**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPC No.6516 of 2007**

1. Enus Kujur S/o Daduram Aged About 34 Years Caste- Uraon, R/o Village - Bandiyakhar, Tahsil- Pathalgaon, District- Jashpur, Chhattisgarh, Chhattisgarh

2. Francis Kujur S/o Daduram Kujur Aged About 39 Years Caste- Uraon, R/o Village - Bandiyakhar, Tahsil- Pathalgaon, District- Jashpur, Chhattisgarh, District : Jashpur, Chhattisgarh

3. Prakash S/o Luduram Aged About 47 Years Caste- Uraon, R/o Village - Bandiyakhar, Tahsil- Pathalgaon, District- Jashpur, Chhattisgarh, District : Jashpur, Chhattisgarh

4. Bandhanu S/o Luduram Aged About 45 Years Caste- Uraon, R/o Village - Bandiyakhar, Tahsil- Pathalgaon, District- Jashpur, Chhattisgarh, District : Jashpur, Chhattisgarh

5. Sukhuram S/o Luduram Aged About 42 Years Caste- Uraon, R/o Village - Bandiyakhar, Tahsil- Pathalgaon, District- Jashpur, Chhattisgarh, District : Jashpur, Chhattisgarh

6. Kusum S/o Luduram Aged About 34 Years Caste- Uraon, R/o Village - Bandiyakhar, Tahsil- Pathalgaon, District- Jashpur, Chhattisgarh, District : Jashpur, Chhattisgarh

7. Chhote Mundari S/o Luduram Aged About 30 Years Petitioner No. 2 To 7 Through Power Of Attorney Holder Petitioner No. 1 Enus Kujur. Caste- Uraon, R/o Village - Bandiyakhar, Tahsil- Pathalgaon, District- Jashpur, Chhattisgarh, District : Jashpur, Chhattisgarh

**---- Petitioners**

**Versus**

1. Chairman Board Of Revenue, Chhattisgarh, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

2. The Collector, Jashpur, District Jashpur Chhattisgarh., District : Jashpur, Chhattisgarh

3. Sub - Divisional Officer ( R ) Pathalgaon, District Jashpur Chhattisgarh., District : Jashpur, Chhattisgarh

4. Jagdish Prasad Choubey ( Dead ) Through Lrs., As Per Court Order Dt. 22-11-2017 And 22-07-2019.
   (I) Smt. Lalita Choubey W/o Late Jagdish Prasad Choubey Aged About 60 Years R/o Bandiyakhar, Ambikapur Road, Pathalgaon, District Jashpur Chhattisgarh., District : Jashpur, Chhattisgarh

   (II) Smt. Usha Choubey S/o Late Jagdish Prasad Choubey Aged About 38 Years R/o Bandiyakhar, Ambikapur Road, Pathalgaon, District Jashpur Chhattisgarh., District : Jashpur, Chhattisgarh

(III) Smt. Asha Mishra W/o Deepak Mishra Aged About 50 Years R/o Bhatti Road, Ambikapur, District - Sarguja Chhattisgarh. (Daughter Of Deceased Jagdish Prasad Choubey ), District : Surguja (Ambikapur), Chhattisgarh

(Daughter of deceased Jagdish Prasad Choubey)

(IV) Smt. Nisha Dubey W/o Kaushlendra Dubey Aged About 41 Years, R/o Village Shrinagar, District Surajpur.

(Daughter of deceased Jagdish Prasad Choubey)

(V) Smt. Varsha Tiwari W/o Vinay Tiwari Aged About 37 Years, R/o Before Collector Bungalow, D.C. Road, District : Surguja (Ambikapur), Chhattisgarh

(Daughter of deceased Jagdish Prasad Choubey)

(VI) Smt. Seema Pandey W/o Vatan Pandey, Aged About 34 Years, R/o Village Sakhauli, P.S. Darima, District Surguja

(Daughter of deceased Jagdish Prasad Choubey)

5. The State Of Chhattisgarh Through Secretary ( Revenue ) D. K. S. Bhawan, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

**---- Respondents**

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For petitioners : Shri Sanjay Agrawal, Advocate
For respondents/State: Shri Vaibhav Singh, Panel Lawyer

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**Single Bench : Hon'ble Shri Justice Manindra Mohan Shrivastava**

**ORDER ON BOARD**

**17/10/2019**

Heard.

1. This petition under Article 227 of the Constitution of India is preferred against the order dated 02-04-2007 passed by the Board of Revenue, by which, Board of Revenue while setting aside the order passed by the Collector on 09-11-2004 has remanded the matter for consideration of Collector by invoking its power under Section 51 read with Section 32 of the Chhattisgarh Land Revenue Code, 1959 (In short “the Code”).

2. Brief factual matrix is that one Ludu Ram, an aboriginal tribe, filed an application on 11-02-2002 before the Sub Divisional Officer (Revenue),

Pathalgaon, alleging that in the matter of transaction of land ad-measuring 0.017 Hectare land, the respondent, without paying any additional consideration, grabbed his land by interpolating and increasing the area by adding '4' in the original description of land as “0.017”. As the allegation pertained to defrauding aboriginal tribe of his legitimate right in respect of the agricultural land, the Sub Divisional Officer initiated enquiry under Section 170-B of the Code, which culminated in passing of order dated 20-06-2002 that aboriginal tribe-Ludu Ram was defrauded of his legitimate right in respect of the agricultural land. The Sub Divisional Officer having found that on a part of the land, house has been constructed by the respondent-Jagdish prior to 01-01-1984, directed the purchaser to pay difference of Rs.29,835/- in respect of the land, on which, house was constructed. As far as remaining open land ad-measuring 0.158 Hectare is concerned, the same was directed to be returned to the aboriginal tribe-Ludu Ram.

Aggrieved by the said order, Jagdish Prasad Choubey preferred an appeal before the Collector. Vide order dated 09-11-2004, the Collector allowed the appeal by setting aside the order passed by the Sub Divisional Officer on the findings that the transaction was bonafide in nature.

Aggrieved by the order passed by the Collector, the petitioners invoked revisional jurisdiction of the Board of Revenue. The Board of Revenue, upon consideration of material on record found that there are material to show that the petitioner was defrauded of his legitimate right and though, permission for sale was granted by the then Collector in exercise of power conferred under Section 165(6) of the Code, the matter required proper enquiry and recall of the said order, if necessary. The Board of Revenue, therefore, while setting aside the order passed by the Collector, remitted the matter to the Collector with a direction to invoke its power under Section 51 read with Section 32 of the Code and decide the case on its merits, after affording the parties proper opportunity of hearing. It is this order, which is under challenge in this petition.

3. Pointed submissions of learned counsel for the petitioner is that once the Board of Revenue, after examination of the material on record, was convinced that the petitioner-aboriginal tribe was defrauded of his legitimate right, it ought to have set aside the order passed by the Collector and for restoration of the order passed by the Sub Divisional Officer, instead of remitting the matter to the Collector for consideration. So far as grant of permission for sale of land under Section 165(6) of the Code is concerned, he would argue that the Board of Revenue itself could have passed order setting aside the order of grant of permission for sale of land passed by the Collector on 20-01-1975 in proceedings under Section 165(6) of the Code.

4. After hearing learned counsel for the petitioner, this Court finds that the Board of Revenue, in remanding the matter for consideration of the Collector on the aspect of grant of permission for sale of land, has not committed any jurisdictional illegality or perversity.

5. A perusal of the order passed by the Board of Revenue shows that the Board of Revenue has recorded a finding that the transaction, under which, the petitioner is said to have sold his land to the respondent-Jagdish Prasad Choubey, appears to be fraudulent in nature. However, having observed so, the Board of Revenue directed the Collector to invoke its jurisdiction under Section 51 read with Section 32 of the Code, in respect of earlier order dated 20-01-1975, by which, permission was granted for sale of land.

The impugned order has been passed by the Board of Revenue in proceedings arising out of the order passed by the Sub Divisional Officer under

Section 170(B) of the Code. The legality and validity of the order dated 20-01-1975 passed by the Collector in proceedings under Section 165(6) of the Code were not under challenge either before the Sub Divisional Officer or even before the Board of Revenue. Therefore, the Board of Revenue could not have itself passed order in a collateral proceedings to set aside the earlier permission granted on 20-01-1975 in proceedings under Section 165(6) of the Code.

The only option left for the Board of Revenue was to remit the matter to the Collector for consideration by invoking its power under Section 51 of the Code to make enquiry and if necessary, to pass an order reviewing/recalling of earlier order of grant of permission passed by the then Collector on 20-01-1975. The course of action, which has been adopted by the Board of Revenue, while deciding the lis before it, does not suffer from any error of jurisdiction, but appears to be to ensure that the proper proceedings are drawn to review/recall order dated 20-01-1975 passed by the authority i.e. the Collector, who had passed that order. It is also found that the Board of Revenue has taken due care to observe that the Collector shall hold enquiry and pass an order after affording the parties due and proper opportunity of hearing. Therefore, it cannot be said that the Board of Revenue either had exceeded its jurisdiction or failed to exercise its power and jurisdiction vested in it under the law. It also cannot be said to be miscarriage of justice so as to warrant interference by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. Thus, there are no grounds available to invoke supervisory jurisdiction under Article 227 of the Constitution of India.

6. In view of above, this Court is not inclined to interfere with the impugned order dated 02-04-2007 passed by the Board of Revenue. This petition is accordingly dismissed.

7. Before parting with the case, it is observed that the Collector shall do well to decide the matter at the earliest preferably within a period of 90 days.

SD/-
(**Manindra Mohan Shrivastava)**
**JUDGE**

Tumane