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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.7535 of 2006

Mohd. Shamim, aged about 52 years, S/o Late Jakir Hussain, R/o Village Pathalgaon, Tahsil Pathalgaon, District Raigarh

---- Petitioner

Versus

1. Board of Revenue through President, Bilaspur (CG)
2. The Collector, Jashpur (CG)
3. Sub Divisional Officer, Pathalgaon, District Jashpur (CG)
4. Jagturam S/o Sukram
5. Pholsai S/o Sukram
6. Topiram S/o Premsai
7. Gendaram S/o Premsai
8. Dharamsai [wrongly mentioned in the order of respondent No.1) S/o Premsai

All R/o Village Pathalgaon, Tahsil Pathalgaon, District Raigarh [now Jashpur] Chhattisgarh

---- Respondents

For petitioner : Shri Parag Kotecha, Advocate
For respondents No.2 & 3/State: Shri Anmol Sharma, Panel Lawyer
For respondents No.4 to 8: Shri Tridib Bhattacharya, Advocate

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Single Bench : Hon'ble Shri Justice Manindra Mohan Shrivastava

ORAL ORDER

10/07/2019

Heard.

1. This petition under Article 227 of the Constitution of India is preferred against the order dated 08-11-2006 passed by the Board of Revenue, whereby

revision filed by the petitioner against the order passed by the Collector in the matter of direction of return of the land under Section 170-B of the CG Land Revenue Code, 1959, has been affirmed.

2. Briefly stated, the case of the petitioner is that the proceedings under Section 170-B were initiated by the Sub Divisional Officer against the petitioner, upon coming to know that the petitioner was in possession of the land admeasuring 0.016 Hectare, situated in Khasra No.88/1, Village Pathalgaon, which belonged to and registered in the name of Sukram and Premsai, who are aboriginal tribes. Upon notice being issued, the petitioner presented before the Sub Divisional Officer along with unregistered agreement dated 13-12-1978, gave statement that he had purchased the land for a consideration of Rs.4,000/- from one Baigaram Satnami and advance of Rs.500/- was given and thereafter, he constructed his house and residing therein. The learned Sub Divisional Officer found that it was merely an agreement, on the basis of which, the petitioner had come into possession of the land and claimed to have constructed house and resided therein, without there being any sale of the land, after obtaining due permission from the Collector as required under Section 165(6) of the Land Revenue Code. On such findings, the Sub Divisional Officer directed return of the land.

Aggrieved by the said order, an appeal was preferred before the Collector, which was dismissed and then, revision was also preferred before the Board of Revenue. The Board of Revenue also dismissed the revision, giving rise to this petition.

3. Assailing legality and validity of the order passed by the Board of Revenue and all other orders/proceedings under Section 170-B of the CG Land Revenue Code, learned counsel for the petitioner would argue that in this case,

no proceedings could be initiated against the petitioner as the jurisdiction to return the land under Section 170-B of the CG Land Revenue Code, could be exercised by the Sub Divisional Officer only when report is received that the subject matter is the agricultural land. He would argue that the land is diverted since long and at that time, he purchased the land and house was found standing over there, therefore, it was not an agricultural land. Next submission is that the only ground, on which, land has been directed to be returned, is that prior to purchase, permission of Collector, as required under Section 165(6) of the CG Land Revenue Code was not taken. He would submit that, this by itself, could not be made a basis to draw an inference of the tribe having been defrauded of his legitimate right. Next submission of learned counsel for the petitioner is that in any case, even if is found that the land was liable to be returned as there has already been a house standing since long and ever since the date of purchase had taken place, at the most, the compensation in lieu of land could be awarded to, as provided under Section 170-B(3) of CG Land Revenue Code, 1959. In support of his submission, learned counsel for the petitioner would argue that on the aspect as to whether there existed house or not, no proper enquiry has been made. He would submit that the Courts below ought to have obtained factual report and the evidence with regard to existence of house prior to the date of passing of an order by the Sub Divisional Officer i.e. prior to 29-03-1996, but without making proper enquiry, order has been passed. In this regard, reliance is placed on the decision of this Court in the case of ***Jagdeesh Choudhary vs. Board of Revenue and others, 2013(2)CGLJ 363.***

4. On the other hand, learned counsel for the respondents would argue that the Sub Divisional Officer passed an order of return of land, on the face of it, being a case of fraudulent transaction, because even the agreement, on the

basis of which, the petitioner purchased the land of Sukram and Premsai, was not recorded in the name of Baiga Ram Satnami and no evidence was led by the petitioner before any of the authorities that before the date of execution of agreement of sale, Baiga Ram Satnami had purchased the land in dispute from original holders Sukram and Premsai. It is next submitted that the Courts below have taken into consideration that the so-called agreement is said to be executed for a paltry consideration of Rs.4,000/- and even against that, an advance of Rs.500/- is said to have been paid, for which also, there is no proof and the petitioner did not examine Premsai and Sukram and their legal heirs. Therefore, present is a case of clear fraud practised upon the tribes. As far as existence of house is concerned, it is argued that the petitioner was required to lead proper evidence before the authorities that he had constructed house on the land in dispute. The Board of Revenue and the Collector, all of them, considered this aspect and this is essentially a finding of fact and not liable to be interfered with.

5. Having considered the submission of learned counsel for the parties, I have perused the records.

6. The entire case of the petitioner appears to be based on an agreement of sale, which he says that it was executed in his favour by one Baigaram Satnami. This is an unregistered document. The document talks of a house. It does not contain any of the details of the land i.e.Khasra Number or any other thing.

The Sub Divisional Officer, upon enquiry, found that the land ad measuring 0.016 Hectare situated in Khasra No.88/1, recorded in the name of Sukram and Premsai was occupied by the present petitioner. There is no evidence led by the petitioner before any of the authorities that this land, which he had occupied, was sold in favour of Baiga Ram Satnami under any registered sale deed by the holders namely Sukram and Premsai.

7. The petitioner did not examine Baiga Ram Satnami or even Sukram or Premsai to prove that the said agreement was executed under the authority of Sukram and Premsai. Even according to the petitioner, out of sale consideration of Rs.4,000/-, an advance of Rs.500/- was given, there is no acknowledgment of the original owner nor is there any evidence that any amount was paid to them. These facts of the case, on the face of it, leave no manner of doubt that the transaction was a fraudulent one. The land of tribes was occupied by the petitioner on the basis of unregistered document said to be executed in his favour by one Baiga Ram Satnami, who had nothing to do with the property and therefore, it can reasonably be inferred that there was intention to grab the land of the tribals.

Other aspect that the house was constructed on the land, the argument that the agreement relates to existence of house on the land in dispute, is liable to be rejected, because, this document is a piece of fraudulent transaction, which is said to be executed by Baiga Ram Satnami, who has not been examined. Baiga Ram Satnami is not the registered owner of the land. Unregistered document/agreement carries no weight. The document, which has been filed by the petitioner before this Court and considered by the Board of Revenue, relates to diversion, which is said to have been carried out in the year 1984-85.

8. Section 170-B of the CG Land Revenue Code is a piece of welfare legislation intended to ensure that the land of aboriginal tribe be returned to them, once it is found that any person, has defrauded legitimate right of aboriginal tribe. Sub section (1) of Section 170-B of the CG Land Revenue

Code provides that every person, who on the date of commencement of the Madhya Pradesh Land Revenue Code (Amendment), 1980, is in possession of agricultural land which belonged to a member of a tribe which has been declared to be an aboriginal tribe under sub-section(6) of Section 165 of the CG Land Revenue Code between the period commencing on 2nd October, 1959 and ending on the date of the commencement of Amendment Act, 1980 shall, within two years of such commencement, notify to the Sub Divisional Officer in such form and in such manner as may be prescribed, all the information as to how he has come in possession of such land.

Sub section(2) of Section 170-B of the CG Land Revenue Code creates presumption that if any person fails to notify the information as required by sub-section (1) within the period specified therein it shall be presumed that such person has been in possession of the agricultural land without any lawful authority. Further sub-section(3) provides that when Sub Divisional Officer received information, he shall make such enquiry as may be deemed necessary about all such transactions of transfer and if he finds that the member of aboriginal tribe has been defrauded of his legitimate right he shall declare the transaction null and void and pass an order revesting the agricultural land in the transferor and if he is dead, in his legal heirs.

Under sub-section(3), the Sub Divisional Officer is required to pass an order revesting the agricultural land in the transferor or to legal heirs. Where building or structure has been erected on the agricultural land prior to such finding, it is required to fix the price of such land in accordance with the principles laid down for fixation of price of land in the Land Acquisition Act, 1894 (No.1 of 1894) and order the person referred to in sub-section (1) to pay to the transferor the difference, if any, between the price so fixed and the price actually paid to the transferor. The proviso carves out an exception that where the building or structure has been erected after the 1st day of January, 1984, the provisions of clause(b) shall not apply.

9. The issue that the land was not an agricultural land, has been raised for the first time before this Court. If the petitioner had a case that the land was not an agricultural land, he was required to raise this plea at the first instance before the Sub Divisional Officer itself, so that, factual enquiry could be made in this regard. However, no specific objection in this regard was taken before the Sub Divisional Officer. The petitioner has come out with a challan, which records purpose of construction of house and fine regarding diversion imposed in one case No.59/A-2 of the year 1984-85. Though, no order of diversion has been placed before this Court, even if it is assumed, for the arguments sake, that any diversion of the land was made, it would not help the petitioner, because according to the scheme of Section 170-B of the CG Land Revenue Code, the enquiry is to be made for possession of person over the agricultural land belonging to aboriginal tribe between the period commencing from 2nd October, 1959 and ending on the date of the commencement of Amendment Act, 1980. Therefore, if the land continued as agricultural land during this period, enquiry could be made under Section 170-B of CG Land Revenue Code. In any case, there is no clinching evidence of diversion of land.

10. As to whether, there existed a house on the land belonging to the tribals-Sukram and Premsai, the petitioner mainly relies on the agreement itself. This is not an agreement between the petitioner and the original holders of land, but between the petitioner and one Baiga Ram Satnami, whom nobody knows. That person never appeared before any of the authorities. The agreement clearly appears to be a self-serving document. The learned Board of Revenue and the

Collector both have minutely scrutinized the material on record and taken into consideration the revenue records, which did not contain any such mention of there existing any house on the land. The Board of Revenue in its finding recorded that in the Khasra Panchshala and revenue records, construction of house has not been recorded. The petitioner has not placed before the Court any receipts etc. or any other evidence of construction of house or document of obtaining permission to raise construction prior to 1984. One certificate dated 29-01-2003 of Chief Municipal Officer, Pathalgaon has been filed. This certificate is being filed before this Court and there is nothing to show that this was filed for the first time before the Board of Revenue of any other authority. If the petitioner wanted benefit of sub-section(3) of Section 170-B of the CG Land Revenue Code, he was required to lead clinching evidence that house was constructed or erected on the land in dispute prior to 01-01-1984.

11. In the result, I am not inclined to interfere with the impugned order dated 08-11-2006 passed by the Board of Revenue, Bilaspur.

12. Accordingly, the petition is dismissed.

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

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