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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2445 of 2018**

Shashi Bhushan S/o Shri Krishnakant Aged About 45 Years Caste Saunra, R/o Village Mahuapali, Post- Bonda, Police Station And Tahsil Baramkela, Revenue And Civil District Raigarh, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Revenue And Disaster Management, Mahanadi Bhawan, Naya Raipur, Revenue And Civil District Raipur, Chhattisgarh.
2. State Of Chhattisgarh Through Secretary, Scheduled Caste/ Scheduled Tribe And Other Backward Classes Department, Mahanadi Bhawan, Naya Raipur, Revenue And Civil District Raipur, Chhattisgarh.
3. Collector Raigarh Revenue And Civil District Raigarh, Chhattisgarh.
4. Sub- Divisional Officer (Revenue) Sarangarh, Revenue And Civil District - Raigarh, Chhattisgarh.
5. District Registrar Raigarh, Revenue And Civil District Raigarh, Chhattisgarh.
6. Tahsildar Baramkela Revenue And Civil District Raigarh, Chhattisgarh.
7. Sub- Registrar Baramkela Revenue And Civil District Raigarh, Chhattisgarh.

---- Respondents**WPC No. 2495 of 2018**

Krishnakant S/o S/o Shri Bhuvneshwar Aged About 68 Years Caste Saunra R/o Village Mahuapali, Post Bonda, P. S. And Tehsil Baramkela, Revenue And Civil District Raigarh, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Revenue And Disaster Management, Mahanadi Bhawan, Naya Raipur, Revenue And Civil District Raipur, Chhattisgarh.

2. State Of Chhattisgarh Through Secretary, Scheduled Caste/ Scheduled Tribe And Other Backward Classes Department, Mahanadi Bhawan, Naya Raipur Revenue And Civil District Raipur, Chhattisgarh.
3. Collector Raigarh Revenue And Civil District Raigarh, Chhattisgarh.
4. Sub Divisional Officer (Revenue) Sarangarh, Revenue And Civil District Raigarh, Chhattisgarh.
5. District Registrar Raigarh, Revenue And Civil District Raigarh, Chhattisgarh.
6. Tehsildar Baramkela Revenue And Civil District Raigarh, Chhattisgarh.
7. Sub Registrar Baramkela Revenue And Civil District- Raigarh, Chhattisgarh.

---- Respondents

WPC No. 3158 of 2018

Phiran Sidar S/o Shri Laxman Sidar, Aged About 63 Years Caste - Saunra, R/o Village - Mahuldeep, Tehsil - Malkharoda, Revenue And Civil District Janjgir Champa Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Revenue And Disaster Management, Mahanadi Bhawan, Naya Raipur, Revenue And Civil District Raipur Chhattisgarh.
2. State Of Chhattisgarh Through Secretary, Scheduled Caste/ Scheduled Tribe And Other Backward Classes Department, Mahanadi Bhawan, Naya Raipur, Revenue And Civil District Raipur Chhattisgarh.
3. Collector Janjgir - Champa, Revenue And Civil District Janjgir Champa Chhattisgarh.
4. Sub Divisional Officer (Revenue) Malkharoda, Revenue And Civil District Janjgir Champa Chhattisgarh.
5. District Registrar Janjgir Champa Revenue And Civil District Janjgir Champa Chhattisgarh.
6. Tehsildar Malkharoda, Revenue And Civil District Janjgir Champa Chhattisgarh.
7. Sub Registrar Malkharoda Revenue And Civil District Janjgir Champa Chhattisgarh.

8. Mulchand Chandra S/o Chaitram Chandra Aged About 60 Years Caste - Chandranahu, R/o Village Nandeli, Tehsil Jaijaipur, District Janjgir Champa Chhattisgarh.

---- Respondents

For Petitioner	: Shri Surfaraj Khan, Advocate.
For Respondent/State	: Shri Satish Chandra Verma, Advocate General with Shri Vikram Sharma, Panel Lawyer.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

P. R. Ramachandra Menon, Chief Justice

24.07.2019

- The issue projected in these three writ petitions is merely with regard to the stand taken by the Respondents in preventing the Petitioners from transacting their lands as desired, in view of urgent need and requirement of cash for different purposes. The case is that registration of the property intended to be sold to a non-tribal member is prevented by the authorities of the Revenue by not issuing the necessary certificate for causing registration of property of the Petitioners. This made the Petitioners to approach this Court by filing the writ petitions. For sake of convenience, Writ Petition (C) No.2445 of 2018 is taken as the lead case. The prayers sought for are to the following effect :

“10.1 That, this Hon'ble Court may kindly be pleased to issue a suitable writ (s), order (s), direction (s) by commanding and directing the respondent authorities, particularly respondents

No.6 & 7 for processing the registration of sale-deed within time frame by issuing the requisite document of sale (बिक्री-छांट) of the land (Annexure P-1), unto the petitioner by the Tehsildar Baramkela and there after the Sub-registrar Baramkela be directed to register the sale-deed after receiving the requisite revenue stamp-fee, in accordance with law.

10.2 That, this Hon'ble Court may kindly be pleased to call the entire records from the respondents authorities for its kind perusal.

10.3 Any other relief, which may be suitable in the facts and circumstances of the case, may also be granted. ”

2. The relief sought for stands resisted by the State, by filing a return.
3. We have heard Shri Surfaraj Khan, learned counsel appearing for the Petitioners as well as Shri Satish Chandra verma, learned Advocate General representing the State.
4. The crux of the submission of learned counsel appearing for the Petitioners is that the Petitioners are not belonging to any Scheduled Tribe coming within the purview of the Presidential order issued Article 342(1) of the Constitution of India, nor is any change or modification with regard to such inclusion or exclusion by the act of Parliament under Article 342(2) of the Constitution of India. When, on one hand, the rights and liberty of the Petitioners to deal with their land or property is sought to be prevented by the Respondent/State stating that the Petitioners belong to Scheduled Tribe, the Respondents/State, on the other hand, are not prepared to

extend any benefit to the Petitioners treating them as members of any Scheduled Tribe, in the matter of education, employment or such other fields.

5. It is brought to the notice of this Court that under similar circumstance, several writ petitions came to be filed before and in all such cases, interference was made and directions were issued to the authorities concerned, pursuant to which, the properties came to be registered in favour of the persons who were desirous to purchase the property. It is also pointed out that, one such matter was filed as a 'Public Interest Litigation' challenging the circular dated 11.09.2009 issued by the District Collector interdicting the conveyances with respect to recommendation sent by the State Government, to the Central Government for inclusion of the communities concerned in the list of Schedule Tribes. The matter was finalized by this Court, holding that there was no necessity to interdict the circular dated 11.09.2009 issued by the District Collector insofar as the Central Government had already rejected the proposal made by the State.
6. In this context, it is relevant to note, as put forth by the learned counsel for the Petitioners, that the original list of Scheduled Tribes as contained in the Presidential order issued in terms of Article 342(1) of the Constitution of India was sought to be modified by the State, referring to the phonetic values of the tribe described as "Saunra", and it was accordingly, that the proposal was forwarded to the Central Government as borne by Annexure R/1. This was considered and rejected by the Central Government. This being the position, the Presidential order stands intact, which cannot be varied even by the President, but by an act of the Parliament. There can't

be any dispute with regard to the legal position in this regard, in view of the law declared by the Constitution Bench of the Apex Court in **State of Maharashtra v. Milind and Others, (2001) 1 SCC 4.**

7. The learned Advocate General submits that the State does not press the submission with regard to the Scheduled Tribe's status of the Petitioners. However, the Petitioners are stated as persons who belong to 'Aboriginal Tribe', who need not be a Scheduled Tribe and the transactions involving property of an Aboriginal Tribe is taken care of by the provisions of the Chhattisgarh Land Revenue Code, 1959. Specific reference is made to Section 165(6), which is reproduced hereinbelow :

“165. Right of transfer.- x

x

x

(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-

- (i) in such areas as are predominantly inhabited 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 be

transferred or be transferrable 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.”

The learned Advocate General submits that necessary notification has been issued as envisaged under the Chhattisgarh Land Revenue Code, by virtue of which, it is necessary to seek for permission of the authorities concerned for transacting with the property, if at all the property is to be sold to a person who is not a member of the Tribe as mentioned therein. It is not prohibitory in nature but regulatory, to ensure that the property belonging to Aboriginal Tribe is not cause to be stealthy or cunningly appropriated by anybody else; especially since the persons belonging to 'Aboriginal Tribe' are mostly illiterate.

8. The learned counsel for the Petitioners points out that the Petitioners are having absolute rights over the property and that the Petitioners are neither belonging to any 'Scheduled Tribe' nor are they members of any 'Aboriginal Tribe' and no notification has been issued by the State showing the particulars of the Caste of the Petitioners as having included in the notification mentioning the 'Aboriginal Tribe'. It cannot be lost sight of the fact that the sale or the conveyance of the property may be necessitated under various circumstances, especially, in connection with the treatment to be availed by any member of the family, the lack of adequate cash or such other assets in connection with education or for securing the employment and for such other reasons. The property involved may be the

only property or asset at the hands of the parties concerned and if there is no other alternative to raise the money, by getting the property conveyed as desired, it is not for the State or the authorities to prohibit the conveyance, detrimental to the interest of the persons belonging to the community whose interest is allegedly sought to be protected. There is some force in the said submission as well.

9. The submission made by the learned Advocate General is that the authorities of the State would never stand against the right and interest of the persons concerned and the endeavour is only to see that their rights and interests are protected in all manner and the property is not appropriated by persons having vested interest for throw away price or by way creation of adverse interests. It is only in the said context that necessity to obtain permission of the competent authority is prescribed as pre-requisite. The learned Advocate General submits that the Petitioners, but for the assertion in the writ petition that an oral request was made by them, have produced no material to show that they had approached the competent authority seeking for getting any permission in this regard. If any such application is filed, seeking for permission of transacting the property before the competent authority Tahsildar (the learned counsel for the Petitioners submits that Tahsildar is the competent authority) giving the particulars as to the extent of property, the quantum of consideration involved, the person who is desirous of purchasing the property of creating any other right, the genuineness of the claim will be considered and necessary sanction will be given; based on which, further steps could be pursued by the Petitioner for causing registration of property. It is stated that, under similar circumstances, such a course is being pursued by the

Tahsildar after making the requisite extent of enquiry in this regard and certificate/clearance has been given to several persons.

10. After hearing both the sides, we find it appropriate that the Petitioners be directed to file representation/request as above before the Tahsildar concerned, giving the particulars of transaction sought to be effected within a period of 'two weeks' from the date of receipt of copy of this verdict. On receipt of such representation/request, the same shall be considered by the Tahsildar concerned; who shall conduct an enquiry to his satisfaction, ascertain the genuineness and give clearance to the Petitioners based on the outcome of such enquiry, at the earliest, at any rate, within a period of 'six weeks' thereafter.

11. The writ petitions stand disposed off.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge