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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.3849 of 2007

(Arising out of order dated 30-4-2007 in Revision Case No.7/A-23/2005-06 of the learned Board of Revenue, Chhattisgarh, Bilaspur)

Smt. Vimla Devi, age about 70 yrs., W/o Dashrath Lal Khandelwal, R/o Village Uslapur, Distt. Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Revenue Department, D.K.S. Bhavan, Raipur (C.G.)
2. Board of Revenue, Through President of Board of Revenue, Chhattisgarh, Bilaspur (C.G.)
3. Collector (Revenue), C.G. State, Bilaspur (C.G.)
4. Additional Collector (Revenue), C.G. State, At Bilaspur, Collector Office, Bilaspur (C.G.)
5. Sub Divisional Officer (Revenue), C.G. State, At Kota, Distt. Bilaspur (C.G.)
6. Shankar Lal, age about 45 yrs., S/o Manrakhan Gond, R/o Village Uslapur, Tah. Takhatpur, Distt. Bilaspur (C.G.)

---- Respondents

For Petitioner: Mr. Ashish Shrivastava, Advocate.
For Respondents No.1, 3, 4 and 5 / State: - Mr. Dilman Rati Minj, Deputy Govt. Advocate.
For Respondent No.6: Mr. Bhaskar Payashi, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

29/01/2018

1. On the report submitted by the Patwari before the Sub-Divisional Officer (Revenue), a case under Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (for short, 'the Code') was registered by the said authority and transaction made in favour of the petitioner was declared null and void against which the petitioner preferred

appeal before the Additional Collector who allowed the appeal and set aside the order of the Sub-Divisional Officer (Revenue) against which respondent No.6 preferred revision before the Board of Revenue and the Board of Revenue has set aside the order of the Additional Collector against which this writ petition has been preferred.

2. Learned counsel for the petitioner submits that the order passed by the Sub-Divisional Officer (Revenue) is in teeth of the provisions contained in Section 170-B(3) of the Code. Learned Board of Revenue ought not to have interfered with the order of the Additional Collector who set aside the order of the Sub-Divisional Officer (Revenue). The Board of Revenue has granted permission to review and the matter has been sent to the Additional Collector.

3. Learned State counsel and learned counsel for respondent No.6 would oppose the petition and the submissions of learned counsel for the petitioner.

4. I have heard learned counsel for the parties and perused the orders impugned and record of the Court below.

5. Section 170-B (3) of the Code provides as under: -

> "**170-B. Reversion of land of members of aboriginal tribe which was transferred by fraud**.-
>
> (3) On receipt of the information under sub-section (1) the Sub-Divisional Officer shall make such enquiry as may be necessary about all such transactions of transfer and if he finds that the member of aboriginal tribe has been defrauded of his legitimate right he shall declare the transaction null and void and —
>
> (a) Where no building or structure has been

erected on the agricultural land prior to such finding pass an order revesting the agricultural land in the transferer and if he be dead, in his legal heirs,

(b) Where any building or structure has been erected on the agricultural land prior to such finding, he shall fix the price of such land in accordance with the principles laid down for fixation of price of land in the Lad Acquisition Act, 1894 (No. 1 of 1894) and order the person referred to in sub-section (1) to pay to the transferer the difference, if any, between the price so fixed and the price actually paid to the transferer:

Provided that where the building or structure has been erected after the 1st day of January, 1984 the provisions of clause (b) above shall not apply:

Provided further that fixation of price under clause (b) shall be with reference to the price on the date of registration of the case before the Sub-Divisional Officer."

6. If the facts of the case are examined in light of Section 170-B(3) of the Code, it would appear that the Patwari concerned has submitted its report on 23-9-1996, on that day, the SDO (R) directed the parties to produce their witnesses for recording their statements and fixed the case on 10-12-1996, but on that day, the matter was adjourned for 21-1-1997, thereafter for 1-2-1997 and again for 17-2-1997. On 1-2-1997, the petitioner preferred her objections and submitted documents. Thereafter, on 17-2-1997, the matter was adjourned and on 13-5-1997, final order was passed by the SDO (R).

7. It appears from the copies of order sheets filed that the provisions

contained in Section 170-B(3) of the Code have been followed in its breach. Though the statement of power of attorney of non-aboriginal tribe was recorded on 21-1-1997, but further, no enquiry has been done in which both the parties have to be granted sufficient opportunity to lead evidence and cross-examine the witnesses of other side and documents have to be supplied. The manner in which the enquiry is said to have been conducted is in complete breach of the principles of natural justice. No full-fledged enquiry has been made and order re-vesting the land from the petitioner to respondent No.6 has been passed and land has been directed to be mutated in the name of aboriginal tribe which is in teeth of Section 170-B(3) of the Code as well as in violation of the principles of natural justice which has rightly been set aside by the Additional Collector, but the Board of Revenue has set aside the order of the Additional Collector on untenable grounds.

8. For the foregoing reasons, the order passed by the Board of Revenue is set aside and the matter is remitted back to the SDO (R), who shall conduct fresh enquiry in accordance with Section 170-B(3) of the Code and decide the case within four months from the date of receipt of a copy of this order. Parties shall produce evidence and submit documents.

9. The writ petition is allowed to the extent sketched herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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