

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 10-07-2019

Judgment delivered on 2-8-2019

FA No. 157 of 2008

- Kiran Devi W/o Vishnu Pratap Agrawal, aged about 40 years, R/o Gaddipara, Ambikapur, Surguja Through Her Power of Attorney Holder Vishnu Pratappur Agrawal S/o Chandagi Ram Agrawal, R/o Gaddipara, Ambikapur, District Surguja (CG).

---- Appellant/plaintiff

Versus

1. State of Chhattisgarh through Collector, Ambikapur, District Surguja (CG).
2. Collector, Surguja, Ambikapur, District Surguja (CG).
3. Sub Divisional Office Revenue Surajpur, Dist. Surguja (CG).
4. Nayab Tahsildar, Pilkha, Surajpur, District Surguja (CG).

---- Respondent/defendants.

For appellant : Mr. Shubhank Tiwari, Advocate appears
on behalf of Mr. Manoj Paranjape,
Advocate

For respondents/State: Mr. A.N. Bhakta, Dy.A.G.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 22-8-2008 passed by the 2nd Additional District Judge (FTC), Surajpur, District Surguja (CG) in Civil Suit No. 6-A/2007 wherein the said court dismissed the suit filed by the appellant/plaintiff for declaration

of title, permanent injunction and for declaring the order void passed by the Collector, Surguja at Ambikapur dated 18-6-2001 in Revenue Case No. 82-A/21/99-2000 vested the land bearing survey No. 377 area 0.40 hectares and survey No. 378 area 0.40 hectares in the State Government.

2) As per appellant, land in question was allotted to one Nakul Viswas who was a displaced person of Indo-Pakistan. The suit land originally belongs to the State Government and was put under the compensation pool under Section 14 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (for short, "the Act, 1954"). The scheme was sponsored by the Central Government and land was vested with the Central Government. After death of Nakul Viswas, the land was recorded in the name of his widow and son and they came to be in possession of the property in question and got recorded their names in revenue records. Legal heirs of Nakul Viswas executed the registered sale deed dated 30-6-1993 in favour of Shakuntala Devi through registered sale deed dated 30-6-1993. As per the appellant, Collector has no jurisdiction to cancel the registered sale deed and procedure adopted by the State Authority under Section 165 (7)(b) of the Madhya Pradesh/Chhattisgarh Land Revenue Code, 1959 is not sustainable. The trial court failed to appreciate the oral and

documentary evidence on record in its true perspective that is why appeal is preferred before this court.

3) Learned counsel for the appellant would submit as under:

- i) As Nakul Viswas was owner of the land his legal heirs had all the right to alienate the property in question, therefore, transfer of property is valid.
- ii) Proceeding started by the Collector, Surguja is without jurisdiction and he has no authority to cancel the sale deed. He placed reliance in the matter of **Bhagwandas and another vs. Sardar Atma Singh¹ Atma Singh (Sardar) s, Bhagwandas and another² and Ramti Devi (Smt) vs Union of India³.**

4) On the other hand, learned counsel for the respondent would submit that there is no such record that the land was owned by the Central Government. The property in question is owned by the State Government, therefore, provision of Section 165(7)(b) of CG Land Revenue Code 1959 is applicable. He would further submit that the sale deed was executed without seeking

¹1996 RN 233 (SC)

² 1995 JRN 311 (HC)

³(1995) 1 SCC 198

permission from the authority who is Collector, therefore, same is void *ab initio*. The land is granted through lease and lessee has no right to alienate the property because lease is granted under terms and conditions and if any condition is violated, lease can be cancelled. He would further submit that lessee has no right to alienate the property, therefore, the order of the Collector is legally sound and the trial court is right in dismissing the suit.

5) I have heard learned counsel for the parties and perused the record of the court below in which judgment/decreed has been passed.

6) From the document Ex.P/3, it is clear that proceeding to grant lease to successors of Nakul Viswas was started in the year 1993 and it is granted as per Ex.P/4 by the Naib Tahsildar, Surajpur. There is nothing on record that the land was ever owned by the Central Government and the Act of 1954 regarding rehabilitation is applicable in the present case. When the legal heirs of Nakul Viswas obtained lease from Naib Tahsildar, the provisions of CG Land Revenue Code 1959 is applicable in the present case and lessee was under obligation to comply with the conditions mentioned in the lease. The lease can be cancelled by the authority which granted it. Lessee has no right to alienate property by execution of sale deed. Without sanction of authority entitlement of lessee is not perfect, therefore, Collector was right

in holding that alienation without permission of Collector is void *ab initio*.

7) The trial Court has elaborately discussed the entire oral and documentary evidence and recorded finding that the appellant was not the owner of the property in question and no right can be passed to person who purchased the property from the appellant. After re-assessing the oral and documentary evidence, this court has no reason to record contrary finding what is recorded by the trial Court. The case laws cited by learned counsel for the appellant are of no help as the same are distinguishable from the facts of the present case.

8) The appeal is liable to be and is hereby dismissed. Accordingly, decree is passed in favour of respondents and against the appellants as under:

- (i) The appeal is dismissed with cost.
- (ii) Parties to bear their own costs.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE