

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(227) No. 688 of 2015****Order Reserved on 14.07.2021****Order Delivered on 22.07.2021**

Smt. Meena Bai W/o Late Krishna Kumar Aged About 45 Years R/o Village Mudhena, Tahsil Mahasamund, District Mahasamund, Chhattisgarh.

---- Petitioner**Versus**

1. Smt. Kalyani Bai W/o Late Shankar Devdas, Aged About 41 Years R/o Village Mudena, Tahsil and District Mahasamund Chhattisgarh.
2. Minor Sangeeta D/o Late Shankar Devdas, Aged About 15 Years Minor Through Natural Guardian Mother Smt. Kalyani Bai, R/o Village Mudena, Tahsil And District Mahasamund Chhattisgarh.
3. Minor Radhik S/o Late Shankar Devdas, Aged About 13 Years Minor Through Natural Guardian Mother Smt. Kalyani Bai, R/o Village Mudena, Tahsil And District Mahasamund Chhattisgarh.
4. Minor Vandana D/o Late Shankar Devdas, Aged About 11 Years Minor Through Natural Guardian Mother Smt. Kalyani Bai, R/o Village Mudena, Tahsil And District Mahasamund Chhattisgarh.
5. Minor Deepti D/o Late Shankar Devdas, Aged About 8 Years Minor Through Natural Guardian Mother Smt. Kalyani Bai, R/o Village Mudena, Tahsil And District Mahasamund Chhattisgarh.
6. Board Of Revenue Chhattisgarh Bilaspur Chhattisgarh.
7. The Additional Commissioner, Raipur Division, District Raipur Chhattisgarh.
8. Sub - Divisional Officer (Revenue), Mahasamund, District Mahasamund Chhattisgarh.
9. Tehsildar Mahasamund, District Mahasamund Chhattisgarh.

---- Respondents

For the Petitioner	:	Shri Rakesh Pandey, Advocate.
For Respondents No.1 to 5	:	None.
For Respondents No.6 to 9/ State	:	Shri Ajay Kumrani, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV ORDER**

Heard.

1. This petition has been brought under Article 227 of the Constitution of India praying for relief of quashing the order of Board of Revenue,

Chhattisgarh, dated 7.7.2015 (Annexure-P/1) and restoration of the order passed by the Sub-Divisional Officer, Revenue Mahasamund in Revenue Case No.56A/46/2008-09 dated 9.10.2009.

2. The facts of the case are that Punitram, father of petitioner – Smt. Meena Bai and respondent No.1 – Smt. Kalyani Bai, was village Kotwar of village Mudhena, Tehsil Mahasamund, who has expired in the year 2001. On his death, the petitioner and the husband of respondent No.1 both applied for appointment as village Kotwar, but the husband of respondent No.1 – Shankar Devdas has got appointment in the year 2001. Shankar Devdas died in the year 2004, subsequent to which, his wife respondent No.1 – Smt. Kalyani Bai was appointed as temporary village Kotwar vide order dated 5.2.2004. Subsequent to which, the application of the petitioner was considered and decided in her favour on 20.11.2006 (Annexure-P/2) whereby, she was appointed as village Kotwar by the Tehsildar Mahasamund.

3. The service land that was given to Shankar Devdas has been given to respondent No.1 by the same order dated 20.11.2006. The order dated 20.11.2006 was challenged by respondent No.1 before the Sub-Divisional Officer, Revenue Mahasamund, which was dismissed by the order dated 12.3.2007. The application moved by the petitioner for grant of service land in her favour before Tehsildar had been dismissed by the order dated 13.7.2009 (Annexure-P/3). This order was then challenged by the petitioner before the Court of Sub-Divisional Officer, Revenue Mahasamund, who vide order dated 9.10.2009 (Annexure-P/4), allowed the appeal and directed the

allotment of service land in favour of the petitioner. The private respondents preferred an appeal before the Additional Commissioner, Raipur Division, who vide order dated 5.7.2012 (Annexure-P/5) allowed the appeal and set aside the order passed by the Sub-Divisional Officer, Revenue Mahasamund upholding the order of Tehsildar dated 13.7.2009. The petitioner has then preferred a revision before the Chhattisgarh Board of Revenue and the same has been dismissed by the impugned order dated 7.7.2015 (Annexure-P/1).

4. It is submitted by counsel for the petitioner that the impugned order is illegal, arbitrary and contrary to the law. The petitioner who has been appointed as Kotwar of village Mudhena has entitlement to get the service land attached with the post of Kotwar. The service land was given to Punitram and Shankar Devdas when they were working as Kotwar, therefore, the entitlement for holding the service land is being a Kotwar. Respondent No.1 – Smt. Kalyani Bai was not appointed as village Kotwar, therefore, she has no authority to hold the possession of service land.

Reliance has been placed on the judgment of this Court in the case of **Gambhir Das Panika vs. Chairman, Board of Revenue, Chhattisgarh and Others** and other connected petitions in W.P.(C) No. 7048 of 2007 decided on 30.11.2018 which is reported in **AIR 2019 C.G. 1**, in which this question has been answered that the land held by ex-Kotwars will not pass on to them in Bhumiswami right, therefore, the petitioner has clear entitlement for the land in question. Hence, the impugned order is not sustainable and the order of the learned Sub-Divisional Officer was the correct order, which is liable to be restored.

5. There is no representation from respondents No.1 to 5. Learned State counsel appearing for respondents No.6 to 9 opposes the submissions and submits that pursuant to the decision of this Court in W.P. No. 2064 of 2000 on 31.10.2001, the State Government has issued a circular dated 21.4.2003, directing grant of proprietary rights under the Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 to Ex-Kotwars whose predecessors were granted land by the malguzars prior to the year 1950, hence, on this basis, the private respondents have entitlement for grant of the Proprietary Rights over the service land, therefore, learned Board of Revenue has not committed any error in passing the impugned order. The petition is without any substance, which may be dismissed.

6. Heard learned counsel for the parties and perused the documents present on record.

7. It is undisputed that the petitioner is holding the post of village Kotwar at present and that she has not been granted the right and possession over the service land, which was provided to the earlier Kotwars. This Court while deciding WP.(C) No. 7048 of 2007 has considered the following question:

"Whether a Kotwar (village servant) holding service land under Section 183(1) of the Chhattisgarh Land Revenue Code, 1959 can be granted bhumiswami right over such service land in view of the provision contained in Section 183(2) of the Code as held in **Chhabil Das** (supra) and **Tikaram** (supra)?"

8. After the detailed discussion, the Division Bench of this Court in the

case of **Gambhir Das Panika vs. Chairman, Board of Revenue, Chhattisgarh and Others**, answered the question at paragraph 43 is as follows:

'For all the above stated reasons, we are of the considered view that **Lalla Singh Chouhan** (supra) has not laid down the correct law and the finding that lands held by Ex-Kotwars as a grant from malguzar would be saved to them as bhumiswami land is erroneous particularly in view of the provisions of Section 3 of the Abolition Act, 1950 read with Section 147, 148 and 150 of the MPLRC, 1954. Resultantly, the orders/ judgments in the matters of **Chhabil Das** (supra), **Tikaram** (supra) and **Lalla Singh Chouhan** (supra) stand overruled.'

In the case of **Lalla Singh Chouhan and Others vs. State of Chhattisgarh and Others**, in **W.P.(C) No. 782 of 2014**, it was held by the Single Bench of this Court that on such enquiry if the right of Bhumiswami is found to be accrued in favour of the petitioners/ Kotwars in terms of provisions of Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, the Bhumiswami Right is to be conferred on the petitioners and with respect to the service lands. According to the judgment of Gambhir Das Panika's case (supra) in W.P.(C) No. 708 of 2007, it is no longer a good law which has been overruled.

9. The facts in the present case are not complete to make out whether it is a case of acquisition of Bhumiswami Rights under the provisions of Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950. The only facts mentioned are that Punitram, the father of the petitioner and

respondent No.1 was village Kotwar who was in possession of service land subsequent to which, the subsequent Kotwar was his son-in-law, namely, Shankar Devdas who was granted the possession over the same service land after Punitram. It is to be noted that Punitram and Shankar Devdas both held the post of Kotwar. Respondent No.1 was although appointed as temporary Kotwar, but subsequent to the appointment of the petitioner of village Kotwar her appointment has come to an end. It is also pertinent to note that none of the parties are having Bhumiswami Rights over the service land.

10. Section 183 of the Chhattisgarh Land Revenue Code, 1959 is as follows:

'183. Service land. - (1) Any person holding land on the condition of rendering service as village servant shall cease to be entitled to such land if he diverts such land to non-agricultural purposes.

(2) A transaction by which a village servant attempts to transfer his interest in his service land by sale, gift, mortgage, sub-lease or otherwise except by a sub-lease for a period not exceeding one year, shall be void.

(3) If the holder of such land dies, resigns or is lawfully dismissed the land shall pass to his successor in office.

(4) The right of the holder in such land shall not be attached or sold in execution of a decree nor shall a receiver be appointed to manage such land under Section 51 of the Code of Civil Procedure, 1908 (V of 1908).'

11. Sub-section (1) and (2) of Section 183 of the Chhattisgarh Land Revenue Code, 1959 (for short 'the Code, 1959') are the restrictions with

respect to holding the service land. Section 183 (3) of the Code, 1959 is very specific, that when the holder of such land dies, resigns or is lawfully dismissed the land shall pass to his successor in office. This provision does not grant proprietary right to a Kotwar in any manner and there being specific provision under Section 183 (3) of the Code, 1959, it is the successor who shall be entitled to hold the service land subsequent to the death of the previous Kotwar. In this particular case, the previous village Kotwar had been Shankar Devdas, who is now deceased. Respondent No.1 – Smt. Kalyani Bai, who temporarily worked as Kotwar is no longer holding that post, therefore, the petitioner is the successor to the post of village Kotwar of village Mudhena, Mahasamund. In view of the principles laid down by the Division Bench of this Court in the case of **Gambhir Das Panika** (supra) and the entitlement of the petitioner as per the provisions of law which is mentioned herein-above, the petitioner has entitlement for grant of service land, which has been erroneously granted to respondent No.1. Hence, on the basis of the discussions, the petition is allowed. The impugned order passed by the Chhattisgarh Revenue Board dated 7.7.2015 (Annexure-P/1) and the order of the Additional Commissioner dated 5.7.2012 (Annexure-P/5) both are erroneous and unsustainable, hence, they are set aside. The order passed by the Sub-Divisional Officer, Revenue dated 9.10.2009 (Annexure-P/4) is upheld and restored.

12. Accordingly, the petition is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge