

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :01/02/2021

Order passed on :18/03/2021

WP227 No. 138 of 2018

1. Vikrant Singh, S/o Late Nihal Singh, Aged About 41 Years, R/o Jarhabhata, Bilaspur, District : Bilaspur, Chhattisgarh
2. Smt. Beula Singh, W/o Late Nihal Singh, Aged About 50 Years, R/o Jarhabhata, Bilaspur, District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
3. Kumari Viola Singh, D/o Late Nihal Singh, Aged About 45 Years, R/o Jarhabhata, Bilaspur, District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Petitioners

Versus

1. State Of Chhattisgarh, Through - Secretary, Department of Revenue, Mahanadi Bhawan, Naya Mantralaya, Naya Raipur, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Commissioner Durg Division, Durg, Chhattisgarh, District : Durg, Chhattisgarh
3. Additional Collector, District Rajnandgaon, Chhattisgarh., District : Rajnandgaon, Chhattisgarh
4. SDO (Revenue), Dongargarh, Tahe. Dongargarh, District Rajnandgaon, Chhattisgarh., District : Rajnandgaon, Chhattisgarh
5. Commissioner, Tribal Development & Member Secretary, High Level Caste Scrutiny Committee, Satpuda Bhawan, Second Floor, Bhopal, Madhya Pradesh., District : Bhopal, Madhya Pradesh
6. Rajesh Nandeshwar, S/o Shri Dukalu Ram Nandeshwar, Aged About 40 Years, R/o Sanjay Nagar, Dongargarh, Police Station and Tahe. Dongargarh, District Rajnandgaon, Chhattisgarh., District : Rajnandgaon, Chhattisgarh
7. Bhramaswarup Bhatia, S/o Shri Mangal Sen, R/o Bazar Chowk, Village Bortalab, Tehsil- Dongargarh, District Rajnandgaon, Chhattisgarh., District : Rajnandgaon, Chhattisgarh
8. Jyoti Bhatiya, W/o Shri Bramhaswarup Bhatiya, R/o Bazar Chowk, Village Boartalab, Tehsil- Dongargarh, District Rajnandgaon, Chhattisgarh., District : Rajnandgaon, Chhattisgarh
9. Ashwani Sahu, S/o Shri Akalu Ram Sahu, R/o Village Kurubhat, Tehsil Dongargarh, District Rajnandgaon, Chhattisgarh., District : Rajnandgaon, Chhattisgarh
10. Rekham, S/o Shri Govardhan, R/o Dongargarh, Tehsil Dongargarh, Rajnandgaon, Chhattisgarh., District : Rajnandgaon, Chhattisgarh

---- Respondents

For Petitioners – Shri Saurabh Dangi and Smt. Surya Kawalkar Dangi, Advocates.

For State/Respondents No.1 to 4 – Shri Gurudev I. Sharan, Govt. Advocate.

For Respondent No.6 – Shri Shashank Thakur, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

18-03-2021

1. This petition has been brought seeking indulgence of this Court to exercise jurisdiction under Article 227 of the Constitution of India for quashing the impugned order dated 30-11-2017 passed by the Commissioner, Durg Division dismissing the revision petition and upholding the orders of respondent No.3.

2. The facts of the case are these, that respondent No.6 purchased the land situated in Village Achholi, Tahsil Dongargarh from late Nihal Singh, who is father of the petitioners by sale deed dated 17-01-2006. Respondent No.6 sold the disputed land to respondents No.7 and 8, by sale deed dated 08-06-2006. Subsequent to that, respondents No.7 and 8 sold the said land to respondent No.9 by sale deed dated 16-04-2008. At present the land is recorded in the name of Respondent No.10.

The petitioners preferred an application under Section 170-B of Chhattisgarh Land Revenue Code before the SDO Dongargarh, claiming that Nihal Singh was member of aboriginal tribe and the sale transaction was malafide.

The respondents raised objection by filing objection on the correctness of the caste certificate issued in favour of late Nihal Singh. The objection was rejected by the SDO and subsequent to that, the revision before the Additional Collector Rajnandgaon and the revision before the Board of Revenue were also dismissed. The respondents filed WP No.7252/2009 which was disposed off on 14-12-2009 and the SDO was directed to get examined the veracity of the caste certificate of Nihal Singh from the Caste Scrutiny Committee and conduct further proceeding thereafter. The Caste Certificate of late Nihal Singh

was forwarded to High Power Caste Scrutiny Committee. The committee vide its communication dated 27-08-2011 to SDO Dongargarh, informed that since Nihal Singh has expired in the year 2006, hence, it is no longer possible to decide his status without hearing him, therefore, the case was closed. Learned SDO then proceeded with application under Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (in short 'the Code, 1959') and passed the order dated 30-11-2011 allowing the application and directing reversion of the disputed land in favour of the petitioners vide Annexure-P/5.

The private respondents preferred appeal against this order in the Court of Additional Collector Rajnandgaon which was decided by order dated 03-04-2013 vide Annexure-P/6 in which the appeal was allowed and the order of the SDO was set aside.

The petitioners preferred revision before the Court of Commissioner, Revenue Division Raipur. This revision was disposed off by order dated 11-04-2014 vide Annexure P/8, in which the order of Additional Collector was set aside and the case was remanded back for rehearing.

The respondents then filed WPC No.880/2014 against the order of the Commissioner dated 11-04-2014. The WPC was disposed off on 08-12-2015 (Annexure-P/9), in which the order of the Commissioner was set aside and direction was given to decide the matter on its own merits. It is subsequent to this order in the WPC, the Commissioner has reheard the revision case. The revision case was renumbered as 352A-23 year 2015-16, decided by the impugned order dated 30-11-2017 (Annexure-P/1), in which the order of the Addl. Collector dated 03-04-2013 (Annexure-P/6) was confirmed.

3. It is submitted by learned counsel for the petitioners that late Nihal Singh was a member of Scheduled Tribe and his caste was also certified by the authorities. Therefore, in such a case any transaction of sale of immovable property required a sanction from the Collector under Section 165 of the Code,

1959. There is clear finding of the Additional Collector that no such permission was sought by the purchaser with respect to the said transaction which has been executed by late Nihal Singh. It is also not in any dispute that respondent No.6, the purchaser was not a member of Scheduled Tribe.

It is submitted that learned High Court in order dated 14-12-2019 passed in WP227 No.7252/2009 directed the SDO to get the caste certificate of late Nihal Singh verified from the Caste Scrutiny Committee and it shall be only after this verification he shall proceed to pass the order in the matter in accordance with law.

The Madhya Pradesh High Power Scrutiny Committee, has by letter dated 27-08-2011 intimated the SDO, Dongargarh that because of death of Nihal Singh on 10-12-2006 he cannot be heard and therefore the proceeding was closed. Hence, the caste certificate in favour of late Nihal Singh has not been invalidated by the High Power Committee and neither the certificate has been recalled by the issuing authority. The SDO Revenue has passed the correct order (Annexure-P/5), whereas, the order of the Additional Collector (Ex.-P/6) is erroneous. After the ratio in the case of **Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others**, AIR 1995 SC 94 : (1994) 6 SCC 241. The revenue officers had no authority to examine the veracity of the caste certificate issued to any person. The direction of the High Court in WPC No.880 of 2014 has been misconstrued and it has been held by the Commissioner in the impugned order, that the caste certificate in favour of late Nihal Singh was not a bonafide document. This finding is against the facts present and is based only on conjectures and surmises. The caste certificate issued in favour of late Nihal Singh has not been set aside. It has been held in case of **Bharati Reddy Vs. State of Karnataka and others**, (2018) 6 SCC 162, that there shall be presumption of veracity of caste certificate issued by an authority, unless it is quashed by

competent authority or court. It is submitted that effect of the impugned order is equal to cancellation of the caste certificate of late Nihal Singh. Hence, the impugned order suffers from grave infirmity and thus it is not sustainable and prayer has been made for grant of relief.

4. Learned counsel for the respondent No.6 submits that Nihal Singh had purchased the disputed property from Shivchand Dadgad. The sale deed dated 26-07-1991 mentions the purchaser as Nihal Singh S/o Nanha Singh Isai and his status as non-tribal person. Similarly, another piece of disputed property was purchased by Nihal Singh, in which his description is similar as in sale deed dated 26-07-1991, which is also a part of Annexure-R-6/4. Similarly, the sale deed that was executed in favour of respondent No.6, dated 03-11-2006 mentions the vendor Nihal Singh as a non-tribal. The claim of the petitioners that late Nihal Singh had obtained the caste certificate on 16-05-2003 is doubtful and falsified by circumstances itself, as the sale deed in favour of respondent No.6 was subsequently executed on 17-01-2006, which does not make any such disclosure regarding the caste status of late Nihal Singh. Hence, it is clearly a cooked up story of the petitioners who have obtained such certificate at a subsequent date which is clearly a false certificate.

Learned counsel for respondent No.6 further submits referring to Annexure-R/6/1 which is a memo issued by SDO (Police) Baihar dated 02-08-2010, that from verification of the register of caste certificates of office at Baihar, District Balaghat, Serial No.4548 which is number of the caste certificate of late Nihal Singh, shows entry of issuance of caste certificate in favour of Ku. Jameela D/o Phool Singh. The Superintendent of Police, Balaghat had made a correspondence vide Annexure-R-6/3 dated 03-12-2010 to Commissioner Tribal Development and Member Secretary, Scheduled Tribes, the Caste Certificate Scrutiny Committee, Bhopal, that the caste certificate in the name of Nihal Singh was doubtful, therefore, in such

circumstances and in presence of the facts as stated hereinabove, the impugned order does not suffer from infirmity. Therefore, the petition is liable to be dismissed.

5. Learned counsel for the State appearing for respondents No.1, 2, 3 and 4 makes formal submission and submits that no error has been committed by the Commissioner, Durg Division in passing the impugned order. Prayer has been made to dismiss this petition.

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

7. In WP227 No.7252/2009 by order dated 14-12-2009 issued direction as follows:

“Therefore, in view of above, the petition is disposed of and it is directed that the Sub Divisional Officer shall first get the caste certificate of the respondents verified from the Caste Scrutiny Committee by sending it for its verification and only thereafter, shall proceed to pass the order in the matter in accordance with law.”

On the date of passing of the abovementioned order, the guidelines laid down by Hon'ble the Supreme Court in the case of **Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others** (supra) were available to be followed. Hon'ble the Supreme Court has in the case of **Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others**(supra) held in paragraph 12 that:-

12. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the

Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following:

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.
2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.
3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.
4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.
5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode

of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only

provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post.”

The direction No.4 directs the State Government to constitute a Committee of three officers for the work of verification and issuance of social status certificate. The direction No.5 directs for constitution of vigilance cell consisting of Senior Deputy Superintendent of Police and other officers to verify and collect the facts of social status as claimed by any person and then there are directions to deal with the matter in case the report of vigilance officer shows, that the social status certificate issued is not genuine, doubtful, spurious or falsely or wrongfully claimed. The communication of the Commissioner, Tribal Development and Member Secretary, High Level Scrutiny Committee for doubtful caste certificate of Scheduled Tribes, Madhya Pradesh, dated 27-08-2011, mentions the only reason for closing the verification

process, that the Nihal Singh has expired on 10-12-2006 and any decision cannot be taken without giving opportunity of hearing to him. This communication shows inaction of the State Level Scrutiny Committee of Madhya Pradesh. It is nowhere mentioned in the directions issued in the case of **Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others** (supra), that giving opportunity of hearing to the person claiming the social status is a must or is the only method to enquire, investigate or verify the veracity of the caste certificate issued to a person. After the order dated 11-04-2014 (Annexure-P/8) passed by the Commissioner, respondent No.6 had filed WPC No.880 of 2014. This Court had in order dated 08-12-2015 made observations in paragraphs 4 to 8, which are as follows:-

- “4. The pleadings and the documents on record show that though this Court had passed order On 14.12.2009 and 23rd October, 2010, the State of Chhattisgarh forwarded the case with regard to decision of caste status of Late Nihal Singh on the ground that he was resident of District-Balaghat which is now within the territory of State of Madhya Pradesh. When the matter was referred to the Caste Scrutiny Committee of Madhya Pradesh, that Committee vide its communication dated 27.8.2011 addressed to SDO (R), Dongargarh, District-Rajnandgaon informing that as Nihal Singh died in the year, 2006, it is not possible to decide the caste status and therefore the case is closed.
5. Faced with the aforesaid situation, the Addl. Collector was left with no option but to decide the matter on the basis of material available before it. Obviously, it was not within the province of authority of the Collector to either issue a direction to the Caste Scrutiny Committee of the State of Chhattisgarh or Caste Scrutiny Committee of the State of Madhya Pradesh to re-open the inquiry and determine the caste status of Late Nihal Singh and his successors.

Learned counsel for the parties admitted that the communication dated 27.8.2011 of the Caste Scrutiny Committee of the State of Madhya Pradesh has not been assailed by filing any petition either before this Court or in the High Court of Madhya

Pradesh.

6. In view of the aforesaid circumstances, the order of the Addl. Collector cannot be faulted on the ground that he proceeded to decide the matter without there being any report of the Caste Scrutiny Committee.

Learned counsel for the parties have not placed before this Court any material to show that at a subsequent point of time, after the communication dated 27.8.2011 (Annexure P-11) of the Caste Scrutiny Committee of Madhya Pradesh, any petition was filed before this Court for issuing fresh direction to Caste Scrutiny Committee of State of Chhattisgarh to take up the matter and decide the matter here only.

7. In view of the above consideration, the Commissioner does not appear to be justified in setting aside the order of the Addl. Collector on the ground that report of Caste Scrutiny Committee was not available before it. The commissioner ought to have decided the matter on its own merits instead of remanding the case back to the Collector.
8. As an upshot of the above discussions, the order of the Commissioner cannot be sustained in law and, therefore, set aside. The matter is remanded to the Commissioner to decide the matter on its own merits. The parties before the Commissioner shall be at liberty to assail or support the order of the Addl. Collector on such grounds as may be available to them under the law.”

8. In this order dated 08-12-2015 opportunity was given to the parties to present their case before the Commissioner, but no direction was issued to make specific compliance with the order of this Court in WPC No.7252/2009, according to which it was the condition precedent, that the caste certificate issued in favour of late Nihal Singh should be verified, before the SDO could proceed to decide the case. Hence, the order in WPC No.880 of 2014 is silent on this point. Therefore, a distinction can be marked in the present case. This fact has come up before this Court after the passing of the impugned order (Annexure-P/1) by which learned Commissioner, Durg Division has held, that

the petitioners have failed to prove, that late Nihal Singh was a member of Scheduled Tribe, whereas, the caste certificate in favour of late Nihal Singh dated 16-05-2003 (Annexure-P/2) is still there and there is no finding present to show that this certificate was invalidly issued or that it is false certificate. Hence, it is found that unless there is specific finding on the point of validity of this caste certificate, passing of orders by the courts concerned would not be conclusive to determine the issue for all the times.

The point to be emphasised is this, that in the order dated 14-12-2009 in WP227 No.7252/2009 (Annexure-P/4) the direction was given to the SDO (Revenue) to get the caste certificate verified and proceed to pass order.

9. On the basis of the discussions made hereinabove and conclusion drawn it is found that there was need of strict compliance of the order dated 14-12-2009 (Annexure-P/4) passed in WP227 No.7252/2009 to be made. The inaction of the State Level Scrutiny Committee of Madhya Pradesh, which is showing from its communication dated 27-08-2011, cannot be made a ground to proceed with the proceeding under Section 170-B of the Code, 1959. The question raised by the respondents regarding the social status of the father of the petitioners is very much relevant and there should be a definite answer to this question, before learned SDO can proceed to pass any order on the application under Section 170-B of the Code, 1959.

The Commissioner, Tribal Development and the Member Secretary, High Level Caste Scrutiny Committee, Bhopal is a party in this petition arrayed as respondent No.5 has not made any specific submission in this petition. Hence, I am of this view that all the proceedings that were taken up after the report of respondent No.5 dated 27-08-2011 were clearly against the direction of this Court in WP227 No.7252/2009. Therefore, all the orders passed subsequent to this report, namely, dated 30-11-2011 (Annexure-P/5) passed by the SDO, dated 03-04-2013 (Annexure-P/6) passed by the Additional Collector

Rajnandgaon, dated 11-04-2014 (Annexure-P/8) passed by the Commissioner and dated 30-11-2017 (Annexure-P/1) passed by the Commissioner are liable to be quashed. Accordingly, all these orders are hereby quashed by invoking the jurisdiction under Article 227 of the Constitution of India. Respondent No.5 is directed to make strict compliance of the direction issued by this Court in WP227 No.7252/2009 and submit a report without fail within a period of six months from the date of passing of this order. Respondent No.4 is further directed to take up the matter for consideration upon the receipt of report of respondent No.5 and decide the matter in accordance with law.

10. The present petition stands disposed off accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge