AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No.4337 of 2005

1. Mayaram, aged about 65 years, S/o Shri Tivarhiya Rajwar, R/o Pasta, Tahsil Surajpur, District Surguja (CG)

2. Anand Ram, aged about 45 years, S/o late Dheeran Rajwar, R/o Pasta, Tah. Surajpur, Distt. Surguja (CG)

3. Shiv Ram, aged about 40 years, S/o late Dheeran Rajwar, R/o Pasta, Tah. Surajpur, Distt. Surguja (CG) **---- Petitioners**

Versus

1. State Of Chhattisgarh, Through Secretary, Department of Revenue, DKS Bhawan, Raipur (CG)

2. Board of Revenue, through Its Secretary, Bilaspur (CG)

3. The Collector, Surguja (CG)

4. Sub Divisional Officer (Rev,) Surajpur, District Surguja (CG)

5. Tahsildar, Tah. Surajpur, Distt. Surguja (CG)

6. Shiv Baran, S/o Siyambar Gond, R/o Village Rampur (Jhagarahi) presently residing at Village Pasta, Tah. Surajpur, Distt. Surguja (CG)

---**Respondents**

For Petitioners	:	Mr. Vivek Bhakta, Advocate
For State	:	Ms. S. Harshita, Panel Lawyer
For Respondents No.6	:	Mr. Bishnu Muni, Advocate appears under instruction from Mr. D.N. Prajapati, Advocate

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Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

11/09/2019

Heard.

1. This petition, under Article 227 of the Constitution of India, is preferred against order dated 13.07.2005 passed by the Board of Revenue affirming

order dated 11.08.2003 passed by the Collector.

2. Brief and relevant facts necessary for adjudication of the controversy involved in the present petition are that one Teeju, a tribe, applied for grant of permission to sell a part of agriculture land on the ground that he needs money for purchase of oxen and agriculture equipments. After making an enquiry, the Collector passed an order on 16.07.1973 (Annexure P/5) granting permission to sell a part of the land in favour of Dheeran and Mayaram. During his lifetime, Teeju did not raise any dispute. He died sometimes in the year 1996-97. Next year i.e. in the year 1998, respondent No.6 started raising dispute with regard to permission granted by the Collector way back in the year 1973 for sale of part of agriculture land. The Sub-Divisional Officer vide its order dated 30.11.2002 rejected the application holding that sale was made upon due permission. An appeal against the said order was preferred before the Collector who, vide order dated 11.08.2003, held that permission granted by the Collector on 17.07.1973 was not bonafide. An order for delivery of possession of the property in dispute in favour of respondent No.6, nephew of Teeju, was passed. This order was challenged before the Board of Revenue by filing a revision petition, which was also dismissed by the Board of Revenue.

3. Learned counsel for the petitioners would argue that the legality and validity of a sale transaction under sale deed dated 17.07.73 as also legality of an order passed by the Collector way back on 16.07.73 was challenged by moving application after about 25 years. According to learned counsel for the petitioners, the application was based on allegation that the purchaser Dheeran and Mayaram falsely stating their caste as 'Keetu' purchased the property of Teeju and the transaction is in violation of Section 170-B of the Land Revenue Code. It is contended that only scope of enquiry was one permissible under Section 170-B of the Land Revenue Code to find out whether aboriginal tribe was defrauded of his legitimate right. The Sub-Divisional Officer rejected the application. In the appeal, the Collector, however, reviewed earlier order of grant of permission of sale of land vide order dated 16/07/1973 (Annexure P/5). The only enquiry which could be held by the Collector was with regard to the aspect as to whether the tribe was defrauded of his legitimate right and not with regard to the correctness

and validity of permission granted in the year 1973. The Board of Revenue has also committed the same illegality, perversity and jurisdictional error.

