

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.2315 of 2008**

- State Of Chhattisgarh Through The Secretary, Ministry Of Revenue, D. K. S. Bhawan, Mantralaya, Raipur Chhattisgarh, District : Raipur, Chhattisgarh

---- Petitioner**Versus**

1. Board Of Revenue Chhattisgarh Through The Registrar, Circuit Court, Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. Died Late Vasudev Chandrakar, S/o Late Ramdayal, Through Legal Representatives
 - (I). Laxman Chandrakar, Aged About 52 Years Gayatri Mandir Ward, Station Road, Durg Chhattisgarh, District : Durg, Chhattisgarh
 - (II). Smt. Shakuntala, Aged About 58 Years Jagdalpur, Tahsil And Distt. Jagdalpur Bastar Chhattisgarh, District : Bastar(Jagdalpur), Chhattisgarh
 - (III). Smt. Pratima Chandrakar, Aged About 45 Years Gayatri Mandir Ward, Station Road, Durg, Chhattisgarh, District : Durg, Chhattisgarh
 - (Iv). Smt. Meena Baghmar, Aged About 42 Years Shankar Nagar, Tahsil And District Durg, Chhattisgarh, District : Durg, Chhattisgarh
 - (V). Anand Deo Chandrakar, Aged About 33 Years Gayatri Mandir Ward, Station Road, Durg, Chhattisgarh, District : Durg, Chhattisgarh
 - (Vi). Sidhharth Deo Chandrakar, Aged About 29 Years Gayatri Mandir Ward, Station Road, Durg, Chhattisgarh, District : Durg, Chhattisgarh
 - (Vii). Gaurav Deo Chandrakar, Aged About 26 Years Gayatri Mandir Ward, Station Road, Durg, Chhattisgarh, District : Durg, Chhattisgarh
 - (Viii). Rahul Deo Chandrakar, Aged About 31 Years Gayatri Mandir Ward, Station Road, Durg, Chhattisgarh, District : Durg, Chhattisgarh
 - (Ix). Smt. Vidya Chandrakar, Aged About 55 Years Gayatri Mandir Ward, Station Road, Durg, Chhattisgarh, District : Durg, Chhattisgarh
3. Madhur Chandrakar S/o Late Mahasing R/o Mohan Nagar, Durg Chhattisgarh., District : Durg, Chhattisgarh
4. Died Suresh Kumar, S/o Late Ramsingh, Through Legal Representative
 - (A). Smt. Usha Devi, Wd/o Late Suresh Kumar, Aged About 65 Years Presently R/o Mohan Nagar, P.S. Mohan Nagar, Tahsil And District Durg, Chhattisgarh, Permanent R/o Village Risama, Post Matwari, Tahsil And District Durg Chhattisgarh, District : Durg, Chhattisgarh
 - (B). Sandeep Chandrakar S/o Late Suresh Kumar, Aged About 40 Years Presently

R/o Mohan Nagar, P.S. Mohan Nagar, Tahsil And District Durg, Chhattisgarh, Permanent R/o Village Risama, Post Matwari, Tahsil And District Durg Chhattisgarh, District : Durg, Chhattisgarh

(C). Smt. Sheetal, D/o Late Suresh Kumar, Aged About 44 Years Presently R/o Mohan Nagar, P.S. Mohan Nagar, Tahsil And District Durg, Chhattisgarh, Permanent R/o Village Risama, Post Matwari, Tahsil And District Durg Chhattisgarh, District : Durg, Chhattisgarh

5. Shail Kumar S/o Late Ramsingh R/o Mohan Nagar, Durg Chhattisgarh., District : Durg, Chhattisgarh
6. Ashok Kumar S/o Late Ramsingh R/o Mohan Nagar, Durg Chhattisgarh., District : Durg, Chhattisgarh
7. Satish Kumar S/o Late Ramsingh R/o Mohan Nagar, Durg Chhattisgarh., District : Durg, Chhattisgarh
8. Santosh Kumar S/o Late Ramsingh R/o Mohan Nagar, Durg Chhattisgarh., District : Durg, Chhattisgarh
9. Toranlal S/o Late Ghainsingh R/o Mohan Nagar, Durg Chhattisgarh., District : Durg, Chhattisgarh
10. Devaki Bai W/o Krishna Lal R/o Village Acholi, Tahsil Dongargaon, District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh
11. Sohagabai W/o Kedarnath R/o Village Bhilai, Tahsil Gunderdehi, District Durg Chhattisgarh., District : Durg, Chhattisgarh
12. Phattelal S/o Toranlal R/o Village Hanouda, District Durg Chhattisgarh., District : Durg, Chhattisgarh
13. Died Dinanath, S/o Toranlal, Through Legal Representative

(A). Smt. Umabai, Wd/o Late Shri Deenanath Chandrakar, Aged About 65 Years R/o Village Hanora, Tahsil Durg, District Durg, Chhattisgarh, District : Durg, Chhattisgarh

(B). Anil Chandrakar, S/o Late Shri Deenanath Chandrakar, Aged About 45 Years R/o Village Hanora, Tahsil Durg, District Durg, Chhattisgarh, District : Durg, Chhattisgarh

(C). Ajay Chandrakar, S/o Late Shri Deenanath Chandrakar, Aged About 40 Years R/o Village Hanora, Tahsil Durg, District Durg, Chhattisgarh, District : Durg, Chhattisgarh

(D). Vijay Chandrakar, S/o Late Deenanath Chandrakar, Aged About 38 Years R/o Village Hanora, Tahsil Durg, District Durg, Chhattisgarh, District : Durg, Chhattisgarh

(E). Smt. Mamta Chandrakar, D/o Late Deenanath Chandrakar, Aged About 36 Years W/o Shekhar Chandrakar, R/o Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

(F). Sanjay Chandrakar, S/o Late Deenanath Chandrakar, Aged About 34 Years R/o Village Hanora, Tahsil Durg, District Durg, Chhattisgarh, District : Durg, Chhattisgarh

(G). Smt. Daani Chandrakar, D/o Late Deenanath Chandrakar, Aged About 32 Years W/o Shri Igendra Chandrakar, R/o Bhilai-III, Sirsa, District Durg, Chhattisgarh, District : Durg, Chhattisgarh

14. Ghanshyam S/o Toranlal R/o Village Hanouda, District Durg Chhattisgarh.,
District : Durg, Chhattisgarh

15. Bholaram S/o Toranlal R/o Village Hanouda, District Durg Chhattisgarh., District
: Durg, Chhattisgarh

---- **Respondents**

For Petitioner: Shri Alok Bakshi, Additional AG
For Respondent No.3 to 12 & 14 to 15 : Shri Goutam Khetrapal, Advocate

Single Bench: Hon'ble Shri Justice Manindra Mohan Shrivastava
Order On Board

16/01/2020

1. This writ petition is preferred under Article 226 of the Constitution of India by the State, aggrieved by the order dated 19-06-2007 passed by the Board of Revenue.

2. The background of the case involves checkered history. The respondent moved an application under Section 57(2) of the CG Land Revenue Code, 1959, before the Sub Divisional Officer, in the year 1967. Orders were passed from time to time by the authorities and on more than one occasions, appellate as well as revisional authorities including the Board remanded the matter to the Sub Divisional Officer for re-consideration and passing fresh order. The last remand order was passed by the Additional Collector, Durg, in appeal on 28-09-2002 and the case was remanded to the Sub Divisional Officer, Durg for passing fresh order. In compliance of the said order, the Sub Divisional Officer passed an order on 19-07-2004, settling land comprised in Khasra No.290/2, in favour of the respondent by declaring them Bhumiswami. The application of the respondent for settling land in their favour as Bhumiswami in respect of the land comprised in Khasra No.310/18 was however, rejected. Aggrieved by that part of the order, by which, application in respect of the land comprised in Khasra No.310/8 was rejected, an appeal was preferred by the respondents. Vide order

dated 27-06-2006, the appellate authority, Additional Collector, Durg, again passed an order of remand on certain aspects. This order of remand was however, challenged before the respondent-Board of Revenue. The Board of Revenue proceeded to decide the case on merits by holding that even in respect of land comprised in Khasra No.310/8, respondent was entitled to Bhoomiswami right of that land also. It is this order, which is under challenge before this Court.

3. The only submission of learned Additional Advocate General for the State to assail the legality and validity of the order passed by the Board of Revenue as also that of the Sub Divisional Officer is that no one can claim absolute right and ownership in any of the land, in respect of which, the provisions of Land Revenue Code are applicable, in derogation of the absolute ownership of the State, which vested in it under Section 57(1) of the Land Revenue Code. He would argue that the rights, which are protected and in respect of which, the application could be made by a person before the Sub Divisional Officer, as contemplated under Section 57(2), falls short of absolute ownership and they only related to cultivatory rights such as tenure holder, Bhumiswami etc. He would submit that the order passed by the Sub Divisional Officer confers absolute title and ownership declaring that the State has no ownership over the land comprised in Khasra No.310/8 as well as land comprised in Khasra No.290/2. He would argue that the Sub Divisional Officer has no authority under the law to declare such right of absolute nature in any person, which is derogation of the State ownership. In support of his submission, learned counsel for the petitioner placed reliance on the decision of the Full Bench of High Court of Madhya Pradesh rendered in ***State of Madhya Pradesh vs. Balveer Singh, 2001(1) MPJR 546***. According to him, the order passed by the Sub Divisional Officer and that of the Board of Revenue to the extent they

indicate conferral of absolute ownership in denial of State's ownership are liable to be declared as without jurisdiction and nonest.

4. On the other hand, learned counsel for the respondent would submit that the scope of the present petition confined only with respect to the dispute concerning land comprised in Khasra No.310/18 and not land comprised in Khasra No.290/2. He would argue that as far as Sub Divisional Officer's order dated 19-07-2004 is concerned, though rejected respondent's claim in respect of the land comprised in Khasra No.310/18, application for conferral of Bhomiswami rights was allowed in respect of the land comprised in Khasra No.290/2. Thus, the application was partly allowed and partly rejected. Though, respondent challenged that part of the order, by which, application was rejected in respect of the land comprised in Khasra No.310/18, the State did not prefer to challenge that part of the order of the Sub Divisional Officer, by which, the respondent's application in respect of the land comprised in Khasra No.290/2 was allowed. Therefore, the State in its petition, while challenging the order passed by the Sub Divisional Officer, is not entitled under the law to challenge the order passed by the Sub Divisional Officer, in so far as the land comprised in Khasra No.290/2 is concerned.

Next submission of learned counsel for the respondent is that the Sub Divisional Officer has granted only Bhumiswami rights under settlement in favour of the respondent. He would submit that irrespective of anything, the order has to be understood only as conferring Bhumiswami rights and not depriving the State of its ultimate ownership as declared under Section 57(1) of the Land Revenue Code. He would submit that the apprehension raised by the State that the order passed by the Sub Divisional Officer has completely divested of the State of its ownership under Section 57(2) is not correct and on

fair and logical reading of the order passed by the Sub Divisional officer, it cannot be held that the State has been completely divested of its ultimate ownership.

5. The issue as to whether the Sub Divisional Officer had jurisdiction to decide the dispute relating to title, is no longer *res integra*, in view of the decision of the Full Bench of High Court of Madhya Pradesh in the case of ***State of Madhya Pradesh vs. Balveer Singh*** (supra). In that case, the Full Bench of High Court of Madhya Pradesh interpreted the scope and nature of rights protected under proviso to sub section(1) of Section 57. As to what kind of dispute could be decided by the Sub Divisional Officer in exercise of powers under sub section(2) of Section 57 also came up for consideration.

6. The distinction between the proprietary and cultivatory right was explained thus:-

14. "The Acts to which a reference has been made hereinabove, which regulated the law relating to land revenue and the rights and liabilities of holders of land from the State Government, agricultural tenures and other matters relating to land and the liabilities incidental thereto in Madhya Pradesh, mostly contain the provisions which are declaratory of the rights acquired by different categories of the holders of the land on the date of vesting. Such holders of land included the proprietor, tenants of the proprietors or sub-tenants, Jagirdars etc., whose proprietary rights, title and interest in the land in respect of which a notification under the Madhya Bharat Jamindari Abolition Act or Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 had been issued stood vested in the State free from all encumbrances subject to certain special tenurial rights which the proprietor or Jagirdar could continue to enjoy subject to certain conditions being satisfied. Not only Madhya Bharat Jamindari Abolition Act and the Madhya Bharat Jagirdari Abolition Act but even in other Acts which were in force earlier regulating the proprietary rights and of liabilities of the proprietor, Jagirdar or an intermediary and the rights of the tiller of the soil were kept distinct and separate. In other words, a consistent distinction was maintained throughout between the proprietary right and the cultivatory right.

15. It may, however, be observed that though certain conditions had been laid down under the various provisions of the aforesaid enactments which were required to be fulfilled before the rights mentioned thereunder were to be deemed to have been acquired but there is nothing to indicate or to suggest that acquisition of such rights was to depend upon the determination of any dispute between persons claiming to belong to a particular category and those who might be interested in challenging their

status by any named authority.

16. This, however, could not mean or suggest that there could not be any dispute which could arise because of the deeming provisions. It is, therefore, obvious that in the absence of specified special Courts or Tribunals created for such determination, ordinary Civil Courts had to be taken to be quite competent to deal with all kinds of civil disputes including the question as to what purpose and between what persons statutory fiction ought to be resorted to.

19. In the present case taking into consideration the implications arising under Sections 3 and 4 of the Madhya Bharat Jamindari Abolition Act, and the other Acts which were in force prior to the bringing into effect of the Madhya Pradesh Land Revenue Code, 1959 there could be no doubt that proprietary rights in the land of any kind vesting in any person stood extinguished and by operation of law vested in the State. It is in this view of the matter, that in Section 57 of the Code, it was clarified and declared that all lands belong to the State Government and all such lands including standing and flowing water, mines, quarries, minerals and forests reserved or not, and all rights in the sub-soil of any land are the property of the State Government.

20. However, since the tenurial rights for the tillers of the soil had been protected, it was provided that nothing in [Section 57\(1\)](#) shall, save as otherwise provided in the Code be deemed to affect any rights of any person subsisting at the coming into force of this "Code" in any such property. It may be noticed that the expression 'subsisting' at the coming into force of the "Code" is of quite significance. The expression "the rights of any person subsisting at the coming into force of this Code" can only have within its ambit the tenurial rights or the rights secured in favour of the tiller of the soil given specific nomenclatures in the enactments which were in force prior to the commencement of the Code. The expression 'tenure' in its general sense is a mode of holding or occupying. It is with reference to such a right that while defining the term "tenant" in the Code it had been specified that a tenant means a person holding land from a bhumiswami as an occupancy tenant under Chapter XIV of the Code and the term 'tenure-holder' was defined specifying him to be a person who holds land from the State Government and who is or is deemed to be bhumiswami under the provisions of the Code which obviously means subject to the rights and the obligations cast upon such a bhumiswami under various provisions of the Code."

7. Placing reliance upon the decision of the Supreme Court in the case of ***Mohd. Noor and others vs. Mohd. Ibrahim and others*, 1994 (5) SCC 562**, the Full Bench doubting the correctness of earlier Full Bench decision in the case of ***Ramgopal vs. Chetu*, 1976 J LJ 278**, proceeded to hold that the rights conferred with nomenclature of Bhumiswami or even other nomenclature cannot be treated as declaration of ownership of the land as contemplated under Section 57 of the Land Revenue Code nor can it be equated with a Proprietor or

Jamindar or an intermediary or jagirdar or malguzar. In para 24 of this decision, it was observed thus:-

24. "The aforesaid observations leave no room for doubt that the tenure-holder as envisaged under the Madhya Bharat Zamindari Abolition Act or the Madhya Pradesh Land Revenue Code, whether given a nomenclature of bhumiswami or any other nomenclature with lesser rights cannot be taken to be the owner of the land comprised in his holding as contemplated under Section 57 of the Code. He cannot further be equated with a proprietor or zamindar or an intermediary or jagirdar or magulzar whose proprietary rights were extinguished and vested by operation of law in the State. We are bound to follow the position in law as indicated by the Apex Court in its aforesaid decision while determining the status of 'bhumiswami' or any other tenure-holder with any other nomenclature given to him under the provisions of the Madhya Bharat Zamindari Abolition Act or the Madhya Pradesh Land Revenue Code (Act No. 20 of 1959). The observations to the contrary made in the decision in the case of Ramgopal Vs. Chetu (supra) have to be taken to have lost their efficacy."

8. The conclusion finally reached upon by the Full Bench with regard to the nature of right contemplated under Section 57(2) in the Land Revenue Code, was as recorded as below:-

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"Question No. (1)-- The "right" contemplated under [Section 57](#) (2) of the Madhya Pradesh Land Revenue Code, 1959 is a right other than the cultivatory right in respect of the land as defined under [Section 2](#) (1) (k) which stands secured in favour of a bhumiswami, occupancy tenants or a Government lessee as defined under the said Code and thin right has to be taken to be confined to the proprietary rights including those rights which vested in the State by operation of law under the enactments in force prior to the coming into effect of the aforesaid Code.

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9. In view of the aforesaid enunciation of law, it is clear that the right provided and in respect of which a dispute, if arising, could be taken before the Sub Divisional Officer under sub section(2) of Section 57 is a right other than the cultivatory right in respect of the land as defined under Section 2(1)(k) which stands secured in favour of the Bhumiswami, occupancy tenants or a Government lessee as defined under the Code and this right has to be taken to be confined to the proprietary rights including those rights which vested in the State by operation of law under the enactments in force prior to the coming into

effect of the aforesaid code.

10. In separate, but concurring judgment, one of the Judge in the Full Bench held as below:-

78. "In order to clear the mist created due to deciding the nature of "rights" envisaged under [Section 57](#) (1) of the Code, it would be beneficial to appreciate the purpose and intent behind the legislation of the enactment of the provision under Section 57 of the Code. Soon after attaining freedom the country was faced with a struggle against the feudal lords claiming various rights under the instrument of accession, who may be termed as intermediaries and protecting the interest of tillers of the land. It was a period when the State reorganisation was taking shape and the country was selling to democracy. In order to safeguard the interest of the actual cultivators of the land and the sovereign powers of the State, it had been the policy of the various legislatures to declare State ownership in all the lands, including standing and flowing water, mines, quarries, minerals and forests etc. It is in consequence of the vesting of the State ownership in all the lands that the question of deciding disputes arose affecting any rights of any person subsisting at the time of coming into force of this Code. It is for this purpose that the provision in the nature of Section 50 of M.P. Land Revenue Code, 1954 was enacted. Somewhat similar provisions are found under different tenancy laws prevalent in erstwhile merging States of the present State of Madhya Pradesh.

79 It would be interesting to note that under most of the relevant provisions dealing with consequences of the vesting in State ownership in all the lands, the private rights of the cultivators including khudkast that is the lands of personal cultivation of even the ex-proprietors were saved. Thus a clear line of demarcation can be sketched between the rights of any person affected in consequence of vesting ownership in the lands in the State which could be decided by the S.D.O. under [Section 57](#) (2) of the Code and the rights of an individual in nature of private rights in any agricultural holding, which could be challenged and decided even against the State Govt. directly in a Civil Court and which, therefore, lay outside the purview of the rights envisaged under the provisions of [Section 57](#) (2) and (3) of Code."

11. In view of the aforesaid enunciation of law, it would thus be clear that a line of demarcation is drawn between the rights of any person affected in consequence of vesting ownership in the lands in the State, which could be decided by the Sub Divisional Officer under Section 57(2) of the Code and the rights of an individual in nature of private rights in any agricultural holding, which could be challenged and decided even against the State Government directly in a Civil Court and which, therefore, lay outside the purview of the rights envisaged under the provisions of Section 57(2) and (3) of the Code.

12. Therefore, it is clear that where proceeding set up in private right in respect of the land, which includes right of complete ownership, as against the State, remedy would be to file a suit before the Civil Court. Considerations of such right is outside the purview of Section 57(2) of the Code, therefore, the Sub Divisional Officer would have no jurisdiction to examine the same. But then, those rights of persons, which affected as consequence of vesting ownership in the lands in the State, could be decided by the Sub Divisional Officer under Section 57(2) of the Code.

13. Applying the aforesaid legal position, this Court has no hesitation to hold that the Sub Divisional Officer, while deciding the respondents application, could only declare Bhumiswami rights, but not a declaration that the State divested of its ownership, which vested in it by operation of law contained under Section 57(1) of the Code. Therefore, the order passed by the Sub Divisional Officer and Board of Revenue, to the extent they imply divesting of the ultimate ownership of the State in the land in dispute are held to be without jurisdiction and authority of law. The orders to the extent it confers Bhumiswami rights without affecting the ultimate ownership of the State in respect of the land in dispute alone is upheld.

14. With the aforesaid finding, this petition is allowed in part and in the manner and to the extent indicated above.

SD/-
(**Manindra Mohan Shrivastava**)
J U D G E