NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP No. 3225 of 2003

1. Shambhu Prasad Gupta, S/o Late Shri Chaturi Prasad Gupta, Aged About 45 Years, R/o Village Bhadar, Tehsil Rajpur, District Sarguja Chhattisgarh
2. Om Prakash, S/o Chandra Shekher, Aged About 50 Years, R/o Village Bhadar, Tehsil Rajpur, District Sarguja Chhattisgarh
3. Dashrath Prasad Gupta, S/o Shri Lal Bihari Gupta, Aged About 38 Years, R/o Village Bhadar, Tehsil Rajpur, District Sarguja Chhattisgarh
4. Kusum, W/o Dashrath Prasad Gupta, Aged About 36 Years, R/o Village Bhadar, Tehsil Rajpur, District Sarguja Chhattisgarh
5. Malti Devi, W/o Tara Chand, Aged About 45 Years, R/o Village Bhadar, Tehsil Rajpur, District Sarguja Chhattisgarh
6. Mamta, W/o Mrinalkant Ghosh, Aged About 40 Years, R/o Village Bhadar, Tehsil Rajpur, District Sarguja Chhattisgarh
7. Jashmati Devi, W/o Baikuntpath, Aged About 55 Years, R/o Village Bhadar, Tehsil Rajpur, District Sarguja Chhattisgarh
8. Naresh Prasad, S/o Manik Chand, By Caste Moniyar, R/o Village Bhadar, Tehsil Rajpur, District Sarguja Chhattisgarh.
9. Ram Baran Prasad, S/o Lal Bihari Prasad, By Caste Noriyar, R/o Village Bhadar, Tehsil Rajpur, District Sarguja Chhattisgarh.
10. Jagdish (Dead) Through Lrs., As Per Court Order Dt. 11-07-2019.
    10.1 - (A) Smt. Rukhmani Devi, Wd/o Late Jagdish, Aged About 65 Years, R/o Village - Bhadar, Tahsil - Rajpur, District Surguja Chhattisgarh
    10.2 - (B) Vinod Kumar Yadav, S/o Late Jagdish, Aged About 41 Years, R/o Village - Bhadar, Tahsil - Rajpur, District Surguja Chhattisgarh
    10.3 - (C) Nand Kumar Yadav, S/o Late Jagdish, Aged About 47 Years, R/o Village - Bhadar, Tahsil - Rajpur, District Surguja Chhattisgarh

10.4 - (D) Pushpa Yadav, D/o Late Jagdish, Aged About 45 Years, W/o Late Banshidhar Yadav, R/o Village - Kirkima, Tahsil - Lundra, District Surguja Chhattisgarh

10.5 - (E) Usha Yada, D/o Late Jagdish, Aged About 43 Years, W/o Arjun Smt. Shanti Bi Yadav, R/o Village - Posta, Tahsil - Balrampur, District Balrampur Chhattisgarh

11. Bal Ram (Dead) Through Lrs., As Per Court Order Dt. 11-07-2019.

11.1 - (A) Smt. Shanti Bai, Wd/o Late Bal Ram, Aged About 60 Years, R/o Village - Bhadar, Tahsil - Rajpur, District - Surguja Chhattisgarh

11.2 - (B) Jay Prakash, S/o Late Bal Ram, Aged About 31 Years, R/o Village - Bhadar, Tahsil - Rajpur, District - Surguja Chhattisgarh

11.3 - (C) Om Prakash, S/o Late Bal Ram, Aged About 29 Years, R/o Village - Bhadar, Tahsil - Rajpur, District - Surguja Chhattisgarh

11.4 - (D) Kiran Gupta, D/o Late Bal Ram, Aged About 38 Years, W/o Munib Gupta, R/o Shankargarh, Balrampur, District Balrampur Chhattisgarh

11.5 - (E) Asha Gupta, D/o Late Bal Ram, Aged About 34 Years, W/o Manoj Gupta, R/o Damodarpur, Post - Kamari, Distrct Balrampur Chhattisgarh

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Versus

1. The State Of Chhattisgarh, Through The Secretary Department Of Revenue, Mantralay, D. K. S. Building Raipur, District : Raipur, Chhattisgarh
2. The Collector, Ambikapur District Sarguja Chhattisgarh
3. Kashi Ram, S/o Bitul By Caste Korwa, R/o Village Bhadar, Tehsil Rajpur, District Sarguja Chhattisgarh

----- Respondents

For Petitioner	:	Mr. Vivek K. Tripathi, Advocate
For State	:	Mr. P. Acharya, P. Lawyer
For Respondents	:	Mr. A.N. Bhakta, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

20.01.2020

1. The challenge in the present writ petition was for quashment of the impugned order Annexure P-4 dated 22.09.2003 passed by the Collector, District Surguja.
2. Vide the said impugned order Collector while hearing an appeal under Section 44 of the Chhattisgarh Land Revenue Code, 1959 allowed the same and quashed the order passed by the Sub Divisional Officer(Revenue) in respect of a proceeding under Section 170 B of the aforementioned Act of 1959.
3. Brief facts of the case relevant for adjudication of the present dispute is that respondent No.3 in the instant case Kashi Ram moved an application under Section 170 B before the Sub Divisional Officer (Revenue) Ambikapur which was registered as Revenue Case No.1 A23/2002-2003. It was the contention of the respondent No.3 the original applicant that the land situating at Khasra No.88 admeasuring 0.656 Hectares was originally owned by his grand father Rati Korwa.
4. According to the counsel for the petitioner, the petitioner's grand father has mortgaged the said property for Rs. 100 to Manikchand the father of the original respondent. Later on, the father of the original respondent Manikchand fraudulently got the property sold to Manwar gond and thereafter got the property registered in his name declaring Manwar Gond to be a non-tribal. According to the petitioner his grand father had never sold the property to Manikchand. Therefore, under the provisions of Section 170 B the property has to

be restored back to the petitioner being the ab-original owner of the said property.

5. The Sub Divisional Officer also got the report from the concerned patwari and patwari in turn has given a report that the land belonged to Rati korwa situated in Khasra No. 81 & 88. Both these lands were registered in the name of Manikchand and Rambaran. According to the patwari from the Rati Korwa the property was transferred in the name of Manwar Gond and Sonsai Gond and from whom Manikchand and Rambaran projecting themselves as tribals in spite of they actually being non-tribals got the property transferred in their name. As per the report of the patwari even before the Land Revenue Code came into force the property already stood recorded in the name of Rati Korwa and at present it is registered in the name of various persons(All the petitioners herein). The defence that respondent Manikchand and Rambaran had taken before the Sub Divisional Officer was that they were not in any manner aware of the fact that the property in fact was originally owned by a person belonging to ab-original tribe and ignorant of the said fact, he had purchased the property. It was further the defence of the respondent before SDO(Revenue) that after the respondent had purchased the property they are peacefully enjoying the possession over the said property and have also carried out huge constructions and they are in possession of the property for decades together, therefore they should not be dispossessed from the said suit property. It was also contended that if the original seller or any of his legal heirs want, the respondent would also be ready to pay the present market value of

the said property to the legal heir of the ab-original owner. Accepting this proposal of the respondent SDO vide his order dated 14.11.2002 disposed of the proceedings holding that respondent may pay the applicant the present day market value of the property.

6. Being aggrieved by the order passed by the Sub-Divisional Officer (Revenue) the original applicant i.e. respondent no.3 in the present writ petition filed an appeal before the Collector under Section 43 of the Land Revenue Code. The appeal was registered as Appeal Case No. 106/A-23/02-03. The Collector, however, after considering the contentions put forth on either side and the evidences which were led by the parties reached to the conclusion that on the basis of the evidences it is established that the disputed property situated at Khasra No. 88 got purchased in the name of Manwar Gond projecting himself as a non-tribal and by showing his caste to be that of Kisan. According to the Collector, this purchase of property in the name of Manwar Gond is a Benami property acquired by Manik Chand and subsequently he got his name transferred from Manwar Gond. The finding of the Collector was that the first transfer of property itself was with malafide and therefore any transfer of the said property to a third person thereafter also automatically becomes bad in law. According to the Collector, the SDO had passed the order for payment of the present day value of the property to the legal heirs of the aboriginal owner on the ground of the respondents i.e. the petitioners herein having constructed a house on the disputed property prior to 01.01.1984. According to the Collector, the only issue which required consideration was whether the house

which stood in the disputed property was in fact constructed after 01.01.1984 or not.

7. The finding of the Collector is that had there been any construction on the disputed property at the time of sale, it would have been reflected in the sale deed itself but the said sale deed was not produced before the authorities concerned. This itself leads to a strong inference of there being no reference of a constructed house on the disputed property at the time of sale. On the basis of the aforesaid finding, the learned Collector has set aside the order of the SDO and ordered for restoring the possession of property in favour of the legal heirs of the aboriginal owner.

