

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on : 05/01/2021****Order Delivered on : 02/02/2021****W.P.(227) No. 230 of 2012**

1. Dukhu Lal S/o Makhnu Aged About 56 Years By Caste - Kalar, R/o Village- Devri, Tahsil Khairagarh, District- Rajnandgaon (Chhattisgarh).
2. Tulsi S/o Makhnu Aged About 51 Years By Caste - Kalar, R/o Village- Devri, Tahsil Khairagarh, District - Rajnandgaon (Chhattisgarh).
3. Salik S/o Makhnu Aged About 46 Years By Caste - Kalar, R/o Village- Devri, Tahsil Khairagarh, District - Rajnandgaon (Chhattisgarh).

---- Petitioners**Versus**

1. Premlal S/o Dhansing Gond Aged About 46 Years R/o Village- Baihatola, Tahsil Khairagarh, District : Rajnandgaon, Chhattisgarh
2. Ganga Bai W/o Ramlal Gond Through Its Guardian Mother Ganga Bai, W/o Ramlal Gond, R/o Village- Devri, Tahsil Khairagarh, District : Rajnandgaon, Chhattisgarh
3. Jitendra Kumar S/o Ramlal Gond Through Its Guardian Mother Ganga Bai, W/o Ramlal Gond, R/o Village- Devri, Tahsil Khairagarh, District : Rajnandgaon, Chhattisgarh
4. Indrani D/o Ramlal Gond Through Its Guardian Mother Ganga Bai, W/o Ramlal Gond, R/o Village- Devri, Tahsil Khairagarh, District : Rajnandgaon, Chhattisgarh
5. Tarachand (Deleted) As Per Hon'ble Court Order Dated 17/11/2020.

5(a) Smt. Ganga Bai W/o Late Tarachand Jain Aged About 62 Years, R/o. Daduchaura, Khairagarh, Tahsil-Khairagarh, District Rajnandgaon, Chhattisgarh.

5(b) Smt. Sharda D/o Late Tarachand, W/o. Naveen Kumar Lodha, Aged About 42 Years. R/o. Rishabh Colony, Durg, Tahsil and District Durg, Chhattisgarh.

5(c) Smt. Meena Bai D/o Late Tarachand Jain, W/o Uttamchandji Sankhla Jain (Kuteli Wale), aged about 38 Years, R/o. Kamthi Line, Rajnandgaon, tahsil and district Rajnandgaon, Chhattisgarh.

5(d) Santosh S/o Late Tarachand Jain Aged About 35 Years, R/o. Dauchaura, Khairagarh, Tahsil Khairagarh, District Rajandgaon, Chhattisgarh.

5(e) Smt. Ritu D/o Late Tarachand Jain, W/o. Naveen Chopra Jain, Aged About 33 Years, R/o. Sadar Line, Dhamtari, Tahsil and District Dhamtari, Chhattisgarh.

5(f) Smt. Sarita D/o Late Tarachand Jain, w/o. Nemichand Sankhla Jain, Aged About 29 Years, occupation General Source, R/o. Balod, Tahsil and District Balod, Chhattisgarh.

5(g) Smt. Neelam D/o Late Tarachand Jain, W/o. Abhinav Rakhecha Jain, Aged About 27 Years, R/o. Near Sadar Line, Dhamtari, Tahsil and District Dhamtari, Chhattisgarh.

6. Sub Divisional Officer Khairagarh, District Rajnandgaon (Chhattisgarh).
7. The Collector District - Rajnandgaon (Chhattisgarh).
8. The Commissioner Raipur Division, Raipur (Chhattisgarh), District : Raipur, Chhattisgarh.

---- Respondents

For the Petitioners	:	Shri Anand Shukla, Advocate.
For Respondent No.1	:	Shri Manoj Chauhan, Advocate on behalf of Shri R.N. Jha, Advocate.
For Respondents No. 6 to 8/ State	:	Shri Gurudev I. Sharan, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV ORDER

Heard.

1. This petition has been brought under Article 227 of the Constitution of India praying for quashing the impugned order dated 25.7.2011 (Annexure-P/1) by the Commissioner (Respondent No.8) and the order dated 6.7.1998 passed by the Additional Collector, declaring the transaction of sale null and void.

2. The case in brief is that one – Dhansingh Gond an aboriginal was the owner of the disputed land. Dhansingh Gond sold his landed property to Tarachand, son of Bheekham Chand Oswal after requisite permission under Section 165 (6) of the M.P./C.G. Land Revenue Code, 1959 by the sanction order of the Collector, District Rajnandgaon, dated 11.4.1978 in Case No.68A/21/1977-78. The petitioners made purchase of the land from Tarachand, whose legal representatives are respondents No.5a to 5g for a consideration of Rs.3,000/- by a sale deed dated 20.1.1984. Son of

Dhansingh Gond made a complaint before Sub-Divisional Officer on 13.11.1991. The proceeding was taken up under Section 170(b) of the Code, 1959 and the order dated 2.2.1996 was passed by the Sub-Divisional Officer, Khairagarh (Annexure-P/6) holding the sale null and void and directing the return of the landed property to the son of the vendor Dhansingh Gond. The petitioners preferred an appeal against this order under Section 44 of the Code, 1959 before the Collector, Rajnandgaon (Respondent No.7) on which order dated 6.7.1998 (Annexure-P/8) was passed and the appeal was dismissed. The petitioners then preferred a revision under Section 50 of the Code, 1959 before the Commissioner, Raipur (Respondent No.8) which has been decided by the impugned order dated 25.7.2011.

