

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 42 of 2010**

- Govind Sai S/o Late Laxminath, Presently Working As Kotwar Of Village Aghanpur, Tahsil Jagdalpur, Distt.-Bastar CG

---- Petitioner**Versus**

1. State Of Chhattisgarh through the Secretary, Ministry of Revenue, D.K.S. Bhawan, Mantralaya, Raipur, CG
2. The Collector, Bastar, District Jagdalpur, CG
3. Chhattisgarh Housing Board, through the Manager, Aghanpur, Jagdalpur, Distt.-Bastar CG

---- Respondents

For Petitioner	:	Mr. Sameer Oraon, Advocate.
For Respondent	:	Mr. Sanjay Patel, Advocate.
For State	:	Mr. Alok Bakshi, Additional A.G.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****02/01/2020**

1. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for following reliefs:

“A. A writ and/or an order in the nature of appropriate writ do issue directing the respondent authorities to transmit to it its record pertaining to the petitioner's claim over the land described in Para 8.1 of this petition for scrutiny by this Hon'ble Court and if necessary, for quashing all the arbitrary action on the part of the respondent State authorities, in the facts and circumstances of the case.

B. A writ and/or an order in the nature of writ of mandamus do issue commanding and directing the respondent State authorities to confer the status of Bhumiswami to the petitioner over the land bearing Khasra Nos. 45 & 62 area 3.55 & 0.05 acre situate at village Agahanpur, P.H. No.60A, Tehsil Jagdalpur, District Bastar in the facts and circumstances of the case.

C. A writ and/or an order in the nature of writ of mandamus do issue commanding and directing the respondent State Authorities to pay the petitioner compensation payable to the petitioner being the Bhumiswami/possessor of the land bearing Khasra No.6 & 36 of village Aghanpur, Jagdalpur, District Bastar being entitled for conferment of status of Bhumiswami over the said land, as per the

order of this Hon'ble Court (Annexure P-5), handed over to the respondent No.3 after taking possession from the petitioner's predecessors and/or direct the respondent State authorities to allot any other land in lieu of the land taken by the petitioner.

D. Any other relief which this Hon'ble Court may deem fit in the facts and circumstances of the case."

2. The petitioner's forefather, who was working as Kotwar, were allotted 8.44 acres of service land. In course of time, the petitioner was also appointed as Kotwar of the village. The respondent No.3 required land for development of housing project and to facilitate development of housing project and construction of the residential house, 4.81 acres out of 8.44 acres of service land were withdrawn by the respondent-State by drawing revenue proceedings in revenue case No.6/8020 (1) 1987-88 dated 17.03.1989. Ten years thereafter, the petitioner filed writ petition seeking aforesaid reliefs.

The main premise of petitioner's submission is that the petitioner is entitled to declared Bhumiswami of the service land allotted to his forefathers and thereafter, to him as Bhumiswami on the strength of order passed by this Court in WP No.2632 of 2000 on 30.10.2001 in the case of **Chhabil Das and Ors. Vs. State and Ors.**, copy of which has been annexed as Annexure P-5. On this premise, it is argued that the petitioner is entitled to allotment of equivalent measure of land i.e. 4.81 acres and if no land can be allotted, compensation in lieu thereof. In the alternative, even if, the petitioner cannot be declared as Bhumiswami or he is not entitled to compensation, State can consider allotment of additional land to the extent it was taken away from the petitioner under revenue proceedings under which final orders were passed in the year 1989.

3. Per contra, learned Additional Advocate General would submit that the petitioner's claim that he be declared as Bhumiswami, now cannot be granted and is liable to be rejected in view of the authoritative pronouncement of the Division Bench of this Court in the case of **Gambhir Das Panika versus Chairman Board of Revenue, C.G. and Ors. (WPC No.7048 of 2007)** and batch of petitions, wherein, it has been held that the Kotwar is not entitled to Bhumiswami rights in respect of service land allotted to him and all earlier decisions including the decisions relied upon by the petitioner have been overruled.

Next submission of learned State Counsel is that as far as compensation is concerned, as the petitioner is not entitled to status of

Bhumiswami rights, no compensation can be granted. The third submission of learned State Counsel is that petitioner cannot claim that he is entitled to get equivalent measure and extent of land which was reclaimed under revenue proceedings for being allotted to Housing Board because as per circular dated 08.08.2008, (Annexure R-1), if a Kotwar is holding less than 7.5 acres of land, he is entitled to higher rates of remuneration @ Rs.1500/- per month which is being paid to the petitioner.

4. I have heard learned counsel for the parties and perused the records.
5. As far as petitioner's claim that he is entitled to declaration of status of Bhumiswami by virtue of holding service land as Kotwar is liable to be rejected at the threshold, in view of the Division Bench judgment of this Court, in the case of **Gambhir Das Panika versus Chairman Board of Revenue, C.G. and Ors.** decided on 30.11.2018, wherein, following question arose for consideration before the Division Bench.

“Whether a Kotwar (village servant) holding service land under Section 183(1) of the Chhattisgarh Land Revenue Code, 1959 can be granted bhumiswami right over such service land in view of the provision contained in Section 183(2) of the Code as held in Chhabil Das (supra) and Tikaram (supra)?”

6. The Division Bench after scrutiny of the scheme of the Act held as below:-

“43. For all the above stated reasons, we are of the considered view that Lalla Singh Chouhan (supra) has not laid down the correct law and the finding that lands held by Ex-Kotwars as a grant from malguzar would be saved to them as bhumiswami land is erroneous particularly in view of the provisions of Section 3 of the Abolition Act, 1950 read with Sections 147, 148 and 150 of the MPLRC, 1954. Resultantly, the orders/judgments in the matters of Chhabil Das (supra), Tikaram (supra) and Lalla Singh Chouhan (supra) stand overruled.”

7. In view of the above, the petitioner's claim for bhumiswami right is rejected as not maintainable under the law.
8. As a fall out of the aforesaid conclusion, claim for compensation is liable to be dismissed.
9. Further more, for additional reason, the petitioner cannot claim 4.81 acres of land because that particular piece of land was withdrawn from the petitioner

under revenue proceedings which culminated in passing final order on 17.03.1989. That order was never challenged by the petitioner. Even in this petition, that order was not challenged.

10. The last part of the submission, however, that the State be directed to consider petitioner's prayer of allotting additional land to the extent it was withdrawn, may receive appropriate consideration at the end of the respondent-revenue authorities in case the petitioner submits a fresh application. It is made clear that the said consideration would be subject only to the condition that the petitioner is still holding the office of Kotwar. In other words, if petitioner is no longer Kotwar, there is no occasion for consideration of any such prayer.
11. In case any application is made, the State authority shall consider the same in accordance with law. In case no additional land is found to be available for being allotted to the petitioner, it goes without saying that the petitioner would be entitled for remuneration @ Rs.1500/- as stated in circular dated 08.08.2008, as amended from time to time.
12. The petition is accordingly disposed off with the observations as above.

Sd/-
(Manindra Mohan Shrivastava)
Judge