AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1152 of 2007

Madan Prasad Gupta, S/o Ram Khilawan, aged about 45 years, R/o Village-Pathalgaon, Tahsil-Pathalgaon, District -Raigarh, (now Jashpur) C.G.

---- Petitioner

Versus

1. Board of Revenue through President, Bilaspur C.G.
2. The Collector, Jashpur C.G.
3. Sub Divisional Officer, Pathalgaon, District- Jashpur (CG)
4. Pholsai, S/o Sukram Urawn
5. Topiram, S/o Premsai Urawn
6. Kondaram, S/o Premsai Urawn
7. Dharamsai S/o Premsai Urawn
8. Santoshi Bai, D/o Premsai Urawn
9. Narsingh, S/o Purushottam Satnami (wrongly mentioned as Urawn)

   Respondents No. 7 to 10 R/o Village Pathalgaon, Tahsil- Pathalgaon, District, Raigarh (now Jashpur) C.G.
10. Jagturam, S/o Sukhram, R/o Village Pathalgaon, District- Jashpur

---- Respondents

For Petitioner	:	Shri Sanjay Agrawal with Shri Shivanshu Pandey, Advocates
For State	:	Shri Anmol Sharma, Panel Lawyer

SB: Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

28/11/2019

1. This petition is preferred against order dated 6.12.2006 passed by Board of Revenue dismissing the petitioner's revision against the order passed by the Collector in appeal arising out of order passed by the SDO in proceedings under Section 170-B of the Land Revenue Code,

1959.

2. The land in dispute originally belonged to aboriginal tribe Sukhram and Premsai. After Section 170-B was introduced by way of amendment w.e.f. 24.10.1980, a report was received by the SDO, Pathalgaon that present petitioner is in occupation of the land which is otherwise recorded in the name of aboriginal tribe- Sukhram and Premsai. Upon receipt of this information, SDO initiated proceedings under Section 170-B of the Land Revenue Code and issued notice to petitioner-Madan Prasad Gupta. The petitioner came out with an unregistered sale deed and agreement dated 8.9.1983, gave statement before the SDO on 21.10.1994 that he had purchased the property in dispute from one Narsingh S/o Purshottam for consideration of Rs.10,600/- with the consent of original bhumi-swami Sukhram and Premsai who have been given bicycle and Rs.1500/-. He further stated that 12 years before, he constructed the house on the said land. In his statement, he has also stated that he had obtained sanction from Municipality for construction of house and has been paying various taxes to the local bodies. He also stated that he is prepared to pay any amount as difference of the reasonable sale consideration. In his statement, he also stated that in the year 1983, he had taken the land and in 1984, he constructed the house.

   After making enquiry, the SDO passed an order on 25.3.1996 holding that transaction of sale, without permission of Collector as required under Section 165 (6) of Land Revenue Code, is illegal. It was further recorded that with effect from 26.1.1977, the area where the land was situated was declared as scheduled area and, therefore, even the Collector could not have granted permission after 26.1.1977. It was also recorded that in order to defeat the provision of Section 170-B of the Land Revenue Code, house has been constructed. On such consideration, the SDO declared the transaction void and directed return of land to the aboriginal tribe.

3. Aggrieved by the said order, the petitioner preferred appeal before the

Collector. Vide order dated 6.2.1997, the Collector also dismissed the appeal, rejecting all the five grounds raised to assail legality and validity of the order passed by the SDO.

Finally, the petitioner filed revision before the Board of Revenue, the highest revenue Court in the State. The Board of Revenue also dismissed the revision. It is this order which has been challenged by the petitioner before this Court.

4. Learned counsel for the petitioner argues that order of return of land to aboriginal tribe has been passed without holding proper enquiry as envisaged under Section 170-B of the Land Revenue Code. He would argue that even though, no registered sale deed was produced, unregistered document of sale and agreement which were produced before the authority proved that in the past, the land in dispute was also transferred by the aboriginal tribe to one Narsingh Satnami and a house was also constructed and standing on the land. It is next submitted that later on, Narsigh sold the property in dispute in favour of the petitioner for a valid consideration. His next submission is that the said transaction of sale between the petitioner and Narsingh had taken place way back on 19.7.1983. The petitioner also placed before the SDO, a copy of sanction order dated 1.10.1983 for construction of house. In support of this claim of having constructed a house long back in the year 1983 itself, the petitioner also placed copy of challan of payment of fine towards illegal construction. The payment of fine amount was made on 4.10.1985 which shows that since long, the house was already constructed on the property. It is next submitted that in the agreement dated 8.9.1983, executed between the petitioner and Sukhram, there is clear recital to the effect that on the land, Shivkumar has constructed house and residing and that the land was already sold by his father to Shivkumar and it also contained recital that the transferor Sukhram has no objection. The petitioner's statement, recorded before the SDO, also proves that the petitioner had constructed a house long back in the year 1983 itself, and was residing in the said house. Therefore, it is contended, there was neither

any fraud played in the transaction by the petitioner nor it could be said that at the time when the petitioner purchased the property, there was only land and no house constructed thereon.