4. Learned counsel for the respondent, however, would submit that the observations which have been made by the Collector as well as by the Board of Revenue clearly show that serious doubt has been raised with regard to the manner, in which, the orders were passed in the matter of grant of permission. As the permission was not found to be bonafide, the Collector as well as the Commissioner did not uphold earlier order of grant of permission for sale passed by the Collector vide order dated 16/07/1973 (Annexure P/5) and therefore, rightly directed return of the property.

5. I have heard learned counsel for the parties and perused the records.

6. The application for grant of permission for sale of a part of agriculture land, filed by Teeju (the deceased) has been filed collectively as Annexure P/6, in which, Teeju sought permission. The statement given on oath by Teeju has also been annexed, in which, he has stated that he needs money and has also stated that even after sale, he would be left with 1.22 decimal land. He has also stated that he is not selling property under any pressure. The order-sheets filed as Annexure P/7 indicate that note-sheets reflected recommendation for grant of permission. Annexure P/5, the order passed by the Collector also shows that permission was granted.

7. It is extremely relevant to note that Teeju, during his lifetime, never challenged the aforesaid order. Teeju sold a part of his agriculture land vide sale deed dated 17.07.1973 (Annexure P/2). During his lifetime, he neither challenged the order passed by the Collector nor the sale deed. Even according to respondent No.6, as stated in application (Annexure P/11), Teeju died sometimes in the year 1996-97. That means for 25 years, Teeju did not raise any objection to the order of the Collector and the sale deed. It was only when Teeju died that respondent No.6, claiming to be his nephew, moved an application (Annexure P/11) in the year 1998 alleging that purchaser Dheeran and Mayaram had wrongly shown their caste. In the application (Annexure P/11), it was alleged that the transaction was in violation of Section 170-B of the Land Revenue Code. It was on such application that the proceedings were initiated by the Sub-Divisional Officer.

Certainly, it was not an application seeking review or recall of order of grant of permission for sale of land passed by the Collector on 16.07.1973 (Annexure P/5). The allegation being contravention of Section 170-B of the Land Revenue Code, the application, in essence, was for return of the land on the ground that Teeju, an aboriginal tribe was defrauded of his legitimate right. The Sub-Divisional Officer rejected the application as he did not find any fraud. However, on appeal being filed before the Collector, the Collector reviewed the earlier order passed way back in the year 1973 raising certain doubts. The scope of enquiry was limited to find out whether the aboriginal tribe was defrauded of his legitimate right, in view of express provision contained in Section 170-B of the Land Revenue Code. It was neither an application for review of earlier order nor enquiry could be made as if the Collector was reviewing its earlier order for grant of permission passed way back in the year 1973. The Collector erroneously assumed jurisdiction to review the order for grant of permission rather than examining as to whether the tribe was defrauded of his legitimate right because the application which was rejected by the Sub-Divisional Officer was an application seeking return of land under Section 170-B of the Land Revenue Code. The Board of Revenue also fell in serious error in upholding the order of the Collector because the Collector had clearly exceeded its jurisdiction in reviewing the order of permission passed earlier in the year 1973. Both the Collector as well as the Board of Revenue committed patent illegality in assuming jurisdiction to review the order of grant of permission passed by the Collector way back in the year 1973. The entire enquiry was misdirected. The application Annexure P/11 filed by respondent No.6 only intended to seek return of land on the allegation that Teeju, an aboriginal tribe, was defrauded of his legitimate right and not seeking review of earlier order of grant of permission.

8. In view of above consideration, the order passed by the Board of Revenue as also that of the Collector suffer from jurisdictional error, patent illegality and perversity cannot be sustained and are set aside.

9. It is found that no enquiry as contemplated under Section 170-B of the Land Revenue Code was made. Therefore, all that can be done is to leave it open to the Sub-Divisional Officer, Surajpur to hold enquiry only

under Section 170-B of the Land Revenue Code to find out whether deceased Teeju was defrauded of his legitimate right and not to dwelve into correctness and validity of order of permission of sale of land passed by the Collector on 16.07.1973 vide Annexure P/5.

10. The petition is accordingly allowed.

11. No order as to costs.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Rekha