AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 5478 of 2007

1. Ganesh Ram Kanwar S/o Kendaram Kanwar, Aged About 45 Years Cultivator Of Village Pandaripaani P.O. Godhi, Tah. And District Korba, Chhattisgarh,

2. Samaroo Kanwar (Dead) Through LRs

2.1 Smt. Yamuna Bai, Widow of Late Samaroo Kanwar

2.2 Laxman, S/o Late Samaroo aged about 10 years

2.3 Laxmin Bai, D/o Late Samaroo, Aged About 7 Years

2.4 Bhuskin Bai D/o Samaroo, Aged About 4 Years

Legal Representative No.2 to 4 above are Minor Through their Mother And Legal Guardian Smt. Yamuna Bai Wd/o Samaroo

All R/o Village Pandri Pani, P.O. Godhi, Tah. And Distt. Korba, Chhattisgarh

3. (Deleted) Smt. Mangalibai

4. Smt. Ratiyaanwanbai Wd/o Mahedhram Kanwar, R/o Pandaripani, Tah. And Distt. Korba, Chhattisgarh

5. Vardan Singh Aged About 11 Years Minor

6. Ram Singh Aged About 9 Years Minor

7. Charan Singh Aged About 7 Years Minor

Petitioners No.5 to 7 are Minors through the Mother Smt. Ratiyaawan Bai W/o Maheshram, R/o Village Pandaripani, District Korba, Chhattisgarh

8. Harabai Wd/o Jethoo Kanwar, R/o Pandaripani, Tah. And Distt. Korba, Chhattisgarh

9. Sukhsingh S/o Jethoo Kanwar, Aged About 22 Years Cultivator, R/o Village Pandaripani, Tah. And District Korba, Chhattisgarh

10. Suklal S/o Jethoo Kanwar, Aged About 20 Years Cultivator, R/o Village Pandaripani, Tah. And District Korba, Chhattisgarh

11. Kirtichandra Lakra Aged About 11 Years Minor Through His Father And Legal Guardian Shri Tej Kumar Lakra R/o Kusmunda P.O. Kusmunda Tah. and District Korba, Chhattisgarh

12. Turcius Lakra S/o Anjulus Lakra, Aged About 35 Years F.C.9 Employee, R/o Village Dhamtari, Tah. And Distt. Dhamtari, Chhattisgarh

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Versus

1. Ganesh Prasad Teli S/o Badloo Lal Teli, Bilaspur, Chhattisgarh

2. Heerchand Chopda S/o Keshari Mal Chopda, Aged About 51 Years R/o Taarbahar Bilaspur At Present Residing Near Naya Maaldhakka, Bilaspur, Tah. And Distt. Bilaspur, Chhattisgarh

3. Avataar Singh Aged About 32 Years

4. Onkaar Singh Aged About 29 Years

5. Jagjeet Singh Aged About 27 Years

   All S/o Preetpaal Singh, Caste Ramgarhia, R/o Power House Road, Near Deendayal Market, Korba, Tah. And District Korba, Chhattisgarh

6. Chhattisgarh Board Of Revenue At Bilaspur, Chhattisgarh.

7. State Of Chhattisgarh, Through The Collector Korba, Tah. And Distt. Korba, Chhattisgarh

---- Respondent

For Petitioners — Shri Viprasen Agrawal, Advocate
For Respondent/State — Shri Sumit Singh, Panel Lawyer

Order On Board

By

Prashant Kumar Mishra, J.

20/06/2019

1. Challenge in this petition is to the order passed by the Board of Revenue, Chhattisgarh on 14-3-2007 allowing the appeal preferred by the respondents No.3 to 5 namely; Avataar Singh, Onkaar Singh & Jagjeet Singh, respectively to set aside the order passed by the Collector, Korba, on 29-5-2000 and that of the Sub Divisional Officer (Revenue), Korba, on 13-3-1997.

2. There is no dispute that the petitioners belong to and are members of aboriginal tribe and are resident of Korba, which is a scheduled area as notified for the purpose of Section 165 (6) of the Chhattisgarh Land Revenue Code, 1959 (for brevity 'the CGLRC').

3. Original holder Kondaram was possessed of the subject land bearing Khasra No.148/3 area 1.00 acre and khasra No.157/10 area 0.78 acres at village Pandripani, PC No.5 (old No.69), RI Circle, Tahsil & District Korba. The subject land was sold to a non-tribal Ganesh Prasad Teli by sale deed dated 22-2-1977 after obtaining permission from the concerned Collector on 22-2-1977.

4. After coming into force of Section 170-B of the CGLRC and Korba being a scheduled area the concerned SDO (R) held a camp at the concerned village and obtained reports as to the land presently held by non-tribals which earlier belong to tribal holders. In respect of the subject land notices were issued to both the parties and thereafter, statements were recorded. From the Patwari report and revenue records the SDO (R) found that the permission for sale of land to a non-tribal was obtained on 22-2-1977 whereas by notification dated 26-1-1977 a complete ban was imposed on transfer of land belonging to tribals to non-tribals in the scheduled area duly notified by the State Government. By the said notification, the entire Korba district as it existed on 26-1-1977 was declared to be a specified area for the purpose of sub-section (6) of Section 165 of the CGLRC. The said provision is reproduced for ready reference :

> ***165. Rights of transfer.--***
>
> xxx xxx xxx
>
> (6) Notwithstanding anything contained in sub-section (1) the right of Bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe by the State Government by a notification in that behalf, for the whole or part of the area to which this Code applies shall--
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> (i) in such areas as are predominately inhabitated by aboriginal tribes and

> from such date as the State Government may, by notification, specify, not be transferred nor it shall be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe in the area specified in the notification.
>
> (ii) in areas other than those specified in the notification under clause (i), not to be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe without the permission of a Revenue Officer not below the rank of Collector, given for reasons to be recorded in writing.
>
> Provided that the provisions of this sub-section shall not be applicable to the land acquired under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (No.30 of 2013).

5. By virtue of the provision contained in sub-section (6) of Section 165 of the CGLRC read with notification dated 26-1-1977, land belonging to a tribal holder cannot be transferred to a non-tribal holder when the land falls within the specified area as mentioned in the notification. The statute does not enable or permit the competent authority i.e. Collector to allow such transaction to happen even with its permission, therefore, the permission granted by the Collector on 22-2-1977 being impermissible in law, it could not have been acted upon for the purpose of execution of sale deed.

Permission is required and could have been granted for sale of property from tribal holder to tribal holder as has been made permissible in clause (ii) of sub-section (6) of Section 165 of the CGLRC, but the subject transaction is between tribal to non-tribal holder and the same is completely prohibited from the date of notification i.e. 26-1-1977.

6. The SDO (R), Korba and the Collector, Korba concurrently held that the transaction between Ganesh Kanwar and Ganesh Prasad Teli being a transaction between tribal to non-tribal holder was not permissible in law even with the permission of Collector, after issuance of notification dated 26-1-1977, however, the said order has been set aside by the Board of Revenue on the ground that there is no evidence of commission of fraud and that there existed valid permission before execution of sale deed.

7. Having heard learned counsel for the parties and on perusal of the record particularly the provision contained in Section 165 (6) of the CGLRC read with the notification dated 26-1-1977, I have no hesitation to conclude that the Board of Revenue has committed a patently illegality by setting aside the order passed by the SDO (R) and the Collector, Korba to hold that the transaction does not suffer from any infirmity. In the teeth of the express provision of law read with notification, any

transaction between a tribal to non-tribal holder after the date of notification dated 26-1-1977 was not permissible even with the permission of the Collector, therefore, to say that there is no element of fraud would not save the transaction. Existence of fraud is to be looked upon where the transaction is made permissible with the permission of the Collector and yet there appears an element of fraud. When the transfer is not at all permissible in law, even if there is no fraud, something which is made statutorily impermissible cannot be permitted by an order of the Revenue Court.

8. The impugned order passed by the Board of Revenue is therefore, set aside and that of the SDO (R), Collector, Korba are restored.

9. In the result, the writ petition is allowed, leaving the parties to bear their own cost(s).

Sd/-

Judge
Prashant Kumar Mishra

Gowri