

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1058 of 2012**

1. AaskumarS/o Bhukan Sahu, Aged about 45 years, resident of Village Jenjra, Tahsil Rajim, District Gariyaband (CG)
2. Udey Ram S/o Sonhar, Aged about 50 years, R/o Vill Jenjra, Tah Rajim, Distt. Gariyabandh, (CG)

---- Petitioner**Versus**

1. State Of Chhattisgarh , Through Secretary, Department of Revenue, Mantralaya, DKS Bhawan, Raipur (CG)
2. Commissioner, Raipur, Division Raipur (CG)
3. Collector, Gariyaband, District Gariyaband (CG)
4. Sub Divisional Officer (Revenue) Gariyaband, District Gariyaband (CG)
5. Tahsildar, Gariyaband, District Gariyaband (CG)
6. Baldau S/o Chain Singh Kanwar, age not known to the petitioners, R/o Village Jenjra, Tahsil Rajim, District Gariyaband (CG)

Through legal heirs

- (a) Lalita Bai, W/o Late Baldau Kanwar, aged about 57 years
- (b) Ramesh S/o Late Baldau Kanwar, aged about 39 years.
- (c) Dinesh S/o late Baldau Kanwar, aged about 37 years,
- (d) Purnima Devi, D/oLate Baldau Kanwar, aged about 34 years,
- (e) Nand Kumar D/o Late Baldau Kanwar, aged about 33 years

All residence of Village Jenjra, Tahsil Rajim, District Gariyaband (CG)

7. Kamal Narayan S/o Chain Singh Kanwar, aged not known to the petitioners, R/o Village Jenjra, Tahsil Rajim, District Gariyaband (CG)

8. Ramkumar Yadav, S/o Harilala Yadav, Aged not known, R/o Village Jenjra, Tahsil Rajim, District Gariyaband (CG)

---- Respondent

WPC No. 1057 of 2012

1. Sukhi Ram S/o Late Ganga Ram Sahu, Aged About 59 Years R/o Village Jenjra, Tahsil Rajim, District Gariyaband Chhattisgarh
2. Sakha Ram S/o Late Ganga Ram Sahu, Aged about 45 years, R/o Village Jenjra, Tahsil Rajim, Distt Gariyaband CG
3. Deen S/o Late Ganga Ram Sahu, Aged about 50 years, R/o Village Jenjra, Tahsil Rajim, Distt Gariyaband CG

---- Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Department Of Revenue, Mantralaya, DKS Bhawan, Raipur Chhattisgarh.
2. Commissioner, Raipur, Division Raipur (CG)
3. Collector, Gariyaband, District Gariyaband (CG)
4. Sub-Divisional Officer (Revenue), Gariyaband, District Gariyaband (CG)
5. Tahsildar, Gariyaband, District Gariyaband (CG)
6. Baldau S/o Chain Singh Kanwar, aged not known to the petitioners, R/o Village Jenjra, Tahsil Rajim, District Gariyaband (CG)

Through legal heirs

- (a) Lalita Bai, W/o Late Baldau Kanwar, aged about 57 years
- (b) Ramesh S/o Late Baldau Kanwar, aged about 39 years.
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- (e) Nand Kumar D/o Late Baldau Kanwar, aged about 33 years

All residence of Village Jenjra, Tahsil Rajim, District Gariyaband (CG)

7.Kamal Narayan, S/o Chain Singh Kanwar, age not known to the petitioner, R/o Village Jenjra, Tahsil Rajim, District Gariyaband Chhattisgarh.

---- Respondent

For Petitioners	Mr. Vaibhav Shukla, Advocate
For Respondent /State	Mr. R. Tripathi, Panel Lawyer
For LR.s. of respondent No.6 and Respondent No.7	Mr. Abhijeet Mishra, Advocate

Order On Board By

Hon'ble Mr. Justice Prashant Kumar Mishra

28/8/2018

1. Heard.
2. The petitioners would assail the impugned order(s) passed by the Commissioner, Raipur Division, who, in turn, has affirmed the order(s) passed by the Additional Collector, Gariyaband on 13.6.2011 and SDO(R), Gariyaband on 6.3.2000, directing reversion of the land in favour of the private respondents 6 Baldau, now represented by his legal representatives, and respondent No.7 Kamal Narayan.
3. The dispute pertains to land admeasuring 8.75 acres bearing Khasra No.311/1 and land admeasuring 2.75 acres bearing Khasra No.374/1 respectively at village Jenjra, Tehsil Rajim, District Gariyaband (CG). The land holders applied for

permission under Section 165(6) of the CG Land Revenue Code, 1959 (in short "the Code"), to transfer and execute the sale-deed in favour of non-tribals i.e. forefathers of the petitioners. Such permission was allowed by the jurisdictional competent authority on 10.11.1975 in execution of two separate sale-deeds, for which, separate proceedings have been drawn and the same are now in challenge in these two separate writ petitions. For brevity, the documents contained in the record of WPC No.1058 of 2012 are being referred.

