

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 18.01.2021

Order Passed on : 24/02/2021

W.P.(227) No. 6178 of 2009

1. Laikhan S/o Somaru Ram Baghel Aged About 45 Years
 2. Tula Ram S/o Somaru Ram Baghel Aged About 35 Years
 3. Late Mohan S/o Somaru Ram Baghel, Through Lrs. Smt. Sonamani W/o Late Mohan, 30 Years,
 4. Ku. Asmati D/o Somaru Ram Baghel Aged About 22 Years
- (All are r/o Village Bilori, Podagurapara, Tahsil Jagdalpur, District Bastar Chhattisgarh)

---- Petitioners

Versus

1. Mehattar S/o Jhitru
 2. Rainu S/o Jhitru
 3. Harichandra, S/o Sewa (Deleted)
 - (a) Raja Bai W/o Late Harichandra
 - (b) Neelu Ram S/o Late Harichandra
 - (c) Ramchandra S/o Late Harichandra
 - (d) Sukchand S/o Late Harichandra
- (Respondents No.1 to 3 are r/o village- Bilori, Tahsil- Jagdalpur, District- Bastar, C.G.)
4. Peshpi Apparam S/o Late Nokraj Naidu
 5. Archana W/o Late Nokraj Naidu
 6. Sushri Nokratnaya D/o Late Nokraj Naidu
- (respondents No.4 to 6 are r/o Village Adawal, Tahsil Jagdalpur, District Bastar Chhattisgarh)
7. State Of Chhattisgarh Through, Collector, Bastar Chhattisgarh
 8. The Commissioner Bastar Division, Jagdalpur Chhattisgarh

---- Respondents

For Petitioners	: Mr. Prafull N. Bharat, Advocate.
For respondents No.1 & 2	: Mr. Manoj Paranjpe and Mr. Anurag Singh, Advocate.
For State/respondents No.7 & 8	: Mr. Gurudev I. Sharan, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

24/02/2021

1. This petition has been brought under Article 227 of Constitution of India praying to quash the order dated 28.03.2002 passed by the Collector and District Magistrate, Bastar, District- Jagdalpur, C.G. and the order dated 04.08.2009 passed by the respondent No.8 i.e. the Commissioner Bastar Division, Jagdalpur, C.G.
2. The inquiry was initiated under Section 170 (B)(3) of Chhattisgarh Land Revenue Code, 1959 before the Sub Divisional Officer, which was dismissed vide order dated 11.11.1980 (Annexure-P/3). The appeal preferred against this order before the Collector was allowed vide order dated 25.02.1992 (Annexure-P/4). A revision was preferred by respondent No.6 before Commissioner, Bastar Division which was disposed vide order dated 01.08.1994 (Annexure-P/5), in which the orders of the Collector and S.D.O. were set aside and the matter was remanded back with direction to make inquiry and pass appropriate order. The Additional Collector, Jagdalpur inquired into the matter and passed the order dated 29.01.1998 (Annexure-P/6) and held that there was nothing mala-fide in the land transaction and the matter was dismissed. Respondent No.1 and 2 then preferred a revision before Commissioner, Bastar which had been disposed off vide order dated

14.09.1999 (Annexure-P/7), by which again the order of Additional Collector dated 29.01.1998 was set aside and direction was issued to make enquiry in accordance with Section 170(B)(3) of C.G.L.R.C. and pass appropriate orders. The matter was then inquired into by the Collector, Bastar and the impugned order had been passed, in which it was held that the transaction was not bonafide. The land in question belonging to the Member of aboriginal tribe, was mortgaged for Rs.3000/-, which was then fraudulently transferred in the name of a non-tribal person. The sale transaction was thereby set aside and the order was passed that the name of the respondent No.1 and 2 be entered in the revenue records. The revision preferred before Commissioner, Bastar Division has been dismissed vide order dated 04.08.2009 (Annexure P-2) and the order of Collector was further modified directing the S.D.O. and Tehsildar, Jagdalpur to restore possession of the property in question to respondent No.1 and 2 and 3.

