

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3334 of 2007**

1. Kishan Kumar Das S/o Bhagiratu Das, Aged About 43 Years R/o Near Nirmal School Jagdalpur, Distt. Bastar, Chhattisgarh
2. Smt. Devendra Kour Jaswal, Aged About 33 Years W/o Paramjeet Singh Jaswal, R/o Ganga Nagar Ward, Geedam Road, Jagdalpur, District - Bastar C.G.

Note The Petitioner No. 02 Purchased The Land Under Dispute By Register Sale Deed And Took Over The Possession During The Pendency Of Case Under Section 170 (B), C.G.L.R.C. Because Of That She Became The Petitioner In The Instant Case

---- Petitioners

Versus

- 1 (a) Sukhram Nag, S/o Late Shri Sukalu Dhuruwa,
- 1 (b) Sukhmati Nag D/o Shri Sukhram Nag
- 1 (c) Deleted Sukola

All Residents of village Saragipal, Jagdalpur, Civil and Revenue District Bastar (CG.)

2. Suresh Rani Kapur Widow Of Banshilal Kapur, R/o Near New Narendra Talkies, Jagdalpur, District - Bastar C.G.
3. Sayeed Moiduiddin Rizvi, S/o Sayeed Kutupuddin Rizvi, R/o Balaji Ward, Jagdalpur, District - Bastar C.G.
4. State of Chhattisgarh Through The Collector At Jagdalpur, District - Bastar C.G.
5. Board of Revenue, State of Chhattisgarh At Bilaspur C.G.

---- Respondents

For Petitioners	:	Shri Prafull N. Bharat, Advocate
For Respondents/State	:	Ms. Astha Shukla, PL

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****19/07/2019**

1. Heard.
2. The present petition is against the order dated 24.11.2006 passed by the Chhattisgarh Board of Revenue in a Revision No.3/A-23/2005-06 which emanates from the revenue case No.2/A-23/2003-04.
3. The facts of this case would show that the petitioners were the last purchasers of the land bearing Khasra No.87/2 and 88/2 admeasuring 1.58 acres situated at village Sargipal, RI circle Jagdalpur (C.G.) Tahsil and District Jagdalpur. The facts as would show that initially the land was held by one Sonmati Dhurwa S/o Chetan Dhurwa, he had different lands at village Sargipal. An application was filed by land holder before the Collector on 12.11.1962 seeking permission to sale the land in favour of the non-tribal person namely Bansilal Kapur S/o Ramchandra Kapur. On such application being filed, the Collector registered the revenue case and an enquiry was conducted. During such enquiry, the report was called for from the Tehsildar and statements were recorded and eventually by an order dated 1st of August, 1963, permitted the sale to be executed in favour of Bansilal Kapur for a sale consideration of Rs.825 thereby accorded permission under Section 165 (6) of the Land Revenue Code.
4. The sale was permitted up to the extent of 1.58 acres of land in respect of part of Khasra No.87 & 88. Pursuant to such permission, the sale deed was executed on 26.08.1963 in favour of Bansilal Kapur. After certain period of

time, Bansilal Kapur sold the land to Sayeed Moiuddin Rizvi (respondent No.3), thereafter, Sayeed Moiuddin Rizvi on 26.12.2000 had sold the same land to Krishna Kumar Das the petitioner No.1 herein. Krishan Kumar Das after some period of time sold the land to one K. Lalita Rao on 02.12.2004 and K. Lalita Rao after some time sold the same to Smt. Devendra Kour Jaswal, the petitioner No.2 herein on 23.09.2006.

5. Further the facts would show that on 28.07.2003 son of the Sonmati (erstwhile seller) filed an application before the SDO (R), Jagdalpur under Section 170 -B of the Chhattisgarh Land Revenue Code, 1959 (for short 'the Code, 1959') with the averments that the area of subject land of 1.58 acres was actually mortgaged to Bansilal Kapur vide Annexure P-3. Thereafter, the SDO made an enquiry from the revenue officers i.e. the Patwari and the revenue case was registered after hearing and by an order dated 16.02.2004 (Annexure P-5 colly) dismissed the application preferred by such respondent. The said order of 16.02.2004 was subject of appeal before the Collector. The Collector too after hearing the appeal came to a conclusion that the permission granted to Sonmati was just and legal and observed that subsequent sale too took place after initial sale of 1963 and eventually dismissed the appeal on 22.08.2005 (Annexure P-5 colly).
6. The said appellate order of dismissal was subject of revision before the Board of Revenue and the Board of Revenue by an order dated 24th of November, 2006 (Annexure P-6), the impugned order, admitted the revision and remanded the case for rehearing to the Collector. The petitioner has impugned such

order.

7. Learned counsel for the petitioner would submit that the relevant part of the order of Board of Revenue would show that it was passed in exercise of powers under Section 51 of the Code, 1959. It is stated that the power of review cannot be directed to be exercised to the Collector therefore, the suo moto reconsideration of review cannot be made applicable. He refers to the judgment rendered by this Court on 07.09.2011 in a WP (227) No.2302/2008 and would submit that under the similar circumstances this Court has occasioned to interpret the Section 51 of the Code, 1959. He would further submit that the Board of Revenue has exercised the revisional power on 24.11.2006 to review the order dated 01.08.1963 i.e. after 40 years. He has placed the reliance in the case of ***M.P. Housing Board Vs. Shiv Shankar Mandil & Ors. {AIR 2009 SC 863}*** and in the case of ***State of Gujarat Vs. Patel Raghav Natha and others {AIR 1969 SC 1297}*** and would submit that the power was exercised beyond the reasonable time and no reasonable occasion exist to exercise such power. He would further submit that the order would show that no finding of illegality or impropriety has been recorded by the Board of Revenue, as such the power of review cannot be exercised as a matter of routine.
8. Per contra, learned State counsel opposes the submission and went through the order of Board of Revenue and would submit that the order of Board of Revenue records the fact that initial order dated 01.08.1963 was obtained by fraud, therefore, when the finding of fraud was recorded, the entire proceeding

subsequent thereto automatically vitiated. She placed her reliance in the case of ***Meghmala & others Vs. G. Narasimha Reddy & others* {(2010) 8 SCC 383}** and ***Union of India and Others Vs. Ramesh Gandhi* {(2012) 1SCC 476}**.

9. No representation is made on behalf of the respondents despite several pass overs and advocate did not turn up.

10. I have heard learned counsel for the parties at length and perused the documents.

11. The series of facts would show that initially an application was filed on 12.11.1962 vide Annexure P-1 by erstwhile owner Sonmati S/o Chetan Dhurwa wherein permission was sought for under Section 165 (6) seeking permission to sell the land bearing Khasra Nos.87 & 88 admeasuring 1.58 acres in favour of Bansilal Kapur a non tribal. On such application being filed, the revenue case was registered, reports were called for from Patwari and Tehsildar and the report having been given in favour of sale, an order was passed on 1st of August, 1963 by the Collector permitting to sale of land of 1.58 acres in favour of Bansilal Kapur for a consideration of Rs.825. The said permission was granted under Section 165 (6) of the Code, 1959. Pursuant to such permission, initially the sale was executed by Sonmati in favour of Bansilal Kapur on 26.08.1963, thereafter, the property changed hands in favour of different sellers and initially was sold to one Sayeed Moiduiddin Rizvi, who in turn sold to Krishna Kumar Das on 26.12.2000, petitioner No.1 herein. Then Krishna Kumar Das subsequently in the year 2004 sold it to K. Lalita Rao and K. Lalita

Rao and lastly it was sold to petitioner No.2 Devendra Kore Jaswal. As application Annexure P-3 was filed by Sonu, son of original seller Sonmati on 28.07.2003 to annul the sale. The record shows that after such application having been filed, the enquiry was conducted and the SDO dismissed the application of the respondent No.1 holding the sale to be valid on the basis of the initial permission granted. The said order was subject of appeal before the Collector, the Collector too affirmed the same and eventually the order dated 24th of November, 2006 was passed by the Board of Revenue, which turned down the order of the Collector.

12. The order of the Board of Revenue would show that the Board has held that the permission so granted initially was outcome of the fraud on the basis of submission made by applicant, the averments of Sonu was that the property was actually mortgaged and was not a sale by Sonmati in favour of Bansilal Kapur. The contents of sale deed which is on record do not fortify such averments and no whisper is made in the sale deed that it was a mortgage. The proviso clause of Section 58 of the Transfer of Property Act, 1882 also makes it necessary that no such transaction shall be deemed to be a mortgage unless the condition is embodied in the document which effects or purports to effect the sale. Consequently, after period of more than 30 years, on what circumstances a property which was transacted in a prior point of time by predecessor in title was held to be a mortgaged by the Board of Revenue is not clear. The Board has failed to give reasons for it besides on the basis of hear-say evidence, such conclusion is recorded. The order further records that the transaction was out come of fraud. How such finding was arrived at is not clear.

The application filed by the respondent No.1 i.e. the legal heir of Sonmati, the element of fraud is not highlighted or has been categorically pleaded. In order to clamp the charges of fraud necessarily the petitioner should be made known of the fact that as to what element existed to held fraud. Simple on assumption the fraud cannot be inferred unless specifically pleaded & proved. Therefore, the finding of fraud by the Board is without any iota of fact & evidence and is perverse.

13. The Supreme Court in the case of ***Meghmala (supra)*** has held that fraud is an intrinsic, collateral act and an act of deliberate deception with a design to secure something, which is otherwise not due. The expression fraud involves two elements, deceit and injury to the person deceived. Therefore, to infer fraud, the aforesaid element would be necessary and in absence thereof fraud cannot be inferred.

14. Further, in the present case during the lifetime of Sonmati Dhurwa, who executed the sale-deed, she never came before any authority or complained of fraud or mortgage. It was his son after a long time filed an application under Section 170 -B of the Code, 1959 with the allegation of fraud & mortgage. Therefore, unless & until the specific ingredients were on record, inference of fraud or mortgage cannot be drawn.

15. The order of the Board of Revenue further would show that the Board has exercised the power of review and directed the Collector to review the order dated 01.08.1963. Since the power of review is vested under Section 51 of the Code, 1959, therefore, the Section 51 of the Code, 1959 would be relevant,

which is reproduced hereunder:-

“51. Review of orders.- 51. (1) The Board and every Revenue Officer may, either on its/his own motion or on the application of any party interested review any order passed by itself/himself or by any of its /his predecessors in office and pass such order in reference thereto as it/he thinks fit;

Provided that [(i) if the Commissioner, Settlement Commissioner, Collector or Settlement Officer thinks it necessary to review any order which he has not himself passed, he shall first obtain the sanction of the Board, and if an officer subordinate to a Collector or Settlement Officer proposes to review any order, whether passed by himself or by any predecessor, he shall first obtain the sanction in writing of the authority to whom he is immediately subordinate.;

[(i-a) no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard in support of such order;]

(ii) no order from which an appeal has been made, or which is the subject of any revision proceedings shall, so long as such appeal or proceedings are pending, be reviewed;

(iii) no order affecting any question of right between private persons shall be reviewed except on the application of a party to the proceedings, and no application for the review of such order shall be entertained unless it is made within ninety days from the passing of the order.

(2) No order shall be reviewed except on the grounds provided for in the Code of Civil Procedure, 1908 (V of 1908).

(3) For the purposes of this section the Collector shall be deemed to be the successor in office of any Revenue Officer who has left the district or who has ceased to exercise powers as a Revenue Officer and to whom there is no successor in the district.

(4) An order which has been dealt with in appeal or on revision shall not be reviewed by any Revenue Officer subordinate to the appellate or revisional authority.”

16. Reading of the Section 51 of the Code, 1959 would show that when the Commissioner, Settlement Commissioner, Collector wants to review the order which is not passed by himself, he shall first obtain the sanction of the Board.

Further the word suo moto used in Section 51 of the Code is a Latin term meaning “on its own motion”. Normally it is used in situations where a government or Court official act of its own initiative. Initiation in this case was not by the Collector of its own but the direction was given by the Board of Revenue. Therefore, the direction to initiate suo-moto power cannot be encompassed under the mandate of Section 51 of the Code, 1959.

17. Here the Collector admittedly has not sought for permission as per Section 51 (1) (i) of the Code, 1959. Therefore, the ratio as laid down by this Court on 07.09.2011 in WP (227) No.2302 of 2008 shall govern the issue as this Court in the said case has held thus in para 5 which is reproduced hereunder:-

“5. In the present case, the Collector/Additional Collector has not applied for sanction/permission to review the order dated 20.03.1968, but the Board of Revenue has directed for review of its own order and has sanctioned for review. Board of Revenue was not empowered to grant such permission or to direct the Collector/Additional Collector for review without any application for sanction on behalf of the Collector/Additional Collector. Order impugned passed by the Board of Revenue is *per se* illegal and is not sustainable under the law.”

18. Furthermore, the Board of Revenue has passed an order on 24.11.2006 to review the order dated 01.08.1963 i.e. almost after a period of 40 years. Section 53 of the Code, 1959 makes it incumbent that subject to any express provision contained in this Code the provision of the Indian Limitation Act, 1908 shall apply to all appeals and applications for review under this Code. Sub-section (2) of Section 51 of the Code, 1959 speaks that no order shall be reviewed except on the grounds provided for in CPC. Article 124 of the Indian Limitation Act, 1963 provides a date for review of the judgment by a Court other

than the Supreme Court and the period is 30 days. The order to exercise the power of review therefore, as passed on 24.11.2006 was much beyond the period of limitation.

19. The Supreme Court in taking into such issue in the case of ***M.P. Housing Board Vs. Shiv Shankar Mandil & Ors. {AIR 2009 SC 863}*** dealing with the issue of MP Land Revenue Code has laid down the law to exercise the power of review at para 14 which is reproduced hereunder:-

"14. The subsequent stance for reviewing the diversion order is slightly intriguing. The Collector wanted to review his own order under Section 51 of the Code and for that purpose, needed the sanction of the Board of Revenue under sub-Section 1(1) of Section 51 of the Code. [Section 51](#) runs as under:-

"51. Review of orders:- (1) The Board and every Revenue Officer may, either on its/his own motion or on the application of any party interested, review any order passed by itself/himself or by any of its/his predecessors in office and pass such order in reference thereto as it/he thinks fit:

provided that-

(i) if the Commissioner, Settlement Commissioner, Collector of Settlement Officer thinks it necessary to review any order which he has not himself passed, he shall first obtain the sanction of the Board, and if an Officer subordinate to a Collector or Settlement Officer proposes to review any order, whether passed by himself or by any predecessor, he shall first obtain the sanction in writing of the authority to whom he is immediately subordinates."

It will be clear from the language that it is a review power and such review power would have to be exercised within a reasonable time. We agree with the Learned Single Judge that in this case, it took more than three years for the State Government to move to the Board of Revenue for reviewing the orders. The Learned Counsel appearing on behalf of appellants tried to suggest that at that time, there was status quo order pending, passed by the High Court on the first Writ petition filed by the

respondents herein. We have examined the record carefully and we find nothing in the record suggesting that the State Government could not have exercised the power under Section 51 of the Code. In AIR 1969 SC 1297 State of Gujarat Vs. Raghav, this Court held that the review power should be used in reasonable time. We accept the finding of the Learned Single Judge as confirmed by the Division Bench of the High Court that the power of review has to be exercised within a reasonable time and that in this case, three years of time, without any explanation, could not be viewed as a reasonable time in view of the fact that the petitioner had obtained possession, paid premium, spent money for obtaining the Registered Sale Deed and have also made the initial expenditure for preparing the land for raising structures. The said Government could not have allowed the petitioner to do all these things and then chosen to review its own powers.”

20. Applying the aforesaid proposition in the facts of this case, clearly it would show that the Board of Revenue came to a finding of fact without any existence on record and on mere assumption. Further the power of review was directed to be exercised under Section 51 of the Code, 1959 to the Collector which is not in the spirit of Section 51 of the Code, 1959 and order of review was exercised after period of almost 40 years. Consequently, the order of Board of Revenue dated 24.11.2006 cannot be sustained. Accordingly, the same is set aside.

21. The petition is allowed. No order as to costs.

Sd/-
Goutam Bhaduri
Judge