

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 378 of 2019**

(Arising out of order dated 19.06.2019 in WPS-451 of 2008)

- Rajkumar, S/o Sunderdas Panika, Aged about 53 Years, R/o - Village Matiya, Tahsil Masturi, District Bilaspur, Chhattisgarh

---- Appellant**Versus**

1. Ramlal, S/o Chaitram Satnami, Aged about 52 Years
2. Ganpat Das, S/o Udal Das Manikpuri, Aged about 73 Years
Both R/o Village Matiya, Tahsil Masturi, District Bilaspur Chhattisgarh
3. The State Of Chhattisgarh, Through The Collector, Bilaspur Chhattisgarh
4. Board Of Revenue, Bilaspur, District Bilaspur, Chhattisgarh

-----Respondents

For Appellant	: Shri Animesh Verma, Advocate
For Respondents/State	: Shri Gagan Tiwari, Dy GA
For Private Respondents	: None appears

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

Per Parth Prateem Sahu, J
23.08.2019

1. Challenge is to the impugned order passed by the learned Single Judge declining to interfere with the order passed by the Board of Revenue rejecting the revision filed by the appellant.
2. The facts of the case in a nutshell are that on occurrence of a vacancy of Kotwar in village Matiya, Naib Tahsildar initiated proceedings for appointment of Kotwar. The appellant along with respondents 1 and 2

applied for the post of Kotwar. Naib Tahsildar after considering all the relevant material available on record, recorded his satisfaction to appoint respondent- 1 on the post of Kotwar. The candidature of the appellant has been refused while recording that he has encroached the government land. Naib Tahsildar passed order of appointment of Kotwar on 29.01.1993, appointing respondent-1. The said order of appointment was challenged by the appellant herein before the Sub-Divisional Officer (Revenue), where he could not succeed and his appeal failed. Thereafter, he preferred Second Appeal before the Divisional Commissioner, Bilaspur Division which was also dismissed vide order dated 21.07.1997.

3. Against the dismissal of Second Appeal, the appellant preferred a revision before the Board of Revenue and the Board of Revenue after recording a categorical finding that the appellant satisfied the amount of fine imposed upon him for encroachment, upheld the orders passed by both the appellate authority and dismissed the revision. Dismissal of the revision was again challenged by the appellant by filing Writ Petition (S)-451 of 2008 and the learned Single Judge after considering arguments raised by the parties and also considering the entire facts, passed a very detailed order dismissing the Writ Petition. It was held that the appellant encroached government land and also paid fine of Rs.500/- imposed upon him; order of encroachment and payment of fine amount have never been challenged before the higher authorities; and further that respondent- 1 was having higher qualification of Matriculation.

4. Learned counsel for the appellant submits that all the Courts below had not considered the fact that the land which is said to have encroached

by the appellant is not a government land, rather it was allotted to his father, when he was working as Kotwar. He further submits that no minimum qualification has been specified in the Rules framed under Section 230 of Chhattisgarh Land Revenue Code (for short, 'Land Revenue Code') and therefore, there is no question of consideration of the higher qualification for appointing respondent- 1 on the post of Kotwar. Rules do not provide that higher qualification to be considered at the time of selection for appointment.

5. Per contra, learned State counsel submits that all the authorities have given a concurrent finding of fact that the appellant has encroached the government land and paid the fine imposed upon him. The appointing authority Naib Tahsildar after recording his satisfaction with respect to the conduct and qualification of the applicants therein, has found respondent- 1 suitable for appointment on the post of Kotwar, which cannot be found faulted with and the authorities have arrived at a conclusion that the order of appointment of respondent- 1 is based on appreciation of facts available with the appointing authority which was in accordance with Section 230 of Land Revenue Code and the rules framed thereunder.

6. To appreciate the arguments submitted before us, it will be beneficial to have a glance of relevant provisions of rule framed under Section 230 of Land Revenue Code 'for appointment, punishment and removal of Kotwar and their duties', which are reproduced here below for ready reference:

“Rules regarding appointment, punishment and removal of Kotwars and their duties:

1. xxxxxxxxxx

2. No person shall be eligible for the post of Kotwar, who — (i) is, in the opinion of the appointing authority, not of good character and antecedents;

(ii) is, in the opinion of the appointing authority, unfit through infirmity of body or mind, to perform the duties of the post;

(iii) is below the age of 21 years;

xxxxxxxxxxxxxxxx

xxxxxxxxxxxxxxxx

8. It shall be the duty of the Kotwar—

(iii) to report to the Patel or Gram Panchayat or Gram Sabha entrusted with the duties of Patel under section 229 read with section 232 of the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959), of misuse of Nistar rights or of Government property and encroachment in the common lands of the village and to assist the Patel or Gram panchayat or Gram Sabha in their protection and use according to rules;

(v) to keep watch and ward over the houses and property of the villagers performing for the purpose such patrol as may be prescribed by the appointing authority;”

Rule 2 provides for that who could not be appointed as Kotwar.

7. The argument which has been raised by learned counsel for the appellant before this Court is that the finding arrived at by all the courts below with respect to the encroachment of land is not sustainable because, the land which the appellant possessed was not a government land, but it was allotted to his father. We have perused the record of the Courts below, appointing authority, considered the statement of Patwari and his report of encroachment of government service land by the appellant and

Sub-Divisional Officer and Commissioner, who are appellate authorities upheld the order of appointing authority. The Board of Revenue gave a categorical finding that fine of Rs.500/- has been imposed on the appellant with respect to encroachment of government land and the appellant deposited it. This finding which is recorded by the Board of Revenue has not been controverted by the appellant by placing any cogent and specific material on record or by bringing any documentary evidence to this effect that the said order of imposition of fine was challenged by him before any higher forum or any authority concerned and it was quashed/ set aside. No document has been placed on record by learned counsel for the appellant along with memo of appeal to show that subsequently the land which has been said to have been encroached by the appellant has been allotted to him in view of the proposal of village Panchayat made much after the date of appointment.

