NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 827 of 2002

- Dhamtaria @ Laxman Sinha (Dead) Through LRs as Per Hon'ble Court Order Dated 10-07-2019.
  1.1 - (A). Sumer Sinha S/o Late Dhamtaria Muner Sinha, R/o Village Dhodhara, Tahsil And District Gariyaband, Civil And Revenue District Gariyaband Chhattisgarh.
  1.2 - (B). Muner Sinha S/o Late Dhamtaria R/o Village Dhodhara, Tahsil And District Gariyaband, Civil And Revenue District Gariyaband Chhattisgarh.
  1.3 - (C). Paduram Sinha S/o Late Dhamtaria R/o Village Dhodhara, Tahsil And District Gariyaband, Civil And Revenue District Gariyaband Chhattisgarh.
  1.4 - (D). Bholaram Sinha S/o Late Dhamtaria R/o Village Dhodhara, Tahsil And District Gariyaband, Civil And Revenue District Gariyaband Chhattisgarh.
  1.5 - (E). Shyamlal Sinha S/o Late Dhamtaria R/o Village Dhodhara, Tahsil And District Gariyaband, Civil And Revenue District Gariyaband Chhattisgarh.
  1.6 - (F). Hemlal Sinha S/o Late Dhamtaria R/o Village Dhodhara, Tahsil And District Gariyaband, Civil And Revenue District Gariyaband Chhattisgarh.
  1.7 - (G). Rajkumar Sinha S/o Late Dhamtaria R/o Village Dhodhara, Tahsil And District Gariyaband, Civil And Revenue District Gariyaband Chhattisgarh.
  1.8 - (H). Shiv Kumar Sinha S/o Late Dhamtaria R/o Village Dhodhara, Tahsil And District Gariyaband, Civil And Revenue District Gariyaband Chhattisgarh.

---- Petitioners

Versus

1. State Chhattisgarh Through Principal Secretary Land Revenue, Mantralaya, D.K.S. Bhawan, Raipur, Chhattisgarh

2. Commissioner Raipur, Division, Raipur, Chhattisgarh

3. Collector Raipur, Chhattisgarh

4. Mukund (Dead) Through Legal Heirs as Per Hon'ble Court Order Dated 19.03.2018.
   4.1 - (A) Amir S/o Late Mukund
   4.2 - (B) Konda S/o Late Mukund Aged About 40 Years
   4.3 - (C) Jaiman S/o Late Mukund Aged About 30 Years
   4.4 - (D) Kushal S/o Late Mukund Aged About 25 Years
   4.5 - (E) Dhanu S/o Late Mukund Aged About 20 Years

---- Respondents

For Petitioners	:	Shri B.P.Sharma and Shri Manish Thakur, Advocate
For State	:	Shri Anmol Sharma, Panel Lawyer

S.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

07/08/2019

This petition, under Article 226 / 227 of the Constitution of India, is directed against order dated 21/01/2002 passed by the Additional Commissioner, Division – Raipur, Chhattisgarh in Revision Petition No.113/A-23/2000-01 arising out of order dated 13/06/2001 passed by the Additional Collector, Gariyaband in appeal case of 22/A-23 99-2000 in proceedings under the Land Revenue Code, 1959 (for short "the Code of 1959") in the matter of claim of return of land.

2. The proceedings under Section 170-B of the Land Revenue Code were initiated by the Sub-Divisional Officer, Gariyaband on the basis of report of a Revenue Officer (Patwari) concerning land situated in Village – Adpaathar which is said to be belonging to applicant – Mukund S/o. Sukhruram Gond. The Sub-Divisional Officer, after drawing proceedings and examination of persons appearing to be involved in the said transaction, passed an order directing return of land to Mukund S/o Sukhruram Gond against which, an appeal was preferred before the Collector. The Collector, vide order dated 13/06/2001, set aside the order passed by the Sub-Divisional Officer on the ground that as the transaction relates to the period prior to 02/10/1959 i.e. prior to coming into force of Land Revenue Code, such transaction is outside the provisions as enumerated under Section 170-B of the Code of 1959. Upon revision being preferred by Mukund, learned Revisional Authority was of the view that the proceedings under Section 170-B of the Code of 1959 could be drawn by the Sub-Divisional Officer even in

respect of the transaction alleged to have taken place prior to 02/10/1959 i.e. the date of coming into force of the Land Revenue Code. Learned Revisional Authority, having examined the material on merits, set aside the order passed by the Collector and affirmed that of the Sub-Divisional Officer, Gariyaband.

3. Learned counsel for the petitioner would argue that firstly, the provisions contained in Section 170-B of the Land Revenue Code could not be invoked to enter into an enquiry for the purpose of returning the land to an aboriginal tribe on the alleged ground of he being defrauded of his legitimate right where alleged transaction is said to have taken place prior to 02/10/1959. The other submission is that otherwise also, the proceedings drawn by the Sub-Divisional Officer do not show that the predecessor in title, namely, Sukhruram Gond was defrauded of his legitimate right. During his life time, Sukhruram Gond never challenged the transaction of the year 1938 and remained fully satisfied with the consideration which was paid to him. It was only after death of Sukhruram Gond that his son Mukund, lured by enhanced value of the land, started raising dispute. According to him, the order of return of land could be directed only in those circumstances where there is material evidence available on record that the Tribal was defrauded of his legitimate right. Even if in a case, transaction has not taken place in the registered document, it could not be said to be a case of fraud and such finding could be recorded only on the material facts and circumstances to prove any fraud played upon aboriginal tribe. In support of his submission, learned counsel for the petitioner places reliance upon Division Bench judgment of this Court in W.P.No.1066/2002 (*Yadram (dead) through LRs. v. State of Chhattisgarh*) passed on 23/01/2015.

4. Learned State counsel would submit that the matter relates to dispute between the private parties. He, however, on issue of law, would submit that it

has been decided by the Division Bench of this Court that the transaction of the period prior to 02/10/1959 would not come within the teeth and rigor of Section 170-B of the Land Revenue Code.

5. None for other respondents.

6. After having heard learned counsel for the parties and particularly, the legal issue arising for consideration, I am of the considered opinion that this petition deserves to be allowed only on the other ground that the transaction in the present case was outside the scope of enquiry under Section 170-B of the Land Revenue Code. In the matter relating to applicability of amended provisions of Section 170-B of the Code of 1959, a Division Bench of this Court in W.P. No.1066/2002, while answering reference on a question of law, has categorically held that the provisions of Section 170-B of the Chhattisgarh Land Revenue Code, 1959 brought by M.P. Amendment Act No.15 of 1980 with effect from 24/12/1980, are not applicable in respect of transactions prior to commencement of Code of 1959 involving transfer / acquisition of right by a non-tribal over a land which, before such acquisition of title or interest or transfer, belonged to a member of tribe who has been declared to be an aboriginal tribe under sub section (6) of Section 165 of the C.G. Land Revenue Code, 1959.

7. In view of the aforesaid settled legal position in the decision referred to herein above, the proceedings drawn by the Sub-Divisional Officer under Section 170-B of the Code of 1959 are without jurisdiction and authority of law. Admittedly, in the present case, transaction in question is dated 24/07/1938 i.e. much before commencement of the Code of 1959. Only on this count, the entire proceedings of the Sub-Divisional Officer are held to be void and nonest. The order passed by the Revisional Authority holding that the provisions under Section 170-B of the

Code of 1959 were applicable to the transaction in question, therefore, is patently illegal and cannot be sustained in law.

8. In the result, the petition deserves to be and is accordingly allowed. The impugned order passed by the Revenue Authority on 21/01/2002 is set aside. The entire proceedings under Section 170-B of the Code of 1959 are declared to be *non est* and possession of the land in question shall be returned to the petitioner by appropriate proceedings to be drawn by the Sub-Divisional Officer.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Deepti