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HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 29.06.2021

Order Passed on : 07/07/2021

W.P.(227) No. 876 of 2012

1. Satyanarayan, S/o. Lt. Ramprasad, aged about 40 years, Nawapara, Post and P.S. Ambikapur, Distt. Surguja C.G.
2. Devnarayan, S/o. Lt. Ramprasad, aged about 38 years, R/o. Ambikapur, Post and P.S. Ambikapur, Distt. Surguja C.G.
3. Ramnarayan, S/o. Lt. Ramprasad, aged about 30 years,
4. Smt. Fulmat Devi, W/o. Lt. Ramprasad, aged about 60 years,
Petitioner No.3 and 4 are R/o. Vill. Ganeshpur, Post and P.S. and Tah. Pratappur, Distt. Surajpur C.G.

---- Petitioners

Versus

1. Babulal Agrawal, S/o. Lt. Kishunchand, aged about 50 years, R/o. Vill. Pratappur, Post, P.S. and Tah Pratappur, Distt. Surajpur C.G.
2. Addl. Commissioner, Surguja, Division Ambikapur, P.S. & Post Ambikapur, Distt. Surguja C.G.
3. State of C.G., through : the Collector, Surguja P.S. and Post Ambikapur, Dist. Surguja C.G.
4. Sub-Divisional Officer, Pratappur, Post, P.S. and Tah. Pratappur, Distt. Surguja (Now Surajpur) C.G.

---- Respondents

For Petitioners	: Mr. A.N. Pandey, Advocate
For Respondent No.1.	: Mr. Sanjay Agrawal, Advocate.
For State/respondents No.2 to 4	: Mr. Alok Nigam, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

1. This petition under Article 227 of the Constitution of India has been brought being aggrieved by the order dated 14.09.2012 (Annexure P-1), passed by the Additional Commissioner, Sarguja, Division – Ambikapur in Revenue Case No.19/A-23/2009-10.

2. It is submitted by the learned counsel for the petitioners that grand father of the petitioners, Kashiram, S/o. Magan was a member of aboriginal tribe and title holder of the land bearing Kh. No. 61 measuring area 1.62 acres and Kh. No. 62 measuring area 30.26 acres. It is submitted that by fraud and forgery, the name of Nanka Panika was entered in the revenue records and on the basis of this erroneous entry, the disputed property has been sold by Nanka Panika to the respondent No.1 by registered sale deed and therefore, the land of the member of aboriginal tribe has been transferred by a fraudulent sale.
3. It is further submitted that late Ramprasad, the father of the petitioners filed an application under Section 170-B of the C.G. Land Revenue Code, 1959 seeking restoration of the disputed land, before the Court of Sub-Divisional Officer, Pratappur. S.D.O., Pratappur, passed order dated 05.07.2004 holding that the sale transaction of the land was prior to the commencement of the C.G. Land Revenue Code, 1959 (*hereinafter referred to as the 'Code, 1959'*), therefore, the provisions under Section 170-B of the Code, 1959 is not attracted. Late Ramprasad then preferred an appeal, before the Collector, Sarguja. The appeal was allowed vide order dated 02.06.2010 and the application under Section 170-B of the Code, 1959 was also allowed, directing the restoration of the disputed land to the petitioners. The respondent No.1 challenged this order before the Court of Additional Commissioner, Ambikapur, Sarguja, Division. The learned Additional Commissioner has passed the impugned order in

revision petition setting aside the order of the appellate authority and restoring the order of the S.D.O..

4. It is also submitted, that the impugned order of the Additional Commissioner is illegal, arbitrary and against the facts and circumstances of the case. The petitioners are still in possession of the suit property, regarding which, the petitioners have filed Annexure P-11 along with rejoinder, which is the statement of the villagers, regarding the possession of the petitioners. The proof that the petitioners are title holder of the disputed property is the revenue entry in the records, which has continued up till 1973. Annexure P-5 is the copy of Sansodhan Panji, which shows Kashi, S/o. Magan as the owner of the dispute property. Nanka Panika, S/o. Golo Panika had never been title holder of the suit property, therefore, the sale deed executed by him in favour of respondent No.1 does not confer any title. It is submitted that the order of Collector, Sarguja was correct order, which was sustainable. Hence, this petition be allowed and the relief be granted to the petitioners.
5. Counsel for the respondent No.1 opposes the petition and the submissions made in this respect. It is submitted that settlement of 1941, shows Nanka Panika as the title holder of the disputed property. The father of the respondent No.1 had purchased the disputed property by sale deed dated 11.03.1954 (Annexure R-1/1). Nanka Panika was not a member of aboriginal tribe. It is further submitted that name of Kashi Gond was erroneously

entered in the revenue records. By Sansodhan Panji dated 04.02.1958 this erroneous entry has been cancelled. Therefore, in the column of other details in Annexure P-5 on which the petitioners are relying and the copy of the same (Annexure R-1/3), which has been filed by the respondent No.1 there is explanation that entry in the name of Kashi, S/o. Magan, is erroneous and that the disputed property Kh. No. 61 and 62 is recorded in the name of Nanka Panika. This explanation is dated 04.02.1958. Note below in Annexure P-5 and Annexure R-1/3 mentions that the entry was canceled on 24.02.1959. Ramprasad, the father of the petitioners has by taking benefit of erroneous entry, filed an application under Section 170-B of the Code, 1959, whereas, the name of the father of respondent No.1 was already mutated in 1954-1955. Copy of the record of rights has been filed along with reply and subsequent to that name of the petitioners has continued in the revenue records, which also shows the possession of the respondent No.1. It is further submitted that apart from the documents of revenue entry i.e. Annexure P-5, the petitioners have not been able to bring forth any documents or other documents to assert their title over the disputed property. Therefore, the claim of the petitioners that they were the title holders and recorded owners of the disputed property is totally false and baseless. It has been rightly held in the impugned order by the Additional Commissioner that the petitioners or their predecessor never had been recorded owner of the disputed property and further the date of sale transaction is the prior to the

date of commencement of Code, 1959, hence, the order of the Collector was rightly set-aside and the order of S.D.O. was rightly restored. This petition is without any substance, which may be dismissed. Reliance has been placed on the judgment this Court in **W.P. No. 1739 of 1997 decided on 02.02.2010**, in case of **Yadram (dead) through L.RS. Smt. Yamuna Bai & Ors. Vs. State of C.G.**, reported in **2015 (5) C.G.L.J. 402 (DB)**, in case of **Smt. Yamuna Bai & Ors. Vs. The State of C.G. & Anr. in W.P. No. 1066 of 2002, decided on 20.09.2017** and in case of **Mst. Sarino Bai & Ors. Vs. State of C.G. & Anr. In W.P.(C) No. 6438 of 2007 decided on 21.06.2019**.

6. Learned State counsel appearing on behalf of the respondents No.2 to 4 opposes the petition and the submissions made in this respect. It is submitted that no errors has been committed by the impugned order. Therefore, the petition be dismissed.
7. In reply, it is submitted by the learned counsel for the petitioners that the petitioners have brought proof that they are in possession of the disputed property since the very beginning and the respondent No.1 is not in possession, hence, the claim of the respondent No.1 over the disputed property is totally false and baseless. It is clear case in which the Section 170-B of the Code, 1959 is applicable, therefore, the petitioners have entitlement for grant of relief.
8. I have heard the learned counsel for the parties and perused the documents placed on record.

9. Considered on the submissions. The claim of the petitioner is based only on one documents i.e. Sansodhan Panji (Annexure P-65), which although shows Kashi, S/o. Magan as recorded owner but the column of 'other details' shows the note that this is erroneous entry and the land bearing Kh. No.61 and 62 is originally recorded in the name of Nanka Panika. This statement has been made by the Patwari of the circle. There is note below these entries made by the Naib Tahsildar on 24.02.1959, that the entry in Sansodharn Panji has been canceled. No other document has been produced by the petitioners to show that apart from that entry in Annexure P-5, the name of the predecessor of the petitioners was ever recorded in the records of rights or in Khasra Panchshala. Sansodhan Panji Annexure P-5 clearly does not support the claim of the petitioners.
10. Reliance of the petitioners on Annexure P-6 is the certificate given by Sarpanch of Gram Panchayat Gontganwa. It is although a photocopy, which can not be referred to as a document in proof and further the Sarpanch of Gram Panchayat is not an authority to certify the possession over any property or any land. Similarly other reliance of the petitioners on Annexure P-11 is again a statement of witnesses, which can not be regarded as proof of possession under any law. Therefore, the claim of the possession made by the petitioners are only oral claim. There is no recorded proof in their support. The Additional Collector, Ambikapur has passed the order dated 02.06.2010 on the basis of the statement of the witnesses, that the petitioners are in possession of the

disputed property. He has not given consideration on the fact, that the sale deed of the suit property was prior to the enactment of the Code, 1959 and that there had never been any entry in the revenue records in favour of the petitioners. Therefore, I am of this view that the learned Additional Commissioner has rightly drawn conclusions that the petitioners were never recorded owner of the disputed property and secondly the sale transaction had been of prior to the date before enactment of the Code, 1959, hence, there was no applicability of Section 170-B of the Code, 1959.

11. The very words of 170-B of the Code, 1959 are clear that the agricultural land must have belonged to a member of tribe, which has been declared to be an aboriginal tribe. There is no doubt that the petitioners are members of aboriginal tribe, but there is also no proof that the land in dispute ever belonged to the petitioners. Hence, on this basis and on the basis of the discussion made herein above, I am of this view that present petition is without any substance, which may be dismissed and disposed off.
12. Accordingly, this petition is dismissed and disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge