

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1008 of 2008

Motilal (Dead) Through LRs :-

1(A) Poonam Kesharwani S/o Late Moti Lal Kesharwani, Aged About 55 Years R/o Puchheli, Tehsil Patharia, Mungeli, District Mungeli Chhattisgarh., District : Mungeli, Chhattisgarh

1(B) Sharad Kesharwani S/o Late Moti Lal Kesharwani, Aged About 52 Years R/o Puchheli, Tehsil Patharia, Mungeli, District Mungeli Chhattisgarh., District : Mungeli, Chhattisgarh

1(C) Suresh Kesharwani S/o Late Moti Lal Kesharwani, Aged About 50 Years R/o Puchheli, Tehsil Patharia, Mungeli, District Mungeli Chhattisgarh., District : Mungeli, Chhattisgarh

1(D) Basant Kesharwani S/o Late Moti Lal Kesharwani, Aged About 48 Years R/o Puchheli, Tehsil Patharia, Mungeli, District Mungeli Chhattisgarh., District : Mungeli, Chhattisgarh

1(E) Hemant Kesharwani S/o Late Moti Lal Kesharwani, Aged About 45 Years R/o Puchheli, Tehsil Patharia, Mungeli, District Mungeli Chhattisgarh., District : Mungeli, Chhattisgarh

1(F) Kiran Kesharwani S/o Late Moti Lal Kesharwani, Aged About 43 Years R/o Puchheli, Tehsil Patharia, Mungeli, District Mungeli Chhattisgarh., District : Mungeli, Chhattisgarh

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Versus

1. Jhamman S/o Rupau Gond, Aged About 30 Years R/o Puchheli, Tehsil Patharia (Mungeli), District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
2. Branch Manager, Sahakari Bhumi Vikas Bank Patharia, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
3. State Of Chhattisgarh, Through Collector, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondents

For Petitioners	:	Shri Hemant Kesharwani, Advocate
For Respondent No.1	:	None appears
For Respondent No. 2	:	Smt. Seema Singh, Advocate
For Respondent No.3/State	:	Shri Ravish Verma, Govt. Advocate

SB: Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

16/07/2020

1. This petition under Article 227 of the Constitution of India, seeking to invoke supervisory jurisdiction of this Court, is directed against order dated 31st January 2007 passed by the Board of Revenue, Chhattisgarh, Bilaspur, whereby petitioner's revision has been dismissed, affirming orders passed by subordinate revenue authorities in the matter of dispute relating to validity of sale of disputed land in favour of original petitioner- Motilal, in course of auction proceedings towards recovery of loan due and payable to Cooperative Land Development Bank.
2. Disputed land admeasuring 2.07 acres comprised in various khasra numbers in village- Pucheli, P.H. No.28 of Tehsil-Mungeli originally belonged to one Rupau Gond in his bhumi-swami rights. Rupau Gond obtained loan from Cooperative Land Development Bank, Pathariya for installing a pump and digging well. As the loan and interest thereon payable to the Bank by said Rupau could not be repaid, the disputed land which was mortgaged with the Bank by Rupau Gond, was put to auction towards realization of loan payable to the Bank. In the auction proceedings held on 7.4.1979, original petitioner- Motilal purchased the same for consideration of Rs.8,200/-, he obviously being the successful bidder offering the highest price. It, however, appears that as the property was sold for Rs.8,200/- whereas the total amount repayable to the Bank was Rs.7869/-, requiring a balance of Rs.336/- to be given to Rupau Gond, a complaint was made before the SDO (R) Mungeli, who registered a case, recorded statements and after holding enquiry, passed an order on 10.3.1997 holding that the sale was in violation of Section 165 (6)/170-B of the Land Revenue Code. On such findings, he passed an order directing return of the land to Jhamman, son of Rupau. Aggrieved by the said order, Motilal preferred an appeal which was dismissed by the Additional Collector vide order dated 23rd January 1999. The order was challenged by way of revision, though

unsuccessfully, before the Board of Revenue, which passed the impugned order giving rise to present petition.

3. Learned counsel appearing for the petitioners made pointed submission that the finding of the Board of Revenue and other subordinate revenue authorities that the sale was in violation of provision contained in Section 165 (6)/170-B of the Land Revenue Code is based on patent misreading of the relevant provision of law and in complete misconstruction of the effect and impact of non-obstante clause in the form of sub-Section (9) of Section 165 of the Code. He would argue that present is a case where the land was not taken from a private person, but it was purchased in auction from a Cooperative Land Development Bank. Though ordinarily, land belonging to an aboriginal tribe could not be sold without due permission of the Collector, as mandatorily required under Section 165 (6) of the Land Revenue Code, sub-Section (9) thereof carved out an exception that such a provision will have no application where transfer of right is towards securing payment of advance made by Cooperative Society or where the Society has right to sell such property for recovery of advance. The revenue Courts committed patent illegality in applying the settled principle of law with regard to effect of non-obstante clause. If the interpretation as put to the scheme of Section 165 by the revenue Court is accepted, sub-Section (9) will virtually become otiose.

Next limb of his submission is that as far as Section 170-B of the Land Revenue Code is concerned, that provision was incorporated by way of amendment with effect from 24.10.1980 to save aboriginal tribes from being defrauded of their legitimate right in respect of agricultural land and to save them from the claws of exploiters and others affluent people from grabbing agricultural land of aboriginal tribes. He would submit that there is nothing like defrauding Rupau Gond. It is undisputed that Rupau Gond had taken loan. It is not a case that the sale of land was a private affair between Rupau Gond and purchaser

Motilal. The sale was effected under an auction held by Cooperative Land Development Bank. At no point of time, either at the instance of Rupau Gond or under any enquiry held by the competent authority, it was found that the officer of the Bank and Motilal had connived to create farce of auction and grabbed agricultural land for song price.

4. There is no representation made by respondent- Jhamman, son of Rupau Gond.
5. Learned counsel for the respondent- Bank supported the case and arguments of the petitioners by submitting that Bank had acted bonafide towards recovery of its loan according to its own provision. According to her, the land was mortgaged with the Bank by Rupau to secure return of loan which he had taken. When Rupau failed to re-pay loan along with interest, the Bank was entitled to sell the mortgaged property in auction towards recovery of loan and interest.
6. Learned counsel for the State, however, contended that even the Bank had proceeded to auction the land, such auction was required to be held consistent with the scheme of sub-section (7) (b) of Section 165 of the Code. In his submission, even if an auction is held towards recovery of loan advanced by Cooperative Land Development Bank, permission of the Collector is a must. For this proposition, he has placed reliance upon decision of this Court in the case of **Usha Mirani & Ors. Vs. State of Chhattisgarh & Ors.** (WP No.1111 of 2002, decided on 16.09.2010) reported in 20011 (1) C.G.L.R.W. 66.
7. I have heard learned counsel for the parties and perused the records of the case.
8. It is an undisputed position, as is reflected from the records that Rupau Gond had taken loan from Cooperative Development Land Bank Pathariya, District Bilaspur. The liability of re-payment of Rs.7869/- which included the amount of interest, is also not disputed. Further, the land was sold in auction on 7.4.1979 by the Bank and Motilal, being

the successful bidder, purchased it for a price of Rs.8,200/- is also not in dispute. Moreover, land was mortgaged by Rupau Gond with the Bank is also not disputed as it is clearly reflected from order dated 23.1.1999 passed by the Addl. Collector in appeal.

9. Section 165 of the Land Revenue Code regulates rights of transfer of a bhumi-swami. Sub-section (6) thereof contains specific provision so as to protect the interest and right of bhumi-swami belonging to an aboriginal tribe in notified area. The provision reads as under :

“165- Rights of transfer-

x x x

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 predominately 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 to be transferred or 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 without the permission of a Revenue Officer not below the rank of

Collector, given for reasons to be recorded in writing.

Explanation. - For the purposes of this sub-section the expression "otherwise" shall not include lease.] “

10. Provision in sub-sections (6-a), (6-b), (6-c), (6-d), (6-e), (6-ee) and (6-f) contain various provisions in the matter of regulating right of bhumi-swami who belongs to aboriginal tribe. Sub-section (9), however, carves out an exception by giving it an overriding effect over remaining provisions of Section 165 as contained in various sub-sections. Sub-section (9), as it existed in the statute book at the time of auction i.e. as on 7.4.1979, is as below :-

“**165** (9) Nothing in this section shall prevent a Bhumiswami from transferring any right in his land to secure payment of an advance made to him by a Co-operative Society or shall affect the right of any such society to sell such right for the recovery of such advance.”

11. It is clear from the aforesaid provision that where a bhumi-swami transfers any right in his land to secure payment of advance made to him by a Cooperative Society, the remaining provisions of Section 165 of the Land Revenue Code shall not prevent him from doing so. The other part of this sub-section provides that nothing in Section shall affect the right of any such society to sell such right for the recovery of such advance. The overriding effect given to the provision contained in sub-section (9) overrides all other provisions including sub-section (6) of Section 165 as well. Provision contained in sub-section (9) excludes application of sub-section (6) not only in the matter of transfer of right of bhumi-swami in favour of Cooperative Society to secure payment of advance but also excludes applicability of sub-section (6) in the matter of exercise of right by such Cooperative Society to sell such right for

the recovery of advance. There is nothing in this provision either expressly stated or inferred from necessary implication that it does not seek to exclude from its purview, rigor of sub-section (6) of Section 165 so as to say that notwithstanding provision contained in sub-section (9), even in the matter of transferring rights to secure payment of advance and sale of right to recover advance, the seller bhumi -swami, if he happens to be an aboriginal tribe, it would require prior permission of the Collector. Therefore, applying the rule of literal construction and overriding effect, it leads to irresistible conclusion that situations covered under sub-section (9) do not require prior permission of the Collector as envisaged under sub-section (6) of the Section 165 of the Code. Once the interplay of sub-section (6) and sub-section (9) of Section 165 of the Code is interpreted in the manner aforesaid, there is no difficulty in reaching to logical conclusion that when Bank proceeds to auction mortgaged land of a bhumi-swami, even though he is an aboriginal tribe, permission of the Collector would not be necessary.

12. Reliance has been placed on the decision of a coordinate Bench of this Court in the case of **Usha Mirani** (supra). In that case, the Court had referred to the then existing provision contained in sub-section (7) (a) and 7 (b) of Section 165 of the Code. The provision under consideration contained proviso that nothing in this sub-section shall apply where a charge has been created on the land by a mortgage. That means, in a case of mortgage, sub-section (7) (b) of Section 165 of the Code will have no application. In the present case, on facts, it is an admitted position that the land was mortgaged with the Bank.
13. As far as alleged violation of Section 170-B of the Land Revenue Code is concerned, suffice to say that the scope and ambit of enquiry under Section 170-B is entirely different. Irrespective of whether or not permission was required by the Collector in the matter of sale and purchase and whether or not such permission was taken, the land

belonging to an aboriginal tribe can be returned to him if it is found that he has been defrauded of his legitimate right. Further, Section 170-B itself was brought on statute book by way of amendment vide M.P. Act No.15 of 1980 w.e.f. 24.10.1980. Whereas, in the present case, transaction itself is dated 7.4.1979. Therefore, the auction of the mortgaged land belonging to Rupau Gond could not be assailed on the ground of violation of Section 170-B of the Land Revenue Code.

14. In the result, this Court finds that the auction held on 7.4.1979 by the Cooperative Land Development Bank and the consequent sale of land of Rupau in favour of original petitioner and successful bidder Motilal did not violate any of the provisions contained in Section 165 of the Land Revenue Code. Accordingly, impugned order passed by the Board of Revenue is set aside, with the effect that all the orders passed by the Sub Divisional Officer and Addl. Collector in appeal declaring auction and sale illegal shall have no effect in law.
15. Consequently, Sub Divisional Officer (R), Mungeli is directed to draw appropriate proceedings for return the said land to the petitioners who are the legal representatives of deceased- Motilal.
16. Petition is accordingly allowed though without any order as to costs.

Sd/-
(Manindra Mohan Shrivastava)
Judge