

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1809 of 2018**

1. Vedram Baghel S/o Ubheyram Baghel, Aged About 74 Years
2. Baldau Baghel, S/o Ubheyram Baghel, Aged About 68 Years
3. Purushottam Baghel S/o Ubheyram Baghel, Aged About 62 Years
4. Pradeep Baghel, S/o Beniram Baghel, Aged About 39 Years

All are R/o Sakti, Tahsil Baloda-Bazar, District Baloda Bazar-Bhatapara, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Collector, Baloda Bazar, Chhattisgarh
2. Gram Panchayat, Sakri, Through The Sarpanch Gram Panchayat Sakri, Tahsil Baloda Bazar, District Baloda Bazar, Chhattisgarh

---- Respondents

For Petitioners
For Respondent-State

Shri Ritesh Verma, Advocate
Shri Shashank Thakur, GA

Hon'ble Justice Mr. Prashant Kumar Mishra**Order On Board****22/11/2018**

1. Challenge in this petition under Article 226 of the Constitution of India is to the order passed by the Board of Revenue on 13.02.2018, which in turn has affirmed the order passed by the Additional Commissioner, Raipur Division on 29.06.2017 rejecting petitioners' prayer for exchange of land.

2. Petitioners are owner of a tank known as 'Bade Talab' on Khasra No.945 and 946, Area 2.29 and 0.77 Hectares at Village and Gram Panchayat Sakri, District Baloda Bazar. The villagers of Village Sakri exercise nistari rights over the said tank and an entry to the said effect is recorded in *Wazib-ul-urz* of the village.
3. On 17.07.2012, the Gram Panchayat Sakri through its Sarpanch moved an application before the Collector, Baloda Bazar for acquisition of the petitioners' tank in public interest in exchange of allotment of 8.27 Acres of grass land bearing Khasra No.1153 to the petitioners. The Gram Panchayat also passed a resolution to the said effect. The Revenue Inspector, Baloda Bazar submitted a report about the value of petitioners' land and the value of the land to be exchanged. A recommendation was made by the Tehsildar, Baloda Bazar before the SDO (Revenue), Baloda Bazar, however, the said SDO (Revenue) disagreed with the recommendation sent by the Tehsildar, based on which the Collector, Baloda Bazar rejected the prayer for exchange of land.
4. On petitioners' revision application, the Additional Commissioner, Raipur Division passed an order on 03.07.2014 allowing petitioners' prayer for exchange of land interalia holding that acquisition of the tank is necessary in public interest. The State Government moved an application before the Board of Revenue seeking permission to reopen the matter in exercise of review jurisdiction. Vide order dated 21.12.2016, the Board of Revenue granted sanction to review the order passed by the Additional Commissioner and thereafter the present impugned orders have

been passed by the Additional Commissioner on 29.08.2017, which has been affirmed by the Board of Revenue vide its order dated 13.02.2018.

5. Section 167 of the Chhattisgarh Land Revenue Code, 1959 (henceforth 'the Code, 1959') provides for '**exchange of land**'.

The provision is reproduced hereunder for ready reference:-

“167. Exchange of land. - Subject to the provisions of section 165 Bhumiswami may exchange by mutual agreement the whole or any part of their holding for purposes of consolidation of holdings or securing greater convenience in cultivation.”

6. A plain reading of the above quoted provision makes it very clear that what is permissible to be exchanged is the whole or any part of holding for the purposes of consolidation of holding or securing greater convenience in cultivation.

7. Section 2 (1) (i) of the Code, 1959 defines the word '**holding**'.

The same is reproduced for ready reference:-

“(i) “holding means -

(ii) a parcel of land separately assessed to land revenue and held under one tenure; and

(iii) in reference to land held by a tenant a parcel of land held from a Bhumiswami under one lease or set of conditions.”

8. The word 'holding', as defined under the Code, 1959, means a parcel of land separately assessed to land revenue and held under one tenure; and in reference to land held by a tenant a parcel of land held from a Bhoomi Swami under one lease or set

of conditions. Petitioners being owner of the tank are not the tenants of any Bhoomi Swami. However, the land in question, which is infact land under water being a tank, is not assessed to land revenue as it is apparent on perusal of the maintenance khasra for the relevant land at Page 13 of the paper book. Thus, the subject tank not being separately assessed to land revenue is not a holding of the petitioners and thus it would not be covered for being exchanged under Section 167 of the Code, 1959.

9. The legislative intent to provide for exchange of land is for consolidation of holding or securing greater convenience in cultivation. Therefore, the land to be exchanged should necessarily be a holding and it is for this reason the land under water, which is not a holding, cannot be exchanged with land which is assessed to land revenue. Even otherwise, the government land offered for exchange with petitioners' tank was part of the grass land for the entire village. The Gram Panchayat is a body corporate but it does not represent the Gram Sabha of the village which is a larger body. For reducing the grazing land or grass land of the village, there has to be a separate proceeding drawn by the Collector under Section 237 of the Code, 1959. Unless such proceeding is drawn and the entry in the nistari rights of the village is modified/altered, government grass land cannot be handed over in exchange with the land under water.
10. In my considered opinion, the Board of Revenue rightly granted sanction to review the Additional Commissioner's previous order

and thereafter the Additional Commissioner and the Board of Revenue rightly rejected the proposal for exchange of land. The said proposal was infact moved by the Gram Panchayat without there being any application by the petitioners under Section 167 of the Code, 1959.

11. The writ petition has no substance. It fails and is hereby dismissed.

Sd/-
Prashant Kumar Mishra
Judge

Nirala