5. According to learned counsel for the petitioner, a direction for return of the land could not be made unless there was clinching evidence collected through a proper enquiry that member of aboriginal tribe has been defrauded of his legitimate rights. In the absence of clear finding recorded by any of the revenue authority, no direction for return could be made.

6. In the alternative, it is submitted that even if it is held that the land was liable to be returned to aboriginal tribe, in view of provision contained in Section 170-B (3) (b) of the Land Revenue Code, only order which could be passed was to pay to the transferor, the difference, if any, between the price so fixed and the price actually paid to the transferor. Therefore, the orders passed by the Board of Revenue and all other revenue authorities be declared illegal and set aside.

7. Despite service of notice, there is no representation made on behalf of aboriginal tribe being legal representatives of deceased -Sukhram and Premsai.

8. Learned counsel for the State submits that the dispute is between the petitioner and private respondent.

9. I have considered the submissions made by learned counsel for the petitioner and perused the records.

10. In order to protect proprietary interest of aboriginal tribes in the State, an important amendment was made in M.P. Land Revenue Code, 1959, by the then State of Madhya Pradesh and a new Section 170-B, was inserted by M.P. Act No. 15 of 1980, brought into force w.e.f. 24.10.1980. This provision required every person, who was in possession of agricultural land which belonged to member of a tribe which has been declared to be aboriginal tribe under sub-Section (6) of Section 165 of the Land Revenue Code between the period

commencing on the 2nd October 1959 and ending on the date of commencement of Amendment Act, 1980, to inform as to how he has come in possession of the said land. The provision of the aforesaid section contemplates an enquiry to be made by the SDO about all transactions of transfer. Sub- Section (3) of Section 170-B further provides that if the SDO finds that the member of aboriginal tribe has been defrauded of his legitimate rights, he shall declare the transaction null and void and pass an order re-vesting the agricultural land in the transferor and if he is dead, in his legal hairs.

11. Constitutionality and validity of the aforesaid provision was challenged before the High Court of Madhya Pradesh. While examining the legislative intent behind enactment of Section 170-B, in the case of **Dhirendra Nath Sharma Vs. State of M.P. and Anr.,** 1985 MPLJ 786**,** the High Court observed thus:

> "**12**. Section 170-B was inserted later for the same purpose with a view to cover the remaining transfers of agricultural land belonging to tribals under which they had been exploited resulting from their unequal bargaining capacity at the time of the transaction. By enacting Section 170-B, a duty was cast on every person in possession of agricultural land, which belonged to a tribal at any time between 2nd October 1959 and the date of commencement of the Amendment Act of 1980 to notify the Sub-Divisional Officer within the period specified in the prescribed manner all the information as to how he had come in possession of such land. Obviously, the provisions enacted in Section 170-A for initiation of the proceedings was not found sufficient and, therefore, such a provision became necessary to ensure that every such transaction of transfer of land belonging to a tribal at any time after 2nd October 1959 when the

> M.P. Land Revenue Code. 1959 came into force was brought to the notice of the Sub-Divisional Officer to enable examination of its validity on the basis of information supplied by the person in possession. Sub-section (3) provides that on the receipt of such information, 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 tribal transferor has been defrauded, the transaction shall be declared null and void and an order would be made revesting the agricultural land in the tribal transferor or his legal heirs, as the case may be. The order contemplated by Sub-section (3) is to be passed only as a consequence of a finding reached after due enquiry that in the transaction of transfer, the tribal transferor had been defrauded of his legitimate right. Unless such a conclusion is reached, no question arises of declaring the transaction null and void and passing an order revesting the agricultural land in the tribal transferor or his legal heirs. ”

12. The aforesaid decision and the scheme of Section 170-B undoubtedly is a beneficent piece of legislation to ensure that property of aboriginal tribes who have been defrauded of their legitimate rights in the hands of others because of their socio-economic disadvantage on the basis backwardness and illiteracy may not be deprived of their source of livelihood i.e. agricultural land in their hands.

13. In the present case, the petitioner was found to be in possession of the agricultural land which admittedly, originally belonged to aboriginal tribe Premsai and Sukhsai. This fact has not been disputed that the land originally belonged to aforesaid two brothers aboriginal tribes.

14. The petitioner claimed to have come into possession of land on the

basis of an unregistered sale deed executed in his favour by one Narsingh. Having perused the records, this Court finds that in order to support his case, the petitioner placed before the SDO, a copy of unregistered sale deed said to be executed in his favour by Narsingh. Recital of this document are that Narsingh had constructed a house on the land which belonged to Sukhsai and Premsai, since 1964-65. Further recitals are that on account of his own necessity, he sold his share admeasuring 4 and ½ decimal to petitioner- Madan Prasad for a consideration of Rs.5,600/- and also handed over possession. The agreement also talks of sale of another piece of land to Shivkumar Gupta for a consideration of Rs.5000/-. This agreement is said to have been executed on 19.7.1983. Firstly, this a photocopy. It has been prepared on a stamp paper of Rs. 5/- and has not even been registered. There are no details of the property. The petitioner did not even produce Narsingh for examination before the authority.

15. The petitioner relies upon another agreement dated 8.9.1983 said to be executed by Sukhram in his favour. A photocopy of this document on a stamp paper or Rs.5/- has been placed on record. Recitals of this document are that Sukhram has no objection to petitioner residing in the house and that Sukhram's father had already sold the property to petitioner Madan Prasad Gupta.

16. Petitioner- Madan Prasad Gupta's statement was recorded by the SDO and in that statement, the petitioner claims to have purchased the property from Narsingh for consideration of Rs.10,600/- from both Sukhsai and Premsai and states that in lieu of consent given by these two bhumi-swamis, he had given bicycle to each of them.

17. On the face of it, the entire transaction is nothing but a fraudulent one. The agreement and sale deed are not only contradictory to each other but they are also at variance with what has been stated by the petitioner in his statement before the SDO. There is no registered sale deed. Petitioner's case with regard to purchase of land from Narsingh is contradicted from agreement dated 8.9.1983 in which there is recital

that land was already purchased by father of the partitioner from Sukhram. If that be so, there was no need to get another sale deed executed. The petitioner claims to have purchased property from Narsingh. There is no document on record nor any evidence led to show as to how Narsingh came in possession of the property of aboriginal tribe. While in various documents, it is claimed that sale consideration was paid to Narsingh, petitioner submits that he had obtained consent of the two owners Premsai and Sukhsai and given bicycle to each of them for seeking their consent.

18. The SDO has clearly recorded that after the area, where the land is situated, was declared as notified area under Section 165 (6) of the Land Revenue Code w.e.f. 26.1.1977, the Collector also could no have granted permission for sale of the land.

This is also clear from provision contained in Section 165 (6) of the Land Revenue Code.

19. All these considerations weighed in the mind of SDO, Collector and the Board of Revenue to hold that the land of the aboriginal tribe is liable to be returned to them. This factual aspect of the matter which are clearly borne out from the records of the case, lead to an inference that there was enough material on record for the authority to come to the conclusion that aboriginal tribes were defrauded of their legitimate rights and their agricultural land was grabbed.

20. The alternative submission of learned counsel for the petitioner that in any case, the land is not liable to be returned but only difference of the reasonable price may be recovered from the petitioner, upon close scrutiny of the material on record, does not merit acceptance. In his statement, the petitioner stated that he got the house constructed 12 years before. However, in the agreement on which the petitioner relies upon, it is stated that the house is standing . This sought to be resolved by submitting that earlier a kachcha house was standing which was later on converted into a pakka house. A building permission dated 1.10.1983 has been placed on record. However, merely because a

building permission was granted is not a proof of the fact that house was constructed. Secondly, the receipt regarding payment of fine for illegal construction is dated 4.10.1985. It is not a document prior to 1.1.1984. There is no clinching evidence led by the petitioner to prove that the house was already constructed prior to 1.1.1984. Various document placed on record were also taken into consideration by the Bord of Revenue. It appears that some construction had taken place but there is no clinching evidence that such construction was prior to 1.1.1984. Documents and statements are equivocal and all that can be said is that some construction was raised on the property some times in the year 1984-85 but whether it was prior to 1.1.1984 or thereafter, is not supported from any clinching evidence.

21. A direction for payment of difference of the reasonable prices and what has been actually paid may be ordered only when it is found that the house was constructed prior to 1.1.1984.

22. After examining the material on record and the orders of the various revenue authorities, this Court does not find that there is any scope of interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. There exists material on record to reach to the conclusion, which have been arrived at by all the Revenue Courts.

23. In the result, the petition fails and is hereby dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Praveen