NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No.5934 of 2009

- Sukho Bai D/o Late Pandey, Caste Gond, aged about 65 years, R/o Village Darripara, Ambikapur, District : Surguja, Chhattisgarh

---- Petitioner

Versus

1. Smt. Amrita Devi W/o Panchu Ram Mistry, Caste Lohar, aged about 50 years, R/o Village Darripara, Ambikapur, Police Station and Tahsil Ambikapur, District : Surguja, Chhattisgarh

2. Dr. Beddram Singh (Dead) Through Lrs. As per Hon'ble Court Order dated 11-04-2002.

   2(A) Dr. Sarita Singh, widow of Dr. Ved Ram, aged 37 years

   2(B) Kumari Vaibhavi Singh D/o Dr. Ved Ram, aged about 9 years, minor through legal guardian mother Dr. Sarita Singh, Both resident of the premises of Govt. Hospital, Ambikapur, District Surguja

3. Dr. Ravishankar Singh S/o Shri Sabal Sai, Caste Kanwar, Aged about 32 years, R/o Khadkhola, Police Station Batauli, Tahsil Sitapur, District Surguja (CG)

4. State of Chhattisgarh through Collector, Surguja, District Surguja (Ambikapur) Chhattisgarh

---- Respondents

For Petitioner: Shri Soumitra Kesharwani, Advocate
None For Respondents No.1.
For Respondent No.2 : Shri Sanjay Pathak, Advocate
For Respondent No.4/State: Shri Anmol Sharma, Panel Lawyer

Single Bench: Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

15/01/2020

1. This petition under Article 226 of the Constitution of India is directed against the order dated 07-08-2007 (Annexure P/1) passed by the Board of Revenue, by which, the order passed by the Collector on 31-12-2005 has been set aside and that of the Sub Divisional Officer is restored in favour of respondent No.1.

2. Quintessential facts, necessary for decision of the writ petition are that the petitioner herein filed an application before the Sub Divisional Officer, Ambikapur on 19-09-2000, purporting to be an application under Section 170-B of the Land Revenue Code, 1959, for return of disputed land admeasuring 1.73 acre situated at Khasra No.3703 stating that the said land was recorded in the name of her father Pandey, uncles Budhau and Thunthun Gond. Later on, her father and uncle died and the petitioner alone was the successor. It was alleged that the land of the petitioner has been grabbed by fraudulent act, under which, the respondent got her name entered by playing fraud. The Sub Divisional Officer, after hearing the parties and perusing the records placed before him, came to the conclusion that the land was recorded in the name of one Ganesh S/o Ramnandan Sav, who was a non-tribal. The Sub Divisional Officer, therefore, closed the case. Aggrieved by the said order, an appeal was preferred before the Collector by the petitioner. The Collector allowed the appeal. It was held by the Collector that the entries made in the records of rights that the Ganesh had purchased the land in dispute vide registered sale deed dated 03-07-1957 from Pandey, appears to be fraudulent entry. It was also held that the copy of said sale deed dated 03-07-1957 was not placed before the Collector or before the Sub Divisional Officer in any enquiry, which shows that Pandey and his two brothers-Budhau and Thunthun Gond were defrauded by Ganesh and contrary to the provisions of Section 165(6) of the Land Revenue Code, transfer had taken place. On such finding, the Collector directed return of the land to the petitioner.

Aggrieved by the order passed by the Collector, the respondent-Smt. Amrita Devi filed a revision petition before the Board of Revenue. The Board of Revenue allowed the revision holding that in the record of rights, an entry was made that Ganesh had purchased the land in dispute from Pandey Gond on

03-07-1957. This shows that the property in dispute, which was purchased by Amrita Devi was under sale deed dated 28-08-1974 from one Ganesh. The Board of Revenue also recorded a finding that when transaction was made between Ganesh and Pandey in the year 1957, Ganesh was notified as ab-original tribe and the transaction was between two tribals. Later on, vide notification dated 17-12-1971, “Panika” caste, to which Ganesh belonged, was removed from the list of Scheduled Tribe. The Board of Revenue also held that the proceedings under Section 170-A and 170-B of the Land Revenue Code was not applicable in respect of such transactions, which had taken place between the original owner of the property, Pandey in the matter of sale to said Ganesh. It was also held that the Collector entered into the correctness of the such entries made in the revenue records without holding any enquiry. On such finding, order passed by the Collector was set aside and that of the Sub Divisional Officer restored, giving rise to the instant petition.

3. Assailing legality and validity of the order passed by the Board of Revenue, learned counsel for the petitioner argued that the transaction of year 1974 was made by Ganesh in favour of respondent-Smt. Amrita Devi on the basis of his claim that he had purchased the land in dispute from Pandey under sale deed dated 03-07-1957, which itself is highly doubtful, because in the revenue proceedings, such sale deed was never produced. He would further submit that the Collector had summoned original records of rights and he found discrepancies in entries made in recording the name of Ganesh as purchaser of disputed property from Pandey under so-called sale deed dated 03-07-1957 and on that basis, the Collector recorded a finding that the transaction of Ganesh with Pandey was an outcome of fraud played on Pandey and his two brothers-Budhau and Thunthun Gond. He submits that in such a case, though, strictly speaking, the transaction between Pandey and Ganesh was prior to

coming into force of the Chhattisgarh Land Revenue Code, 1959, its effect, since it was a fraudulent transaction, such finding recorded by the Collector cannot be said to be outside the purview of jurisdiction. He would further submit that the petitioner has throughout remained in possession of the property and it is only when said sale deed was executed in the year 1974, that she came to know about the fraudulent transaction and moved an application before the Sub Divisional Officer for return of land. In support of his submission, learned counsel for the petitioner has placed reliance on the decisions in the case of ***Noor Mohammad vs. Dev Bux & Others[1], Jagdeesh Choudhary vs. Board of Revenue and others[2] and Smt. Ramkunwar vs. Banshilal and others[3].***

4. There is no representation made on behalf of respondent No.1.

5. Shri Sanjay Pathak, learned counsel appears for respondent No.2 and supports the case of the petitioner by submitting that during the pendency of the revision petition, respondent No.3 had purchased the property in dispute and the order passed by the Collector is proper and valid and the Board of Revenue has illegally set aside the said order.

6. The Board of Revenue as well as the Sub Divisional Officer both have come to the conclusion that the application under Section 170-B filed by the petitioner is not maintainable as prayer for return of land is based on the disputed transaction made by a tribal in the year 1957.

7. The sale of land in favour of respondent-Smt. Amrita Devi was made by Ganesh vide sale deed dated 28-08-1974. Ganesh Ram is shown to be purchaser of the land in dispute from Pandey, father of the petitioner. The entries made in the record of rights show that vide sale deed dated 03-07-1957, Ganesh purchased the land in dispute from Pandey, father of the petitioner. It is

1 2006(2) CGLJ 17
2 2013(2) CGLJ 363
3 2013 CGRJ 279

not a case that sale transaction dated 28-08-1974 is allegedly made between the original holder of land i.e. Pandey with the present respondent. According to the revenue records, sale of the land in dispute was made way back in the year 1957 by Pandey S/o Jagsai Gond in favour of one Ganesh Ram. The question, therefore, arising for consideration, is whether the provision of Section 170-B of the Land Revenue Code could be invoked to enter into the correctness and validity of those transactions of year 1957.

8. This issue is no longer res integra. It has been held by this Court in the case of ***Yadram (Dead) through L.Rs vs. State of Chhattisgarh and others***[4] that the transaction said to have been made prior to coming into force of the present Land Revenue Code, i.e. prior to 02-10-1959, is outside the purview of the enquiry under Section 170-B of the Land Revenue Code. In the aforesaid decision, the aforesaid issue was considered and decision rendered, as below:-

> **19. "**In view of the legal opinion we have formed regarding the applicability of Section 170-B of the Code, we answer the question referred that the provisions of Section 170-B of the Code and Act No.15 of 1980 (with effect from 24-10-1980) will apply in respect of transaction involving transfer/acquisition of right by a non-tribal over a land, before such acquisition of title or interest or transfer, belonged to member of tribe who has been declared to be an aboriginal under sub-section (6) of Section 165 of the Code from the commencement of the Chhattisgarh Land Revenue Code, 1959 i.e. 2-10-1959 till commencement of the Amendment Act, 1980 i.e. 24-10-1980."
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> **20**. In the light of the view taken by us, it is manifest that the decision of the learned Single Judge in Smt. Ramkunwar (supra) is legally erroneous as it has wrongly applied and misconstrued the provisions of law and is a judgment per incuriam. Thus, we overrule Smt. Ramkunwar (supra) and other rulings whose ratio run counter to the principles enunciated above. We answer the reference accordingly.**"**

9. It is found that in the present case, the Collector entered into an enquiry as to whether the sale transaction dated 03-07-1957 was bonafide or fraudulent.

4 W.P.No.1066 of 2002, decided on 23-01-2015

That means, the Collector entered into the transaction prior to coming into force the present Land Revenue Code i.e. 02-10-1959. Irrespective of the merits, it was wholly outside and scope of enquiry under Section 170-B of the Land Revenue Code as to whether sale transaction dated 03-07-1957 was an outcome of fraud alleged to be practiced by the Ganesh in order to grab the property of Pandey, his brothers-Budhau and Thunthun Gond.

10. The Board of Revenue has recorded a finding that at the time, when transaction dated 03-07-1957 was made, “Panika” was included in the list of aboriginal tribe and therefore, the transaction of year 1957 was made between the two tribals and it did not involve non-tribal. The Collector, while hearing appeal, could not have embarked upon the enquiry as to whether transaction dated 03-07-1957, by which, Ganesh is said to have purchased the disputed land from Pandey, was an outcome of fraud or not, because, in view of the aforesaid decisions, as referred to hereinabove, transaction being prior to coming into force of the Land Revenue Code, 1959, is outside the jurisdiction and purview of the enquiry under Section 170-B of the Land Revenue Code. The Collector, therefore, clearly exceeded its jurisdiction while deciding appeal by going into the correctness and validity of the transaction of sale said to have been made in the year 1957, in any case, prior to coming into force of the Land Revenue Code.

11. The Board of Revenue corrected this mistake committed by the Collector by holding that the transaction of 1957 was not open to challenge in any enquiry under Section 170-B of the Land Revenue Code.

12. It is noteworthy that said Pandey, during his life time, never challenged that the entries made in the record of rights was not sale of land by him in favour of Ganesh. In the year 1974, Ganesh sold this disputed property to

respondent-Smt. Amrita Devi. At this time, when these transactions were made, as has been held by the Board of Revenue, “Panika” caste was removed from the list of ab-original tribe vide notification dated 17-12-1971. This shows that the transaction of year 1974 was between non-tribals, therefore, this transaction could not be said to be transaction between tribal and non-tribal. It would thus be seen that the application filed by the petitioner before the Sub Divisional Officer in the year 2000, in effect, sought enquiry into the legality and validity of the transaction of sale made on 03-07-1957 between her father Pandey and Ganesh. Pandey never challenged during his life time those transactions of revenue entries made in the record of rights.

13. The decisions, which have been cited by learned counsel for the petitioner, are not applicable in the present case, because, in none of these decisions, it has been held that the revenue authorities can enquire into the correctness of the transactions, prior to coming into force of the Land Revenue Code, 1959. These cases are distinguishable on facts. Moreover, if the Sub Divisional Officer had no jurisdiction to enter into the validity of the transaction of .year 1957, the decisions, which have been cited before this Court that the entries made in the record of rights in the year 1957 are liable to be rejected, cannot be gone into in these proceedings. The proceedings itself being without jurisdiction, the order passed by the Board of Revenue does not suffer from any patent illegality, rationality or absence of jurisdiction so as to warrant interference against the order passed by the Board of Revenue in exercise of certiorari jurisdiction of this Court. There is yet again weighty reason as to why this writ petition is liable to be dismissed. The petitioner is guilty of suppression of material fact that the petitioner filed a suit seeking declaration against the order passed by the Board of Revenue. The petitioner, thereafter, filed this writ petition without disclosing this fact to the Court that he had already initiated

another proceedings parallel for redressal of his grievance. Though, learned counsel for the petitioner submits that later on, suit was withdrawn, the petitioner cannot be absolved of this suppression of material fact from this Court.

14. In the result, this petition is deserves to be dismissed and is accordingly dismissed.

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

Tumane