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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 878 of 2018**

Maya Gandhi, W/o Santosh Gandhi, aged about 48 years, R/o Suncity, Jagdalpur (C.G.).

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department of Revenue and Disaster Management, Mahanadi Bhawan, Mantralaya, Post and P.S. Mandir Hasaud, Raipur (C.G.)
2. Collector, Jagdalpur (C.G.)
3. Boti S/o Sukta, aged about 66 years, R/o Village Ghatpadmur, Tahsil Jagdalpur, District Bastar (C.G.)

--- Respondents

For Petitioner	:	Mr. Aman Kesharwani, Advocate.
For Respondents/ State	:	Mr. Avinash Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****02/04/18**

1. Learned counsel for the parties would submit that this case is covered by the decision rendered by this Court in **Paramjit Singh v. State of Chhattisgarh** passed in WPC No. 885/2017, in which this Court in Paragraph – 8 has held as under :-

“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 land 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-agricultural 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 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.

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."

2. 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, rigor 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.

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

Sd/-

(Sanjay K. Agrawal)
Judge