NAFR

HIGH COURT OF CHHATTISGARH BILASPUR

Judgment reserved on 03.03.2020
Judgment delivered on 26.05.2020
Writ Appeal No.379 of 2019

(Arising out of order dated 19.06.2019 passed in Writ Petition No.363 of 2006 by the learned Single Judge)

1. Tulsi son of late Chain Sai Gond, age about 48 years
2. Babu Lal son of late Chain Sai Gond, age about 46 years
3. Sukhlal son of late Chain Sai Gond, age about 42 years
4. Shivlal son of late Chaiin Sai Gond, age about 38 years

   All are resident of Mahuwapara, Tahsil Surajpur, District Surajpur, Chhattisgarh

---- Appellants

Versus

1. Board of Revenue, Chhattisgarh, Bilaspur, Chhattisgarh
2. The Collector, District Surguja (now District Surajpur)
3. The Sub-Divisional Officer, Surajpur, District Surguja (now District Surajpur)
4. Kishori Lal Agrawal son of Khemchand Agrawal, aged about 75 years, resident of Village Surajpur, Tahsil Surajpur, District Surguja (now District Surajpur) through Power of Attorney Holder Ramesh Kumar Agrawal son of Kishori Lal Agrawal, aged about 55 years, resident of Mahuwapara, Tahsil Surajpur, District Surajpur, Chhattisgarh

   (Petitioner)

   Note : The respondent Chain Sai died during pendency of the writ petition, therefore he has not arrayed as party in this case.

---- Respondents

For Appellants	: Shri D.N. Prajapati, Advocate
For Respondent/State	: Shri Vikram Sharma Dy. Government Advocate
For Respondent No.4	: Shri Prafull N. Bharat, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge
C A V Judgment

Per Parth Prateem Sahu, Judge

1. Correctness and sustainability of the order dated 19.06.2019 passed in Writ Petition No.363 of 2006 is put to challenge in this appeal wherein the learned Single Judge allowed the writ petition in part, set aside the order passed by the Board of Revenue and further enhanced the amount towards value of land fixed by the Sub Divisional Officer (Revenue), Surajpur (hereinafter referred to as 'SDO (R)') by Rs.2 Lacs to be paid to the Appellants/Respondents No.4 to 8 therein.

2. Facts of the case in nutshell are that, the Patwari, Halka No.51, Revenue Circle Surajpur, submitted a report to the SDO (R) mentioning therein that lands bearing Khasra Nos.2403, 2404, 2405 and 2407 admeasuring 0.085, 0.048, 0.012 and 0.012 hectares respectively have been recorded in the name of Kishori Lal Agrawal i.e. Respondent No.4 herein, but in *Bandobast Mishal* of the year 1946, the aforementioned lands have been shown to be owned and recorded in the name of Gopal Gond S/o Pandit Gond (aboriginal Tribe).

3. Based upon the aforementioned report submitted by the Patwari, the SDO (R) registered a case under Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (hereinafter referred to as the 'Code of 1959') against Respondent No.4. In reply to the notice of the proceedings drawn by the SDO (R), Respondent No.4 has submitted that the lands bearing Khasra Nos.2403, 2404, 2405 an 2407 and 2400/2 were purchased from one Mohan S/o Bhausa Gond in the year 1950 for a total consideration of Rs.90/- and since then, he is in possession of aforementioned lands after raising residential accommodation and also constructed surrounding boundary wall. It was also pleaded that on the land in question, he has installed 'Saw Mill' and doing his business. It was further mentioned that except the land bearing Kharsa No.2400/2, other lands were recorded in the name of Gopal S/o Pandit Gond and the said land was purchased by Mohan S/o Bhausa Gond, who subsequently sold it to Respondent No.4. The land is a diverted land and is situated within the boundaries of municipal limits.

4. The SDO (R) has recorded evidence of witnesses produced by the respective parties and held that the defence taken by Respondent No.4 is contrary to the facts available on record as in the year 1950 when it is said to be purchased from Mohan, disputed land was owned by Gopal and not by Mohan. The SDO (R) taking into consideration the evidence and pleadings held that over the land in dispute, Respondent No.4 has raised construction and by applying the provisions of Section 170-B (3) (b) of the Code of 1959, assessed the amount of compensation to the tune of Rs.1,03,935/-.

5. The order passed by the SDO (R) dated 21.01.2002 was challenged by the Appellants herein before the Collector, District Surguja (Ambikapur) in an appeal, which was dismissed. The order passed by the Collector was further challenged by the Appellants herein in a revision before the Board of Revenue, Bilaspur. The Board of Revenue while arriving at a finding that the spot was not inspected properly as provided under Section 170-B of the Code of 1959, set aside the order passed by the SDO (R) as well as the order passed by the Collector and remitted back the case to the SDO (R) with a direction that he should visit the spot personally and prepare a report and then, pass order and calculate the amount of compensation. The order passed by Board of Revenue was challenged by Respondent No.4 herein/Petitioner by filing writ petition before High Court on the grounds mentioned therein, which was allowed in part, by the learned Single Judge while setting aside the order passed by Board of Revenue, enhanced the amount of compensation calculated by the SDO (R) and ordered Respondent No.4 to pay a sum of Rs.2 Lacs in addition to the amount already directed to be paid to Appellants by the SDO (R).

6. Shri D. N. Prajapati, learned counsel for the Appellants submits that the Board of Revenue after considering the records of the case has rightly held that the property in dispute has not been inspected properly to ascertain area of construction and also not calculated the amount of compensation in accordance with law, remitted the case to the SDO (R) for passing fresh orders. There was no permanent construction over the entire land but only on part of the land, whereas the learned Single Judge has recorded that there was evidence showing the construction of structure as well as the boundary wall and in view of provisions of Section 170-B(3), he is only entitled for enhanced amount of compensation. It is also contended by the learned counsel for the Appellants that the finding recorded by the SDO (R) with regard to the construction and awarding of compensation is without evidence and there is noncompliance of provisions of Section 170-B(3) of the Code of 1959. The Saw Mill is situated on Khasra No.2403, admeasuring 0.085 and the lands bearing Khasra Nos.2404, 2405 and 2407 are open lands and the land in question is not being used for running of Saw Mill. The SDO (R) has erroneously not called for the report as prescribed under Section 170-B(3) of the Code of 1959 and thereby committed error in recording that there was permanent construction as well as construction of boundary wall and further that Saw Mill was in operation over the land in question. He lastly contended that the order passed by the Board of Revenue was just and proper and is in consonance with the provision of Section 170-B(3) of the Code of 1959 but learned Judge erred in setting aside the order passed by Board of Revenue and further enhancing the amount in lump sum without taking recourse to the provision of Land Acquisition Act, 1894 (hereinafter referred to as the 'Act of 1894').

7. Per contra, Shri Prafull N. Bharat, learned counsel for Respondent No.4 submits that construction of permanent nature over the land in dispute is a concurrent finding of fact recorded by the two Authorities, but the Board of Revenue has erroneously interfered with the factual finding of fact. He also submitted that the learned Single Judge looking to the dispute raised by the Appellants in writ petition that there was no construction over the land in question, has called for the records of the Court of SDO (R) to look into the evidence and material available on record for ascertaining a finding that there was construction over the land in dispute as also installation of Saw Mill, which is running over the land in question and only thereafter, learned Single Judge held that there was material and evidence available in record of the SDO's case. There is evidence of witnesses wherein they have admitted that there was construction, land was surrounded by boundary wall and also the Saw Mill was running and looking to the fact that amount of compensation is less, has awarded suitable amount of compensation in addition to the compensation already awarded by the SDO (R) in accordance with the provisions of Section 170-B(3) of the Code of 1959. In support of his submission, Shri Bharat refers to paragraph-4 of the impugned order as well as concluding paragraphs of Annexure P/2 i.e. the order passed by the SDO (R). He lastly submitted that Respondent has deposited the amount.

8. We have heard learned counsel appearing for the respective parties and perused the record.

9. So far as the ground raised by learned counsel for the Appellants that there is no material to show that there was construction over the land in dispute and the Saw Mill was running is concerned, the learned Single Judge looking to the dispute raised by the Appellants has called for the records of the SDO (R) and after perusal of the records, recorded thus :

> "5. Having scrutinized the record, it appears, there are oral evidence showing construction of boundary wall, saw mill and rooms over the subject land about 20-30 years back from the date of recording of

> statement of witnesses. This fact has not only been admitted by petitioner Kishorilal Agrawal and Lavango but also by respondent No.5 Tulsiram. Moreover, there is public document in the nature of order passed by the Divisional Forest Officer, South Sarguja Division, Ambikapur on 01.11.1975, whereby the petitioner was permitted to establish a saw mill. Since there are oral evidence that the saw mill was established on the subject plot, it is implied that the saw mill for which permission was granted by the Competent Forest Officer, was established on the subject plot sometimes in the year 1975-76."

10. From the above argument raised by the learned counsel for the Appellants that there was no material or evidence to show that the Saw Mill was not running and there was no permanent construction cannot be said to be correct. The SDO (R) has recorded the evidence/statement of Tulsi Ram i.e. Appellant No.1/Respondent No.5, who admitted the fact of running of Saw Mill and also learned Single Judge has found that the order dated 01.11.1975 was available on record showing permission of Divisional Forest Officer, South Surguja Division, Ambikapur for establishing a Saw Mill. The statement/evidence of Tulsi Ram placed on record as Annexure P/5 wherein he admitted that Kishori Lal Agrawal after possessing the land, has constructed and established a Saw Mill. He also stated that the Saw Mill has been established

15-20 years prior to recording of his evidence i.e. 22.04.2001.