8. It is this order which is under challenge in the present writ petition.

9. The contention of the counsel for the petitioners is that admittedly the petitioners are in possession of the suit property since long and they have also invested huge money in raising construction, therefore, at this juncture, it would not be proper for getting the petitioners evicted from the said property and restoring the possession of the suit property to the respondent no.3 and his legal heirs. Counsel for the petitioners submits that there was no scope of interference to the well reasoned order passed by the S.D.O (Revenue) who had on due appreciation of the evidences and the statements available on record reached to the conclusion that on the petitioners' paying present day market value of the said property to the legal heirs of the aboriginal owner, the possession part may not be interfered. According to the counsel for the petitioners, the learned Collector failed to appreciate the evidences of the applicants

before the authority wherein the legal heirs of the respondent no.3 themselves have accepted the fact that if the persons in possession of the property pay the present day market value of the suit property to the respondent no.3 and his legal representatives, they would not pursue with the proceedings any further.

10. Per contra, the counsel for the Respondent No. 3 opposing the petition submits that a plain perusal of the impugned order of the Collector itself would show that he has given the specific reasons which are in accordance with the provisions of the Land Revenue Code, 1959. Therefore, there is hardly any scope of interference available for this Court under Article 226/227 of the Constitution of India exercising the supervisory writ jurisdiction. It was also the contention of the counsel for the petitioner that no strong case has been made out by the petitioners to show that the finding given by the Collector is in any manner illegal or contrary to law, which are the only two grounds available for this Court in exercising of its writ jurisdiction to interfere with the order of the Collector.

11. According to the counsel for the respondent no. 3, the reasons for the Sub-Divisional Officer to hold that the petitioners be paid market value of the land and the construction made over it is totally illegal as the payment of compensation for any sort of construction was payable only in the event if the construction was made prior to 01.01.1984 as would be evident from the provisions of Section 170 B (3).

12. The petitioners having failed to produce any proof in this regard without which the finding of the SDO was contrary to law. It was further the contention of the counsel for the Respondent No. 3 that even otherwise

the order of the Collector does not warrant any interference for the simple reason of there being no evidence to establish compliance of Section 170 B as is required under the Land Revenue Code in the event of land belonging to a tribal being in possession of a non-tribal.

13. For the aforesaid reasons, the counsel for the respondent no. 3 prayed for the rejection of the writ petition upholding the order of the Collector.

14. Having heard the contention put-forth on either side and on perusal of record what is an admitted position in the instant case is that all the petitioners are non-tribals. They are also in possession of land which was originally belonging to a tribal after coming into force of the Land Revenue Code, 1959. There were certain requirement necessarily to be complied with by all those persons who were non-tribals and were in possession of a land originally owned by tribals. From the evidences and records, the petitioners have not established the compliance as is required under Section 170 B.

15. The aforesaid provision of Section 170 B (3) of the Land Revenue Code, 1959 was brought into force w.e.f., 01.01.1984. Proviso clause of the said provision, it has been very clearly envisaged that for any building or structure erected after 01.01.1984 the benefit of clause (b) of Section 170 B (3) shall not apply. In view of the aforesaid proviso clause to sub-Section 170 B (3), all that was required to be ascertained was whether the construction made was prior to 01.01.1984 or was it subsequent. The main proof and evidence to establish this fact would had been the sale deed that were executed between the parties. If there would had been any sort of construction over the disputed land, it would had been definitely reflected in the sale deed and with which it

could had been easily decided whether the construction was of a date prior to 01.01.1984 or thereafter. That from the evidences which has been brought before the Sub-Divisional Officer or also the Collector, there is no proof of the construction of the house over the disputed property existing prior to 01.01.1984 so as to attract clause 170 B(3)(b). It would also be relevant at this juncture to take note of the provisions of Section 170 B which casts certain responsibility on a non-tribal, found in possession of a land belonging to a tribal. As per the said provisions, any non-tribal possession of a land tribal after 02.10.1959 have to submit a declaration before the concerned Sub-Divisional Officer specifying the manner as to how he has come in possession of the said land.

There is no evidence brought on record on behalf of the petitioners in this regard. The natural consequence of non-compliance of the provisions of Section 170 B(1) is the automatic reversion of the land to the person to whom it originally belonged or to his legal heirs, if he is dead. So far as the consent given by the tribal of his willingness to relinquish his claim for possession over the disputed property is concerned, since the said provision of Section 170 A and 170 B is an enactment for the welfare and protection of the properties belonging to a tribal, a consent of a tribal cannot be accepted to be a ground for holding the transfer of property of a tribal to a non-tribal in contravention to the provisions of the code to be accepted. As regards, the annexure which has been relied upon by the petitioners questioning the order of the Collector, this Court is of the opinion that the said document cannot be accepted for the simple reason that the said document was neither produced before the Sub-Divisional Officer at the first instance or when the proceedings were held before the Collector. Therefore, the said document cannot be permitted to be relied upon at this juncture.

16. Given the aforesaid facts and circumstances of the case and taking into consideration the clear provision of Section 170 B, this Court does not find any strong case made out by the petitioners calling for an interference with the order passed by the Collector and the petition, therefore, being devoid of merit deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge