

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition No.5120 of 2005

Kejuram Sahu, S/o Prabhu Ram Sahu, Aged about 54 years, R/o Village Semariya, Post Dharseeva, District Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Revenue Department, D.K.S. Bhawan, Raipur (C.G.)
2. Jaikrishna Agrawal, S/o Hariharlal Agrawal, R/o Vill. Semariya, Tah. & Distt. Raipur (C.G.)
3. Collector, Raipur, Distt. Raipur (C.G.)
4. S.D.O. (Revenue), Raipur, District Raipur.
5. Bahara (Deleted)
6. Basant Ram, S/o Bhau (Bhai)
7. Gajanand (Deleted)
8. Bodhhi (Deleted)
9. Bhagat Ram, S/o Hiralal
10. Ram Bharosa (Deleted)

Respondents No.6 and 9 are R/o Vill. Semaria, Tah. & Distt. Raipur (C.G.)

11. Board of Revenue, State of Madhya Pradesh, Gwalior, Madhya Pradesh

---- Respondents

For Petitioner:	Mr. Manoj Paranjpe and Mr. Prasoon Agrawal, Advocates.
For Respondents No.1, 3 and 4 / State:	Mr. S.P. Kale, Deputy Advocate General.
For Respondent No.2:	Mr. H.B. Agrawal, Senior Advocate with Mr. Pankaj Agrawal, Advocate.
For Respondents No.6, 9 and 11: -	None present.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

02/05/2018

1. Present dispute between the parties relates to land bearing Khasra No.579/2, area 3.74 acres, situate at Village Semariya which has been declared as grass land by the order of the Deputy Commissioner-cum-Nistar Officer, Raipur in Case No.37/1/1/1951-52, by order dated 22-10-1952. The Naib Tahsildar, Semariya on the report of the Revenue Inspector, Mandir Hasoud, initiated a proceeding under Section 248(1) of the Chhattisgarh Land Revenue Code, 1959 (for short, 'the Code') against respondent No.2, stating inter alia that he has encroached upon the said Government land and on the basis of that, notice was issued to respondent No.2. In the said proceedings, it appears that respondent No.2 filed an application under Section 57(2) of the Code stating that his father Hariharlal Agrawal was malgujar of Village Semariya and since the malgujari time, he has been cultivating the land and the scheduled land has been in the khudkhast land since 1947-48 and land should have been recorded in his name in accordance with the provisions contained in the M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (for short, 'the Act of 1950') and filed certain documents in support thereof i.e. khasra panchsala of the years 1950-51, 1952-53 and 1978-79. The concerned Naib Tahsildar issued proclamations and invited objections of the villagers and in compliance thereof, the villagers submitted their objections that the land is recorded as grass land and also being used as burial land, therefore, the encroachment made by respondent No.2 be removed. The Naib Tahsildar in its report dated 13-9-1982 held that

though Khasra No.579/2, area 3.74 acres, is recorded as grass land, but in column No.3, the name of Hariharlal Agrawal (father of respondent No.2) has been recorded and 3.74 acres of land is recorded as grass land and 1.19 acres has already been earmarked as burial ground, and further held that from 1969-70 to 1971-72, the possession of respondent No.2 is established and also held that khudkhast land should have been left in the possession of ex-malgujar, but any how land has been vested in the State Government, but recommended to the Sub-Divisional Officer (Revenue) that the case be settled in the name of respondent No.2 under Section 57(2) of the Act of 1950. The Sub-Divisional Officer (Revenue) after one year of the said recommendation, on 29-9-1983 without registering any case under Section 57(2) of the Act of 1950 and hearing the State, accepted the report dated 13-9-1982 and held that from the perusal of khasra panchsala of the years 1950-51 and 1952-53, the land in dispute i.e. 3.74 acres is recorded as grass land, but it was a khudkhast land on the basis of khasra panchsala of the years 1950-51 and 1952-53 and, therefore, it remained under the possession of the possession holder under Section 4 read with Section 5 of the Act of 1950 and directed for recording of the name of respondent No.2 over the said land.

2. Feeling aggrieved against that order, the petitioner herein as well as five other persons who are private respondents herein preferred a first appeal before the Collector under Section 44 of Code. The learned Collector after hearing the parties, allowed the appeal holding that it is not khudkhast land and after thirty years of the coming into force of the Act of 1950, land cannot be held to be

khudkhast land. That order was affirmed by the Additional Commissioner, Raipur Division, Raipur, in second appeal at the instance of respondent No.2. Respondent No.2 preferred a revision before the Board of Revenue and the Board of Revenue firstly referred the matter to the Division Bench and the Division Bench on 30-12-1995 opined that the land was never recorded as khudkhast land and in the khasra of 1950-51 only, it was recorded as grass land and thereafter, by its order dated 27-1-1999, the Board of Revenue allowed the revision setting aside the orders passed by the two authorities below holding that in the year 1950-51, the suit land is recorded as khudkhast land and by virtue of the provision contained in Section 4(2) of the Act of 1950, respondent No.2 is entitled for settlement of subject land in his favour. The impugned order dated 27-1-1999 passed by the Board of Revenue has been challenged by the sole petitioner by filing this instant writ petition on 6-10-2005 stating that the order passed is unsustainable and bad in law.

3. On behalf of respondent No.2, return has been filed stating that the land having been recoded as khudkhast land in the revenue papers of the year 1950-51, it has rightly been directed to be settled in favour of respondent No.2.
4. The State/respondents No.1, 3 and 4 has also filed return opposing the writ petition.
5. Mr. Manoj Paranjpe, learned counsel appearing for the petitioner, would submit that firstly the petitioner was not aware of the impugned order passed by the Board of Revenue and as soon as respondent No.2 started interfering with the impugned land in the

year 2005, one of the affected persons i.e. the petitioner herein has filed this writ petition. He would further submit that the property is situated in the State of Chhattisgarh and therefore the High Court of Chhattisgarh will have jurisdiction to hear the matter and other applicants, who have filed appeal, before the Collector have already been impleaded as respondents in this writ petition. Respondent No.2 did not raise any objection that the appeal was not maintainable before the Collector and the Commissioner and he contested the appeal and the revision on merits, therefore, he cannot be permitted to raise a new plea for the first time before this Court that the appeal before the Collector and the revision before the Commissioner were not maintainable. Respondent No.2 himself has filed revision before the Board of Revenue which has been allowed, therefore, such an objection deserves to be overruled.

6. Mr. H.B. Agrawal, learned Senior Counsel appearing for respondent No.2, would submit that the writ petition deserves to be dismissed on the ground of delay in filing the writ petition. This Court has no jurisdiction to hear the writ petition and the writ petition is not maintainable in light of the remedy available under Section 57(3) of the Code.
7. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also gone through the record with utmost circumspection.
8. I will take-up the grounds of preliminary objection first.
9. So far as delay is concerned, it would be appropriate to mention what the petitioner is contending i.e. the land in dispute, which runs

into approximately 4 acres, is grass land which is being used by the public at large / villagers of Village Semariya for nistar purpose and that is vested in the State and the subject land has already been declared as grass land by the order of the competent officer. As soon as the order is communicated to the petitioner, he came forward and has filed writ petition which cannot be thrown away, as the matter relates to public property running into 4 acres and as such that cannot be thrown-out at this stage on the ground of delay. Even otherwise, the ground of delay has not been raised in the return filed by respondent No.2 and as such he cannot be allowed to take a new plea at the time of final hearing.

10. Likewise, the property is situated within the territorial limits of the State of Chhattisgarh, therefore, this Court will have jurisdiction to hear the writ petition filed against the order relating to the property situated in the State of Chhattisgarh. Other applicants / appellants who had filed appeal before the Additional Collector have already been impleaded as respondents herein and some of them have been deleted also on their sad demise.
11. So far as the objection based on Section 57(3) of the Code is concerned, it is pertinent to mention that against the order of the Sub-Divisional Officer (Revenue) dated 29-9-1983, the petitioner herein and six other persons preferred appeal before the Additional Collector in which respondent No.2 herein was arrayed as respondent. Respondent No.2 herein contested the said appeal on merits and the appeal was allowed. Second appeal of respondent No.2 was also dismissed by the Additional Commissioner, Raipur Division, Raipur and he filed revision before the Board of Revenue

which has been allowed. At no stage, respondent No.2 did raise any objection with regard to non-maintainability of first appeal or second appeal filed by the petitioner herein and other persons and for the first time, he is raising plea based on Section 57(3) of the Code which cannot be permitted to be raised, as he has failed to raise such an objection at the earlier stage before the Additional Collector when the order dated 29-10-1986 was passed by the Additional Collector granting the appeal filed by the petitioner and other persons. Furthermore, the writ petition is pending since 6-10-2005 and after more than 12 years of filing and institution of writ petition, it cannot be thrown-out on the ground which respondent No.2 did not raise at the earlier stage for the reasons best known to him before the revenue authorities particularly, when it is a case where encroachment proceeding was initiated against respondent No.2 under Section 248(1) of the Code and respondent No.2 filed an application under Section 57(2) of the Code which has been granted by the Sub-Divisional Officer (Revenue) even without hearing the State as party only on the basis of the report submitted by the Naib Tahsildar. Moreover, this plea of maintainability has not been raised in the return filed by respondent No.2 earlier and is being raising for the first time in the return so filed before this Court. Therefore, all the objections raised on behalf of respondent No.2 are hereby repelled.

12. The aforesaid determination would bring me to the question as to whether respondent No.2 is entitled to get the subject land bearing Khasra No.579/2, area 3.74 acres, settled in his favour.

13. It is established on record that the subject land bearing Khasra

No.579, area 3.74 acres, was declared as grass land by the order of the Nistar Officer in a registered revenue case by order dated 22-10-1952. Even it is the report of the Naib Tahsildar dated 13-9-1982 that in the khasra panchsala of the year 1950-51, the land is recorded as grass land and only in column No.3, the name of respondent No.2's father Hariharlal Agrawal is recorded. The Board of Revenue has allowed the claim of respondent No.2 on the ground that in the khasra entry of 1950-51, the name of respondent No.2's father Hariharlal Agrawal is entered as owner of khudkhast land and by virtue of Section 4(2) of the Act of 1950, he is entitled for settlement in his favour. Khudkhast land is not defined in the Act of 1950, but Section 2(g) of the Act of 1950 defines, "home-farm" land which includes khudkhast land. Section 2(g) of the Act of 1950 reads as follows: -

"2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(g) "*home-farm*" means—

(1) in relation to the Central Provinces,—

(i) land recorded as *sir* and *khudkasht* in the name of proprietor in the annual papers for the year 1948-49, and

(ii) land acquired by a proprietor by surrender from tenants after the year 1948-49 till the date of vesting;

(2) in relation to merged territories, that part of the land under the personal cultivation of the proprietor on the date of vesting which was similarly under cultivation in the agricultural year 1949-50 and which he is entitled to retain on the termination of proprietary tenure under any instrument having the force of law and applicable

to such tenure.

Explanation.—Land under personal cultivation includes land allowed to lie fallow in accordance with the usual agricultural practice; but does not include any land in lawful possession of a raiyot or tenant.”

14. From the aforesaid definition of “home-farm” land which includes khudkhast land and by virtue of the provisions contained in Section 4(1) and 4(2) of the Act of 1950, the person claiming the land is required to establish following facts: -

(1) that the suit land is a 'home-farm land' within the meaning of Section 2(g)(1)(i) of the Act of 1950 on the date of vesting and recorded in the name of the proprietor in the annual papers for the year 1948-49;

(2) that they are in possession of the said home-farm land on the date of vesting i.e. 31-3-1951; and

(3) that they are in personal cultivation of the land after the agricultural year 1948-49 but prior to the date of vesting i.e. 31-3-1951.

15. In the matter of [Haji Sk. Subhan v. Madhorao](#)¹, the Supreme Court considered the question in the light of the provisions contained in the Abolition Act and after quoting the definition of 'home-farm land' in Section 2(g) of the Act of 1950, Their Lordships discussed the matter as under:--

"(22) It is significant to note in this connection that sub-clause (i) refers to land actually recorded as sir and khudkasht in the annual papers of 1948-49 and does not refer in terms to land which was the sir and khudkasht of the proprietor in that year and which ought to have been

¹ AIR 1962 SC 1230

recorded as such in those papers but had not been so recorded. ..."

Further :

"(23) It is also significant to notice that in sub-section (2), the land answering the description of "home-farm" is described differently. Only that land comes within the expression "home-farm" which had been under the personal cultivation of the proprietor on the date of vesting and which had been similarly under cultivation in the agricultural year 1949-50, and which he is entitled to retain even on the termination of his proprietary tenure under any instrument having the force of law and applicable to that tenure. Personal cultivation of the proprietor at two relevant dates was the main criterion. Such cultivation was not made the criterion in the definition in sub-clause (i) of sub-section (1). It is not necessary, according to that sub-clause, that the proprietor be personally cultivating that land. The only condition requisite for the proprietor having certain land treated as his home-farm was the fact that the annual papers of 1948-49 recorded that land as his sir and khudkasht. The basis was the record and not the fact of actual cultivation or his title to that land.

(24) The definition evinces the intention of the Legislature to remove the question of certain land be "home-farm" or not from the sphere of litigation. Recorded entry was treated to be the basis for adjudging the land to be 'home-farm'."

16. At this stage, it would be appropriate to notice Section 4(2) of the Act of 1950 which states as under: -

"4. Consequences of the vesting.—(1) xxx xxx xxx

(2) Notwithstanding anything contained in sub-section (1), the proprietor shall continue to retain the possession of his home-stead, home-farm land, and in

the Central Provinces also of land brought under cultivation by him after the agricultural year 1948-49 but before the date of vesting."

17. A close and careful perusal of sub-section (2) of Section 4 of the Act of 1950 would show that proprietor in possession of home-farm land on the date of vesting is entitled to retain the possession notwithstanding the vesting of all his rights in the State Government.

18. In Haji Sk. Subhan (supra), the Supreme Court further held as under:--

"In accordance with the provisions of this section, the proprietary rights in an estate, mahal, alienated village or alienated land in the area specified in the notification vesting in a proprietor of such estate, etc., were to pass from such proprietor and vest in the State for purposes of the State free from all encumbrances. These provisions themselves were sufficient to divest the proprietor of such estate, etc., of his proprietary right. The consequences of such vesting are further specified in Section 4. In view of sub-section (2) of Section 3, no right could be acquired over the land which had vested in the State except by succession or under a grant or contract in writing made or entered into by or on behalf of the State."

Thereafter reference was made to various provisions of the Act and dealing with sub-section (2) of Section 4, it was held as under:--

"Sub-section (2) of Section 4 of the Act provides that the proprietor can continue to retain possession of home-farm land after the vesting of his proprietary right in the State. The respondent cannot take advantage of this provision even if the land in suit be held to be home-farm. He was not in possession of the land in suit on the date of vesting and no question of continuing to retain

possession arose."

(emphasis supplied)

Later:—

"It is also significant to notice that in sub-section (2), the land answering the description of 'home-farm' is described differently. Only that land comes within the expression 'home-farm' which had been under the personal cultivation of the proprietor on the date of vesting and which had been similarly under cultivation in the agricultural year 1949-50, and which he is entitled to retain even on the termination of his proprietary tenure under any instrument having the force of law and applicable to that tenure. Personal cultivation of the proprietor at two relevant dates was the main criterion."

19. The aforesaid decision of the Supreme Court in [Haji Sk. Subhan \(supra\)](#) was reiterated and followed by the Supreme Court in the matter of [Ramkhilawandhar and others v. Gajodharprasad \(Dead\) by LRs. and others](#)² and it was observed as under:--

"A reading of sub-section (2) of Section 4 with the definition of "home-farm land" shows that while all rights of the proprietor vest in the State Government on the specified date, the proprietor shall continue to retain the possession of his home-farm land. In other words, notwithstanding the vesting of all his rights in the State Government, the proprietor may continue to retain the possession of his home-farm land. The necessary implication is that the proprietor is in possession of the land on the date of vesting. If he is in physical possession of the land on the date of vesting, he may continue to retain the possession of such home-farm land. In the present case, admittedly the plaintiffs were not in possession of the lands in dispute on the date of vesting and, therefore, their suit must necessarily fail."

² (1985) 2 SCC 58

20. Reverting to the facts of the present case, it would appear that the learned Sub-Divisional Officer (Revenue) only on the basis that in the years 1950-51 and 1952-53, the land is recorded as khudkhast land in the name of the father of respondent No.2 held that by virtue of Section 4 read with Section 5 of the Act of 1950, respondent No.2 is possession holder and possession remained with respondent No.2 which was reversed by the Additional Collector and upheld by the Additional Commissioner holding that the land is not recorded as khudkhast land and after 30 years of coming into force of the Act of 1951, the land cannot be reverted in favour of respondent No.2. As held above, respondent No.2 has failed to bring documents on record that is the annual papers of the year 1948-49, as required under Section 4(2) of the Act of 1950, showing personal cultivation of land by respondent No.2 after the agricultural year 1948-49 and before the date of vesting i.e. 31-3-1951. It was incumbent on the part of respondent No.2 to file documents demonstrating that the land in dispute being home-farm land (khudkhast land) had been under his personal cultivation on the date of vesting and it had been under his personal cultivation in the agricultural year 1948-49, by which he is entitled to retain the possession. Thus, personal cultivation of the proprietor on the above-stated two relevant dates is to be established on record in order to succeed which respondent No.2 had miserably failed to establish.

21. Respondent No.2 has not brought on record any document demonstrating that the land in dispute was in his personal cultivation in the agricultural year 1948-49 and has also not brought

any document showing that on or before the date of vesting, he or his father was in possession of the suit land, as the land was not recorded as khudkhast land in the year 1948-49 in village papers. The Board of Revenue by its impugned order ignoring the mandate of Section 4(1) and 4(2) of the Act of 1950 held as under for setting aside the concurrent finding of the Additional Collector and the Additional Commissioner: -

उपरोक्त से स्पष्ट है कि यदि भूमि की सीर या खुदकाशत की प्रविष्टि 1948-49 तक नहीं है और यदि निस्तार अधिकारी द्वारा शासन में निहित करने की कार्यवाही के पूर्व भूतपूर्व मालगुजार द्वारा भूमि को काशत में लिया गया है तो ऐसी स्थिति में भूतपूर्व मालगुजार मालगुजारी उन्मूलन अधिनियम की धारा 4 (2) के तहत भूमि को अपने नाम दर्ज करने के हकदार है। उपलब्ध साक्ष्य और जैसा कि नायब तहसीलदार द्वारा अपने प्रतिवदेन के पैरा 4 में दिखाया गया है कि 1950-51 की खसरा प्रविष्टि में हरिहर लाल अग्रवाल के नाम खुदकाशत दर्ज है। उसके बाद भी कई एक वर्षों में आवेदक का कब्जा दिखाया गया है। इन कारणों से आवेदक को धारा 4 (2) मालगुजारी अधिनियम के तहत व्यवस्थापन की पात्रता है। 1973 आरएन 540 और 1979 आरएन 182 में यह निर्णय दिया जा चुका है कि धारा 57 (2) का विवाद घास या चरनोई की प्रविष्टि के बारे में भी दिया जा सकता है। चूंकि खण्डपीठ ने इस मुद्दे पर कोई निर्णय नहीं दिया है कि क्या मालगुजारी उन्मूलन अधिनियम की धारा 4, 5 सहपठित संहिता की धारा 57 (2) के तहत अनुविभागीय अधिकारी को कलेक्टर से धारा 37 (2) की अनुमति लेनी है या नहीं, अतएव इस संबंध में पूर्वलिखित निर्णय लागू होंगे। उपरोक्त विवेचना के प्रकाश में अपर कलेक्टर के आदेश दिनांक 29-10-86 और अपर आयुक्त के आदेश दिनांक 29-9-87 स्थिर रखने योग्य नहीं है और तदनुसार उन्हें निरस्त किया जाता है।

22. Thus, on the basis of aforesaid analysis, it is held that respondent No.2 has failed to establish that the suit land being khudkhast land is recorded in his name in the annual papers of the year 1948-49 and in personal cultivation of respondent No.2, as the Board of Revenue has upheld the order of the Sub-Divisional Officer (Revenue) only on the ground that in the year 1950-51, in the khasra entry, the name of Hariharlal Agrawal – father of respondent No.2 is recorded as khudkhast which is not fulfilling the requirement

under Section 4(2) of the Act of 1950.

23. There is yet another reason for not upholding the order of the Board of Revenue. Under Section 57(2) of the Code, dispute between the State and the Bhumiswami has to be decided by the Sub-Divisional Officer (Revenue). In the present case, in the encroachment proceeding initiated by the Naib Tahsildar, respondent No.2 laid the claim to be under Section 57(2) of the Code. But enquiry for Section 248 of the Code was conducted by the Naib Tahsildar and report was submitted and without hearing the State and without taking any further action, the Sub-Divisional Officer (Revenue) straightway declared respondent No.2 to be the person entitled and to hold the possession of the land in dispute in his own right without hearing which is clearly contrary to law particularly, the scheme of Section 57(2) of the Code ignoring the fact that the Deputy Commissioner/Nistar Officer in a duly constituted revenue proceeding, by order dated 22-10-1952, had already declared the land to be grass land. Once the nature of land is declared as grass land that too by the officer of the rank of Deputy Commissioner in a duly instituted revenue proceeding, the Sub-Divisional Officer (Revenue) could not have reverted the land without hearing the State and the authorities concerned and without holding any enquiry. Viewing the matter from any of the angles, I am unable to sustain the order passed by the Board of Revenue.

24. As a fallout and consequence of the aforesaid discussion, the order passed by the Board of Revenue is set aside and that of the Additional Collector duly affirmed by the Additional Commissioner is upheld.

25. The writ petition is allowed to the extent outlined herein-above leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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