

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :02/09/2021

Order passed on : 29/09/2021

WP227 No. 222 of 2014

1. Itwari, S/o Ramcharan, Caste Gond, aged about 75 Years, R/o Village Champajhar, Tehsil Baikunthpur, District-Koriya, Chhattisgarh

---- Petitioner

Versus

1. Ibrahim, S/o Nasir Khan, Aged About 45 Years, R/o Village Patan, Tehsil Baikunthpur, District-Koriya, Chhattisgarh
2. Shek Ismile, S/o Nasir Khan, aged about 40 Years, R/o Village Champajhar, Tehsil-Baikunthpur, District:Koriya(Baikunthpur), Chhattisgarh
3. Branch Manager Baikunthpur, Bhumi Vikas Bank, Baikunthpur District:Koriya, Chhattisgarh
4. Additional Commissioner, Surguja Division, Ambikapur District Surguja, Chhattisgarh

---- Respondents

For Petitioner : Mr. Bhupendra Singh, Advocate.
For State/Respondent No.4 : Mr. Shakti Singh Thakur, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

29/09/2021

1. This petition under Article 227 of the Constitution of India has been brought being aggrieved by the order dated 28.02.2013 passed in Revenue Revision Case No.80/A-23/2010-11 by respondent No.4 and the orders passed by the Courts below, seeking direction to SDO(Sub-Divisional Officer) Revenue, for initiating proceeding under Section 170B of Chhattisgarh Land Revenue Code(for short' the Code, 1959')

against respondents No.1 & 2.

2. It is submitted by the counsel for petitioner that petitioner is a member of Schedule Tribe, who was owner of the land in question. The petitioner had obtained a loan from respondent No.3. As the loan amount could not be repaid, the landed property of the petitioner was auctioned and sold by respondent No.3, which has been purchased by respondent No.1 in auction. It is submitted that no prior permission was sought by respondent No.3 before auctioning the landed property of the petitioner in favor of respondents No.1 & 2. The provision under Section 165(6-a) of Code, 1959 clearly provides, that the right of a *bhoomiswami* belonging to a tribe which has been declared to be an aboriginal tribe by the State Government shall not be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe in the area, specified in the notification. It is submitted that the property is situated in notified area of District-Koriya, therefore, the such permission before auctioning the landed property of the petitioner was essential.

Reliance has been placed on the judgment of this Court in the case of Usha Mirani and another v. State of Chhattisgarh and others, reported in (2011) 1 C.G.L.R.W. 66. It is submitted that it has been settled by this Court that the auction sale made in favor of the non-tribal person is violative of Section 165(7B) and in such a case the provision under Section 170B of the Code, 1959 is attracted. It is also submitted that it was similarly held in the case of Ramsingh v. Shankarlal, reported in AIR 1974 MP 90, therefore, the impugned order of the respondent No.4, the order dated 2.2.2006 passed by the Collector, District-Koriya and the order of SDO dated 17.3.2004 is

unsustainable, hence, the petition be allowed and relief be granted to the petitioner.

3. Respondents No.1, 2 & 3 are unrepresented.
4. Learned State counsel appearing for respondent No.4 opposes the submissions made by the petitioner side. It is submitted that the impugned order and the orders of the Collector and SDO all are sustainable. No error has been committed in passing of these orders, hence, the petition be rejected.
5. I have heard both the parties and perused the documents on record.
6. The petitioner had preferred an application under Section 170(B) of the Code, 1959, before the Court of SDO challenging the auction of his landed property on which the petitioner is placing claim, to non-tribals namely respondents No.1 & 2 and praying for reversion of the land in his favor. The SDO by order dated 17.03.2004 held that the land of the petitioner was mortgaged by the petitioner against the loan obtained by him. Due to non-repayment of loan, the mortgaged property was sold in auction on 27.10.1976 to respondents No.1 & 2. It was also held that the place of residence of the petitioner was notified as tribal area on 26.01.1977, therefore, the provision under Section 170(B) of the Code, 1959 is not attracted.
7. The appeal preferred before Collector was dismissed by order dated 02.02.2006 on similar ground and the revision preferred before the Additional Commissioner, Surguja Division has also been dismissed by the impugned order. The main ground of contention of respondent side was this that the District-Baikunthpur was a notified area for Scheduled Tribe. The date when the auction was made was in the year 1976

whereas the notification came into effect from 26.1.1977, which is mentioned in the order of SDO and also in the order of the Additional Commissioner.

8. Protection that is given to the tribal person member of Schedule Tribe under Section 165(6) Clause-1 as follows:-

“in such areas as are predominately inhabited by aboriginal tribes and from such date as the State Government may, by notification, specify, not be transferred nor it shall be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe in the area specified in the notification;”

The wording in this provision is very clear, that the benefit of this provision shall be available to the inhabitants and number of aboriginal tribe of such tribal area from the date which shall be notified by the notification to this effect.

9. There is no dispute raised on this point by the petitioner side that the place of residence of the petitioner was notified as tribal area on 26.9.1977. The mortgaged landed property of the petitioner was auctioned prior to this notification. Therefore, the benefit that is available to a member of Schedule Tribe under Section 165(7) of the Code, 1959, was not available on the date when the property was auctioned, therefore, I do not find any error in the impugned order and the order of the Collector and SDO.

10. Accordingly, the petition is dismissed and disposed off.

Sd/-

(Rajendra Chandra Singh Samant)

Judge