**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Order reserved on 05.10.2017**

**Order passed on 03.11. 2017**

**Writ Petition (C) No. 60 of 2017**

Paramjit Singh Suri, S/o Shri Rajendra Singh Suri, Aged about 55 years, R/o Village Hatkachora, Jagdalpur, District Bastar (C.G.)

**---- Petitioners**

**Versus**

1. State of Chhattisgarh, Through the Secretary, Department of Revenue and Disaster Management, Mahanadi Bhawan, Mantralaya, Post & PS Mandir Hasaud, Raipur (C.G.)
2. Collector Jagdalpur (C.G.)
3. Nandlal Baghel, aged about 70 years, R/o Village Khamargaon, Tahsil Jagdalpur, District Bastar (C.G.)

**---- Respondents**

**Writ Petition (C) No. 885 of 2017**

1. Paramjit Singh Suri, S/o Shri Rajendra Singh Suri, Aged about 55 years, R/o Village Hatkachora, Jagdalpur, District Bastar (C.G.)

**---- Petitioner**

**Versus**

1. State of Chhattisgarh, Through the Secretary, Department of Revenue and Disaster Management, Mahanadi Bhawan, Mantralaya, Post & PS Mandir Hasaud, Raipur (C.G.)
2. Collector Jagdalpur (C.G.)
3. Nandlal Baghel, aged about 70 years, R/o Village Khamargaon, Tahsil Jagdalpur, District Bastar (C.G.)

**---- Respondents**

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For Petitioner : Shri Varun Sharma, Advocate
For Respondents/State : Shri P.K. Bhaduri, Govt. Advocate.

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**C A V Order**

(1) Since the common question of law and fact is involved in both the writ petitions, they are being disposed of by this common order.

(2) The petitioner calls in question the impugned order dated 02.11.2015 passed by Board of Revenue affirming the order passed by the Commissioner dated 10.10.2012, by which, the Commissioner, Bastar Division has revoked the permission granted by the Collector under Section 165(6)(i) of the Chhattisgarh Land Revenue Code, 1959 (for short 'Code, 1959')

(3) Essential facts necessary to adjudicate the question involved in this writ petition are as under:-

(3.1) The petitioner is resident of village Hatkachora, District Jagdalpur which has been declared as a Scheduled Area. Respondent No. 3-Nandlal Baghel got his land diverted for non-agricultural purposes and thereafter made an application for transfer to the Collector, Jagdalpur of the aforesaid non-agricultural land. Additional Collector, Jagdalpur, by its order dated 16.1.2009, granted permission to sell his land to the petitioner.

(3.2) In exercise of power conferred under Section 50 of Code, 1959, the Commissioner, Bastar Division took *suo moto* congnizance and found that order dated 16.1.2009 is contrary to Section 165(6)(i) of the Code, 1959 and cancelled the permission granted by the Additional Collector and reverted back the matter to the Collector for re-consideration.

(3.3) The Collector, Jagdalpur passed final order dated 29.04.2013 setting aside the sale deed executed in his favour thereby directed the petitioner to handover possession of the subject land to respondent No. 3.

(3.4) Feeling aggrieved and dissatisfied with the order passed by Commissioner dated 10.10.2012 passed by the Commissioner cancelling the permission granted by the Collector for sale of non-agricultural land, filed revision before the Board of Revenue.

(3.5) The Board of Revenue, by its order dated 02.11.2015, dismissed the revision and upheld the order passed by the Commissioner, Revenue Division, against which instant writ petition has been filed questioning the same.

(4) Shri Varun Sharma, learned counsel appearing for the petitioner would submit that the Commissioner, Bastar Division and the revenue authorities have failed to appreciate the law declared by the Supreme Court in the matter of **Gwalior Sugar Co. V. Anil Gupta and others** reported in **(2012) 12 SCC 19,** in which their Lordships of the Supreme Court have clearly held that that the provisions of Section 165 of the Code, 1959 are not applicable to the non-agricultural land. He would further submit that the Collector by its order dated 29.04.2013 has virtually cancelled the registered sale deed, which can only be done by the competent civil court in view of the decision rendered by the Supreme Court in the matter of **Satya Pal Anand Vs. State of Madhya Pradesh & others** reported in **(2016) 10 SCC 767.** He would also submit that since the subject land is already diverted for non-agriculture purpose, therefore, provisions of Section 165(6) of the Code, 1959 would not be applicable and the impugned order is liable to be set aside.

(5) On the other hand, learned counsel for the State would support the impugned order and submit that merely because the land is diverted in favour of aboriginal tribe, it does not change his right, title and interest in the capacity of Bhoomiswami as per Section 157 & 158 of the Code, 1959 and the permission was granted to respondent No. 3- Nandlal Baghel only for his own residential use, therefore, the learned Commission has rightly

set aside the order dated 16.1.2009.

(6) I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

(7) The Question for consideration in this writ petition is whether mere diversion of land in scheduled area to non-agricultural area would bring it out of the rigour of the provisions of Chhattisgarh Land Revenue Code, 1959.

(8) This Court, in the matter of **Smt. Neelima Belsaria Vs. State of Chhattisgarh & others {W.P. (C) No.3241/2011}** has decided the issue involved herein and held as under:-

> "13. Section 172 of the Code makes provision with regard to diversion of land. The petitioner applied for diversion of lane before the competent authority and vide order dated 04-08-2008 passed by the Sub Divisional Officer (Revenue), the land was diverted. There is nothing in the provision contained in Section 172 of the Code to prohibit diversion of land from agricultural to non-agicultural purpose where the land is held by Bhumiswami belonging to aboriginal tribe. Further, there is no impediment under the law that the land situated in an area which is predominantly inhabited by aboriginal tribe in respect of which notification as specified in (i) of sub section (6) of Section 165 of the Code has been issued cannot diverted for non-agricultural purpose. Therefore, it cannot be said that the benefit of diversion of land is not available to aboriginal tribe in respect of agricultural land held by it in an area covered by notification issued under Section 165(6)(i) of the Code. There is no other illegality or irregularity pointed out in the impugned order passed by the Commissioner as to how the order of the diversion is not in accordance with law.

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 ceases 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.

(15) Learned counsel for the petitioners could not bring to the notice of this Court any provisions contained either in the Chhattisgarh Municipal Corporation Act or Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam or any other law for the time being in force which makes special provisions to the effect that in respect of the land held by a Bhumiswami belonging to aboriginal tribe in notified area, included within the limits of the Municipal Corporation or situated in an urban area and there being diversion of land from agricultural to non-agricultural purpose, bar against transfer of rights to any person other than such aboriginal tribe shall not operate.

Merely because the petitioner has been granted licence and permission to develop the area as Colonizer, it cannot be said that restriction on transfer of right envisaged in Section 165(6)(i) is no longer applicable. It could not be pointed out from Colonizer Rules also that such bar ceases to apply. Preparation of development plan under the Adhiniyam of 1973

> and reserving land for residential use, only authorizes development of the area as residential site. That does not by itself make provision with regard to sale of lands/plots."

(9) The aforesaid decision rendered by this Court squarely applies to the facts of the case. The petitioner is claiming that since the land has been diverted for the non-agricultural purpose, rigour of Section 165(6) of the Code would not be attracted, this Court has clearly held that embargo on transfer of right of aboriginal tribe would still be applicable irrespective of change of land from agricultural purpose to residential purpose.

(10) In view of the aforesaid enunciation of law, I do not find any merit in both the writ petitions, the writ petitions deserves to be and are accordingly dismissed. No cost(s)

Sd/-

(Sanjay K. Agrawal)
Judge

D/-