3. It is submitted by the learned counsel for petitioners that Section 170(B) (3) of C.G.L.R.C. provides that it shall be the Sub Divisional Officer, who shall make an inquiry about all such transactions or transfer to find out whether the member of an aboriginal tribe has been defrauded by his legitimate right or not. The Collector did not have any authority to make any such inquiry. The Collector and Commissioner both failed to appreciate, that the transaction of a land had taken place with the prior permission and sanction of the Collector as provided under the Code. It raises a presumption in favour of the purchaser, unless, it is proved that permission/sanction granted was unlawful.
4. The property in dispute, Khasra No.54, measuring 4 acres was previously recorded in the name of the ancestors of respondent No.1 and 2, which was sold to the father of respondent No.6 by a sale deed

dated 11.11.1980, on the basis of the sanction order dated 28.04.1972 granted for the sale. It is submitted that this sanction order was never challenged. It is further observed in the order of Commissioner that the Tehsildar, Jagdalpur had submitted a report dated 09.03.2004, according to which the transaction was not bonafide, that report given by Tehsildar was without any authority or law as the Tehsildar has no such power to make any such inquiry. The aboriginal vendors of the disputed property namely- Domay and one another never challenged the sale. Therefore, the impugned orders are not sustainable and a prayer has been made to quash the same.

5. Reliance has been placed on the judgment of Division Bench of M.P. High Court in the case of **Atmaram Vs. State of Madhya Pradesh** reported in 1995 M.P.L.J. 633.
6. Learned counsel for the respondent No.1 and 2 opposes the submissions and submits that the original order dated 11.11.1980 that was passed by S.D.O. was not an order passed on any inquiry, therefore, that order was illegal. Even if, the sale is made by a permission from Collector, the S.D.O. still has the authority to inquire on such transactions. It has been conceded that the Commissioner should have remanded the case to the S.D.O. in the light of the judgment in *Atmaram Vs. State of Madhya Pradesh* (Supra).
7. Learned State counsel appearing for respondent No.7 and 8 submits that no error has been committed in the impugned orders passed by the Collector and the Commissioner, therefore, this petition may be dismissed.
8. In reply, it is submitted by the learned counsel for the petitioner that in this case, the S.D.O. has not made any inquiry, which is reflected from

the orders passed by the learned Collector and that he himself did not make any inquiry. Further, the permission of the Collector in the sale of the property was also not put to question, hence, the petition deserves to be allowed.

9. I have heard learned counsel for the both the parties and perused the documents placed on records.
10. Considered on the submissions. It can be viewed that the order of S.D.O. filed as annexure P-3 dated 11.11.1980 is an order in the order sheet, which mentions, "that parties have not given appearance. The transaction of land has taken place with the permission of Collector, therefore, any adverse inference can not be drawn" and the proceeding was dismissed. This order does not clarify in any manner as to whether any inquiry was made or not. The dictionary meaning of word 'inquiry' is "to seek information, which may be by the process of summoning and examining the witnesses and the documents which may be essential for the purposes of drawing the conclusion." The word 'inquiry' has been defined in Section 2 (g) of Cr.P.C. which means "every inquiry other than the trial conducted under the Code of Criminal Procedure by a Magistrate or Court." The Revenue Officers also exercise the powers of a Court in the proceeding under Section 170 (B)(3) of the C.G.L.R.C.
11. The appeal that was preferred before the Collector against the order dated 11.11.1980 was allowed, mentioning that "the non-tribal purchaser of the property did not file any return for the transaction and, therefore, order was passed for restoration of the property to the aboriginal vendor." This order again is not a speaking order and neither there is any mention of any inquiry nor mention of witnesses or any documents in evidence. The revision that was preferred by the father of respondent No.6 before Commissioner was allowed vide order dated 01.08.1994

(Annexure- P/5) and the case was remanded, however, without any specific directions as to who shall be the authority to make inquiry in accordance with Section 170(B)(3) of C.G.L.R.C. The case that was remanded was not sent for inquiry to S.D.O. On the contrary, it was the Additional Collector, Jagdalpur, who inquired into the matter by summoning the witnesses and on that basis, the order dated 29.01.1998 (Annexure-P/6) was passed which was again set aside by the Commissioner in Revisional jurisdiction vide order dated 14.09.1999 (Annexure-P/7) and a direction was again issued for making inquiry in compliance with Section 170(B)(3) of C.G.L.R.C. Subsequent to this order again no effort was made by the Collector to send the matter for inquiry to S.D.O. and he again proceeded on the matter and passed the impugned order dated 28.03.2002 (Annexure-P/1) drawing the conclusion on the basis of the material that was already present, which has been confirmed by the Commissioner vide impugned order dated 04.08.2009 (Annexure-P/2).

12. In the case of *Atmaram Vs. State of Madhya Pradesh* (Supra), the Divisional Bench of M.P. High Court has observed in the paragraph No.06 as follows:-

6. In dealing with the contention that the effect of Sub-section (2) of Section 170-B is to usurp the judicial functions and that there is repugnancy between Central Enactments, the Court observed that the interpretation placed in the judgment on Section 170-B(2) is sufficient to repel the argument. The Court observed in para 20 as follows:

"The mere fact that an order contemplated by Sub-section (3) has to be passed even in cases falling within the ambit of Sub-section (2), as practice which is admittedly being followed, is sufficient to indicate that there is no usurpation of judicial function thereby and there is no arbitrariness in the procedure nor is there the vice of absence of enquiry."

Dealing with the contention that there may be some hard cases in which due to unforeseen difficulties it would not be possible for the transferee to notify the requisite particulars under Sub-section (1) within the period specified, the Court observed in para 21 as follows:

"In our opinion, this apprehension also is not justified. Once it is held, as was conceded by the learned Additional Advocate General, that an order contemplated by Sub-section (3) has to be passed invariably in every such case including a case falling within the ambit of Sub-section (2), all the incident attaching to such an order made under the Code are automatically attracted. It would be open at least to the appellate authority in suitable cases if proper cause is shown to reopen the matter to direct the Sub-Divisional Officer to give a fresh decision under Sub-section (3) on merits taking into account the cause shown by the transferee. This also ensures reasonability of the procedure in all cases including those falling within the ambit of Sub-section (2). Such an order may also be treated as an ex parte order which may be set aside by the Sub-Divisional Officer himself on sufficient cause being shown to explain in the transferee's default in notifying the particulars within the period prescribed."

13. Further, the procedure in such inquiry under Section 170(B)(3)

C.G.L.R.C. has been explained in paragraph No.9 which is as follows

***170B. Reversion of land of members of aboriginal tribe
which was transferred by fraud. -***

(1) XXX

(2) XXX

(3) On receipt of the information under sub-section (1), the Sub-Divisional Officer shall make such enquiry as may be deemed 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 pass an order revesting the

agricultural land in the transferor and, if he is dead, in his legal heirs.

(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 transferor 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 transferor the difference, if any, between the price so fixed and the price actually paid to the transferor :

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.

14. In such an inquiry, the sanction/permission granted by the Collector can also be put to question. For the reason that the power of S.D.O. to revert the land to the Members of aboriginal tribe is absolute and such power is not affected by any sanction granted by the Collector for the sale transaction of a land under Section 165(2) of the Code, 1959. Hence, in view of this legal position present in this case, the impugned orders that have been challenged in this Writ Petition are found to be

passed without the exercise of lawful authority under the C.G. Land Revenue Code. Therefore, this petition is allowed, and both the impugned orders are quashed. The proceeding of inquiry under Section 170 (B) of Land Revenue Code is restored before the Court of S.D.O., Jagdalpur, with a direction to proceed with the inquiry as contemplated under Section 170(B)(3) of C.G.L.R.C. and pass appropriate order in accordance with law.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika