

HIGH COURT OF CHHATTISGARH BILASPUR

Judgment reserved on 26/02/2019

Judgment delivered on 25/03/2019

Writ Appeal No.13 of 2019

1. Devendra Bahadur Singh, S/o late Virendra Bahadur Singh, aged about 34 years, R/o Saraipali, District Mahasamund (CG)
2. Ku. Pukhraj Singh, D/o Late Virendra Bahadur Singh, aged about 38 years, R/o Saraipali, District Mahasamund (CG)

---- Appellant

Versus

1. Smt. Shakuntala Devi, w/o Late Ganpat Rai Agrawal, aged about 68 years, R/o Saraipali, District Mahasamund (CG)
2. Mukesh Agrawal, s/o Late Ganpat Rai Agrawal, aged about 50 years, R/o Saraipali, District Mahasamund (CG)
3. Manoj Agrawal, s/o Late Ganpat Rai Agrawal, aged about 39 years, R/o Saraipali, District Mahasamund (CG)
4. Laxmi Narayan Agrawal, s/o Late Ganpat Rai Agrawal, aged about 30 years, R/o Saraipali, District Mahasamund (CG)
5. Smt. Babita Agrawal, d/o Late Ganpat Rai Agrawal, aged about 40 years, w/o Praful Agrawal, R/o M. Sonsm Subhash Chowk, Raigarh (CG)
6. Smt. Savita Agrawal, d/o Late Ganpat Rai Agrawal, aged about 37 years, R/o Amor Agencies, Daily Market, Balangir, Orissa
7. Smt. Navita Agrawal, d/o Late Ganpat Rai Agrawal, aged about 35 years, w/o Anup Agrawal, R/o Suhag Bhandar, Katabhanji, Orissa.
8. Smt. Sarita Agrawal, d/o Late Ganpat Rai Agrawal, aged about 33 years, w/o Vishal Agrawal, R/o Anil Agencies, MG Road, Raipur (CG)
9. State of Chhattisgarh, Through Secretary, Revenue Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur (CG).

---- Respondents

For Appellants : Shri Manoj V Paranjpe, Advocate
For Respondents No.1 to 8: Sarvashri Satish Agrawal, Yashvardhan
Agarwal, Shobit Banerjee & Prateek
Lunkad, Advocate
For Respondent No.9: Shri Vikram Sharma, PL
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Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C A V JUDGMENT

Per Parth Prateem Sahu, J

25/03/2019

1. By this appeal the appellants have challenged the legality and validity of the order dated 1.11.2018 passed by the learned Single Judge in WPS No.514/01 by which the learned Single Judge has allowed the writ petition filed by respondents No.1 to 8 herein and set aside the order dated 9.4.2001 passed by the Additional Commissioner, Raipur Division, Raipur.
2. Brief facts relevant for disposal of present appeal are that one Ganpat Rai Agrawal, predecessor of respondents No.1 to 8, had purchased the lands in question from Thakur Birendra Bahadur Singh, Thakur Mahendra Bahadur Singh and Smt. Gayatri Kumari vide registered sale deed dated 7.1.1961. Prior to execution and registration of said sale deed, the parties have entered into an agreement to sell on 8.4.1957 and on the date of agreement itself, part payment of sale consideration i.e. Rs.10,000/-, out of total consideration of Rs.25,000/- has been paid to the sellers, who in turn delivered possession of lands in question to the purchaser. The Sub-Divisional Officer (Revenue) *suo motu* took cognizance of the matter and issued a show-cause notice under Section 170B(2) of the CG Land Revenue Code, 1959 (for short 'the Code of 1959') to said Ganpat Rai Agrawal (purchaser) calling upon him to explain as to why the lands purchased by him in between 2.10.59 & 24.10.80, which originally belonged to the members of scheduled tribe, be not restored to its original

owners i.e. tribals, on account of his failure to notify the SDO all the information as to how he came into possession of such property. Said Ganpat Rai replied the said notice in which he had specifically stated that he is in possession of the property in question by virtue of its purchase vide registered sale deed dated 7.1.1961 and that he has already complied with the provisions of Section 170(B) (1) of the Code of 1959 on 24.11.1981 by furnishing information to the competent authority and also enclosed a copy of the same with reply. Said Ganpat Rai Agrawal also submitted one consent letter executed by Thakur Mahendra Bahadur Singh, one of the signatories of sale deed, in which in categorical terms it was mentioned that the sellers have sold the property in question to Ganpat Rai Agrawal by way of registered sale deed dated 7.1.1961 and that agreement to sell was also executed on 8.4.1967 under which an advance of Rs.10,000/- was also received by them. At the time of execution of sale deed, total sale consideration was received by them. On the basis of reply and consent letter (Annexure P-7 & P-8 to the writ petition respectively), SDO dropped the *suo-motu* proceedings by recording that a consent letter has been executed by one of the signatories admitting that they have sold the land to purchaser Ganpat Rai and purchaser of the property has also complied with the provisions of Section 170(B) of the Code of 1959 by furnishing information with the competent authority. With respect to the objection raised by legal heir of one of the sellers, it has been recorded that in view of categorical admission by one of the sellers, who was alive, the same is of no significance. Consequently, the SDO filed the case vide order dated 9.4.1992.

3. Being dissatisfied with the order dated 9.4.1992 passed by SDO, the objector (legal heir of one of the sellers out of three) preferred an appeal before the Collector as provided under the provisions of Section 44 (1) of the Code of 1959. The appellants herein have urged following grounds in their memo of appeal:-
- Property in question was mortgaged in the year 1960;
 - Adequate sale consideration as per market value has not been given;
 - Prior permission of the Collector has not been taken before execution of sale deed dated 7.1.1961
 - Consent letter submitted before SDO is forged and fabricated.
4. The Collector while considering grounds urged in appeal by present appellants had held vide order dated 11.1.1999 that the appellants therein belong to scheduled tribe community; sale agreement dated 8.4.1957 could not be relied upon as it did not find place in original sale deed dated 7.1.1961; prior permission of the Collector for transfer of land belonging to members of scheduled tribe community to non-tribe was not obtained and that the appellants were legal representatives of Late Birendra Bahadur Singh, who died on 19.12.1982, and therefore, SDO should have decided the objection raised by them in an objective manner. By recording the aforesaid findings, Collector allowed the appeal, set aside the order passed by SDO and directed for reversion of land in question to the sellers (tribe persons) and in case of their death, to their legal representatives.
5. Respondent purchaser of the property challenged the order dated 11.1.1999 before the Additional Commissioner, Raipur Division, Raipur. In appeal it was pleaded that originally the appeal was presented

before the Collector, Raipur by legal heirs of Late Birendra Bahadur Singh and subsequently after formation of new District Mahasamund, said appeal was transferred from Raipur and Collector Mahasamund passed the order dated 11.1.1999 by proceeding ex-parte against the appellants therein. It was also pleaded that the transaction dated 7.1.1961 does not attract provisions of Section 170B of the Code of 1959 as the registration of sale deed took place on 7.1.1961 but agreement to sell was executed much prior to coming into force of the Code of 1959 i.e. on 8.4.1957. It was also pleaded that Collector has recorded wrong finding that after the death of Birendra Bahadur Singh in the year 1982, name of his legal heirs were mutated in the land records against the property in dispute, which is a wrong fact. Further, the sellers of property in question are not the members of scheduled tribe community as their caste, which has been mentioned as 'Raj Gond', is not provided in the notified list of scheduled tribe community.

6. The Additional Commissioner vide order dated 9.4.2001 dismissed the appeal filed before him by recording a finding that 'Raj Gond' caste has been declared to be a caste of scheduled tribe by clarificatory letter dated 9.2.1987. It has been further observed and recoded that aforementioned letter has been issued in pursuance of the letter dated 23.4.1986 issued by the Government of India and further relied upon the judgment passed by the Hon'ble High Court of Madhya Pradesh in WP No.5371/1997 reported in 1999 (1) MPLJ 379. The Commissioner also recorded a finding that amount of Rs.25,000/- as sale consideration of the entire property is not adequate or sufficient. It was further held that SDO did not follow the provisions for

deciding objection raised in a proceeding under Section 170B of the Code of 1959 by a tribal person.

7. The order passed by Commissioner was challenged by purchaser before the High Court in a writ petition bearing WP No.514/2001. The writ Court allowed the petition by the impugned order by recording a finding that caste of sellers i.e. 'Raj Gond' has not been shown to be listed in the Presidential Order of 1950 to be a caste of scheduled tribe of Madhya Pradesh and therefore provisions of Section 170B of the Code of 1959 are not attracted.

8. Learned counsel for the appellants submitted that the learned Single Judge fell into an error in not considering that caste 'Gond' as mentioned in the Presidential Order as caste of scheduled tribe community and word 'Raj' has been used as 'prefix' to show their status. In support of this argument, he placed reliance on the decision of the MP High Court in the matter of Yashwant Raj Singh vs. Board of Revenue, Gwalior & ors reported in 1999 (1) MPLJ 379. He further argued that the Collector and the Commissioner have rightly held that SDO has committed an error in not holding proper enquiry as provided under provisions of Section 170B of the Code of 1959 and not deciding objection filed by the appellants in accordance with law.

9. Per contra, learned counsel for the private respondents argued that sellers of property in question do not come within the purview of scheduled tribe community as enlisted in the Presidential Order. Transfer of property by way of registered sale deed does not attract the provisions of Section 170B of the Code of 1959 as agreement to sell of property in question took place on 8.4.1957. Thakur Mahendra Bahadur Singh (one of the sellers out of three), who was only alive on the date of proceedings initiated by

SDO, had executed a consent letter on 22.1.1992 admitting that they have sold the property in dispute, received total sale price as agreed; no fraud has been practiced on them and they do not want back the property in question, which is part of sale deed, from purchaser Ganpat Rai. Appellants belong to a Royal family and they were Mother Queen and Prince of Saraipali Estate and subsequently they also became Members of Parliament and Legislative Assembly and therefore there is no question of playing fraud on them for obtaining property in question through registered sale deed.

10. We have heard learned counsel for the parties and perused the records.
11. In view of dispute raised by the parties at different stages of proceedings, the questions arise for consideration of this Court are (a) whether the sellers of the property in question belonged to scheduled tribe community or not? (b) whether SDO had committed an error in not conducting enquiry as provided under Section 170B of the Code of 1959?
12. So far as first question is concerned, it was not disputed by appellants in their writ appeal by challenging the finding recorded by learned Single Judge with respect to family to which they belonged i.e. Royal Family of Saraipali Estate. It was also not disputed by the appellants herein that their predecessors were Members of Parliament or Legislative Assembly. From perusal of the notified list of scheduled tribe community prevailing in the State of Madhya Pradesh and subsequently in the State of Chhattisgarh, it is clear that caste 'Gond' is enlisted as one of the castes of tribal community in the State of Madhya Pradesh, which was notified by the Government of India in the year 1960 and amended from time to time. From the above it is also not in

dispute that in the initial notification of Presidential list of the caste of ab-original tribes, caste 'Gond' finds place.

13. It is also not in dispute, as perceived from the documents and pleadings raised by respective parties, that sellers belong to royal family of Sarapali Estate, they were having huge property and also a Palace. Perusal of sale deed dated 7.1.1961 reveals that looking to the status of sellers, the then Sub Registrar had given special treatment to them by not obtaining thumb impression over the registered sale deed, which is an important requirement for identifying the sellers. An endorsement to this effect was also made in the sale deed. Registered sale deed also bears an endorsement that for obtaining signature of Smt. Gayatri Kumari Devi, who was widow Queen of the King, the Sub-Registrar went to her residence i.e. Saraipali Palace, as mentioned in the sale deed. Sub-Registrar also made an endorsement that Smt. Gayatri Kumari Devi was known to him personally. From the aforementioned facts, which are part of sale deed, it is evident that the seller shown in the sale deed belongs to royal family.
14. In the sale deed, caste of sellers has been mentioned as 'Raj Gond'. In the judgment relied upon by learned counsel for the appellant i.e. Yashwant Raj Singh (Supra), the Court has held that the word 'Raj' has been used as prefix to the caste listed in the Presidential Order i.e. Gond, therefore, 'Raj Gond' will also come within the category of scheduled tribe community.
15. The learned Single Judge while considering whether 'Raj Gond' comes within the category of Scheduled Tribe has held as under:-
 - "12. As per presidential order only Maria and Muria were included in Gond Tribe while Rajgond was not

included. This presidential order was substituted by Scheduled Castes and Scheduled Tribes order Amendment Act 1956/1976 and in that order also Rajgond was not included as part of group or Gond. There is no clear inclusion of the community of Rajgond in the appropriate presidential order. Though "Raj" is included as part or group within 13 Gond, but "Raj" are Mason who works for construction and looking to their backwardness they find place in amended order.

13. In the matter of *Prish Kumar Choudhary vs. State of Tripura*, reported in AIR 1990 SC 991 Hon'ble the Supreme Court has held as under: "16. These authorities clearly indicate, therefore, that the entries in the Presidential Order have to be taken as final and the scope of enquiry and admissibility of evidence is confined within the limitations indicated. It is, however, not open to the Court to make any addition or subtraction from the Presidential Order".

14. In *Bhaiyalal vs. Harikishan singh*, reported in AIR (1965) SC 1557, it is held by Constitution Bench of Hon'ble the Supreme Court as under:

"It is obvious that in specifying castes, races or tribes, the President has been expressly authorised to limit the notification to parts of or groups within the castes, races or tribes, and that must mean that after examining the educational and social backwardness of a caste, race or tribe, the President may well come to the conclusion that not the whole caste, race or tribe but parts of or groups within them should be specified. Similarly, the President can specify castes, races or tribes or parts thereof in relation not only to the entire State, but in relation to 14 parts of the State where he is satisfied that the examination of the social and educational backwardness of the race, caste or tribe justifies such specification. In fact, it

is well-known that before a notification is issued under Art. 341(1), an elaborate enquiry is made and it is as a result of this enquiry that social justice is sought to be done to the castes, races or tribes as may appear to be necessary, and in doing justice, it would obviously be expedient not only to specify parts or groups of castes, races or tribes, but to make the said specification by reference to different areas in the State."

15. As per law laid down by Constitution Bench of Hon'ble the Supreme Court in the aforesaid matter, the presidential order is issued only after examination of the social and educational backwardness of the caste which justifies their specification as Scheduled tribe and for that elaborate enquiry is to be made.
16. In the present case, sellers of the land were King (Raja) and Queen of Saraipali and also they were members of Legislative Assembly and Parliament (Rajya Sabha) and they were not socially and educationally backward at any point of time since 1950 onwards that is why they were not included in the presidential order. Again, Thakur Mahendra Bahadur Singh one of the sellers admitted before the Sub Divisional Officer that land was transferred to the original petitioner after getting full consideration who was the only 15 surviving seller at the time of proceeding before the Sub Divisional Officer. The Sub Divisional Officer satisfied that sellers were not members of Scheduled Tribe during relevant period i.e, from 2-10- 1959 to 24-10-1980 and sale is executed as per law of the land and there is no fraud on the part of the purchaser,

therefore, Sub Divisional Officer dropped the proceeding against the present petitioner.

17. Both the courts of Collector and Additional Commissioner have recorded their finding on the basis of one judgment of Madhya Pradesh High Court rendered in Writ Petition No.5371 of 1997 but the fact remains that as per law laid down by Hon'ble the Apex Court in the matter of *Srish Kumar Choudhary (supra)*, the Court cannot add or abstract any entry, therefore, finding of court of Collector and the Court of Additional Commissioner is not sustainable. The only course open to Community claiming to be Tribe and not included in list to make representation before the Parliament to include such community in list as per Article 342 (2) of the Constitution.”

16. Recently in the matter of *State of Orissa v. Dasarathi Meher* reported in AIR 2018 SC 4998, , the Supreme Court after taking into consideration the judgment of the Constitution Bench i.e. *Bhaiya Lal v. Harikishan Singh* reported in AIR 1965 SC 1557, has held as under:-

“8. The Second Constitution Bench Judgement is in the case of *Bhaiya Lal v. Harikishan Singh*. In this case the appellant claimed that he belonged to ‘Dohar’ caste, which was a sub-caste of ‘Chamar’ caste. The Constitution Bench held that an inquiry of such a kind was not permissible.

9. The Third Constitution Bench Judgment is in the case of the *State of Maharashtra v. Milind*. In this case the notified Scheduled Tribe was Halba/Halbi. The High Court, relying upon certain material held that “Halb-Koshti” was included in “Halba” or “Halbi”. This Court held

that it was not permissible for the courts to do so. After discussing the entire law, this Court held as follows:-

36. In the light of what is stated above, the following position emerge:-

1. It is not at all permissible to hold any inquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the entry concerned in the Constitution (Scheduled Tribes) Order, 1950.

2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes order if they are not so specifically mentioned in it.

3. A notification issued under clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under clause (1) of Article 342 only by Parliament by law and by no other authority.

4. It is not open to State Government or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under clause (1) of Article 342.

5. Decisions of the Division Benches of this Court in *Bhaiya Ram Munda v. Anirudh Patar* and *Dina v. Narain Singh* did not lay down law correctly in stating that the inquiry was permissible and the evidence was admissible

within the limitations indicated for the purpose of showing what an entry in the Presidential order was intended to be. As stated in Position (1) above no inquiry at all is permissible and no evidence can be let in, in the matter.”

It would be pertinent to mention that in Milind’s case (AIR 2001 SC 393) (supra), the Constitution Bench reaffirmed the ratio of the earlier two Constitution Bench judgments.”

17. From the above law laid down by the Hon’ble Apex Court, it is clear that list of scheduled tribe community published in the Presidential Order is to be read as it is and it is not permissible for the Courts to interpret or to add or subtract from the same for considering any caste to be listed as caste of scheduled tribe community or not. Admittedly, the caste ‘Raj Gond’ has not been shown in the Presidential list and the notification of the caste of scheduled tribe as one of the caste of scheduled tribe community. Therefore, the sellers of land/appellants herein could not be held to be members belonging to scheduled tribe community.
18. Learned Single Judge has correctly recorded that as the objector and his ancestors (sellers) do not belong to scheduled tribe community, therefore, the provisions of Section 170B of the Code of 1959 would not be applicable to the transaction in question i.e. registered sale deed dated 7.1.1961.
19. The notification under Clause (1) of Article 342 of the Constitution of India specifying the scheduled tribes can be amended only by a law to be made by the Parliament and it is only the Parliament who can amend the list of scheduled tribes issued under Article 342 (1) of the Constitution of India. In view of the above, it is not required for us to deal with other

question raised by learned counsel for the appellants.

20. We do not find any infirmity in the order passed by the learned Single Judge. The appeal being devoid of merit is liable to be dismissed and is hereby dismissed.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Roshan/-