11. In view of the aforementioned evidence available on record findings recorded by the learned Single Judge after perusal of the record and also considering Annexure P/5, which is available on record i.e. statement/evidence of Tulsi Ram, in our considered opinion, the submission made by learned counsel for the Appellants that there was no evidence and material available on record so as to arrive at a conclusion that there was permanent construction over the land in dispute and the Saw Mill was running is not correct. This finding is a factual finding recorded by the SDO (R), Collector Appellate Court and learned Single Judge based on the evidence available on record. For the foregoing reason, this submission of learned counsel for the Appellants is repelled.

12. So far as next ground raised by learned counsel for the Appellants that the SDO (R) has not correctly assessed the value of land to be awarded to the Appellants under the provisions of Section 170-B(3) of the Code of 1959 is concerned, we have perused the finding recorded by the SDO (R) as well as relevant provisions of the Chhattisgarh Land Revenue Code, 1959. For better understanding, the relevant provision for awarding compensation under Section 170-B is reproduced below for ready reference :

> "**170-B. Reversion of land of member of aboriginal tribe which was transferred by fraud.** -(1) * * *
>
> (2) * * * *

(3) On receipt of the information under sub-section (1) the Sub-Divisional Officer shall make such enquiry as may be necessary about all such transactions of transfer and if he finds that the member of aboriginal tribe has been defrauded of his legitimate right he shall declare the transaction null and void and

(a) Where no building or structure has been erected on the agricultural land prior to such finding pass an order revesting the agricultural land in the transferer and if he be dead, in his legal heirs,

(b) Where any building or structure has been erected on the agricultural land prior to such finding, he shall fix the price of such land in accordance with the principles laid down for fixation of price of land in the Land Acquisition Act, 1894 (No.1 of 1894) and order the person referred to in sub-section (1) to pay to the transferer the difference, if any, between the price so fixed and the price actually paid to the transferer:

Provided that where the building or structure has been erected after the 1st day of January, 1984 the provisions of clause (b) above shall not apply:

Provided further that fixation of price under clause (b) shall be with reference to the price on the date of registration of the case before the Sub-Divisional Officer."

13. The learned Single Judge upon considering the relevant provisions as also the finding of the SDO (R) for awarding the amount of compensation, arrived at a finding that the value of land has not been properly fixed and thereby awarded a lump sum additional amount of Rs.2 Lacs to the Appellants/Respondents No.4 to 8.

14. Section 170-B of the Code of 1959 specifically provides for a provision under which the value of the land is to be fixed in lieu of land of a tribal person wherein a permanent construction is raised and being utilized by the non-tribal person. Section 170-B (3) clearly envisages that the value of land is to be fixed by taking recourse of the provisions of the Act of 1894. Second proviso of sub-section (3) of Section 170-B specifically provides that fixation of the price is to be based on the date of registration of the case before the Sub Divisional Officer.

15. When the learned Single Judge has reached to the conclusion that the value of land fixed by the SDO (R) was not just and proper, then in view of provisions of Section 170-B (3), proper course would be to remit back the matter to the SDO (R) for ascertaining and assessing the market value of the land based on the relevant factors provided under the Act of 1894 as well as guidelines/directions issued by the State Government for the same. When there was specific provision under which the value of land is to be calculated, then in the considered opinion of this Court, the value of land is to be calculated based upon the factors and formula prescribed under the law and not by assuming the amount of compensation in lump sum.

16. For the foregoing reasons, the impugned order requires interference of this Court. We uphold the order passed by the learned Single Judge to the extent that the finding recorded by the SDO (R) that there was permanent construction over the land, boundary wall was constructed and Saw Mill was also running over it and the value of the land calculated by SDO (R) is inadquate. We however set aside the part of impugned order whereby the learned Single Judge enhanced the amount of compensation by Rs.2 Lacs and remit back the case to the Court of Sub Divisional Officer (Revenue), Surajpur for calculating the value of land in lieu of the land in accordance with sub-section (3)(b) of Section 170-B of the Code of 1959.

17. Looking to the fact that the order passed by learned Single Judge awarding additional 2 Lacs is not challenged by the Respondent No.4 non tribal person, further considering that object and purpose of provisions of Section 170-B (3) (b) and also the fact that Respondent No.4 has already deposited the amount as ordered (as submitted by counsel for Respondent No.4), we direct the SDO (R) to evaluate the value of the land in accordance with the provisions of Act of 1894.

18. Looking to the fact that the case is pending since more than two decades before the different forums, we direct the Sub Divisional Officer (Revenue), Surajpur to assess the value of land afresh within a period of four months from the date of production of certified copy of this judgment. The amount so calculated be deposited by Respondent No.4 to be paid to the Appellants at any rate with a period of further six weeks from the date of passing of the order by SDO (R).

19. The appeal is allowed in part with the aforementioned directions.

Sd/-	Sd/-
(P. R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

Yogesh