

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 6438 of 2007**

1. Mst. Sarino Bai D/o Matalram Aged About 60 Years Caste Of Nagvanshi, Occupation- Agriculturist, R/o Petitioner No. 1, Village Ludeg, Tahsil- Patthalgaon, District- Jashpur, Chhattisgarh
2. Deleted Smt. Saniyaro Bai Dead
3. Dayaram Dead Through Lrs
3.1 – Brijmohan S/o Late Dayaram Aged About 49 Years R/o Village- Bahama, Tahsil- Lailunga, District Raigarh, Chhattisgarh
3.2 – Umar Sai S/o Late Dayaram Aged About 47 Years R/o Village- Bahama, Tahsil- Lailunga, District Raigarh, Chhattisgarh
4. Laxman S/o Shri Cher, aged about 60 years, Caste of Nagvanshi, Occupation Agriculturist, R/o Village Bahama, Tahsil Lailunga, District Raigarh (CG)
5. Lakhpati S/o Cher, aged about 55 years, Occupation - Agriculturist, R/o Village - Bahama, Tehsil - Lailunga, District – Raigarh (C.G.)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Collector, Raigarh, District Raigarh, Chhattisgarh
2. Nandlal S/o Shri Mahingal Singh, aged about 56 years, Caste Agharia, R/o Village - Bahama, Tehsil - Lailunga, District – Raigarh C.G.

---- Respondent

For Petitioners : Shri Vivek Bhakta, Advocate.

For Respondent/State : Shri Rajesh Singh, Deputy GA.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board**21/06/2019 :**

1. Challenge in this writ petition is to the order passed by the Board of Revenue whereby Revision Application preferred by respondent Nandlal has been allowed and the order passed by the Sub Divisional Officer (Revenue) Gharghoda, District Raigarh on 27.4.2005 and the appellate order passed by the Additional Collector, Raigarh on 28.7.2005 have been set aside. By these two orders, the Sub Divisional Officer (Revenue) and the Additional Collector have allowed the petitioner's application under Section 170-B of the CG Land Revenue Code, 1959 (for short 'the Code') to direct that the land bearing Khasra Nos.138/2 and 138/3 ad measuring 3 acres be reverted back to the legal heirs of the original tribal holder.
2. By two separate sale deeds dated 3.2.1958 and 31.3.1958 the predecessor of the petitioners namely, Cherka and Matal had executed a sale deed for 3 acres of land in favour of Mahigal Singh, father of respondent Nandlal. Mutation of the name of Mahigal Singh was recorded some time in the year 1963. After the sale deed and at the time of mutation, the purchaser was in possession of the property, yet the tribal holder did not initiate any action. After coming into force of Section 170-B of the Code,

an application under Section 170-B was moved stating that the subject land was in fact mortgaged in favour of Mahigal Singh but he obtained execution of sale deed, therefore, it is a case of commission of fraud. After examining the parties, the Sub Divisional Officer (Revenue) Gharghoda allowed the application filed by the tribal holder with a finding that even if sale deed was executed before 2.10.1959 i.e. before commencement of operation of the Code, yet considering the fact that the land was in fact mortgaged and not sold by Cherka and Matal, it is the transaction which is hit by Section 170-B of the Code. The Collector affirmed the order passed by the Sub Divisional Officer (Revenue).

3. Before the Board of Revenue, the respondent Nandlal raised an objection that for transaction before 2.10.1959, the provisions contained in Section 170-B of the Code would not be applicable. This plea has been accepted while allowing the Revision Application filed by the non-tribal holder.
4. Learned counsel for the petitioner would submit that when sons of Mahigal Singh, in whose names the property was purchased' applied for mutation in the year 1960, Cherka objected to the prayer on the plea that the land has not been sold but it has been mortgaged. The Revenue Inspector rejected the prayer for

mutation, however, without filing any appeal or challenging the order, another application for mutation was moved in the year 1963, which was allowed vide Annexure-P/3. Thus cause of action for invoking Section 170-B of the Code has arisen after 2.10.1959 and not before that, therefore, the provisions contained in Section 170-B of the Code would be applicable.

5. On the other hand, learned State Counsel would support the impugned order.
6. The question as to whether the provisions contained in Section 170-B of the Code would apply to a transaction before 2.10.1959 was earlier considered by me in the matter of **Parwati Bai and Another Vs. State of M.P. & Others** (WP No.1739/1997, decided on 2.2.2010). After referring to the judgment rendered by the Madhya Pradesh High Court in the matter of **Roop Chand Vs. Board of Revenue** {1995 Revenue Nirnay 184}, it was held in para-13 thus:-

“13. In view of the material on record and the legal position settled by the High Court of M.P., this Court is of the opinion that the provisions of Section 170(B) of the Code are not attracted in the present case. The Commissioner is not correct in observing that the provisions of Section 170 (B) of the Code will be applicable even where the transaction has been entered into before 02.10.1959. The Commissioner has not assigned any reason for arriving at such conclusion. The Commissioner appears to have been impressed the

fact that the petitioners have not been able to produce any order obtaining permission for sale of the land. However, since the provision itself was not applicable for the transaction prior to 02.10.1959, the question as to the requirement of obtaining permission would not arise at all.”

7. Subsequently, a contrary opinion was rendered by different Bench, therefore, the matter was referred to the Larger Bench, which came to be decided in the matter of **Yadram (dead) through LRs Smt. Yamuna Bai & Others Vs. State of CG & Others** {2015 (5) CGLJ 402 (DB)}. In this judgment, the Division Bench approved the view taken by this Court in the matter of Parwati Bai, referred to above, to hold that for transaction entered into before 2.10.1959, the provisions contained in Section 170-B of the Code, have no application.
8. The petitioners' argument that mutation having taken place after 2.10.1959, Section 170-B of the Code would be attracted does not appeal to this Court because plain language of Section 170-B of the Code covers transaction between 2.10.1959 and 24.10.1980 when Amendment Act No.15 of 1980 was made effective by introducing Section 170-B of the Code. Mutation of the name of the purchase is by itself not a transaction independent of the sale deed. The transaction transferring title of the land is one which is permissible in law under the provisions of the Transfer of

Property Act. The sale of immovable property for more than Rs.100/- can happen only by execution of the registered sale deed, therefore, it is this transaction of execution of sale deed which is the date on which title would transfer. The subsequent order mutating the name of the purchaser is only an act pursuant to the transaction whereas title had already passed on the purchaser.

9. The principle having already been settled by this Court in the matters of Parwati Bai and Yadram, referred to above, the Board of Revenue has rightly allowed the Revision Application and set aside the orders passed by the Sub Divisional Officer (Revenue) and the Additional Collector.
10. In view of the above discussion, the subject transaction of execution of sale deed on 3.2.1958 and 31.3.1958 is not covered for initiating proceeding under Section 170-B of the Code. Therefore, the Writ Petition deserves to be and is hereby dismissed. The impugned order passed by the Board of Revenue is affirmed.

Sd/-
Judge
(Prashant Kumar Mishra)

HEADLINES

Merely because mutation occurred after 2.10.1959, transaction before the said date would not be covered for proceeding under Section 170-B of the CG Land Revenue Code, 1959.