

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Orders on : 23/07/2021

Order Passed on : 04/08/2021

W.P.(227) No.373 of 2018

1. Premroshan Beck S/o Luthar Beck Aged About 32 Years Village Putta
Tahsil Lakhanpur District Surguja Chhattisgarh
2. Premsagar, S/o Luthar Beck, Aged About 22 Years R/o Village Putta
Tahsil Lakhanpur District Surguja Chhattisgarh

---- Petitioners

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Revenue
Mahanadi Bhawan New Raipur District Raipur Chhattisgarh
2. The Commissioner, Surguja Division Ambikapur, District Surguja
Chhattisgarh
3. The Sub Divisional Officer (Revenue) Udaipur, District Surguja
Chhattisgarh
4. Manoj Kumar Choubey S/o Vedprakash Choubey Aged About 48 Years
5. Santoish Choubey, S/o Vedprakash Choubey Aged About 45 Years
6. Rajkumar S/o Vedprakash Aged About 42 Years

(respondents No.4 to 6 are r/o Village Putta Tahsil Lakhanpur District Surguja
Chhattisgarh)

---- Respondents

For Petitioners : Mr. A.N. Pandey, Advocate.

For respondent No.1, 2 & 3 : Mr. Sameer Oraon, Govt. Advocate.

For respondent No.4 & 5 : Dr. Sachin Nidhi, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

04/08/2021

1. This petition has been brought against the order dated 19.02.2018 passed by the Court of Commissioner, Surguja, Division Ambikapur, C.G. in Revenue Appeal Case No.192/A-6/2015-16.
2. The facts of the case are these that respondent No.6 is the recorded owner of the lands situated in village Putta, Tehsil Lakhanpur District-Surguja, C.G. He executed a registered sale deed dated 19.05.2014 in favour of the petitioners. The petitioners filed application under Section 110 of C.G. Land Revenue Code, 1959 before the Tehsildar for mutation in land records. This application was rejected on the ground that respondent No.6 has not taken prior permission from the Collector before registering the sale of the property, which is a requirement under Section 165 (7-B) of Land Revenue Code, 1959. The petitioners then filed appeal before the S.D.O., which was allowed vide order dated 21.09.2016 (Annexure P-4). Respondent No.4 & 5 filed Second Appeal before the Commissioner, which has been allowed by the impugned order in which the order of the S.D.O. (Annexure P-4) has been set aside and the order of Tehsildar has been upheld.
3. It is submitted by the learned counsel for petitioner that the respondent No.6 had all the authority to transfer the property under his ownership and in possession and he has done accordingly, hence, this transfer cannot be put to any question, therefore, it had never been any requirement to seek permission from Collector to sell the property in question, hence, impugned order is illegal, arbitrary and erroneous which is unsustainable.
4. Learned State counsel for respondent No.1, 2 and 3 submits that this

petition under Article 227 of Constitution of India is not maintainable as the petitioner had the remedy available for filing revision petition before the Revenue Board. Further, the impugned order passed does not suffer from any infirmity, therefore, the petition may be dismissed.

5. Learned counsel for respondents no.4 and 6 have adopted the arguments advanced by the learned State counsel and submits that the facts disclosed in the impugned order very clearly suggest that the land held by respondent No.6 was on the basis of the Bhoomi Swami Right granted under Section 158(3) of the Code of 1959. Therefore, the permission for sale was necessary under Section 165 (7-B) of the Code of 1959 and no error has been committed by the learned Commissioner in passing the impugned order. Therefore, it is prayed that the petition may be dismissed.
6. Heard learned counsel for the parties and perused the documents present.
7. Considered on the submissions. On perusal of the order passed by Nayab Tehsildar, Lakhanpur, District- Surguja, C.G. dated 14.01.2015, it is found that the facts mentioned in the order are these that the land in question was obtained by the grandfather of the respondent No.6 in 1955-56 and Bhoomi Swami Rights were granted to the grandfather of the respondent No.6, who had been Government Lessee. Therefore, the permission under Section 165 (7-B) of the Code, 1959 was necessary.
8. Section 165(7-B) of the Code of 1959 is as follows:-

“165. Rights of transfer:-

(7-b) Notwithstanding anything contained in sub-section (1), a person who holds land from the State Government or a person who holds land in bhumiswami rights under sub-section (3) of Section 158 or whom right to occupy land is

granted by the State Government or the Collector as a Government lessee and who subsequently becomes bhumiswami of such land, shall not transfer such land without the permission of a Revenue Officer, not below the rank of a Collector, given for reasons to be recorded in writing.”

9. As this provision mentions about the Bhoomi Swami Right granted under Section 158 (3), the provisions under Section 158 (3) is reproduced here as under:-

“158. Bhumiswami:-

(3) Every person- (i) who is holding land in bhumiswami right by virtue of a lease granted to him by the State Government or the Collector or the Allotment Officer on or before the commencement of the Chhattisgarh Land Revenue Code (Amendment) Act, 1992 from the date of such commencement, and (ii) to whom land is allotted in bhumiswami right by the State Government or the Collector or the Allotment Officer after the commencement of the Chhattisgarh Land Revenue Code (Amendment) Act, 1992 from the date of such allotment, shall be deemed to be a bhumiswami in respect of such land and shall be subject to all the rights and liabilities conferred and imposed upon a bhumiswami by or under this Code :

Provided that no such person shall transfer such land within a period of ten years from the date of lease or allotment.”

10. The facts mentioned in the impugned order are clear that the grandfather of the respondent No.6 has obtained the land in question on lease from the State Government and subsequently, he was granted Bhoomi Swami Rights in 1955-56. This fact is also mentioned that respondent No.6 received the land in question in partition and subsequent to which, he had filed an application for permission to sale out the property which was pending and during the pendency of that

application, the sale deed was executed. It is quite clear that seeking permission of the Collector is mandatory under Section 165(7-B) of the Code of 1959 and without which any sale deed executed is a nullity. Therefore, the order passed by Nayab Tehsildar was legally correct, which has been unlawfully set aside by the S.D.O. but then lawfully restored by the Court of Commissioner, Surguja Division. Hence, I do not find any error in the impugned order, therefore, this petition is dismissed.

11. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika