

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 514 of 2001

Reserved on 26-9-2018

Delivered on 01-11-2018

- Ganpat Rai Agrawal, son of late Shri Sohanlal Agrawal, aged about 65 years, r/o. Village Saraipali, Tahsil Saraipali, District Mahasamund (CG) – dead through following legal representatives.
 - 1 Smt. Shakuntala Devi, aged about 68 years, w/o. Late Shri Ganpat Rai Agrawal, r/o. Village Saraipali, District Mahasamund, CG
(wife of the deceased)
 - 2 Shri Mukesh Agrawal, aged about 50 years s/o. Late Shri Ganpat Rai Agrawal, r/o. Village Saraipali, District Mahasamund, CG
(son of the deceased)
 3. Shri Manoj Agrawal, aged about 39 years s/o. Late Shri Ganpat Rai Agrawal, r/o. Village Saraipali, District Mahasamund, CG
(son of the deceased)
 4. Shri Laxmi Narayan Agrawal, aged about 30 years s/o. Late Shri Ganpat Rai Agrawal, r/o. Village Saraipali, District Mahasamund, CG
(son of the deceased)
 5. Smt. Babita Agrawal, avged about 40 years d/o. Late Shri Ganpat Rai Agrawal, w/o. Shri Praful Agrawal, M. Sonsm Subhash Chowk, Raigarh, CG.
(Daughter of the deceased)
 6. Smt. SavitaAgrawal,aged about 37 years, d/o. Late Shri Ganpat Rain Agrawal, Amor Agencies, Daily Market, Balangir, Orissa
(Daughter of the deceased)
 7. Smt. Navita Agrawal, aged about 35 years, d/o. Late Shri Ganpat Rai Agrawal, w/o. Shri Anup Arawal, Suhag Bhandar, Katabhanji, Orissa.
(Daughter of the deceased)
 8. Smt Sarika Agrawal, aged about 33 years, d/o. Late Shri Ganpat Rai Agrawal, w/o. Shri Vishal Agrawal, Anil Agencies, M.G. Road, Raipur, CG.
(Daughter of the deceased.)

--- Petitioners

Vs.

1. State of Chhattisgarh, Secretariat Raipur, (Chhattisgarh).
2. Devendra Bahadur Singh son of Late Shri Virendra Bahadur Singh, aged about 34 years, resident of Saraipali, District Mahasamund, Chhattiasgarh.
3. Ku. Pukhraj Singh, d/o. Late Shri Virendra Bahadur Singh, a ged about 38 years, resident of Saraipali, Tahsil Saraipali, District Mahasamund, Chhattisgarh.

--- Respondents

For petitioners	:	Mr. Satish Agrawal, Shri Ankit Singhal, Shri Shobhit Banerjee and Shri Prateek Lunkad, Advocates.
For State/ Respondent No.1	:	Mr. Suryakant Mishra, P.L.
For Respondents No. 1 and 2	:	Mr. T.K.Jha and Mr. Romir Goyal, Advocates.

(SB: Hon'ble Mr. Justice Ram Prasanna Sharma)

CAV Order

1. Challenge in this writ petition filed under Article 226/227 of the Constitution of India is to the order dated 9-4-2001 passed by the Additional Commissioner, Raipur Division, Raipur (CG) in Revisional Case No. 42/A/23/98-99 whereby the revision filed by the petitioner under Section 50 of the Madhya Pradesh Land Revenue Code, 1959 (for short, "the Code 1959") was dismissed.
2. The revision was filed before the said Revenue Court against the order dated 11-1-1999 passed by the Collector, Mahasamund in Revenue Appeal No. 378/A-23/96-97 in which the appeal filed by the respondents No. 2 and 3 was allowed and the order passed by

the Sub Divisional Officer, Mahasamund in Revenue Case No. 191/A-23-87-88 dated 9-4-1992 was reversed. The subject matter of the writ petition is land situated at Saraipali, Patwari Halka No. 36 consisting of Khasra Nos and area as per sale deed dated 7-1-1961 is as under;

Khasra No..	(Acres)
670	2.11
671	0.95
672	0.92
673	0.75
674	1.35
675	0.43
676	0.61
677	1.46
	----- 8.58 -----
678/1	0.95
678/2	0.34
678/3 (in part)	0.90
678/4	0.14
678/5	0.25
678/6	0.10
	----- 2.68 -----
Total acres	11.26

3. As per the petition, the original petitioner namely Ganpat Rai Agrawal purchased the said land from (1) Thakur Virendra Bahadur Singh, aged 35 years, (2) Thakur Mahendra Bahadur Singh, aged 35 years and (3) Smt. Gayatri Devi aged 55 years, wife of late Shri Lalbahadjur Singh, resident of village Saraipali

Palace (Rajmahal), Police Station Saraipali, Tahsil, Mahasamund, District Raipur vide agreement dated 8-4-1957 for consideration of Rs.25,000/- out of which Rs.10,000/- was given on 8-4-1957 and possession was handed over on the same day by the above vendor to purchaser (original petitioner namely Ganpat Rai Agrawal) and remaining amount of Rs.15,000/- was given on 7-1-1961 when the sale deed for the property was executed. On 4-1-1967 land was mutated in the name of Ganpat Rai Agrawal. The instant litigation under Section 170-B(1) of the Code 1959 is started by respondents No. 2 and 3 who were legal heirs of late Virendra Bahadur Singh (who executed the sale deed in favour of Ganpat Rai Agrawal) on the ground that actual cost of the land was not paid and it is a case where father of the present respondents No. 2 and 3 was defrauded. As per the petitioner, Thakur Virendra Bahadur Singh, Thakur Mahendra Bahadur Singh and (3) Smt. Gayatri Devi were real owners of the property and value of the property was less than the amount paid by the purchaser Ganpat Rai Agrawal. After delivering possession of the land and after executing sale deed in favour of purchaser, all the three owners of the land have never objected the sale on any ground and the purchaser was in peaceful possession of land for 23 years i.e., from 1957 to 1980.

4. As per petition, from the sale deed, it is clear that same is executed in Palace of the said seller and as per endorsement

made by the Registrar, sale deed was executed in the said Palace where all the three sellers admitted receiving full consideration of the amount and thereafter sale deed was executed. As per petitioner, Mahendra Bahadur Singh was Member of Legislative Assembly and he was Ex-member of Rajya Sabha. Again Devendra Bahadur Singh was also member of legislative assembly ,therefore, it was not possible for the original petitioner who was an ordinary citizen of the locality to defraud them. As the transaction of sale agreement was executed on 8-4-1957 before coming into force of Section 170-B of the Code of 1959, the case does not fall within the purview of the said Section even though proceedings were initiated by the said Sub Divisional Officer against the original petitioner. Both respondents No. 2 and 3 are claiming to be from caste "Rajgond", but Rajgond was never included in the list of Scheduled Tribe as per presidential order 1950, subsequent presidential order and subsequent notification issued by the State of Madhya Pradesh.

5. Scheduled Tribe is defined in Article 366 (25) of the Constitution of India , to mean such tribes or tribal communities or parts or groups within such tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purpose of this Constitution. Scheduled Tribes are not defined in Land Revenue Code or other laws.

6. Articles 341 and 342 of the Constitution deal with Scheduled Castes and Scheduled Tribes respectively and contain almost identical provision. We may extract Article 342 dealing with Scheduled Tribes.

“Article 342. Scheduled Tribes -

(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification”

7. As per petition, when the caste “Rajgond” is not included in the Scheduled Tribe as per presidential order 1950 and subsequent notification, it is not a case of transaction with member of Scheduled Tribe. Therefore, Section 170-B of the Code 1959 has no

application in the present case. As it is not a case of any kind of fraud, again Section 170-B of the Code 1959 has no application in the present case and, therefore, the order passed by the Court of Additional Commissioner is liable to be quashed.

8. Contention of the respondents No. 2 and 3 is as under:

- I) Section 170(B) of MP Land Revenue Code 1959 provides for reversion of land of members of aboriginal tribe which was transferred by fraud. The section stipulates that every person who on the date of commencement of the amendment Act of 1980 was in possession of the agricultural land which belongs to a member of tribe which has been declared to be an aboriginal tribe between the period 2nd October 1959 to the date of commencement of Amendment Act, 1980 (ie., 24-10-1980) shall notify to the Sub Divisional Officer in such form and in such manner as prescribe, all the information as to how he has come in possession of such land.
- ii) The properties in dispute were transferred by Virendra Bahadur Singh, his younger Mahendra Bahadur Singh and their mother Smt. Gayatri Devi Singh vide registered sale deed 7-1-1961 for a meagre consideration of Rs.25000/-. Land owners were Rajgond. Land owner Virendra Bahadur Singh and Smt. Gayatri Devi Singh are dead and

respondents No. 2 and 3 are legal representatives of Virendra Bahadur Singh. Mahendrs Bahadur Singh is alive, however, he has not been impleaded as a party, so on this count alone the petition is liable to be dismissed for non-joinder of necessary party.

- iii) It is not in dispute that the permission of Collector has not been obtained before the transfer of land as mandated by Section 165(6) of the Code, 1959.
- iv) Agreement dated 8-4-1957 is of no legal value and, therefore, finding of the Additional Commissioner is not liable to be interfered while invoking writ jurisdiction.

9. To deal with the issue, first to start with Section 170 (B) of the Code 1959 which may be read as under:

“170-B. Reversion of land of members of aboriginal tribe which was transferred by fraud.- (1) Every person who on the date of commencement of Madhya Pradesh Land Revenue Code (Amendment) Act, 1980 (hereinafter referred to as the Amendment Act of 1980) is in possession of agricultural land which belonged to a member of a tribe which has been declared to be an aboriginal tribe under sub-section (6) of section 165 between the period commencing on the 2nd October, 1959 and ending on the date of the

commencement of Amendment Act, 1980 shall, within two years of such commencement, notify to the Sub-Divisional Officer in such form and in such manner as may be prescribed, all the information as to how he has come in possession of such land.

(2) If any person fails to notify the information as required by sub-section (1) within the period specified therein it shall be presumed that such person has been in possession of the agricultural land without any lawful authority and the agricultural land shall, on the expiration of the period aforesaid revert to the person to whom it originally belonged and if that person be dead, to his legal heirs”.

10. The information as required regarding possession of land in question was notified by the original petitioner before the Sub Divisional Officer on 24-11-1981 regarding possession since 8-4-1957. Possession of Ganpat Rai Agrawal from 8-4-1957 was not challenged by Thakur Virendra Bahadur Singh, Thakur Mahendra Bahadur Singh and Smt. Gayatri Devi before the Sub Divisional Officer. Mahendra Bahadur Singh admitted that he handed over the possession of land to the original petitioner on 8-4-1957 i.e., before 2-10-1959 when Section 170(B) of the Code 1959 came into force. Crucial date for Section 170(B) of the Code, 1959 is from 2-10-1959 to 24-10-1980, but in the present case, the original petitioner was in

possession of the land before 2-10-1959 and as none of the sellers has objected the sale deed on the ground that quantum of consideration amount is less or any other ground and Mahendra Bahadur Singh admitted the entire transaction, therefore, Sub Divisional Officer did not find it to be a case under Section 170 (B) of the Code, 1959 and dropped the matter. Mahendra Bahadur Singh has not contested the case, therefore, he is not necessary party in the present petition.

11. The President of India has issued order as per Article 342 (1) of the Constitution with respect to Madhya Pradesh after consultation with the Governor of the State. The Constitution (Scheduled Tribes) Order, 1950 is relevant which may be read as under;;

C.O.22. In exercise of the powers conferred by clause (1) of Article 342 of the Constitution of India, the President, after consultation with the Governors and Rajpramukhs of the State concerned, is pleased to make the following Order, namely:-

1. This Order may be called the Constitution (Scheduled Tribes) Order, 1950.
2. The tribes or tribal communities, or parts of or groups within, tribes or tribal communities, specified in Parts 1 to XIV of the Schedule to this Order shall, in relation

to the States to which those Parts respectively relate, be deemed to be Scheduled Tribes so far as regards members thereof resident in the localities specified in relation to them respectively in those Parts of that Schedule.

- 3 Any reference in the Schedule to this Order to a district or other territorial division of a State shall be construed as a reference to that district or other territorial division as existing on the 20th January 1950.

PART IV - MADHYA PRADESH

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| 1) Melghat taluq of Amravati district | 8) Balod (Sanjari) tahsil of Durg District |
| 2) Baihar Tahsil of Balaghat district | 9) Mandli Niwas and Ramgah (Dindori) tahsils of Mandla District. |
| 3) Bhanupratappur, Rajapur, Dantewara, Jagdalpur, Kanker, Kondagaon, Konta and Narayanpur Tahsils of Bastar District | 10) Liarsud tahsil of Nimar District. |
| 4) Betul and Bhainsdehi tahsils of Betul district. | 11) Dharumjaigarh, Ghargoda, Jashpurnagar and Kharsia tahsils of Raigarh district. |
| 5) Katghora, tahsil of Bilaspur district. | 12) Ambikapur, Baikunthpur, Bhartpur, Janakpur, Manendragarh, Pal, Samari and Sitapur tahsils of Sarguja district. |
| 6) Suroncha and Gharchroli tahsils of | |

Chandra District.

7) Amarwara, Chhindwara and Lakhnadon tahsils of Chhindwara district.

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1. Andh		15. Kavar or Kanwar
2. Baiga		16. Kharia
3. Bhaina		17. Kundh or Khond or Kandh
4. Bharia- Bhuria or Bhuinhar - Bhumia		18. Kol
5. Bhattra		19. Kolarn.
6. Bhil		20. Korku.
7. Bhunjia		21. Korwa
8. Binjhwar		22. Majhwar
9. Birhul or Birhor		23. Munda
10. Dhanwar		24. Nagesia or Nagasia
11. Gadaba or Gadha		25. Nihal
12. Gond (including Madia (Maria) and Mudia (Muria)		26. Oraon
13. Halba		27. Pardhan
14. Kamar		28. Pardhi
		29. Parja
		30. Saonta or Saunta
		31. Sawar or Sawara

12. As per presidential order only Maria and Muria were included in Gond Tribe while Rajgond was not included. This presidential order was substituted by Scheduled Castes and Scheduled Tribes order Amendment Act 1956/1976 and in that order also Rajgond was not included as part of group or Gond. There is no clear inclusion of the community of Rajgond in the appropriate presidential order. Though "Raj" is included as part or group within

Gond, but “Raj” are Mason who works for construction and looking to their backwardness they find place in amended order.

13. In the matter of **Srish Kumar Choudhary vs. State of Tripura, reported in AIR 1990 SC 991** Hon'ble the Supreme Court has held as under:

“16. These authorities clearly indicate, therefore, that the entries in the Presidential Order have to be taken as final and the scope of enquiry and admissibility of evidence is confined within the limitations indicated. It is, however, not open to the Court to make any addition or subtraction from the Presidential Order”.

14. In **Bhaiyalal vs. Harikishan singh, reported in AIR (1965) SC 1557**, it is held by Constitution Bench of Hon'ble the Supreme Court as under:

“It is obvious that in specifying castes, races or tribes, the President has been expressly authorised to limit the notification to parts of or groups within the castes, races or tribes, and that must mean that after examining the educational and social backwardness of a caste, race or tribe, the President may well come to the conclusion that not the whole caste, race or tribe but parts of or groups within them should be specified. Similarly, the President can specify castes, races or tribes or parts thereof in relation not only to the entire State, but in relation to

parts of the State where he is satisfied that the examination of the social and educational backwardness of the race, caste or tribe justifies such specification. In fact, it is well-known that before a notification is issued under [Art. 341\(1\)](#), an elaborate enquiry is made and it is as a result of this enquiry that social justice is sought to be done to the castes, races or tribes as may appear to be necessary, and in doing justice, it would obviously be expedient not only to specify parts or groups of castes, races or tribes, but to make the said specification by reference to different areas in the State."

15. As per law laid down by Constitution Bench of Hon'ble the Supreme Court in the aforesaid matter, the presidential order is issued only after examination of the social and educational backwardness of the caste which justifies their specification as Scheduled tribe and for that elaborate enquiry is to be made.

16. In the present case, sellers of the land were King (Raja) and Queen of Saraipali and also they were members of Legislative Assembly and Parliament (Rajya Sabha) and they were not socially and educationally backward at any point of time since 1950 onwards that is why they were not included in the presidential order. Again, Thakur Mahendra Bahadur Singh one of the sellers admitted before the Sub Divisional Officer that land was transferred to the original petitioner after getting full consideration who was the only

surviving seller at the time of proceeding before the Sub Divisional Officer. The Sub Divisional Officer satisfied that sellers were not members of Scheduled Tribe during relevant period i.e, from 2-10-1959 to 24-10-1980 and sale is executed as per law of the land and there is no fraud on the part of the purchaser, therefore, Sub Divisional Officer dropped the proceeding against the present petitioner.

17. Both the courts of Collector and Additional Commissioner have recorded their finding on the basis of one judgment of Madhya Pradesh High Court rendered in Writ Petition No.5371 of 1997 but the fact remains that as per law laid down by Hon'ble the Apex Court in the matter of *Srish Kumar Choudhary (supra)*, the Court cannot add or abstract any entry, therefore, finding of court of Collector and the Court of Additional Commissioner is not sustainable. The only course open to Community claiming to be Tribe and not included in list to make representation before the Parliament to include such community in list as per Article 342 (2) of the Constitution.

18. As per admission of the surviving seller namely Mahendra Bahadur Singh, property was handed over as per agreement in the year 1957, therefore, Sub Divisional Officer was right in dropping the matter as Section 170(B) of the Code 1959 has no applicability in the present case. Again, vide presidential order of 1950 and subsequent order, Rajgond was not included as Tribe as part or

group of "Gond". They were not tribes on the date of execution of the sale deed i.e., 7-1-1961 and therefore, permission of Collector was not required as per Section 165 (6) of the Code 1959. The Sub Registrar who executed the sale deed is right in recording in sale deed and the Section 165(6) of the Code 1959 is not violated while executing the sale deed. As the surviving seller has admitted that no fraud is committed and after receiving full consideration sale deed is executed and amount paid for sale was just and proper at the time prevailing, therefore, there was nothing in record of Sub Divisional Officer to say that consideration amount is under valued. From any angle there was nothing to maintain that any fraud is committed on the part of purchaser. Therefore, the Sub Divisional Officer was right in holding that the sale deed is proper and it is not a case where fraud is committed and no case under the said Section is made out. As no court can add or subtract any word in the presidential order as held by Hon'ble the Apex Court, the finding of the Collector/Additional Commissioner on the basis of court order is contrary to law and same is not sustainable. Sale deed executed in the present case is valid, therefore, petitioners are owners of the land in question as mentioned above.

19. Accordingly, writ petition is allowed. Order passed by the Additional Commissioner is set aside and it is declared that the petitioners are owners of the land as mentioned above.

20. The Tahsildar/Incharge Revenue Officer is directed to correct the record of right in the name of petitioners within one month from the date of receipt of copy of this order.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju_