NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :09/12/2020

Order passed on :03 /03/2021

WP227 No. 5721 of 2011

- Sonaram S/o Devnath, Caste Gond, Aged about 58 years, R/o Village - Devari, Tahsil- Kanker, District Bastar (C.G.)

---- Petitioner

Versus

1. Dev Singh S/o Bakka, Caste Gond, R/o Village Dhanora, Tahsil Keshkal, District Bastar (C.G.)
2. Praveen Kumar S/o Ganesh Suman, Caste Brahman, R/o Village-Dhanora, Tahsil Keshkal, District Bastar (C.G.)
3. Lekhuram S/o Shivraj, Caste Halba, R/o Village- Surdogar, Tahsil Keshkal, District Bastar (C.G.)
4. State of Chhattisgarh, through the Collector, Jagdalpur, District Bastar (C.G.)

---- Respondents

For Petitioner – Shri Goutam Khetrapal, Advocate.
For Respondent No.1 – Shri Prakash Tiwari, Advocate.
For State/Respondent No.4– Shri Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

03-03-2021

1. This petition under Article 227 of the Constitution of India has been brought seeking indulgence of this Court to quash the order dated 23-11-2009 passed by Commissioner Bastar Division and the order dated 26-08-2011 passed by the Chhattisgarh Board of Revenue.

2. It is submitted by learned counsel for the petitioner that the petitioner and respondent No.1 both are members of aboriginal tribe. An agreement to sale was executed by respondent No.1 for the sale his property to the petitioner for consideration of Rs.37,100/- on 05-04-1987. The petitioner made payment of full consideration, subsequent to which the sale deed was also executed. On the basis of this sale, the property purchased was mutated in the name of the petitioner in the year 1988.

It is submitted that respondent No.1 has with ulterior motive filed an application under Section 170-B of M.P. Land Revenue Code, on 16-11-1994 before the Sub-Divisional Officer (Revenue) Kondagaon, making statement that the sale deed in question is fraudulent which has been actually made benami. The name of the petitioner shown as purchaser is sham, whereas, the actual beneficiary of the sale is non-tribal person Praveen Kumar S/o Ganesh Suman. It is submitted that learned SDO passed the order on 19-08-2006 and rejected the application of respondent No.1.

Respondent No.1 preferred appeal before the Court of Additional Collector Jagdalpur, District Bastar. This appeal was also dismissed by order dated 03-03-2008. Respondent No.1 then again preferred a revision petition before the Court of Commissioner, Bastar Division. The revision petition was allowed and it was ordered that the disputed property be revested to respondent No.1 and the mutation in records be done accordingly.

The petitioner then made a petition before the Chhattisgarh Board of Revenue. The Revenue Board has dismissed the petition of the petitioner by order dated 26-08-2011 on the ground of maintainability making reference to the clause (c) of the proviso to Section 50 subsection 1 of Chhattisgarh Land Revenue Code.

3. It is submitted by learned counsel for the petitioner that the SDO (Revenue) has passed a speaking order in revenue case No.01-A-23-94-95 on 19-08-2006. The petitioner had contested the pleadings and claim made by respondent No.1, by producing sale dated 05-04-1987 and other documents from his possession. It was clearly denied that the said sale deed was a benami transaction. This order has been passed by SDO after detailed appreciation of the evidence led by both the parties in the enquiry made. Therefore, this order passed by the SDO (Revenue) which was confirmed by the Additional Collector Bastar, was a proper and lawful order which needed no interference.

It is submitted by learned counsel for the petitioner that the order of Commissioner Bastar dated 23-11-2009, suffers from infirmity. It was erroneously considered that the land of a tribal cannot be purchased by a non-tribal person making a mention, that the statement of Praveen Kumar in the enquiry was not appreciated in which he stated about the transaction. There had been clear statement of the petitioner regarding the purchase made bonafidely by him from respondent No.1. The registered sale deed stands in his name and the petitioner persistently led claim over the property in dispute. Hence, the order of the Commissioner is illegal, arbitrary and unsustainable.

Reliance has been placed on the judgment of M.P. High Court in case of **Dhirendra Nath Sharma Vs. State of Madhya Pradesh and another**, 1985 M.P.L.J. 786, **Atmaram Rohulla and others Vs. State of Madhya Pradesh**, 1995 M.P.L.J. 633, **P. Leelavathi (D) by LRs Vs. V. Shankarnarayana Rao (D) by LRs** , 2019 SCC OnLine SC 489.

Reliance has also been placed on the judgment of Hon'ble the Supreme Court in the case of **Mangathai Ammal (Died) through LRs and Others Vs. Rajeswari and Others**, 2019 SCC OnLine SC 717 and judgment of Orrisa High Court in the case of **Panika Bhoi Vs. Kunu Bariha and others**, 2011 SCC OnLine Ori 366 and it is submitted that it was burden of respondent No.1 to prove that the transaction was benami and the same was not discharged by him. Hence, learned Commissioner has not exercised the jurisdiction properly and passed an erroneous order and the Revenue Board has also failed to exercise its jurisdiction to correct the same. Therefore, it is prayed that the petition be allowed and the relief be granted to the petitioner.

4. Learned counsel for respondent No.1 opposes the submission made by learned counsel for the petitioner and submits that the transaction in question is very clearly a benami transaction which was done with intention to bypass the legal provision of the Chhattisgarh Land Revenue Code. There is evidence

present in the enquiry establishing that Praveen Kumar was the person behind the petitioner, who had made the purchase of the landed property in dispute. The learned commissioner had rightly observed in the impugned order that there had been issues to be determined as to whether the sale transaction was benami, whether the fact regarding the possession of Praveen Kumar for few years was deliberately not appreciated by the revenue Courts below and whether the examination of Patwari was deliberately given up, on this basis the finding has been given in the order dated 23-11-2009, holding that the sale transaction in this case was not bonafide and therefore the same was cancelled.

Learned counsel for respondent No.1 places reliance on the judgment of this High Court in the case of **Parwati Vs. Munna and others**, (2011) 2 MPHT (Chh) 38 and the judgment of Hon'ble the Supreme Court in the case of **Bhaiji Vs. Sub-Divisional Officer, Thandla and others**, (2003) 1 SCC 692. It is submitted that there had been evidence present in the enquiry with respect to the benami ownership of Praveen Kumar. Some of the khasra entries also shown in the name of Praveen Kumar showing him in possession. Further proof of payment is also doubtful and therefore false. There is mention in order of Commissioner Bastar, that the receipts produced by the petitioner showing the payment of consideration, to have made about in three years after the execution of sale deed, raises doubt, therefore, the order of Commissioner Bastar Division does not suffer from any infirmity and the jurisdiction of revision has been rightly exercised. Therefore, the present petition is without any substance which ma be dismissed.

5. In reply, it is submitted by learned counsel for the petitioner, that the petitioner had proved his case in the enquiry before the SDO (Revenue). The statement of Praveen Kumar was appreciated by the SDO (Revenue) in the order passed by him. Therefore, observation of the Commissioner in the

impugned order that the statement of Praveen Kumar has not at all been considered, is by itself erroneous and further the revenue records do not show any entry in the name of Praveen Kumar as recorded owner of the land. Hence, the transaction of the petitioner with respondent No.1 was totally bonafide, which should have been allowed to stand as it is.

6. Heard learned counsel for the parties and perused the documents.

7. Section 170-B (1), (2) and (3) of the M.P. & Chhattisgarh Land Revenue Code read as under:-

170-B. Reversion of land of members of aboriginal tribe which was transferred by fraud. - (1) Every person who on the date of commencement of the Madhya Pradesh Land Revenue Code (Amendment), 1980 (hereinafter referred to as the Amendment Act of 1980) is in possession of agricultural land which belonged to a member of a tribe which has been declared to be an aboriginal tribe under sub-section (6) of Section 165 between the period commencing on the 2nd October, 1959 and ending on the date of the commencement of Amendment Act, 1980 shall, within two years of such commencement, notify to the Sub-Divisional Officer in such form and in such manner as may be prescribed, all the information as to how he has come in possession of such land.

(2) If any person fails to notify the information as required by sub-section (1) within the period specified therein it shall be presumed that such person has been in possession of the agricultural land without any lawful authority and the agricultural land shall, on the expiration of the period aforesaid revert to the person to whom it originally belonged and if that person be dead, to his legal heirs.

(2-A) If a Gram Sabha in the Scheduled area referred to in clause (1) of Article 244 of the Constitution finds that any person, other than a member of an aboriginal tribe, is in possession of any land of a bhumiswami belonging to an aboriginal tribe, without any lawful authority, it shall restore the possession of such land to that person to whom it originally belonged and if that person is dead to his legal heirs :

Provided that if the Gram Sabha fails to restore the possession of such land, it shall refer the matter to the Sub-Divisional Officer, who shall restore the possession of such land within three months from the date of receipt of the reference.

(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.

[[1](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 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.]

The provisions under Section 170-B(1) and (2) is clearly directed against the person who is not a member of any Scheduled Tribes or any aboriginal Tribe, therefore, for the purposes of initiating a proceeding under section 170-B of Chhattisgarh Land Revenue Code it is essential that one of the party in the transaction of sale of landed property was not a member of aboriginal tribe. The sale in question which is dated 05-04-1987 had been between the petitioner and respondent No.1 and both of them are members of aboriginal tribe.

This position has been elaborated and explained by Hon'ble the

[1] Substituted for Scheduled Areas of the State by M.P. Notfn. F. No. 1-70-VII-N-II-83, dated 5-1-1984

Supreme Court in the case of **Bhaiji Vs. Sub-Divisional Officer, Thandla and others** (supra) and held in paragraph No.8 of in the judgment that :-

> **8.** It is well known that some of the aboriginal tribes are nomadic and some indulge into crimes traditionally and historically. The purpose of settling land with the tribals mostly which is done at very concessional rates and at times even without involving an obligation to pay the land revenue, is so done with a view to see that the aboriginals settle at one place abandoning nomadism and picking up tilling the soil as their vocation by settling at one place and earning livelihood by labour and toil. It is also well known that creamy layers have developed and even as amongst socially unprivileged some have acquired affluence. An affluent shrewd tribal may indulge into exploiting his fellow beings. Possibility cannot be ruled out where a non-tribal may manage to have land transferred apparently but not in reality in the name of a tribal and taking advantage of his status, affluence or any other means, conferring him with capacity to exploit, may till the land to his own advantage depriving the aboriginal tribal from the benefits of the land settled by the state with him. All such cases are taken care of by Section 170-B. The purpose of enacting Section 170-B of the Code is very wide. The object sought to be achieved, as its drafting indicates, is to gather and make available all statistics with the state officials so as to find out how much land belonging to aboriginal tribals is in possession of anyone to whom it does not belong as on the cut off date. The information having been collected the enquiry under sub-section (3) shall be directed towards finding out the nature of transaction resulting into transfer of land whether such transaction of transfer has resulted in the aboriginal tribal having been defrauded of his legitimate right in the land? Sub- sections (1), (2) and (3), as enacted in 1980, have to be read as part of one whole scheme. If the submission of Shri Gambhir is correct then the object of enquiry under sub-section (3) would have been to find out if such transaction of transfer has resulted in an aboriginal tribal having been defrauded of his legitimate right by person not belonging to aboriginal tribe. But that is not so. Nowhere in the entire scheme of sub-section (1), (2) and (3) of Section 170-B, as enacted in 1980, there is the least indication of confining the applicability of the provision to such transactions of transfer as were entered into by a member of aboriginal tribe in favour of a member not belonging to aboriginal tribe. No

> exception has been enacted by the legislature so as to exclude from the purview of section 170-B transactions of transfer between two persons both of whom are members of aboriginal tribes. Had it been so, the legislature would have specifically said so. The language of the section as drafted in 1980 is clear and unambiguous and does not admit of any doubt so far as this aspect is concerned."

Therefore, this being the position in law, the sale transaction between members of aboriginal tribes can also be questioned under Section 170-B of the Chhattisgarh Land Revenue Code.

This view of the Apex Court has been followed by this Court in case of **Parwati Vs. Munna and others** (supra).

Constitutional validity of Section 170-A, 170-B of the Madhya Pradesh/Chhattisgarh Land Revenue Code has been considered in the case of **Dhirendra Nath Sharma Vs. State of Madhya Pradesh and another** (supra) and the validity of the same has been upheld by the Division Bench of Madhya Pradesh High Court.

In the case of **Atmaram Rohulla and others Vs. State of Madhya Pradesh** (supra), Division Bench of M.P. High Court had observed that the presumption to be drawn under Section170-B (2) is a rebuttable presumption. It has been observed by the Division Bench in paragraph 9 of the judgment that:-

> **9.** As explained in *Dhirendra Nath Sharma's* case even in a case governed by sub-section (2) of section 170-B of the Code, there must be show cause notice and enquiry. In reply to show cause notice, it is open to the vendee in possession to aver that his possession is by lawful authority. It must be open to him to adduce evidence in support of his contention that his possession is by lawful authority. If the S.D.O. is satisfied on the materials before him either produced by the vendee or received from other sources that the vendee's possession is based on lawful authority, the presumption is rebutted. That is the end of the operation of sub-section (2). It is important to know that the presumption has nothing to do with the aspect whether the document is obtained by fraud or other unfair means or whether the document is substantially

unfair and constitutes fraudulent transaction affecting legitimate rights of the tribals. The presumption is confined only to one aspect in a narrow compass namely, whether the possession is without lawful authority.”

7. Hon'ble the Supreme Court in the case of **P. Leelavathi (D) by LRs Vs. V. Shankarnarayana Rao (D) by LRs** (supra) has observed in paragraphs 25 and 26 that:-

25. In the case of *Thakur Bhim Singh* (supra), it is observed and held by this Court that while considering a particular transaction as benami, the intention of the person who contributed the purchase money is determinative of the nature of transaction. It is further observed by this Court as to what the intention of the person who contributed the purchase money, has to be decided on the basis of the surrounding circumstance; the relationship of the parties; the motives governing their action in bringing about the transaction and their subsequent conduct etc. In the aforesaid decision, this Court considered the earlier decision of this Court in *Jaydayal Poddar v. Bibi Hazra (Mst.)* (1974) 1 SCC 3, more particularly para 6, and thereafter summed up in para 17 and para 18. Paras 17 and 18 of that judgment are as under:

“**17.** The principle enunciated by Lord Macmillan in the case of *Manmohan Das* [AIR 1931 PC 175 : 134 IC 66 9 : 1931 ALJ 550] has been followed by this Court in *Jaydayal Poddar v. Bibi Hazra (Mst)* [(1974) 1 SCC 3 : (1974) 2 SCR 90] where Sarkaria, J., observed thus: (SCC p. 6, para 6)

“It is well settled that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of a benami is the intention of the party or parties concerned; and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation, and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption

> in his favour that the apparent state of affairs is the real state of affairs. Though the question whether a particular sale is benami or not, is largely one of fact, and for determining this question, no absolute formulae or acid tests, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the courts are usually guided by these circumstances: (1) the source from which the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami colour; (4) the position of the parties and the relationship if any, between the claimant and the alleged benamidar; (5) the custody of the title deeds after the sale and (6) the conduct of the parties concerned in dealing with the property after the sale."

18. The principle governing the determination of the question whether a transfer is a benami transaction or not may be summed up thus: (1) the burden of showing that a transfer is a benami transaction lies on the person who asserts that it is such a transaction; (2) it is proved that the purchase money came from a person other than the person in whose favour the property is transferred, the purchase is prima facie assumed to be for the benefit of the person who supplied the purchase money, unless there is evidence to the contrary; (3) the true character of the transaction is governed by the intention of the person who has contributed the purchase money and (4) the question as to what his intention was has to be decided on the basis of the surrounding circumstances, the relationship of the parties, the motives governing their action in bringing about the transaction and their subsequent conduct, etc."

26. In *Binapani Paul* case (supra), this Court again had an occasion to consider the nature of benami transactions. After considering a catena of decisions of this Court on the point, this Court in that judgment observed and held that the source of money had never been the sole consideration. It is merely one of the relevant considerations but not determinative in character. This Court ultimately concluded after considering its earlier judgment in the case of *Valliammal v. Subramaniam* (2004) 7 SCC 233 that while considering whether a particular transaction is benami in nature, the following six circumstances can be taken as a guide:

"(1) the source from which the purchase money came;

(2) the nature and possession of the property, after the purchase;

(3) motive, if any, for giving the transaction a benami colour;

(4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;

(5) the custody of the title deeds after the sale; and

(6) the conduct of the parties concerned in dealing with the property after the sale. (*Jaydayal Poddar v. Bibi Hazra* (supra), SCC p. 7, para6)"

And similarly in case of **Mangathai Ammal (Died) through LRs and Others Vs. Rajeswari and Others** (supra) the ratio laid down in case of **P. Leelavathi (D) by LRs Vs. V. Shankarnarayana Rao (D) by LRs** (supra) has been followed.

8. Taking into consideration the above preposition of law and the facts of this case, it would be seen that the learned Sub-Divisional Officer, Kondagaon has in the order dated 19-08-2006 (Annexure-P/8) appreciated on all the evidence of witnesses in the enquiry. The sale transaction of the execution of sale deed (Annexure-P/3) has been proved by the statement of petitioner, who was non-applicant there and the witnesses on that sale deed namely Bavji Ghodke and Pandu. The evidence was led about payment of consideration. Although there is evidence that for about five years Praveen Kumar had been in possession of the disputed property but the sale deed had been executed on 05-04-1987 and since then it was not the whole period, the said Praveen Kumar had been in possession of the disputed property. The case of the petitioner has been supported by the other witnesses namely Ghasiya Ram and J.S. Mandavi. On this basis, the learned Sub-Divisional Officer has passed the order of dismissal dated 19-08-2006 (Annexure-P/8), which has been confirmed by the Additional Collector, Bastar vide order dated 03-03-2008, passed in revenue appeal (Annexure-P/9).

The learned Commissioner has not agreed with this finding on the ground that consideration price has been paid in duration of three years and that the statement of Praveen Kumar has not properly rebutted. There is mention of the statement given by non-applicant No.2 Praveen Kumar that he has made purchase of disputed property in the name of the petitioner but only oral statement of non-applicant No.2, who is the respondent No. 2 before this Court. His statement was disbelieved by the Court of SDO and Additional Collector as the same was not supported with other facts, circumstances and evidence. I am of this view that the learned Sub-Divisional Officer has given full consideration to all the evidence given by the witnesses and drawn conclusion, whereas, the learned Commissioner has given weightage only to the statement of respondent No.2, which is only oral statement and not supported and corroborated with other facts and circumstances of the case. The evidence regarding possession of respondent No.2 for a fraction of time of 5 years, if taken as it is, cannot be regarded as his continued possession from the date of sale and is not sufficient to rebut the khasra entries which are in favour of petitioner.

Hence, on this basis this conclusion can be drawn, that the learned Commissioner had while passing the impugned order has not given consideration to all the evidence present in the enqiry made before the Sub-Divisional Officer. Hence, this can not be said to be a proper exercise of a jurisdiction vested with the Commissioner for passing the impugned order. In exercise of supervisory jurisdiction, this Court draws conclusion as mentioned here-in-above and on this basis it is found that the petition deserves to be allowed. Hence, this petition is allowed. The impugned order dated 23-11-2009, passed by the Court of Commissioner, Bastar, Division Bastar (C.G.) in Revenue Case No. 32-A-23/2007-2008 and the order of the Revenue Board dated 26-08-2011, passed by the Board of Revenue, Chhattisgarh, Circuit Court, Jagdalpur in Case No.RN/01/R/A-23/421/2009 are hereby quashed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Aadil/Balram