

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 585 of 2016**

(Arising out of the order dated 03.11.2016 passed by learned Single Judge in WPC No. 2695/2016)

Tirath Ram Kenwat S/o Shri Fagawa Kenwat, Aged About 65 Years R/o Village Jamli, Tahsil And Police Station Chhura, District Gariyaband Chhattisgarh

---- Appellant

Versus

1. State Of Chhattisgarh Through The Collector Gariyaband, District Gariyaband Chhattisgarh
2. Chhattisgarh Rajya Anusuchit Janjati Aayog Raipur, Through Its Secretary, 61 Jalvihar Colony, Raipur, District Raipur Chhattisgarh
3. The Tahsildar, Chhura, District Gariyaband Chhattisgarh
4. Shri Surtiya Ram Gond Village Jamli Tahsil And Police Station Chhura, District Gariyaband Chhattisgarh
5. Premnarayan Pal S/o Inderman Pal, Aged About 45 Years R/o Tulsi Baadera Tahsil And District Raipur Chhattisgarh
6. Adim Jati Seva Sahkari Samiti, Village Path Sivani, Tahsil Chhura, District- Gariyaband, Chhattisgarh

---- Respondents

For Appellant	:	Shri Hemant Kesharwani, Advocate
For State/Respondents No.1 to 3	:	Shri Vikram Sharma, Deputy G.A.
For Respondent No.6	:	Shri A.S. Kachhwaha with Shri B.L. Sahu, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Sanjay K. Agrawal, Judge

Order on Board

Sanjay K. Agrawal, J

25.06.2019

Heard

1. The present writ appeal is directed against the order dated 03.11.2016 by which the appellant's writ petition has partly been allowed and the matter has been remanded to the learned Sub Divisional Officer (SDO) to initiate proceeding under Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (henceforth 'the Code') to decide the

matter afresh in accordance with law.

2. Learned counsel for the appellant submits that though the matter has been remanded to the learned SDO to proceed under Section 170-B of the Code, but the learned Single Judge has ignored the order dated 20.07.1998 (Annexure P-3) by which learned SDO has already held that this is not a case where the proceeding can be initiated under Section 170-B of the Code and that order has become final, therefore, the impugned order is liable to be set-aside.
3. Mr. Sharma, learned counsel for Respondents No. 1 to 3 & Mr. Kachhwaha, learned counsel for Respondent No. 6 would support the impugned order.
4. We have heard learned counsel for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.
5. The appellant questioned the order of Respondent No. 2 herein dated 21.11.2004 by which a certain recommendation was made by the Chhattisgarh State Scheduled Tribe Commission (for short 'the Commission') in favour of Respondent No. 4, which was set-aside by the learned Single Judge holding that the provisions contained in Section 165(7)(b) and Section 170-B of the Code would be applicable and remitted the matter to the learned SDO for fresh consideration, which is sought to be challenged in this writ appeal.
6. Since the matter has already been remitted to the learned SDO for fresh consideration, the appellant is at liberty to make submission

before that Court bringing to the notice of that Court that the order dated 20.07.1998 passed by SDO, Gariyaband is with regard to the applicability of Section 170-B of the Code has become final and the liberty is reserved in favour of the appellant herein. The appellant herein is granted liberty to raise the plea that the provisions contained in Section 165(7)(b) of the Code is not attracted. In that event, learned SDO will also consider the said plea of applicability of Section 165 (7)(b) & Section 170-B of the Code in accordance with law without being prejudiced to any of the finding and observation made by the learned Single Judge in its order dated 11.03.2006.

7. Accordingly, the present writ appeal is disposed of with above-stated liberty reserved in favour of petitioner to raise all the grounds permissible including applicability of Section 170-B & Section 165(7)(b) of the Code before the SDO, Gariyaband and said authority will consider the said grounds in accordance with law. Since the matter is old one and is pending since long, the SDO, Gariyaband is directed to consider and dispose off the proceedings within three months from the date of receipt of certified copy of this order.
8. A copy of this order be sent to the learned SDO, Gariyaband through fax/ e-mail for compliance and needful.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge