

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 375 of 2021

1. Kanhaiyalal S/o Mitthulal, Aged About 57 Years Caste Satnami, R/o Village Jharra, Malkharouda, District Janjgir Champa Chhattisgarh
2. Neelkamal S/o Setram Kalar, Aged About 35 Years R/o Village Jharra, Malkharouda, District Janjgir Champa Chhattisgarh
3. Tuleshwar, S/o Setram Kalar, Aged About 33 Years R/o Village Jharra, Malkharouda, District Janjgir Champa Chhattisgarh.
4. Puranlal, S/o Harihar Satnami, Aged About 70 Years R/o Village Jharra, Malkharouda, District Janjgir Champa Chhattisgarh.
5. Jawahar, S/o Harihar Satnami, Aged About 70 Years R/o Village Jharra, Malkharouda, District Janjgir Champa Chhattisgarh.
6. Sunita Devi, D/o Chaudhar Prasad, Aged About 30 Years R/o Village Jharra, Malkharouda, District Janjgir Champa Chhattisgarh.
7. Narendra Prasad S/o Rajendra Prasad Satnami, Aged About 48 Years R/o Village Jharra, Malkharouda, District Janjgir Champa Chhattisgarh
8. Prem Bai, W/o Puniram, Aged About 45 Years Caste Satnami, R/o Village Jharra, Malkharouda, District Janjgir Champa Chhattisgarh.
9. Chakradharilal, S/o Puniram, Aged About 35 Years R/o Village Jharra, Malkharouda, District Janjgir Champa Chhattisgarh
10. Heeralal, S/o Siyaram, Aged About 50 Years Caste Satnami, R/o Village Jharra, Malkharouda, District Janjgir Champa Chhattisgarh
11. Raj Kumar, S/o Siyaram, Aged About 45 Years Caste Satnami, R/o Village Jharra, Malkharouda, District Janjgir Champa Chhattisgarh
12. Swati, D/o Sanat Kumar, Aged About 20 Years R/o Village Jharra, Malkharouda, District Janjgir Champa Chhattisgarh.
13. Thandaram, S/o Santram Satnami, Aged About 55 Years R/o Village Jharra, Malkharouda, District Janjgir Champa Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh, Through Secretary, Revenue Department, Mantralaya Mahanadi Bhawan, Atal Nagar, New Raipur, District Raipur Chhattisgarh.
2. Chhattisgarh State Scheduled Tribes Commission, Through Its Secretary, Chhattisgarh State Scheduled Tribes Commission, Raipur, District Raipur Chhattisgarh.
3. Collector, Janjgir, District Janjgir Champa Chhattisgarh.
4. Sub Divisional Officer (Revenue) Sakti, District Janjgir Champa Chhattisgarh

5. Naib Tahsildar, Malkharouda, District Janjgir Champa Chhattisgarh.
6. Top Singh Son Of Shri Hari Singh Maravi, R/o Village Jharra, Post Sapiya, Tahsil Malkharouda, District Janjgir Champa Chhattisgarh.

---- Respondents

For Petitioners	:	Shri Lavkush Kumar Sahu, Advocate
For Respondent/ State	:	Ms. Richa Shukla, Dy. G.A.
For Respondent No. 2	:	Shri Vinod Kumar Tekram, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

02.02.2021

Heard.

1. Learned counsel for the petitioner would submit that the C.G. Rajya Anusuchit Janjati Ayog the Tribunal on a complaint of Respondent No. 6 has recommended for reversal of the land in exercise of the power under Section 170 (B) of the Land Revenue Code. He further submits that despite the fact that the valid permission existed long back from the year 1970, 1984, the commission has recommended for reversal of Land and the Tahsildar on such recommendation has started acting upon by way of mutation proceeding and notices have been received. Therefore, he prays that order dated 15.12.2020 (Anneuxre P-1) may be stayed.
2. Perusal of the Sections 9 & 10 of the Act of 1995 prescribes the power of Commission which reads as under:-

9. Functions of the Commission. - (1) It shall be the function of the Commission-

(a) to act as watch-dog Commission for the protection afforded to the members of the Scheduled Tribes under the Constitution and under any other law for the time being in force;

(b) to recommend to the State Government to take steps to add particular tribes or parts of or groups within tribes or tribal

communities in the Constitution (Scheduled Tribes) Order, 1950.

(c) to watch the proper and timely implementation of programmes meant for welfare of Scheduled Tribes and to suggest improvement in such programmes of the State Government or any other body or authority responsible for such programmes;

(d) to tender advice regarding reservation for Scheduled Tribes in public services and admission in educational institutions;

(e) to perform such other functions as may be assigned to it by the State Government.

(2) The advice of the Commission shall, ordinarily be binding upon the State Government, where, however, the Government does not accept the advice, it shall record its reason therefor.

10. Powers of the Commission. - The Commission shall, while performing its functions under sub-section (1) of Section 9, have all the powers of a Civil Court trying a suit and in particular, in respect of the following matters, namely -

(a) summoning and enforcing the attendance of any person from any part of the State and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any Court or office;

(e) issuing commissions for the examination of witnesses and documents; and

(f) any other matter which may be prescribed.

3. Reading of sections would show that Commission is not vested with any power to give a finding of like nature. Therefore, finding which has been given in exercise of the power under Section 170 (B) of the Land Revenue Code, *prima facie*, appears is not within the authority of the Commission, the power is only recommendatory. The Tahsildar if has proceeded on the recommendation order dated 15.10.2020, by admission of finding as conclusive proof the same can not be accepted as conclusive proof instead the procedure as prescribed under Section 170 (B) of the Land Revenue Code are required to be followed. Meaning thereby the petitioners are

required to get all the opportunities of hearing and would be given opportunity to place their documents and necessary permission which they hold in their favour by way of necessary evidence. It is further directed that the observation made by the order dated 15.10.2020 shall not be acted upon as a finding of proof by the Tahsildar and finding under Section 170 (B) if are commenced under the Land Revenue Code shall be independent and should be based on the facts and evidence which is produced before the authority without having been influenced by the impugned order.

4. With the aforesaid observation, the petition stands disposed of.

Sd/-
(Goutam Bhaduri)
Judge

Jyoti