugned order. Questioning that order, this writ petition has been preferred.

4. Mr. H.B. Agrawal, learned Senior Advocate appearing for the petitioner, would submit that the order passed by the Commissioner, Durg Division, Durg is bad in law, as surplus land would have been determined by the competent authority as on date

and not on the appointed day i.e. 7-3-1974 as the original holder died on 1-2-2014 and no ceiling proceedings were completed during the life time of original holder Dukalu Ram.

5. On the other hand, Mr. Arun Sao, learned Deputy Advocate General appearing on behalf of the State/respondents, would submit that since the proceeding was once concluded and it is the petitioner who has changed the area of land to be vested and sold the vested land, therefore, the proceedings were initiated. Even otherwise, the appointed day is the relevant date for determination of surplus land as provided under Section 2(b) of the Act of 1960 and, therefore, the writ petition deserves to be dismissed.
6. I have heard learned counsel for the parties and considered their rival submissions and also gone through the record with utmost circumspection.
7. Section 2(gg) of the Act of 1960 defines, “family” means husband, wife and their minor children, if any. Section 6 provides and enlists persons who are deemed or not deemed to be holders for purposes of Chapter III. Section 7 provides for maximum extent of land to be held by a person or family which states as under: -

“7. Maximum extent of land to be held by a person or family.—(1) Subject to the provisions of this Act, no holder or where the holder is a member of a family, no such family, shall, as from the appointed day, be entitled to hold land other than exempted land in excess of the land as is specified below—

(a) where the holder is not a member of a family.	(1) land capable of yielding two crops and receiving assured irrigation or assured private	10 acres.
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	irrigation for both the crops; (2) land capable of yielding one crop and receiving assured irrigation or assured private irrigation for the crop; (3) dry land.	15 acres. 30 acres.
(b) where the holder is a member of a family of five or less.	(1) land capable of yielding two crops and receiving assured irrigation or assured private irrigation for both the crops; (2) land capable of yielding one crop and receiving assured irrigation or assured private irrigation for the crop; (3) dry land.	18 acres. 27 acres. 54 acres.
(c) where the holder is a member of a family of more than five members.	(1) land capable of yielding two crops and receiving assured irrigation or assured private irrigation for both the crops; (2) land capable of yielding one crop and receiving assured irrigation or assured private irrigation for the crop; (3) dry land.	18 acres plus 3 acres for each member in excess of five subject to the maximum of 36 acres. 27 acres plus 4.50 acres for each member in excess of five subject to the maximum of 54 acres. 54 acres plus 9 acres for each member in excess of

		five subject to the maximum of 108 acres:
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Provided that where all or any one of the members of a family is also holder and holds land in his own rights, the aggregate land which such family shall hold shall not exceed the ceiling area specified above and the members of the family shall continue to hold land within the ceiling area in proportion to the extent of the land held by each one of them before the appointed day.

(2) Where a holder who is member of a family has one or more major sons, each such son shall, subject to the ceiling area specified in sub-section (1) for a holder, be entitled to hold land separately from out of the land belonging to the family before the appointed day, as if each such son were a holder:

Provided that if such major son or a member of his family hold land in his own rights and the extent of such land is less than the ceiling area specified in sub-section (1) for the category of holders under which he falls, he shall be entitled to hold land out of such family holding only to the extent by which the land held by him as on 1st January, 1971 falls short of the ceiling area:

Provided further that no major son shall be entitled to have land under the preceding proviso, unless he files before the competent authority a declaration in such form and within such period as may be prescribed.

(3) in computing the ceiling area under sub-section (1)—

- (i) orchards other than banana gardens and vineyards shall be treated as dry land; and
- (ii) land which a holder or member of a family has in a Joint Farming Society or any other Co-operative Society as member thereof shall be treated as land held by such holder or member of a family;
- (iii) one acre of land capable of yielding two crops and receiving assured irrigation or assured private irrigation for both the crops shall be equal to 1.5 acres of land capable of yielding one crop and receiving assured irrigation or assured private irrigation for the crop or three acres of dry land.

Explanation.—For the purposes of this section different kind of crops grown in either Rabi or Kharif season shall be deemed to be one crop.”

8. The above-stated provision clearly mandates that no holder or where the holder is a member of a family, no such family, shall, as from the appointed day, be entitled to hold land other than exempted land in excess of the land as from the appointed day that is 7-3-1974. Sections 6 and 7 of the Act of 1960 have to be construed harmoniously and ultimately to determine the ceiling area which a holder is entitled to hold under Section 7 of the Act and after notional partition under Section 6(ii) of the Act, the persons falling within the purview of the definition “family” shall be treated to one unit. (See **Soorat Singh Himachal Singh v. State of M.P. and others**¹ and **State of M.P. and others v. Shivprasad and others**².)
9. Thus, the surplus land of original holder has to be determined by the competent authority on the appointed day that is 7-3-1974 irrespective of his death later-on. Therefore, the learned Additional Commissioner is absolutely justified in affirming the order passed by the learned Sub Divisional Officer (Revenue). I do not find any jurisdictional error in the impugned order. The writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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1 1984 M.P.L.J. 187

2 2003(5) M.P.L.J. 549