

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 2740 of 2002****Reserved on 29.03.2019**
Pronounced on 10.05.2019

1. Besesar, S/o Late Kheduram, aged 50 years,
2. Iswari, S/o Late Kheduram, aged 40 years,
Both are R/o Ramtala, Tahsil Pandariya, District Kawardha (C.G.)
3. Khorbharin, D/o Late Kheduram, aged 60 years, R/o village Kaltukari, Tahsil Pandariya, District Kawardha (C.G.)
4. Bismat, D/o Late Kheduram, aged 40 years, R/o village Navapara, Tahsil Pandariya, District Kawardha (C.G.)
5. Biswasa, D/o Late Kheduram, aged 35 years, R/o village Kapa Tahsil Pandariya, District Kawardha (C.G.)
6. Asha, D/o Late Kheduram, aged 30 years, R/o village Kaltukari, Tahsil Pandariya, District Kawardha (C.G.)
7. Sadhana, D/o Late Kheduram, aged 28 years, R/o village Khaduda, Tahsil Kawardha, District Kawardha (C.G.) (Lrs of Late Kheduram)

---- Petitioners**Versus**

1. State Of Chhattisgarh through Secretary, Revenue, D.K.S.Bhavan, Raipur.
2. Additional Commissioner, Bilaspur Division, Bilaspur (C.G.)
3. Collector, Bilaspur.
4. Additional Collector, Bilaspur.
5. Sub Divisional Officer, Lormi
6. Gulab Singh (Died) through the legal representatives :
 - (a) Smt. Chandrakanta Raj, W/o Gulab Singh, aged about 72 years.
 - (b) Smt. Mamta Raj, W/o Santosh Raj, aged about 26 years.
 - (c) Ku. Anita Raj, D/o Gulab Singh, aged about 32 years.
 - (d) Ku. Sapna Raj, D/o Gulab Singh, aged about 22 years.
 All are R/o Rajmahal, Pandariya, District Kabirdham (C.G.)
 - (e) Smt. Munni Raj, W/o Shah Babbu, aged about 48 years, R/o village Mohlla, District Rajnandgaon (C.G.)

(f) Smt. Sunita Raj, W/o Vinod Shah, aged 45 years, R/o Village – Sahas Lohara, District Kabirdham (C.G.)

(g) Smt. Babbita Raj, W/o Ranjit Singh Dhruv, aged about 28 years, R/o Near Gondwana Magal Bhawan, Bilaspur (C.G.) ---- Respondents

For Petitioners	: Shri Rajeev Shrivastava with Shri Avinash Choubey, Advocate.
For Respondents No.1 to 5/State	: Shri Vimlesh Bajpai, Government Advocate.
For Legal Representatives of deceased respondent No.6	: Shri M.D.Sharma with Shri Pritam Kumar Tiwari, Advocate.

Hon'ble Shri Justice Sanjay Agrawal

CAV Order/Judgment

1. This writ petition arises out of the proceedings initiated by the Revenue Authorities under Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (hereinafter referred to as the Code) whereby all the Revenue Authorities, except the Collector, have held that the petitioner's possession is unauthorised over the suit property owned by one Gulab Singh, an aboriginal, and directed for reversion of the land in question to him.

2. Briefly stated the facts of the case are that petitioner Kheduram (since deceased now represented by his legal representatives), by virtue of the registered deed of sale dated 17.12.1986, purported to have been executed by one Gulab Singh [since deceased now represented by his legal representatives – respondents No.6 (a) to 6 (g)], an aboriginal, acquired valid right, title and interest over the property in question i.e., part of Kh.No. 131/1 admeasuring 0.95 acres, as mentioned in the alleged sale, situated at village Ramtala, Tahsil Pandaria, District Kawardha (C.G.)

3. After the insertion of Section 170-B of the Code on the commencement of the Chhattisgarh Land Revenue Code (Amendment) Act, 1980 (Act No.15 of 1980) (hereinafter referred to as the Amendment Act of 1980), which came into force w.e.f. 24.10.1980, a report was submitted by the concerned Revenue Inspector on 28.09.1996 to the Sub-Divisional Officer (Revenue), Lormi, through

Tahsildar Pendra stating therein that the petitioner is in possession over the suit land, however, the Collector's permission is not mentioned in the *Sansodhan Panji*. Based upon the said information, a show-cause notice was issued to the petitioner by the Sub Divisional Officer (Revenue), Lormi, directing him to furnish the particulars that under what capacity he has come in possession over the land in question, belonging to the aboriginal tribe, else his possession would be deemed to be unauthorised.

4. In reply to the aforesaid notice, it is stated by the petitioner that he has come in possession over the suit land on the strength of the registered deed of sale dated 17.12.1986 and since the alleged transaction was made much beyond the period prescribed in Section 170-B of the Code, therefore, the said provision does not get attracted and the proceedings initiated thereunder be dropped. The Sub-Divisional Officer (Revenue), Lormi, however, vide order dated 11.03.1997 directed for reversion of the land in question on finding that the possession of the petitioner is unauthorised over the suit land as the alleged transaction was effected without prior permission of the Collector, as required under sub-section (6) of Section 165 of the Code.

5. Being aggrieved with the aforesaid order of reversion, an appeal was preferred by the petitioner under Section 44 (1) of the Code before the Additional Collector, who in turn, vide its order dated 29.10.1997, reversed the aforesaid order by observing, inter alia, that the alleged transaction made in the year 1986 was much beyond the period prescribed under Section 170-B of the Code, therefore, it is beyond its purview and in consequence, remanded the matter to the S.D.O. (Revenue), Lormi.

6. The aforesaid order was, however, reversed by the Commissioner, Bilaspur vide its order impugned dated 14.11.2002 in Revision preferred by the

aboriginal Gulab Singh under Section 50 of the Code by observing that since the alleged transaction was made in favour of the petitioner without prior permission of the Collector, therefore, his possession cannot be held to be lawful and observed further that although the alleged transaction was made after 24.10.1980, but still the S.D.O. can examine the validity of the alleged sale in exercise of its suo-motu power conferred under Section 170-A of the Code. In consequence, the Commissioner, Bilaspur, has directed for reversion of the land in question to the aboriginal Gulab Singh. This is the order, which has been questioned by way of this petition.

7. Shri Rajeev Shrivastava, learned counsel for the petitioners submits that the order impugned as passed by the Commissioner reversing the order of the Collector by directing for reversion of the land in question to said Gulab Singh is apparently contrary to law. According to him, the alleged transaction was made on 17.12.1986, much beyond the period prescribed under Section 170-B of the Code, therefore, the entire proceedings initiated by the S.D.O. (Revenue) under the said provision is without jurisdiction. He submits further that the mode prescribed under Section 170-B of the Code for reversion of the land would get attracted only if it is found that the person is in unauthorised possession of the agricultural land, which belonged to a member of a tribe defined to be an aboriginal tribe under sub-section (6) of Section 165 of the Code between the period commencing with effect from 2nd of October, 1959 and ending on the date of commencement of Amendment Act of 1980, i.e., 24.10.1980. He, therefore, submits that since the alleged transaction was made in the year 1986, therefore, the entire proceedings initiated under the provision contained in Section 170-B of the Code and consequent upon the issuance of direction for reversion of the land in question in exercise of its suo-motu power under Section 170-A of the Code, is apparently contrary to law. In support, he placed his reliance upon the decisions

rendered in the matter of *Dr. Aboobakar Hingora vs. The State of Madhya Pradesh & Ors.*, decided on 23.06.2006 in Writ Petition No.2692 of 1999 and in the matter of *Yadram and Ors. vs. State of Chhattisgarh and Ors.*, decided on 23.01.2015 in W.P.No.1066 of 2002.

8. On the other hand, Shri M.D.Sharma, learned counsel appears along with Shri Pritam Kumar Tiwari submits that the alleged transaction was made on 17.12.1986, but nevertheless the enquiry regarding authenticity of the alleged sale can be examined by the S.D.O. (Revenue), Lormi, in exercise of its suo-motu power as provided under Section 170-A of the Code. Therefore, the suo-motu power exercised by the S.D.O. (Revenue), Lormi by examining the authenticity of the alleged sale cannot be held to be without jurisdiction. According to him, since the alleged transaction was made without prior permission of the Collector, as required mandatorily under sub-section (6) of Section 165 of the Code, therefore, in exercise of suo-motu power provided under Section 170-A of the Code, the said authority can examine the authenticity of the alleged sale even under clause (ii) of Section 170 of the Code. Lastly, he submits that the provision prescribed under the Land Revenue Code, 1959, is enacted for the benefit of the aboriginals, therefore, the alleged transaction, which was made in contravention of sub-section (6) of Section 165 of the Code without prior permission of the Collector cannot be held to be executed validly, and therefore, the S.D.O (Revenue) was competent to examine the same in its suo-motu power, as conferred upon him under Section 170-A of the Code. In support, he placed his reliance upon the decision rendered in the matter of *Keshabo and another vs. State of M.P. and others* reported in 1996 Revenue Nirnaya 175 (SC).

9. I have heard learned counsel for the parties and perused the entire record carefully.

10. A proceeding has been initiated under Section 170-B of the Code on the basis of the report submitted by the concerned Revenue Inspector where it was reported that petitioner is in possession over the land in question belonging to the aboriginal, however, the Collector's permission is not mentioned in the *Sansodhan Panji*. Based upon it, a show cause notice was issued and an enquiry was conducted by the Sub-Divisional Officer and passed the order directing for the reversion of the land in question as the alleged transaction was made in contravention of the Code. The said order was reversed in appeal preferred by the petitioner by the Collector vide its order dated 29.10.1997 holding that the alleged transaction was made much beyond the period prescribed under the said provision. But, the Commissioner, Bilaspur, by way of its impugned order, has held that since the alleged transaction was made in favour of the petitioner without prior permission of the Collector, therefore, his possession cannot be held to be lawful and held further that the Sub-Divisional Officer, in its suo-motu jurisdiction provided under Section 170-A of the Code, can examine the validity of the alleged sale made after 24.10.1980 when the provision prescribed under Section 170-B of the Code has been inserted by virtue of Amendment Act of 1980.

11. In order to examine the validity of the aforesaid order impugned, it is necessary to examine the provision prescribed under Section 170-B of the Code, which reads as under:-

“[170-B. Reversion of land of members of aboriginal tribe which was transferred by fraud.----(1) Every person who on the date of commencement of the Madhya Pradesh Land Revenue Code (Amendment), 1980 (hereinafter referred to as the Amendment Act of 1980) is in possession of agricultural land which belonged to a member of a tribe which has been declared to be an aboriginal tribe under sub-section (6) of Section 165 between the period commencing on the 2nd October, 1959 and ending on the date of the commencement of Amendment Act, 1980 shall, within [two years] of such commencement, notify to the Sub-Divisional Officer in such form and in such manner as may be prescribed, all the information as to how he has come in

possession of such land.

(2) If any person fails to notify the information as required by sub-section (1) within the period specified therein it shall be presumed that such person has been in possession of the agricultural land without any lawful authority and the agricultural land shall, on the expiration of the period aforesaid revert to the person to whom it originally belonged and if that person be dead, to his legal heirs.

