

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.45 of 2007

1. Jaimangal, S/o Dhamodhar Sharma, Aged about 53 years.
 2. Rajmangal, S/o Dhamodhar Sharma, Aged about 46 years.
- Caste of both the appellants is Brahmin, Both are R/o Village Gharghoda, Police Station & Tehsil – Gharghoda, District Raigarh (Chhattisgarh)

---- Appellants/Plaintiffs

Versus

State of Chhattisgarh, Through the Collector, Raigarh (Chhattisgarh)

---- Respondent

For Appellants/Plaintiffs	:	Mr.B.D.Guru, Advocate
For Respondent/Defendant	:	Mr.Arun Shukla, Govt.Advocate

Hon'ble Shri Justice Sanjay K. AgrawalOrder On Board31/07/2019

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellants/plaintiffs.
2. The suit filed by the plaintiffs was dismissed by the trial Court, which was affirmed by the first appellate Court, against which, this second appeal under Section 100 of the CPC has been preferred by the plaintiffs.
3. The suit land is government land. Shri Netranand Singh was granted patta over the suit land for residential purpose on 13.7.78 and thereafter, the land was sold by legal representatives of Netranand Singh in favour of the plaintiffs on 21.4.1995. On complaint being filed by Bhoko Ram Nagwanshi, the Collector, Raigarh by its order dated

16.1.2004 finding the transfer dated 21.4.1995 in favour of the plaintiffs in violation of the provisions contained in Section 165(7-b) of the Code revoked the patta granted in favour of Shri Netranand Singh and declared the said land to be reserved for *abadi*. The plaintiffs being aggrieved against that order filed a suit for declaration of title before the trial Court. The trial Court dismissed the suit holding that patta and sale deed granted in favour of the plaintiffs have rightly been revoked by the Collector in view of the provisions contained in Section 165(7-b) of the Code, which was upheld by the first appellate Court.

4. Mr.B.D.Guru, learned counsel for the appellants/plaintiffs, would submit that both the Courts below were absolutely unjustified in holding that provisions contained in Section 165(7-b) of the Land Revenue Code, 1959 (hereinafter called as “the Code”) is applicable, therefore, the finding being perverse is liable to be set aside and as such, the appeal give rise to substantial question of law for determination.
5. On the other hand, Mr.Arun Shukla, learned Government Advocate for the respondent/defendant, would support the impugned judgment and decree.
6. I have heard learned counsel for the appellants/plaintiffs and considered his submissions made hereinabove and also went through the records with utmost circumspection.
7. Section 165(7-b) of the Code came into force w.e.f. 24.10.1980, which states as under:-

“7-b) Notwithstanding anything contained in sub-section (1), a person who holds land from the State Government or a person who holds land in Bhoomiswami rights under sub-section (3) of section 158 or whom right to occupy land is granted by the State Government or the Collector

as a Government lessee and who subsequently becomes Bhoomiswami of such land, shall not transfer such land without the permission of a revenue officer, not below the rank of a Collector, given for reasons to be recorded in writing.”

8. A close reading of above-stated amended provision would clearly show that a person who holds land from the State Government or a persons who holds lands in Bhoomiswami rights under sub-section (3) of Section 158 or whom right to occupy land is granted by the State Government and who subsequently becomes Bhoomiswami of such land, shall not transfer such land without the permission of a Revenue Officer, not below the rank of a Collector, given for reasons to be recorded in writing. The above stated provision has been made to restrict the transfer of the land, which has been granted on lease by the State Government to landless person and such person cannot be deprived of the land by any transfer except as permissible under Section 165(7-b) of the Code. By virtue of amendment incorporated in 165(7-b) w.e.f. 28.10.1992, requirement of obtaining permission from Collector has also been made applicable to a person who holds land in Bhoomiswami rights under Section 158(3) of the Code.
9. Thus, it is quite vivid that provision would also be applicable to a person who holds land from the State Government and transfer is barred without obtaining permission from the Collector. Legal representatives of Netranand Singh to whom patta was granted by the State Government was required to obtain permission from the Collector before alienating the suit land in favour of the plaintiffs in view of the provisions contained in Section 165(7-b) of the Code, which they did not obtain before transferring the suit land in favour of the plaintiffs and

therefore, transfer being void and made in violation of the provisions contained in Section 165(7-b) of the Code. Both the Courts below were absolutely justified in holding that the plaintiffs are not entitled for decree particularly also for the reason when copy of order dated 16.1.2004 passed by the Collector was neither produced nor exhibited though it was sought that it is not binding on the plaintiffs. In view of above, I do not find any illegality or perversity in the finding recorded by the Courts below and even I do not find any substantial question for determination of this second appeal.

10. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in *limine* without notice to other side.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-