4. After coming into force of Section 170-B of the Code, 1959, the petitioners submitted information before the jurisdictional SDO (Revenue) vide Annexure P/4 on 8.7.1982 informing as to the manner in which they came to be in possession of the subject land. Despite the said information being given, the proceeding under Section 170-B was initiated and eventually, an order was passed by the SDO(R), Gariyaband on 28.3.1989 directing reversion of land. In appeal by the petitioners before the Additional Collector, Raipur, an order was passed on 1.5.1990 remitting the matter back to the SDO for fresh enquiry, against which, a Revision Application preferred by respondents 6 & 7 was rejected by the Additional Commissioner, Raipur on 11.4.1991. Thereafter, the Board of Revenue passed an order on 28.5.1992 directing fresh proceedings and order under Section 170-B of the Code after making complete enquiry. Thereafter, the SDO(R) enquired the matter and passed an order on 08.4.1999 finding that no fraud has been committed by the petitioners while purchasing the land after obtaining due

permission from the Collector. During this round, the matter again travelled up to the Board of Revenue, wherein, an order was passed on 16.6.2004 again remitting the matter back to the Additional Collector, Gariyaband for fresh decision. The Additional Collector thereafter passed the final order on 13.6.2011 allowing the appeal preferred by respondents 6 & 7. However, the Additional Collector recorded a finding that the permission was duly obtained from the Collector, Raipur but full payment was not made by the purchasers. The Additional Collector has also referred to different statements made by the sellers at different point of time but still recorded a finding that full amount was not paid to the sellers. The Additional Collector appears to be infused by the fact that information about the nature of possession was made after two years.

5. In the order passed by the Additional Collector, finding of commission of fraud by the petitioners at the time of purchase of land is not properly recorded as the same has not been done by properly appreciating the statements made by the legal representatives of the sellers in their statements recorded on 4.4.2011, in which, respondent No.7 Kamal Narayan has clearly stated that they desire to put an end to the controversy and have compromised. Similar is the statement of Baldau, who would depose that at the time of transaction, he was 15-16 years old and was not aware about the payment of the amount of consideration. Baldau and Kamal Narayan have also filed affidavits before the Additional Collector and moreover, they have also moved a separate application before the

Commissioner vide Annexure P/8 that they do not want to obtain possession of the land, which also reflects from the inquest prepared by the Incharge Tehsildar vide Annexure P/9 clearly mentioning that when the Incharge Tehsildar visited the spot for handing over possession of the land pursuant to the order passed by the Additional Collector, respondents 5 & 6 refused to receive the possession.

6. The fact that respondents 6 & 7 have made statements before the Additional Collector, moved application before the Commissioner and thereafter, demonstrated their refusal to obtain possession of the land, goes to show that in between the parties, there is no ill-will on account of any fraud being committed by the petitioners, therefore, the finding contrary to the said evidence is perverse. Not only this, in the earlier order of SDO(R) passed on 8.4.1999, it is clearly mentioned that in his statement before the said officer on 1.3.1994, Baldeo has admitted that no fraud has been committed during the subject transaction and he does not want any further action in the matter.
7. It appears that when the parties did not want the dispute to persist for the reason that no fraud has been committed by the petitioners or their forefathers upon the sellers and that required permission was obtained before entering into the transaction, the authorities have wrongly passed the order by infusing fraud in the transaction contrary to the record. Merely because some part of the consideration was paid by handing

over paddy to the equal value of the balance consideration, it does not become a matter of fraud.

8. Be that as it may, in view of the statements made by respondents 6 & 7 in appeal and their consistent stand before the Additional Collector, the Commissioner and before the Incharge Tehsildar at the time of handing over possession that they do not want any dispute and no fraud has been committed, the order(s) passed by the authorities are vitiated as they suffer from perversity
9. Consequently, the writ petitions are allowed and the impugned orders are set-aside .

Sd/-

(Prashant Kumar Mishra)

Judge

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