

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 613 of 2016

Order Reserved On : 05/01/2017

Order Passed On :13/04/2017

- K. S. Sujeeth, S/o Shri K.V. Sukumaran, Aged About 37 Years R/o Main Road, Bacheli, Tehsil Dantewada, District South Bastar, Dantewada (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Revenue D.K.S. Building, Mantralaya, District Raipur (Chhattisgarh)
2. The Commissioner, Jagdalpur, Division Bastar (Chhattisgarh)
3. The Collector, Dantewada, District South Bastar Dantewada, (Chhattisgarh)
4. The Sub Divisional Officer (Revenue), Dantewada, District South Bastar Dantewada, (Chhattisgarh)
5. The Tehsildar, Dantewada, District South Bastar Dantewada, (Chhattisgarh)
6. Shri Ramkumar Nag, S/o Shri Lingaram Nag, R/o Bade Bacheli, Tehsil Dantewada, District South Bastar Dantewada, (Chhattisgarh)

---- Respondent

And

WPC No. 871 Of 2016

- Saji Perumal S/o Shri V.V. Perumal, Aged About 53 Years R/o Bacheli, Tehsil Dantewada, District South Bastar, Dantewada (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through Secretary, Department Of Revenue

Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh)

2. The Commissioner, Jagdalpur, Division Bastar (Chhattisgarh)
3. The Collector, Dantewada, District South Bastar, Dantewada (Chhattisgarh)
4. The Sub Divisional Officer (Revenue), Dantewada, District South Bastar, Dantewada (Chhattisgarh)
5. The Tehsildar, Dantewada, District South Bastar, Dantewada (Chhattisgarh)
6. Shri Hungaram, S/o Shri Barega, Age- Unknown, Tribe- Muria, R/o Ward No. 1, Bade Bacheli, Tehsil Dantewada, District South Bastar, Dantewada (Chhattisgarh)

---- Respondent

And

WPC No. 759 Of 2016

- Y. Thankachan, S/o Shri O. Yohannan, Aged About 69 Years R/o Bacheli, Tehsil Dantewada, District South Bastar, Dantewada (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through Secretary, Department Of Revenue D.K.S. Building, Mantralaya, District Raipur (Chhattisgarh)
2. The Commissioner, Jagdalpur, Division Bastar (Chhattisgarh)
3. The Collector, Dantewada, District South Bastar, Dantewada (Chhattisgarh)
4. The Sub Divisional Officer (Revenue), Dantewada, District South Bastar, Dantewada (Chhattisgarh)
5. The Tahsildar, Dantewada, District South Bastar, Dantewada (Chhattisgarh)
6. Shri P.L. Bhayor, S/o Shri Asharam Bhayor, Age- Unknown, R/o New Rajendra Nagar, District Raipur (Chhattisgarh)

---- Respondent

For Petitioners : Shri Manish Nigam, Advocate.

For Respondent/State : Shri AS Kachhawaha, Additional Advocate General.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

1. The facts and legal issue involved in these 3 writ petitions being common, they were heard analogously and are being disposed of by this common order.
2. The petitioners are non-tribals and are resident of Village Bade-Bacheli, Tehsil and District Dantewada. They have purchased land with superstructure built thereupon from the members of aboriginal tribe after seeking permission from the District Collector under Section 165 (6) of the CG Land Revenue Code, 1959 (for short 'the Code').
3. The Commissioner, Bastar Division initiated suo motu revision proceeding and after hearing the parties permission granted by the Collector was cancelled and the matter was remitted back to the concerned Collector for passing consequential order. The Collector, South Bastar, Dantewada thereafter passed an order directing reversion of land in favour of the erstwhile tribal owner of the land. The Board of Revenue, Chhattisgarh thereafter dismissed the petitioners' revision application which they had preferred to challenge the order passed by

the Commissioner, Bastar Division.

4. Referring to the order passed by the M.P. High Court in the matters of **Mewalal Kanhaiyalal Vs. Jankibai and Others** {1994 M.P.L.J. 369} and **Babulal s/o Nandramji Gupta Vs. Hiralal, s/o Roopnarayanji** {2012 (1) MPLJ 168}, it is argued that the sale of house by a member of aboriginal tribe or sale of Nazul land situated within the Municipal Corporation limits do not attract the provisions contained in Section 165 (6) of the Code.
5. Per contra, learned State Counsel would refer to the order passed by the coordinate Bench on 7.8.2014 in **WPC No.3509/2011 (Vijay Pandey Vs. State of Chhattisgarh & Ors.)** with 2 other connected matters to argue that in scheduled areas which have been so declared under the Vth Schedule of the Constitution of India, there can be no transaction between tribal holder of land and non-tribal even with permission from the Collector, therefore, the Writ Petitions deserve to be dismissed.
6. The land involved in the matter of Vijay Pandey, referred to above, was also situated within the Municipal Corporation Limits of Jagdalpur, District Bastar, a scheduled area. Therein, this Court referred to the provisions contained in Section 165 of the Code to observe that in the areas specified in Section 165 (6) (i), there is total ban on transfer of right of Bhumiswami belonging to aboriginal tribe to a person not belonging to such tribe in the areas specified in the notification.

Transaction after seeking permission from the Collector is permissible only where Section 165 (6) (ii) applies, to mean such transfer is permissible with the previous permission of the Collector in the non-notified or non-scheduled areas. This Court thereafter proceeded to observe thus in paras- 11, 14, 16 & 17:-

“11. The provision creating embargo on transfer of right of Bhumiswami belonging to a tribe which has been declared to be aboriginal tribe in areas, which are predominately inhabited by aboriginal tribes notified as such under Section 165 (6)(i) of the Code, is absolute in nature and does not admit of any exception. It is a complete ban. Subject to other provisions contained in Section 165, the embargo does not allow transfer of right of such Bhumiswami in notified areas as referred to hereinabove. Such a stringent provision has been made in order to protect the Bhumiswami's right of aboriginal tribes in notified areas. The legislative intention is clear that in areas notified as above, rights of Bhumiswami belonging to aboriginal tribe as notified by the government in that behalf, rights shall not be transferred nor it shall be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe in the area specified in the notification.

14. Even if it were assumed that the subject land is situated in an area which is now brought within the local limits of the Municipal Corporation, Jagdalpur, seminal question arising for consideration is whether the embargo on transfer of rights of Bhumiswami covered by the provisions contained in Section 165 (6) (i) is taken away or to say, ceases to apply.

On a plain reading of the provision contained in Section 165 (6) or any other sub sections or any other provisions contained in the Land Revenue Code, it nowhere expressly or by necessary implication removes the embargo on transfer of right of Bhumiswami belonging to aboriginal tribe in the area notified under Section 165 (6)(i) of the Code. Therefore, this Court is unable to hold that in cases,

where land is diverted from agricultural purpose to residential purpose and included in urban area, restriction on transfer of right of a Bhumiswami belonging to aboriginal tribe in notified area will cease to apply. In other words, irrespective of whether the land is diverted one and/or situated within the limits of a Municipal Corporation and therefore, in an urban area, the embargo on transfer of right as referred to above continues unhindered.

16. Thus, diversion of land for non-agricultural purpose, inclusion in the urban area or grant of colonizer license or land use specified to be residential under development plan do not in any manner operate to whittle down the rigor of provision contained in Section 165(6)(i) of the Code, which seek to protect the interest of aboriginal tribes in notified area, that rights of Bhumiswami belonging to such aboriginal tribe shall not be transferred to any person except those belonging to such aboriginal tribe.

17. Reliance placed on the judgment of the Division Bench of High Court of Madhya Pradesh in the case of **Aildas, Harjesh Rai and Kamal Singh Narre** (supra) is misconceived. In the case of **Aildas** (supra), it was held that the provisions contained in sub section 5 & 7 of Section 165 of the Code will not apply in case of Najul land situated in urban area. It is not a case here. Other judgments relate to house sites.

Reliance on the judgment of the Supreme Court in the case of **Gwalior Sugar Company Limited** (supra) is misconceived because in that case, the issue was entirely different. That was not a case where the Supreme Court was dealing with the scope and ambit of provisions contained in sub section (6) of Section 165 of the Code.”

7. In the case at hand also, there is no averment or supporting document that the subject land is Nazul land. There is no proof either to establish that construction raised on the land was with permission of the concerned Municipal body. The cases relied by the petitioners in the matter of **Mewalal** (Supra) was one concerning the validity of a decree

for specific performance of contract where the Court was not directly concern with the issue which has fallen for consideration in the present case. In any case, the area to which the subject land in the matter of **Mewalal** (Supra) was situated, was not a scheduled area under Section 165 of the Code. Similarly, in the matter of **Babulal** (Supra) also, learned Single Judge of the M.P. High Court was deciding the Second Appeal arising out of a suit for specific performance. It is also not clear from the facts of the case as to whether the matter originated from scheduled area or non-scheduled area.

8. For the foregoing, this Court is of the considered view that the law laid down by this Court in the matter of **Vijay Pandey**, referred to above, which originated from the land situated in scheduled area like in the present three writ petitions, is binding on this Court. There being no question of permission for sale of land between tribal holder to non-tribal holder in the scheduled area, the order passed by the Board of Revenue does not suffer from any legal infirmity.

9. In the result, all the Writ Petitions fail and are hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve