

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 119 of 2021**

- Top Singh, S/o Shri Hari Singh Maravi, Aged About 72 Years, R/o Village Jharra, Post Sapiya, Tahsil Malkharouda, District Janjgir Champa Chhattisgarh
----- Appellant

Versus

1. State of Chhattisgarh Through Secretary, Revenue Department, Mantralaya, Mahanadi Bhawan Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh
2. Chhattisgarh State Scheduled Tribes Commission Through Its Secretary, Chhattisgarh State Scheduled Tribes Commissioner, 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. Kanhaiyalal S/o Mitthulal Aged About 57 Years Caste Satnami
7. Neelkamal S/o Setram Kalar Aged About 35 Years
8. Tuleshwar S/o Setram Kalar Aged About 33 Years
9. Puranlal S/o Harihar Satnami Aged About 70 Years
10. Jawahar S/o Harihar Satnami Aged About 70 Years
11. Sunita Devi D/o Chaudhar Prasad Aged About 30 Years
12. Narendra Prasad S/o Rajendra Prasad Satnami
13. Prem Bai W/o Puniram Aged About 45 Years
14. Chakradharilal S/o Puniram Aged About 35 Years
15. Heera Lal S/o Siyaram Aged About 50 Years Caste Satnami
16. Raj Kumar S/o Siyaram Aged About 45 Years Caste Satnami
17. Swati D/o Sanat Kumar Aged About 20 Years
18. Thandaram S/o Santram Satnami Aged About 55 Years
No.6 to 18 All R/o Village Jharra, Post Sapiya, Tahsil Malkharouda, District Janjgir Champa Chhattisgarh

-----Respondents

For Appellant	: Shri Shukdev Prasad Sahu, Advocate
For Respondents- 1 to 5/State	: Shri Chandresh Shrivastava, Dy AG
For Respondent- 6 to 18	: None appears

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
08.04.2021

1. Challenge in this appeal is to the order dated 02.02.2021 passed in WPC-375 of 2021, whereby learned Single Judge allowed the Writ Petition

holding that the observation made by the Chhattisgarh Rajya Anusuchit Janjati Ayog Act, 1995 (for short, 'Act of 1995') order dated 15.12.2020 shall not be acted upon by the Tahsildar as a finding under Section 170B of the Chhattisgarh Land Revenue Code, 1959 (for short, 'Code of 1959').

2. Facts relevant for disposal of this appeal are that appellant has submitted a complaint application with respondent-2 mentioning therein that the land owned by him was possessed by respondents-6 to 18. Appellant made an application before the Sub-Divisional Officer on which a direction was issued to the Tahsildar for submission of its report. Halka Patwari has conducted spot inspection, but has not submitted its report. The application was registered under Sections 9 and 10 of the Act of 1995. The Commission thereafter, enquired into the complaint and have issued recommendation. The Commission observed that the permission obtained under Section 165(6) of Code of 1959 is not from the competent authority. The permission of sale dated 24.03.1984 is not acceptable. Issued further recommendation for returning of the land and correction of the Revenue entries vide its recommendation dated 15.12.2020 (Annexure P1). The recommendation/order of respondent-2 was put to challenge by the private respondents in WPC-375 of 2021 on the grounds mentioned therein. The Writ Petition came up for hearing before the learned Single Judge on 02.02.2021, which was allowed observing that the recommendation /order dated 15.12.2020 shall not be acted upon as a finding of proof and finding under Section 170B of the Code of 1959. The finding given on merits *prima facie* not within the authority of the Commission. If proceeding under Section 170B is to be commenced, to be independent based on the facts and evidence produced

before the authority. The procedure as prescribed under Section 170B is to be followed.

3. We have heard Shri SP Sahu, learned counsel for the appellant, as well as Shri Chandresh Shrivastava, learned Dy AG for the State.

4. Shri SP Sahu, learned counsel for the appellant submitted that the appellant belongs to the lower strata of the Society and belongs to Schedule Tribe Community. He initially made an application before Sub-Divisional Officer (Revenue) for getting his land back, on which the report was called for, but Patwari did not submit the report. He thereafter, filed an application before the respondent-2. Respondent-2 called for the report and had arrived at a finding that the sale deed said to be executed was without prior permission from the competent authority. The authority who gave permission was not competent. The Commission has discussed the issue in detail and based on material collected, passed very clear recommendation. The proceeding of Tahsildar is consequential.

5. We have heard learned counsel for the appellant. The grievance raised by the private respondent/Writ Petitioner is that the Tahsildar started acting upon the recommendation made by the Commission and drawn proceedings of mutation. The Commission has been constituted for protecting the interest of the ST Community. Under Section 9(1)(a) of the Act of 1995, the function of the Commission is to act as 'watch-dog' for the protection afforded to the members of the ST Community under the Constitution and under any other law for the time being in force. Section 10 prescribes powers of the Commission, which is limited to the extent of ascertaining the facts mentioned in the complaint/application

made by any of the persons belonging to the community, to record its satisfaction and recommend for the action to be taken.

6. After recording satisfaction on complaint, based on material collected, the Commission will only make a recommendation for taking action. The recommendation cannot be accepted as an order. The satisfaction recorded by Commission is not the conclusion after adjudication because under the Act of 1995, Commission is not clothed with the powers to adjudicate the issue or dispute placed before it and to determine rights of the parties. After receiving the recommendation, the authority has to draw proceedings in accordance with the law prescribed for such action.

7. Hon'ble Supreme Court considering the powers and functions of the Commission constituted under Orissa State Commission for Women Act, 1993 in case of **Bhabani Prasad Jena Vs Convenor Secretary, Orissa State Commission for Women and another**, (2010) 8 SCC 633 and held thus:

“10. In other words, the State Commission is broadly assigned to take up studies on issues of economic, educational and health care that may help in overall development of the women of the State; gather statistics concerning offences against women; probe into the complaints relating to atrocities on women, deprivation of women of their rights in respect of minimum wages, basic health, maternity rights, etc., and upon ascertainment of facts take up the matter with the authorities concerned for remedial measures; help women in distress as a friends, philosopher and guide in enforcement of their legal rights. However, no power or authority has been given to the State Commission to adjudicate or determine the rights of the parties.”

8. In the aforementioned case, Hon'ble Supreme Court has clearly held that the Commission has not been given any power to adjudicate or determine the rights of the parties.

9. In the case at hand, the Commission has recorded satisfaction that execution of sale is without prior permission of the competent authority as provided under Section 165 (6) of the Code of 1959. This can be a ground for drawing proceeding under Section 170B of Code of 1959. The respondent-Tahsildar without any order under Section 170B of the Code 1959, cannot initiate proceedings for correction of revenue records.

10. Learned Single Judge taking into consideration the provisions under Sections 9 and 10 of the Act of 1995, has rightly held that the observation made in a recommendation dated 15.12.2020 cannot be accepted as conclusive proof. For taking action as recommended, the procedure as prescribed under Section 170 B of the Code 1959 is required to be followed, order is to be passed after providing opportunity of hearing to the parties and to decide the issue on the basis of the evidence collected and available on record before the authority. The direction issued by learned Single Judge is strictly in accordance with law.

11. For the foregoing reasons, we do not find any infirmity in the order passed by learned Single Judge.

12. Appeal being devoid of any merit, is accordingly dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge