

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition No.3129 of 2005

1. Smt. Bisahin Bai Kashyap, aged 70 years, wife of late Shri Daras Ram, Dead, through the petitioner No.3 and 4.
2. Smt. Dhan Bai Kashyap, aged 65 years, wife of late Shri Daras Ram,
3. Kaleshwar Kashyap, aged 22 years, S/o late Shri Daras Ram,
4. Parmeshwari Bai Kashyap, aged 30 years, D/o late Shri Daras Ram,
5. Komal Singh, aged 35 years, S/o late Shri Takhat Singh,

All are residents of Village Kurudih (near Bhaisma), Tehsil & District Korba (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, through the Secretary, Revenue Department, Raipur (C.G.)
2. Board of Revenue, Chhattisgarh State, at Bilaspur (C.G.)
3. The District Collector, Korba, District Korba (C.G.)
4. Sub Divisional Officer, Korba, District Korba (C.G.)

5-A. Smt. Soniya Bai, aged 50 years, wife of late Shri Ude Ram,

5-B. Shyam Kanwar, aged 35 years, S/o late Shri Ude Ram,

Both are residents of Village Kurudih, Tehsil & District Korba (C.G.)

---- Respondents

For Petitioners: Mr. Somnath Verma, Advocate.

For Respondent Nos.1, 3 and 4 / State: -

Mr. Avinash Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

13/02/2018

1. Heard.
2. Ude Ram, aboriginal tribe, subsequently died and his LR's have been

brought on record as respondents No.5-A and 5-B, filed an application under Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (for short, 'the Code') which was rejected by the Sub Divisional Officer (Revenue). The Collector has dismissed the appeal against the said order and affirmed the order of the SDO (R). The Board of Revenue allowed the revision filed by Ude Ram against which this writ petition has been preferred.

3. Learned counsel for the petitioner submits that the SDO (R) has not made enquiry as contemplated under Section 170-B (3) of the Code, only statements have been recorded and no opportunity of cross-examination has been given despite in earlier round, the matter was remitted by the Collector.
4. No one appears for the private respondents though served.
5. Learned State counsel would support the impugned order.
6. Section 170-B (3) of the Code reads 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 Land 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.

7. The SDO (R) was obliged to make enquiry with regard to transaction as it is the case of the petitioners that the land in dispute was purchased after due permission from the Collector on 2-1-1977 by Amrita Bai and from Amrita Bai, the petitioners have purchased the land. Non-making of due enquiry is also apparent from the statements of witnesses recorded by the SDO (R). Only statements have been recorded and opposite party has not been given opportunity to cross-examine the witnesses which is in teeth of the provisions contained in Section 170-B(3) of the Code, which cannot be allowed to stand. The matter is remitted to the SDO (R) to afford opportunity of hearing to the parties in accordance with Section 170-B(3) of the Code and decide the case afresh after hearing the parties, within six months.
8. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma