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HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 363 of 2006

- Kishori Lal Agrawal, S/o Shri Khemchand Agrawal, aged about 75 years, R/o Village Surajpur, Tahsil Surajpur, District Sarguja (C.G.), through Power of Attorney Holder Ramesh Kumar Agrawal, S/o Shri Kishori Lal Agrawal, aged about 55 years, R/o Mahuwapara, Surajpur, District Sarguja (C.G.)

---- Petitioner

Versus

1. Board Of Revenue, Chhattisgarh, Bilaspur (C.G.)
2. The Collector, District Sarguja (C.G.)
3. The Sub Divisional Officer, Surajpur, District Sarguja (C.G.(
4. Chain Sai, S/o Indal Gond
5. Tulsi, S/o Chain Sai Gond
6. Babu Lal, S/o Chain Sai Gond
7. Sukhlal, S/o Chain Sai Gond
8. Shivlal, S/o Chain Sai Gond

Respondent Nos.7 & 8 are minor through their natural guardian father Chain Sai, S/o Indal Gond, respondent Nos.4 to 8 are R/o Mahuwapara, Tahsil Surajpur, District Surajpur (C.G.)

---- Respondents

For Petitioner	P. N. Bharat, Advocate
For Respondent-State	Shri Rahul Jha, GA
For Respondent Nos.4 to 8	Shri J. K. Shastri, Advocate

Hon'ble Justice Mr. Prashant Kumar Mishra

Order On Board

19/06/2019

1. The order under challenge passed by the Board of Revenue on 13.10.2005 arises out of proceedings under Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (henceforth the Code, 1959). By the said order, the Board of Revenue has set aside the concurrent orders passed by the SDO (Revenue), Surajpur on 21.01.2002 and that of the appellate order passed by the Collector, Sarguja on 22.11.2002. Under both these orders, the Revenue Authorities had rejected application of the respondent Nos.4 to 8 for reversal of land in exercise of powers under Section 170-B of the Code, 1959.

2. The subject land admeasuring 0.42 Acres, situate at Village Mahuapara, Tahsil Surajpur, District Sarguja (now District Surajpur) belonged to tribal holder Gopal, son of Pandit. The said Gopal sold the land in favour of Mohan on 01.06.1973. Petitioner Kishori Lal Agrawal claims that prior to this transaction, he had already paid some amount to Gopal in and around 1950 and was settled in possession, however, there is no document to this effect.

3. Be that as it may, after coming into force of Section 170-B of the Code, 1959, the concerned Patwari submitted a report before the SDO (Revenue) that the land belongs to a tribal holder but is presently possessed by a non tribal i.e. petitioner Kishori Lal Agrawal. On the basis of this report, the SDO (Revenue) initiated proceedings under Section 170-B of the Code, 1959. In the said proceedings, statements of Devsaran, Lavango, Tulsiram, Lal Sai, S/o Habul and Kishorilal, S/o Khemchand were recorded and

eventually an order was passed by the SDO (Revenue) on 21.01.2002 holding that Mohan was a Benami purchaser for and on behalf of petitioner Kishorilal Agrawal, therefore, transaction is hit by Section 170-B of the Code. However, upon appreciation of material on record, the SDO (Revenue) invoked provisions contained in sub-section (3) of Section 170-B to allow compensation assessed at Rs.1,03,935/- payable to the respondent Nos.4 to 8 for the reason that the construction has been made on the subject land prior to 01.01.1984. This order of the SDO (Revenue) was affirmed by the Collector vide its order dated 22.11.2002 while rejecting the appeal preferred by the respondent Nos.4 to 8.

4. The Board of Revenue has interfered with the order in exercise of its revisional jurisdiction mainly on the finding that there is no evidence on record regarding existence of any construction over the subject land, which was made prior to 01.01.1984. Since the contest between the parties and the decision on this petition is revolving around existence of material showing construction on the subject land prior to 01.01.1984, this Court had summoned record of the SDO (Revenue), Collector and the Board of Revenue. For perusal, all the records are available.

5. Having scrutinized the record, it appears, there are oral evidence showing construction of boundary wall, saw mill and rooms over the subject land about 20-30 years back from the date of recording of statement of witnesses. This fact has not only been admitted by petitioner Kishorilal Agrawal and Lavango but also by

respondent No.5 Tulsiram. Moreover, there is public document in the nature of order passed by the Divisional Forest Officer, South Sarguja Division, Ambikapur on 01.11.1975, whereby the petitioner was permitted to establish a saw mill. Since there are oral evidence that the saw mill was established on the subject plot, it is implied that the saw mill for which permission was granted by the Competent Forest Officer, was established on the subject plot sometimes in the year 1975-76.

6. Prior to the present proceedings under Section 170-B of the Code, 1959, the petitioner Kishorilal Agrawal had instituted a suit bearing Civil Suit No.4-A/1985 against Mohan for declaration of title. Even if the suit was not maintainable in relation to a land belonging to Scheduled Tribe, the same is referred only for the purpose of mentioning that in the plaint of the suit, it is mentioned that a house and boundary wall is constructed over the said land.

7. In view of the material available on record, it appears, the Board of Revenue has recorded a perverse finding to observe that there is no material to demonstrate existence of construction over the subject plot, which was made prior to 01.01.1984.

8. At this stage, Shri J. K. Shastri, learned counsel for the respondent Nos.4 to 8, would submit that the construction is not made on the entire plot but it is only on a small portion of the plot, therefore, sub-section (3) of Section 170-B is not attracted for the entire plot.

9. To appreciate Mr Shastri's submission, it would be apt to refer to sub-section (3) of Section 170-B of the Code, 1959, which is reproduced hereunder:-

> "(3) On receipt of the information under sub-section (1) the Sub-Divisional Officer shall make such enquiry as may be 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
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> (a) Where no building or structure has been erected on the agricultural land prior to such finding pass an order revesting the agricultural land in the transferer and if he be dead, in his legal heirs,
>
> (b) Where any building or structure has been erected on the agricultural land prior to such finding, he shall 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 transferer the difference, if any, between the price so fixed and the price actually paid to the transferer:
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> Provided that where the building or structure has been erected after the 1st day of January, 1984 the provisions of clause (b) above shall not apply:
>
> Provided further that fixation of price under clause (b) shall be with reference to the price on the date of registration of the case before the Sub-Divisional Officer."

10. A bare perusal of the provision would indicate that construction of building or structure as mentioned in Clause (b) of sub-section (3) is not intended to be meant that the construction has to be on every inch of the land. If a non agricultural or non residential activity like operation of a saw mill is going on, on a land admeasuring 0.42 Acre, it would necessary require establishment of a saw mill and office on some portion and storage of sawn and unsawn wood/timber on the other part of the land. There being

evidence on record that the boundary wall has been constructed over the entire area, it can safely be concluded that the whole area has some or the other structure for operating the saw mill, therefore, the contention raised by Shri J. K. Shastri does not appeal to this Court.

11. In view of the above, the writ petition deserves to be and is hereby allowed. The order passed by the Board of Revenue being based on perverse findings, the same deserves to be and is hereby set aside.

12. Before parting, it is deemed appropriate to consider the adequacy of compensation offered to the respondent Nos.4 to 8 in the order passed by the SDO (Revenue). Although the said assessment is based on some calculation, however, upon considering and balancing the equities in exercise of jurisdiction under Article 226 of the Constitution of India, it appears equitable that the tribal holder should be allowed some more compensation, therefore, in addition to what has been allowed by the SDO (Revenue) in its order dated 21.01.2002, it is directed that in addition to the said amount, the petitioner shall pay further amount of Rs.2 Lakhs to the respondent Nos.4 to 8 within a period of 4 months from today.

Sd/-
Prashant Kumar Mishra
Judge

Nirala