[(2-A) If a Gram Sabha in the Scheduled area referred to in clause (1) of Article 244 of the Constitution finds that any person, other than a member of an aboriginal tribe, is in possession of any land of a bhumiswami belonging to an aboriginal tribe, without any lawful authority, it shall restore the possession of such land to that person to whom it originally belonged and if that person is dead to his legal heirs :

Provided that if the Gram Sabha fails to restore the possession of such land, it shall refer the matter to the Sub-Divisional Officer, who shall restore the possession of such land within three months from the date of receipt of the reference.]

(3) On receipt of the information under sub-section (1), the Sub-Divisional Officer shall make such enquiry as may be deemed 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 pass an order revesting the agricultural land in the transferor and, if he is dead, in his legal heirs.]

[(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 transferor 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 transferor the difference, if any between the price so fixed and the price actually paid to the transferor :

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.]”

12. By virtue of the aforesaid provision, it is clear that the person is required to notify to the S.D.O. all the necessary information regarding his possession within two years from the commencement of the Amendment Act of 1980, i.e., upto

23.10.1982 only when he is found in possession of the agricultural land belonging to the member of aboriginal tribe defined under sub-section (6) of Section 165 of the Code, else his possession shall be deemed to be unauthorised, as required under sub-section (2) of the aforesaid provision.

13. Here, in the instant case, the petitioner has come in possession only on 17.12.1986 when the registered deed of sale was executed by said Gulab Singh in his favour. As such, he was not in possession of the suit land between the period when the Code came into force, i.e., on 02.10.1959 and the insertion of Section 170-B by commencement of the Amendment Act of 1980, i.e., 24.10.1980. Therefore, the initiation of entire proceedings under Section 170-B is *ex facie* illegal.

14. At this juncture, the principles laid down by this Court on 23.06.2006 in the matter of ***Dr. Aboobakar Hingora vs. The State of Madhya Pradesh & Ors.***, (supra) passed in **Writ Petition No.2692 of 1999**, as relied upon by Shri Rajeev Shrivastava, are to be noted, where it has been observed at paragraph 6 while referring to the provision of Section 170-B of the Code, as under:-

“6. xxxx xxxxxx xxxxxx xxxxxx xxxxxx

It is nobody's case that the petitioner was in possession of the subject lands between 02-10-1959 and 24-10-1980 and admittedly, he came into possession of the subject lands in pursuance of the three sale deeds executed in his favour on 18-10-1985 and 02-12-1985. Therefore, initiation of the proceedings by the 4th respondent under Section 170-B was *ex-facie* misconceived. ”

15. Similar is the principles laid down by the Division Bench of this Court in the matter of ***Yadram and Ors. vs. State of Chhattisgarh and Ors*** (supra) decided on 23.01.2015 in W.P.No.1066 of 2002 wherein it has been observed at paragraph 19 as under :-

“19. In view of the legal opinion we have formed regarding the

applicability of Section 170-B of the Code, we answer the question referred that the provisions of Section 170-B of the Code and Act No.15 of 1980 (with effect from 24-10-1980) will apply in respect of transaction involving transfer / acquisition of right by a non-tribal over a land, before such acquisition of title or interest or transfer, belonged to member of tribe who has been declared to be an aboriginal under sub-section (6) of Section 165 of the Code from the commencement of the Chhattisgarh Land Revenue Code, 1959 i.e. 2-10-1959 till commencement of the Amendment Act, 1980 i.e. 24-10-1980.”

16. By applying the aforesaid principles to the case in hand, the entire proceedings initiated under Section 170-B of the Code cannot be held to be sustainable in the eyes of law.

17. Now the contention of Shri Sharma that although the alleged transaction was made in the year 1986 but under clause (ii) of sub-section (1) of Section 170 of the Code, the Sub-Divisional Officer (Revenue) in exercise of its suo-motu power as provided under Section 170-A of the Code can examine the authenticity of the alleged sale when it was made in violation of sub-section (6) of Section 165 of the Code without prior permission of the Collector is required to be examined. In view of the said submission, it is necessary to examine the provision prescribed under Section 170 of the Code, which reads as under:-

“[170. Avoidance of transfer in contravention of Section 165.--- (1) Where possession is transferred by a Bhumiswami in pursuance of a transfer which is in contravention of sub-section (6) of Section 165 any person who, if he survived the Bhumiswami without nearer heirs would inherit the holding, may, —

- (i) till the 31st December, 1978, in the case of transfer of possession prior to the 1st July 1976; and
- (ii) within [twelve years] of such transfer of possession, in subsequent cases,

apply to the Sub-Divisional Officer to be placed in possession subject so far as the Sub-Divisional Officer may, in accordance with the rules made in this behalf determine to his acceptance of the liabilities for arrears of land revenue or any other dues which form a charge on the holding, and the Sub-Divisional Officer shall dispose of such application in accordance with the procedure as may be prescribed.]

(2) Where any land of a Bhumiswami is sold in contravention of sub-section (3) of Section 165, the Court by which such sale is ordered

shall, on the application of the Bhumiswami of any person who, if he survived the Bhumiswami without nearer heirs would inherit the holding made within two years of such sale, set aside the sale and place the applicant in possession of the land subject to his accepting the liability for arrears of land revenue or any other dues which form a charge on the land.”

18. A bare perusal of the aforesaid provision would show that it authorises the person who survived the Bhumiswami without nearer heirs, to apply to the S.D.O. in order to be placed in possession of the land, if transferred, in contravention of sub-section (6) of Section 165 of the Code. Thus, the application under this provision may be made by the successor and not by the transferor himself/herself and enquiry under this provision is restricted only to examine whether a transfer is made in contravention of sub-section (6) of Section 165 of the Code or not. However, the enquiry is altogether different under Section 170-A of the Code. Prior to insertion of this provision, transferor has acquired no right whatsoever to question the validity of the sale made by him/her. Such a right is, however, provided to him/her by insertion of this provision on or from 29.11.1976 when it was brought into the Code, which reads as under:-

“[170-A. Certain transfers to be set aside.--- (1) Notwithstanding anything contained in the Limitation Act, 1963 (No.36 of 1963), the Sub-Divisional Officer may, on his own motion or on an application made by a transferor of agricultural land belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6) of Section 165 on or before the 31st December, 1978, enquire into a transfer effected by way of sale, or in pursuance of a decree of a Court of such land to a person not belonging to such tribe or transfer effected by way of accrual of right of occupancy tenant under Section 169 or of bhumiswami under sub-section (2-A) of Section 190 at any time during the period commencing on the 2nd October, 1959 and ending on the date of commencement of the Madhya Pradesh Land Revenue Code (Third Amendment) Act, 1976 to satisfy himself as to the *bona fide* nature of such transfer.

(2) If the Sub-Divisional Officer on an enquiry and after giving a reasonable opportunity to the persons owning any interest in such land, is satisfied that such transfer was not *bona fide*, he may notwithstanding anything contained in this Code or any other enactment for the time being in force,----

[(a) subject to the provisions of clause (b), set aside such transfer if made by a holder belonging to a tribe which has been

declared to be an aboriginal tribe under sub-section (6) of Section 165 and restore the land to the transfer; or]

[(a) subject to the provisions of clause (b), set aside such transfer if made by a holder belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6) of Section 165 and [restore the land to the transferor by putting him possession of the land forthwith]; or

(b) where such land has been diverted for non-agricultural purposes, he shall fix the price of such land which it would have fetched at the time of transfer and order the transferee to pay the difference, if any, between the price so fixed and the price actually paid to the transferer within a period of six months.]”

19. By virtue of the aforesaid provision, which came into force from 29.11.1976, the S.D.O., on its own motion or on an application made by a transferor of agricultural land belonging to a tribe, which has been declared to be an aboriginal tribe under sub-section (6) of Section 165 of the Code, may enquire into a transfer effected by way of sale, or in pursuance of a decree of a Court of such land to a person not belonging to such tribe or transfer effected by way of accrual of right of occupancy tenant under Section 169 or of Bhumiswami under sub-section (2-A) of Section 190 at any time during the period commencing with effect from 2nd October, 1959 and ending on the date of commencement of the Madhya Pradesh Land Revenue Code (Third Amendment) Act, 1976, i.e., 29th November, 1976. Thus, the validity of the transaction made as such during these periods, (i.e., 02.10.1959 upto 29.11.1976) can be examined by the Sub-Divisional Officer on its own motion or on the basis of the appreciation made by a transfer only on or before 31st December, 1978 as provided therein and, not thereafter. Prior to insertion of this provision, the S.D.O. neither can exercise its suo-motu power nor even can examine the same on the basis of the application made by the transferor. Such a suo-motu power as reflected from the aforesaid provision can be exercised by the S.D.O. only on or before the 31st December, 1978 in order to examine the validity of the sale made on 02.10.1959, when the

Code came into force, upto 29.11.1976, when the Madhya Pradesh/Chhattisgarh Land Revenue Code (Third Amendment) Act, 1976 came into force.

20. Pertinently to be noted here further that prior to insertion of this provision on 29.11.1976, even the transferor had no right to question the validity of the sale made by him/her by moving an application before the S.D.O. as prior to it, the heirs of transferor alone has acquired such right by virtue of the provisions prescribed under Section 170 of the Code.

21. A close scrutiny of both these provisions would, therefore, show that there is a distinction regarding scope of enquiry as well under it. Under the provision prescribed under Section 170-A of the Code, enquiry about bona fide in nature of transferor may be seen but under Section 170 of the Code, it had to be seen whether transfer is made in contravention of Section 165 (6) of the Code or not. Thus, the scope of enquiry as well as the initiation of the proceedings under these provisions are altogether different with each other.

22. Further, as observed herein above, the S.D.O. may exercise its suo-motu power only in relation to the examination of the sale made during the aforesaid periods only on or before 31st December, 1978 as no such right was provided to him after 31st December, 1978 with regard to the transaction made during these periods, i.e., 02.10.1959 upto 29.11.1976. Though the S.D.O. has no right to examine the validity of the sale made during the aforesaid periods in exercise of its suo-motu power, as provided under Section 170-A of the Code after 31st December, 1978, but he gets a right (not as a suo-motu power as provided under Section 170-A of the Code) to examine the validity of the sale by virtue of enforcement of Section 170-B of the Code with regard to the transaction made commencing with effect from the enforcement of the Code, i.e., 02.10.1959 upto 24.10.1980 when this provision (Section 170-B) was inserted on the

commencement of the Amendment Act of 1980.

23. By virtue of sub-section (1) of Section 170-B of the Code, the person who is in possession of agricultural land which belonged to a member of a tribe which has been declared to be aboriginal tribe under sub-section (6) of Section 165 of the Code, is required to notify all the information as to how he has come in possession of such land to the S.D.O. in such form and in such manner, as may be prescribed with regard to the period commencing on and from 2nd October, 1959 and ending on the date of commencement of the Amendment Act of 1980, i.e., 24.10.1980 within two years of such commencement, i.e., upto 23rd October, 1982. It means the transactions which took place on or after 02.10.1959 upto 24.10.1980 alone are governed by this provision. Sub-section (2) of it, provides that if the person required to notify the requisite information to the S.D.O. in the prescribed format upto 23rd October 1982 fails then it shall be presumed that such person holding the land without lawful authority and the land shall be reverted to the person to whom it originally belonged and in case he or she is dead, to his/her heir. Although it appears from a bare perusal of sub-section (2) that the person would be deemed to hold the possession of the land unauthorisedly owing to failure of providing necessary information, as required, however, this presumption is held to be rebuttable in nature, in view of the principles laid down in the matter of *Atmaram* vs. *State of M.P.*, reported in **AIR 1995 MP 225**. And, by virtue of sub-section (3), the S.D.O. is required to hold an enquiry about such transactions of transfer on receipt of the information under sub-section (1). Thus, irrespective of the fact that the person fails to notify in the prescribed format upto 23rd October, 1982 as required under sub-section (1), yet the S.D.O. has to hold an enquiry about all such transactions of transferor made on or from 02.10.1959 upto 24.10.1980.

24. A close scrutiny of the aforesaid provisions, it is evident that the

transaction of transfer which falls within 02.10.1959 upto 29.11.1976, the S.D.O. can make an enquiry under Section 170-A of the Code either on the basis of the application filed by the transferor or in exercise of its suo-motu power only on or before 31st December, 1978 but not under Section 170-B of the Code. This suo-motu power has been provided to the S.D.O. w.e.f. 29.11.1976 when the provision of Section 170-A was inserted in the Code and that too only with regard to the transaction which took place between 02.10.1959 upto 29th November, 1976. But still an enquiry can be conducted by the said authority in view of the enforcement of the provisions prescribed under Section 170-B of the Code which came into force w.e.f. 24.10.1980 on the commencement of the Amendment of 1980. According to it, every person, who on the date of commencement of the Amendment Act of 1980, is in possession of agricultural land which belonged to a member of a tribe, which has been declared to be an aboriginal tribe under sub-section (6) of Section 165 of the Code between the period commencing on 2nd October, 1959, and ending on the date of the commencement of Amendment Act of 1980 shall, within the period of two years of such commencement, i.e., upto 23rd October, 1982, notify to the Sub-Divisional Officer in such form and in such manner, as may be prescribed, all the information as to how he has come in possession of such land. It is, thus, clear that the Sub-Divisional Officer, based upon this provision, vis-a-vis, the principles laid down in the matter of **Atmaram vs. State of M.P.** (supra) can examine the validity of sale which took place on 2nd October, 1959 upto 24th October, 1980 and would not be authorised to examine the validity of sale in any manner which took place thereafter, i.e., after 24.10.1980.

25. In view of the aforesaid provisions coupled with the principles laid down in the above referred decisions, the contention of Shri Sharma, learned counsel for the legal representatives of Respondent No.6 that the Sub-Divisional Officer in

exercise of its suo-motu power provided under Section 170-A of the Code, can examine the validity of the alleged sale made in violation of sub-section (6) of Section 165 of the Code under clause (ii) of sub-section (1) of Section 170 of the Code, based upon the principles laid down in the matter of **Keshabo and another vs. State of M.P and others** (supra) is, therefore, noted to be rejected as the principles laid down therein are entirely distinguishable from the facts involved in the present case. That is the case where a transaction was made on 23.12.1960 in contravention of the Code as prior permission required under sub-section (6) of Section 165 of the Code was not obtained and the authority had suo-motu jurisdiction under Section 170-A of the Code to examine the validity of the said sale. However, such a suo-motu power to examine the validity of sale made on 17.12.1986, i.e., after 24.10.1980 was not available to the authority, i.e., the Sub-Divisional Officer under Section 170-B of the Code. Therefore, I am not impressed with the submission of Shri Sharma else the entire purpose for enacting the provisions prescribed under Section 170-B of the Code restricting the power of the Sub-Divisional Officer to examine the validity of sale made on and from 02.10.1959 upto 24.10.1980, would be defeated.

26. In view of the foregoing discussions and that by applying the principles laid down in the matter of **Dr. Aboobakar Hingora vs. The State of M.P. and others** and **Yadram and others vs. State of Chhattisgarh and Ors.** (supra), the entire proceedings initiated under Section 170-B of the Code is *ex-facie* without jurisdiction and cannot be held to be sustainable in the eyes of law.

27. The petition is accordingly allowed. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge