

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.118 of 2007**

Jagdish Prasad, Aged about 45 years, S/o Ramkrishna Joshi, R/o Village:
Nagoi, Tehsil & District : Bilaspur, Chhattisgarh

---- Appellant/Plaintiff

Versus

State of Chhattisgarh, Through the Collector, Bilaspur, Tehsil & District Bi-
laspur, Chhattisgarh

---- Respondent/Defendant

For Appellant/Plaintiff	:	Mr.Malay Shrivastava, Advocate
For Respondent/Defendant	:	Mr.Matin Siddiqui, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

16.08.2019

1. The substantial question of law involved, formulated and to be answered in this second appeal preferred by the plaintiff is as under:-

“Whether the first appellate Court is justified in holding that Ex.P-1 does not confer any right to the appellant, especially in the absence of any pleading of the respondent in this regard that Ex.P-1 was not issued after following the procedure prescribed in this regard ?”

[For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. The plaintiff instituted a suit for declaration of title and permanent injunction pleading inter-alia that he is owner of 4 acres of land out of Khasra No.375 situated at village Nagoi, Tahsil and District Bilaspur

and his father was cultivating the suit land for last 40 years, he has been granted patta by the Naib-Tahsildar, Bilaspur on 24.8.79 and has also been granted Rin Pustika. Since, he is likely to be dispossessed from the suit land by the State Officials, he instituted a suit for the aforesaid reliefs.

3. The defendants filed its written statement and opposed the averments made in the plaint stating inter-alia that the suit land is grass land/land reserved for grazing purpose, as such, the plaintiff is not entitled for decree of declaration of title and permanent injunction.
4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 30.4.2005, decreed the suit holding that the plaintiff is title-holder of the suit land and also granted permanent injunction in his favour, which the first appellate Court reversed on appeal being preferred by the defendant. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/plaintiff, in which substantial question of law has been formulated by this Court, which has been set-out in the opening paragraph of this judgment.
5. Mr.Malay Shrivastava, learned counsel for the appellant/plaintiff, would submit that the first appellate Court is absolutely unjustified in granting the appeal and dismissing the suit ignoring the fact that patta granted in favour of the plaintiff was remain unchallenged and it is not the case of the defendant that patta (Ex.P-1) was not granted in accordance with law, as such, the judgment and decree of the first

appellate Court deserves to be set aside and that of the trial Court be restored.

6. On the other hand, Mr. Matin Siddiqui, learned Deputy Advocate General for the respondent/defendant, would submit that the suit land being grass land reserved for grazing purpose and therefore, without the sanction of the Collector under Section 237 (2) of the Chhattisgarh Land Revenue, 1959 (hereinafter called as "the Code"), the suit land could not have been diverted for the purpose other than mentioned in sub-section (1) of Section 237 of the Code, as such, the second appeal deserves to be dismissed.
7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumscription.
8. Section 234 of the Chhattisgarh Land Revenue Code, 1959 throws sufficient light on the preparation of '*Nistar Patrak*' and according to this provision, the Sub Divisional Officer shall prepare the '*Nistar Patrak*' embodying the scheme of all unoccupied lands of all matters indicated thereto and particular matter specified in Section 235. Section 235 of the Code relates to matters to be provided for in '*Nistar Patrak*' and according to this provision the matters highlighted from clauses (a) to (d) shall be dealt with under this provision. Section 236 of the Code speaks about provision in '*Nistar Patrak*' for certain other matters like free grazing of cattle used for agriculture; etc. as envisaged in clauses (a) to (c). Sub-section (1) of Section 237 empowers the Collector to set apart unoccupied land for certain

purposes including for *grass bir*. For ready reference, it would be apt to quote relevant portion of Section 237(1) (b) and (2) of the Code, which reads as thus:-

“237. Collector to set apart land for exercise of *Nistar* right.-(1) Subject to the rules made under this code, the Collector may set apart unoccupied land for the following purposes, namely:-

- | | | | |
|-----|---|-----|-----|
| (a) | *** | *** | *** |
| (b) | for pasture, grass bir or fodder reserve; | | |
| (c) | *** | *** | *** |
| (d) | *** | *** | *** |
| (e) | *** | *** | *** |
| (f) | *** | *** | *** |
| (g) | *** | *** | *** |
| (h) | *** | *** | *** |
| (i) | *** | *** | *** |
| (j) | *** | *** | *** |
| (k) | *** | *** | *** |

2. Lands set apart specially for any purpose mentioned in sub-section (1), shall not otherwise be diverted without the sanction of the Collector.”

Section 237(2) of the Code was deleted from statute book w.e.f. 16.1.2012.

9. Looking to entire scheme of Chapter XVIII of the Code, which includes these Sections, it is clear like a noon day that particular land will be reserved by the Collector for the purpose of grazing/grass bir for *Nistari* right of all the inhabitants of that particular village and therefore no individual of that village can enjoy that land exclusively for his own use.

10. The Supreme Court in the matter of **State of Jharkhand v. Pakur Jagran Manch and others**¹ highlighting the importance of

1 (2011) 2 SCC 591

gochar land of village held as under:-

“23. We should however note that such de-reservation of any government land reserved as *gochar*, should only be in exceptional circumstances and for valid reasons, having regard to the importance of *gochar* in very village. Any attempt by either the villagers or others to encroach upon or illegally convert the *gochar* to house plots or other non-grazing use should be resisted and firmly dealt with. Any requirement of land for any public purpose should be met from available waste or unutilized land in the village and not *gochar*.”

11. The suit land is part of Khasra No.375. In nistar patrak (Ex.D-1), the land has been recorded as grass/grazing land and out of which, 4 acres of land has been allotted to the plaintiff vide Ex.P-1 by way of patta, which the trial Court has accepted, but the first appellate Court has reversed. It is not in dispute that the suit land was originally reserved as grass/grazing land under Section 237 (1) (b) of the Code and according to Section 237 (2) of the Code, the lands specially for any purpose mentioned in sub-section (1), shall not be diverted without the sanction of the Collector.
12. The plaintiff has claimed that 4 acres of land has been allotted to him. Once the nistar patrak is prepared under the provision of the Code and under Section 237 (1) (b) of the Code, land is reserved as grass/grazing land, it was not open to allot even a small piece of land out of the land reserved for specific public purpose, and its nature cannot be changed under sub-section (2) of Section 237 of the Code without following the procedure prescribed under Section 237(2) of the Code and for changing the nature of land reserved for specific public purpose, was not shown to have been adopted by learned Naib-Tahsildar while allotting to the plaintiff, therefore, no

individual/plaintiff of that village can enjoy that land exclusively for his own use, as such, nature of reserved land cannot be changed under sub-section (2) of Section 237 of the Code without following the procedure prescribed and the rules made thereunder.

13. The plaintiff having claimed Bhumiswami right over the allotted land on the basis of patta, which was earlier reserved as grass/grazing land, was required to plead and establish that while allotting the land to him procedure envisaged under Section 237(2) of the Code was followed by learned Naib-Tahsildar. Neither such fact was pleaded in the plaint nor proved/established, as such, the first appellate Court is absolutely justified in holding that patta granted by the Naib-Tahsildar, Bilaspur to the plaintiff is in violation and is in teeth of the provisions contained in sub-section (2) of Section 237 of the Code. I do not find any perversity or illegality in the finding recorded by the first appellate Court, as such, the judgment and decree of the first appellate Court is affirmed. The substantial question of law is answered in favour of the defendant and against the plaintiff.

14. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

15. Decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge