

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 178 of 2017**

- Shivkumar Sharma S/o Bhikharilal Sharma Aged About 76 Years
R/o Village- Tenduwa, Tahsil- Kota, District- Bilaspur,
Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through: The Collector, District- Bilaspur,
Chhattisgarh
2. The Additional Commissioner, Bilaspur Division, Bilaspur,
Chhattisgarh
3. The Additional Collector, Bilaspur, District- Bilaspur,
Chhattisgarh
4. The Sub-Divisional Officer (R), Bilaspur, District- Bilaspur,
Chhattisgarh
5. Anjora Bai (Now Deceased) Through Lrs. Naresh Gond S/o
Panchram Gond R/o Village-Amne, Tahsil-Kota, District-
Bilaspur, Chhattisgarh
6. Laxmi Kumar Sharma (Now Deceased) Through L.Rs :
 - (a) Brihaspati Bai Aged about 70 Years W/o Laxmi Kumar
Sharma, R/o Village Tenduwa, Tahsil Kota, District Bilaspur
(Chhattisgarh)
 - (b) Smt. Manjulata Aged about 50 Years W/o Rameshwar
Pandey, R/o Village Tenduwa, Tahsil Kota, District Bilaspur
(Chhattisgarh)
 - (c) Smt. Anjulata Pandey Aged about 42 Years W/o Dwarika
Pandey, R/o Village Belpara, Post- Tahsil & District Bilaspur
(Chhattisgarh)
 - (d) Smt. Pramod Pandey W/o Ishwar Prasad Pandey R/o Village
Kumrauli, Post Semarsal, Tahsil Lormi, District Mungeli
(Chhattisgarh)
 - (e) Smt. Omlata W/o Manoj, R/o Pali, Tahsil Pali, District Korba
(Chhattisgarh)
 - (f) Smt. Premlata Tiwari W/o Chaturbhushan Tiwari, R/o

Dhandhan, Tahsil Takhatpur, District Bilaspur (Chhattisgarh)

---- Respondent

For Petitioner	Mr. Ajay Kumar Pandey, Advocate
For Respondent /State	Mr. A.S. Kachhwaha, Additional Advocate General.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

25/1/2017

1. Heard.
2. The petitioner, who is a non-tribal, claims to have purchased the subject land from the tribal holder on 12.12.1958. After coming into force of the provisions contained in Section 170-B of the C.G. Land Revenue Code, 1959 (in short "the Code, 1959"), the proceedings were initiated against the petitioner to satisfy as to how he is in possession of the land belonging to a tribal holder. In the said proceedings, the concerned Collector passed an order in petitioner's favour on an assumption that since his name was mutated in the revenue record much prior to 02.10.1959, on which date, the provisions of the Code of 1959 came into operation, the provisions contained in Section 170-B would not apply.
3. On an appeal preferred by respondent Anjora Bai (now

represented by her legal representative), the Additional Commissioner, Bilaspur Division, passed an order on 08.11.1993 (Annexure P/1) remitting the matter back to the Collector for deciding as to whether there exists any sale-deed or any other instrument of transfer in favour of the petitioner executed prior to 02.10.1959. It is specifically observed by the Additional Commissioner that the Collector has treated the order of mutation in petitioner's favour as an instrument of transfer, which is not correct, therefore, if there is no instrument of transfer in favour of the petitioner executed before 02.10.1959, the provisions of Section 170-B of the Code, 1959 would apply in the case.

4. In the present petition, the challenge is only to the order dated 08.11.1993, however, it appears the petitioner had preferred Revision Application before the Board of Revenue much earlier, but it remained pending before the Board of Revenue till the year 2016, when it dismissed his application on the ground that the Revision Application does not lie before the Board of Revenue in proceedings under Section 170-B of the Code, 1959.
5. Since the matter had remained pending before the Board of Revenue, instead of dismissing the petition on the ground of delay and laches, this Court proceeded to consider the arguments of learned counsel for the petitioner on merits.
6. Having considered the petitioner's submission, I do not find any illegality in the order passed by the Additional Commissioner, Bilaspur on 08.11.1993, because, by the said order, the matter

has been remitted back to the subordinate revenue authority, wherein, the petitioner would get opportunity to defend his case.

7. Let the SDO(R), Kota, re-examine the entire matter by issuance of notice to both the parties, recording their evidence and thereafter, adjudicating the matter in accordance with law. The petitioner shall appear before the SDO(R), Kota **on 20.02.2017**. On the said date, the concerned SDO(R) shall issue notice to the opposite parties and thereafter, shall proceed in the matter in the manner indicated above.
8. The writ petition is accordingly disposed of.

Sd/-

Judge

(Prashant Kumar Mishra)

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