8. On perusal of Annexure A/6 to the Writ Petition, which is the proposal of village Panchayat is of 30.12.2003, ie about 10 years after process of appointment of Kotwar initiated by the Naib Tahsildar. Even the recommendation made by the Collector which is part of Annexure P/6 is dated 22.09.2004. The subsequent recommendation of allotment of any government land to the appellant treating him to be a landless person will not help the appellant because the date of consideration with respect to the encroachment will be, as it was in the year 1992, when the appointing authority has considered the candidature of the appellant for his appointment on the post of Kotwar along with others. Admittedly from the argument raised and the document placed on record by the appellant

himself before the Writ Court shows that, he was not holding or possessing the land validly but it will definitely come within the purview of encroachment of the land, when it is a government land.

9. The Co-ordinate Bench of this Court has dealt with the issue of land granted to them while they were working as Kotwar can be classified as their ownership land/Munafi land in the matter of **Gambhir Das Panika Vs Chairman, Board of Revenue, Chhattisgarh and others** reported in AIR 2019 CG 1 and held thus:

“41. A conjoint reading of the provisions contained in Sections 145 to 150 of the MPLRC, 1954 makes it apparent that a person holding service land as a Kotwar through the proprietor or malguzar free of land revenue can never become a bhumidhari, as he never held the land as occupancy tenant in the Mahakushal Region or as raiyat or raiyat sarkar or a tenant either in the Mahakushal Region or merged territories, therefore, the status of Kotwar vis-a-vis the service land remain a grant from the proprietor in lieu of services rendered to the malguzar or village.

42. If the petitioners' forefathers became bhumidhari under the MPLRC, 1954 there is absolutely no reason why their forefathers or after their demise the present petitioners did not move application for conferral of bhumiswami rights under Section 150 of the MPLRC, 1954 or the CGLRC, 1959 for last about seven decades. There is no proof that the petitioners or their forefathers had ever paid the land revenue under Section 148 of the MPLRC, 1954. As a matter of fact, this provision by itself exposes the fallacy in the petitioners' argument because a bhumidhari is required to pay the same land revenue, which he was paying in respect of lands held by him and the same rent if he was paying rent in respect of lands held by him. It is the

petitioners' own case and it is the case of all Kotwars who were enjoying service land before coming into force the CGLRC, 1959 that they were exempted from payment of land revenue.

43. For all the above stated reasons, we are of the considered view that Lalla Singh Chouhan (ILR 2018 Chh 626) (supra) has not laid down the correct law and the finding that lands held by Ex-Kotwars as a grant from malguzar would be saved to them as bhumiswami land is erroneous particularly in view of the provisions of Section 3 of the Abolition Act, 1950 read with Sections 147, 148 and 150 of the MPLRC, 1954. Resultantly, the orders/ judgments in the matters of Chhabil Das (supra), Tikaram (supra) and Lalla Singh Chouhan (supra) stand overruled."

10. The Court in categorical terms held that the Kotwar cannot become *Bhumidar* (owner) of the land granted to him in lieu of service rendered to the Malguzar or village.

11. In the case at hand also appellant admitted his possession on government land, he was fined by the competent authority for Rs.500/-. The possession of service land even after going out from service of his ancestor becomes illegal possession and therefore, it is an encroachment of government land and the competent authority has also imposed fine for encroaching government land.

12. Looking to the duty cast upon the Kotwar to be a watchman of village and to report the encroachment of land by others to Patwari and Patel of village, the conduct of the appellant of encroachment of government land dis-entitles him to be appointed on the post of Kotwar. Appellant who is violating law continuously, cannot be considered as eligible for the government job like 'Kotwar'.

13. Learned Single Judge after considering all the facts and material placed on record, in view of the rules framed under Section 230 of the Land Revenue Code, rightly held that there is a concurrent finding of the fact and dismissed the writ petition filed by the appellant.

14. So far as the next argument of the learned counsel for the appellant is concerned that the appointing authority committed error in considering that respondent -1 is more qualified is concerned, definitely the Rule does not provide for any specific qualification but as for the first ground that the appellant was found to have encroached government land witnessed by Patwari and also admitted by the appellant by paying fine of Rs.500/-, we do not wish to go into the second argument as the appellant suffered disqualification as provided under Rule 2 of the "Rules Regarding Appointment Punishment and Removal of Kotwar and Their Duties". Under Rule 8(iii) of the Rules framed u/s 230 of the Land Revenue Code, there is a duty casts upon the Kotwar to report to Patel misuse of *nistari* rights of Government property and encroachments in the common lands of the village and to assist the Patel and Gram Panchayats or Gram Sabha in their protection and use according to Rules, but he himself has encroached the government land. There is concurrent finding of facts of all the Courts, no legal issue could be pointed out by the appellant.

15. In the considered opinion of this Court, in the facts and circumstances of the case, as well as the provisions of law, learned Writ Court has not committed any error in dismissing the Writ Petition.

16. We do not find any tenable ground calling interference of this Court. Appeal being devoid of any substance, it is liable to be and is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma