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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on 27.6.2019****Judgment delivered on 25.7.2019****Writ Appeal No. 326 of 2017**

(Arising out of the order dated 2.2.2017 passed by learned Single Bench in
Writ Petition No.2154/1987)

1. Jungbahadur Singh S/o Late Shri Trilochan Singh. Aged about 61 years, resident of Nayapara, Gidam Road, Jagdalpur (CG)
2. Pritpal Singh, son of Late Shri Trilochan Singh, aged about 58 years, resident of Nayapara, Gidam Road, Jagdalpur (CG)
3. Smt. Surinder Kaur, wife of Shri Kulwant Singh, aged about 66 years, resident of Nagpur, Maharashtra
4. Smt. Jatinder Kaur, wife of Shri Paramjeet Singh Bedi, aged about 55 years, resident of Bharuch, Gujarat

-----Appellants**VERSUS**

1. State of CG (earlier MP) through the Chief Secretary, Government of Chhattisgarh, Mahanadi Bhawan, Mantralay, Raipur
 2. Board of Revenue, Chhattisgarh Bilaspur/Raipur/Jagdalpur
 3. Additional Settlement Commissioner-cum-Competent Authority (under the Ceiling on Agricultural Holdings Act, 1960) Raipur (earlier shown as 'Moti Mahal Gwalior')
- (Respondent No.4 Smt.Vedvati alias Subhraj Kumari died living no legal heirs and therefore not made party)

-----Respondents

For Appellants : Mr. B. P.Sharma and Mr.Sameer Oraon, Advocates

For Respondents No.1 &3/State : Mr.Gagan Tiwari, Dy. Govt. Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Sanjay K. Agrawal, Judge

C.A.V. Order

Sanjay K. Agrawal, J.

1. Invoking appellate jurisdiction of this Court under Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006, the appellants herein, who are legal representatives of writ petitioner- Sardar Trilochan Singh [who died after delivery of judgment in writ petition], have preferred this writ appeal calling in question legality, validity and correctness of the order dated 2.2.2017 passed by the learned Single Judge in Writ Petition No.2154/1987 dismissing his writ petition filed under Article 226 of the Constitution of India finding no merits, dubbing the order so passed as contrary to law.

[For sake of convenience, parties hereinafter will be referred as per their status shown in the original writ petition]

2. The dispute relates to land held by Smt.Vedvati, holder of land (respondent No.4 in the writ petition), widow of late Praveen Chand Bhanjdeo, the Maharaja of Bastar [she was not impleaded in this appeal as she died issue-less]. The competent authority in exercise of powers conferred under Section 11 of the M.P. Ceiling on Agricultural Holdings Act, 1960 (hereinafter called as "the Act of 1960") on 05.07.1985 declared 60.87 acres of land held by respondent No.4 therein including the land claimed by original writ petitioner as surplus land to be vested in the State. The writ petitioner filed the writ petition stating inter-alia that he is owner of Khasra No.30, area 26.50 acres at Jagdalpur (Bastar), which was also subject-matter of vesting by order dated 5.7.1985 on the strength of lease having been granted by Smt.

Vedvati, respondent No.4 therein in the year 1970-71 placing him in actual physical and cultivating possession over the land. He further claimed that his name was entered in the revenue records on and from the year 1970-71 conferring upon him the status of occupancy tenant, which was later on recognized by an order passed by the Tashildar, Jagdalpur dated 3.1.1986 declaring him as Bhoomiswami of the land. It was claimed that revision preferred by the writ petitioner under Section 11(5) of the Act of 1960 was dismissed by the Board of Revenue holding it to be barred by limitation and review petition was also dismissed by the Board of Revenue, therefore, the order dated 5.7.1985 and orders of the revisional and appellate authorities be quashed and the writ petition be allowed.

3. The Learned Single Judge after taking note of the fact that writ petition was filed on 22.7.87 and remained pending till the matter came up for hearing on 19.10.2016 decided to hear the parties on merits instead of remanding the matter to the Board of Revenue for deciding the appeal/revision on merits after condoning the delay in preferring appeal/revision which learned counsel for the parties graciously agreed and after hearing the parties on merits, dismissed the writ petition holding that alleged grant or approval of or accrual of Bhumiswami right to the writ petitioner being itself is void and inoperative in view of the provisions contained in Section 5 read with Section 6-B of the Act of 1960 and declined to grant any relief to the writ petitioner. Now, by way of this writ appeal, *//s* has been brought before us.
4. Mr. B. P. Sharma, learned counsel appearing for the appellants, would submit that impugned order passed by the learned Single Judge is perverse and contrary to the facts and law available on record. He

would further submit that Section 6-B of the Act of 1960 would not be applicable in the instant case, as the writ petitioner had become occupancy tenant of the subject land prior to coming into force of the provisions contained in Section 6-B of the Act of 1960, which came into force only with effect from 24.1.1984. He would also submit that order dated 03.01.1996 conferring the writ petitioner as Bhumiswami under Section 169 read with Section 190 of the Chhattisgarh Land Revenue Code, 1959 has become final and it was never challenged by respondent State/its authorities. Therefore, the impugned order passed by the learned Single Judge is liable to be set aside and consequently, the order dated 05.07.1985 to the extent of lease held by the writ petitioner be also set aside.

5. On the other hand, Mr. Gagan Tiwari, learned Deputy Government Advocate appearing for respondents No.1 and 3/State, would support the impugned order passed by the learned Single Judge and submit that the order passed by the learned Single Judge is unexceptionable and the writ appeal deserves to be dismissed.
6. We have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
7. The question for consideration would be whether the learned Single Judge is right in declining interference to the challenge made to order passed by the competent authority under Section 11 of the Act of 1960 vesting the subject land under Section 11 of the Act of 1960 in favour of the State holding it to be surplus land with holder of land i.e. respondent No.4 in the writ petition.

8. The object of the Act of 1960 is to provide for the imposition of ceiling on agricultural holdings, acquisition and disposal of surplus land and matter ancillary thereto. In construing the provisions of the Act of 1960, the broad objective of the Act has to be kept in view. The Ceiling Act is a social welfare legislation designed to implement the great objective of securing social justice enshrined in the Preamble and the Directive Principles of the Constitution. The object of the Ceiling Act is to make available surplus land to the Government for distribution to the needy. The said Act came into force with effect from 20th September, 1960. Section 5 (a) and (b) of the Act of 1960 provides as under:-

“5. Restrictions on transfer or sub-divisions of land and consequences of transfer or sub-division made in contravention thereof.- Notwithstanding anything contained in any law for the time being in force, no land shall be-

(a) transferred whether by way of sale (including sale in execution of a decree of a Civil or of an award or order of any other lawful authority) or by way of gift, exchange, lease or otherwise; or

(b) sub-divided (including sub-division by a decree or order of a Civil Court or any other lawful authority) whether by partition or otherwise;

until a final order under Section 11 is passed except with the permission in writing of the Collector.”

9. A careful perusal of the aforesaid provision would show that though Section 5 of the Act of 1960 does not in terms say that a transfer made in contravention of the prohibition contained in it would be void, that would be the consequences in view of provision contained in Section 23 of the Contract Act read with Section 4 of the Transfer of Property Act. The purpose of Section 5 was to prevent a holder from defeating the object of the Act by making transfers or sub-divisions of his holding. There being a public policy behind Section 5 of the Act of 1960, the

requirement of permission of the Collector must be construed as mandatory and transfers made in contravention of that requirement must be held to be void for all purposes. It has been held so by the Division Bench of the Madhya Pradesh High Court in the matter of **State of Madhya Pradesh v. Board of Revenue and others**¹.

10. At this stage, it would be appropriate to notice Sections 6-B and 6-BB of the Act of 1960 which provide as under:-

“6-B. Accrual of right of occupancy tenant or Bhumiswami under Code to be void.-Where as a consequence of lease given by a tenure holder of land comprised in his holding in contravention of Section 168 of the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959) rights of an occupancy tenant or bhumiswami, as the case may be, have accrued to the lessee under Section 169 or Section 190 of the said Code during the period commencing from 1st January, 1971 and ending on the appointed day, accrual of such rights shall be void and of no legal effect whatsoever for the purposes of this Act, notwithstanding anything contained in this Act or any other law for the time being in force or any judgment, decree or order of any Court.

6-BB. Declaration of surplus land in cases to which Section 6-B apply.-Where as a result of operation of Section 6-B, there is an addition to the quantum of land held by a holder prior to such operation so as to necessitate declaration of surplus land, then notwithstanding anything contained in this Act, the competent authority shall in declaring the surplus land specify the land in the following order:-

- (i) the land held by such holder other than the land to which Section 6-B relates;
- (ii) if the land so held by him falls short of the requisite surplus the entire land so held and so much of the land to which Section 6-B relates as falls short of the requisite surplus.”

Section 6-B of the Act of 1960 came into force with effect from 24.1.1984 by which any accrual of right of occupancy tenant or Bhumiswami from 1st January, 1971 and ending on the appointed day *i.e.* 01.03.1974 shall be void and of no legal effect whatsoever for the

¹ 1983 M.P.L.J. 148

purpose of this Act.

11. It is the case of the writ petitioner that holder of land i.e. respondent No.4 in the writ petition (now deleted) had leased out the subject land to him in the year 1970 and placed him in actual, physical possession and cultivating possession over the land and consequently, his name was entered into revenue record on and from the year 1970-71 conferring him the status of occupancy tenant, which was recognized by order of Tahsildar on 03.01.1986 declaring him Bhumiswami of land and directing mutation of his name. The writ petitioner had filed no document(s) to demonstrate that lease was actually granted to him by respondent No.4 prior to 01.01.1971, the date specified in Section 6-B of the Act of 1960 except proclaiming to be in possession of subject land since 1970. In Annexure P-2 (Khasra Panchsala), for the year 1970-71 the subject land is recorded in the name of Bastar Maharaja and in Column-12 of Khasra Panchsala, only it has been mentioned as per statement of respondent No.4 therein (Smt. Vedvati) that the subject land was cultivated by original writ petitioner, as such, no other document evidencing lease was brought on record. Even otherwise, the order dated 03.01.1996 passed by the Tahsildar would not confer any right of Bhumiswami to the original writ petitioner in light of provisions contained in Sections 5, 6(B) and 11 of the Act of 1960, which clearly provide that any such transfer would be void, as such, the above-stated provision clearly bars the transfers by way of lease or otherwise. In our considered opinion, the learned Single Judge has taken the correct view of the matter, which we are not inclined to interfere in intra-court appeal, finding no illegality or perversity in the order passed by the learned Single Judge.

12. We do not find any merit in the submissions of learned counsel for the appellants herein and we concur with the view taken by the learned Single Judge and hereby dismiss the writ appeal. No cost(s).

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Sanjay K. Agrawal)
Judge

Bablu

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Appeal No.326 of 2017

Appellants

Jungbahadur Singh and others

Versus

Respondents

State of Chhattisgarh and others

(English)

In construing the provision of the M.P. Ceiling on Agricultural Holdings Act, 1960, the board objective of the Act has to be kept in view as it is a social welfare legislation.

(हिन्दी)

म.प्र.कृषिक जोत उच्चतम सीमा अधिनियम, 1960 के प्रावधान के निर्वचन में, अधिनियम के विस्तृत उद्देश्य का ध्यान रखा जाना चाहिये क्योंकि यह एक सामाजिक कल्याण विधान है।