3. It is submitted by learned counsel for the petitioners that the purchase of the disputed property by Tarachand was lawful after obtaining permission of the Collector under the provision of Section 165 (6a) of the Code, 1959 (Annexure-P/2). The mention of this permission has been clearly made in the sale deed dated 15.4.1978. Section 165 (6a) of the Code, 1959 clearly provides that the decision of the Collector granting refusal to grant permission under Section 165 (6a) of the Code, 1959 or ratifying or refusing to ratify the transaction under Section 165 (6b) of the Code, 1959 shall be final notwithstanding anything to the contrary contained in this Code. Therefore, the transaction between Dhansingh Gond and Tarachand should not have been put to question by the revenue Court in the light of this provision. It is also submitted that Dhansingh Gond was alive when the complaint was filed by his son, who had no entitlement to file such complaint.

No enquiry was ever made by the learned Sub-Divisional Officer before passing the order dated 2.2.1996, therefore, the order that has been passed is illegal.

4. It is argued that sub-section (3) of Section 170(b) of Code, 1959 very clearly provides that the Sub-Divisional Officer shall make an enquiry before passing any order, therefore, the order passed by the Sub-Divisional Officer was illegal. The confirmation of that order by the Appellate Court and Revisional Court are also illegal.

5. Relying on the judgment of Madhya Pradesh High Court in the case of **Atmaram vs. State of Madhya Pradesh** reported in **AIR 1995 MP 225**, it is submitted that in this case the Division Bench of the Madhya Pradesh High Court has observed, that the procedure under sub-section (3) of Section 170(b) of the Code, 1959 is mandatory. This view has also been expressed by the Chhattisgarh High Court in the case of **Jagdeesh Choudhary vs. Board of Revenue and Ors.**, reported in **AIR 2013 C.G. 60**, therefore, the impugned orders are not sustainable. A prayer has been made to quash the same.

6. Learned counsel for respondent No.1 submits that the Court of Sub-Divisional Officer, the appellate Court of Additional Collector and the Revisional Court of the Commissioner all have passed lawful orders which need no interference.

7. It is submitted that the learned Sub-Divisional Officer has examined

the evidence presented before him and passed the appropriate order which has been affirmed by the Appellate Court and the Revisional Court accordingly. Learned Sub-Divisional Officer has complied with the procedure as required under sub-section (3) of Section 170(b) of Code, 1959. Hence, the petition is without any substance which may be dismissed.

8. Heard learned counsel for the parties and perused the documents produced alongwith this petition.

9. It would be proper to consider on the initiation of the proceeding before Sub-Divisional Officer, which was made on the application filed by respondent No.1. This application mentions that respondent No.1 is a member of scheduled tribe whereas, the private respondents are non-tribal persons. It was mentioned in the application that the father of respondent No.1 was addicted to drink alcohol, hence, during the minority of respondent No.1, taking benefit of the same, his property was purchased by Tarachand and thereafter, the same has been purchased by the petitioners. On this basis, it was prayed that the disputed property should be reverted back to respondent No.1. The order dated 2.2.1996 (Annexure-P/6) mentions about the appearance of the petitioners in the proceeding and it is also mentioned that no documentary evidence was produced to show that the transaction was bonafied and valid. On this basis, the order of reversion was passed.

10. The question before this Court is whether the Sub-Divisional Officer has passed any order without following the procedure under sub-section (3) of Section 170(b) of the Code, 1959. The order dated 2.2.1996 (Annexure –P/6) does not mention about making of any enquiry, it appears

that the order has been passed on the basis of the submissions made by both the sides and it is also mentioned that the registered sale deed dated 15.4.1978 mentions about the sanction of Collector for the said sale. Learned Sub-Divisional Officer has taken note of this sanction, which is mentioned in the sale deed and even then has denied to believe it, stating that no documentary evidence had been produced. The registered sale deed itself was a document in proof that the sale deed was executed after complying with Section 165 (6-a) of the Code, 1959. Hence, the finding of the learned Sub-Divisional Officer that there was requirement of further evidence of the same appears to be arbitrary and uncalled for. At the same time, in the order it is nowhere reflected that any enquiry was made by following the procedure under sub-section (3) of Section 170(b) of the Code, 1959.

11. The Division Bench of Madhya Pradesh High Court in the case of **Atmaram** (supra) observed in paragraphs 7, 8 and 9 is as follows:

'7. It is thus clear that even where a vendee in possession has not notified the particulars as required under Sub-section (1) of Section 170-B, he has a further opportunity to explain the reasons his failure to notify the particulars and if the reasons are acceptable, Sub-section (2) cannot be revoked and the presumption cannot be drawn. In this connection, it is necessary to refer to an aspect which was not urged before the Court in Dhirendra Nath Sharma's case (AIR 1986 Madh Pra 122). Failure to notify the information as required under Sub-section (1) of Section 170-B of the Code within the period specified leads to a presumption. That is because of the words "it shall be presumed" occurring in Sub-section (2). But the nature and extent of presumption is that the person in pos-

session has been in possession without any lawful authority. Subsection (2) does not expressly or by necessary implication, indicate that the presumption is either irrebuttable presumption or that it is a presumption amounting to conclusive proof.

8. [Section 4](#) of the Indian Evidence Act, 1872 deals with three kinds of presumptions; The first deals with a case where the court may presume a fact as proved it may regard such fact as proved unless and until it is disproved or may call for proof of it. This is the meaning of the words "may presume". The second deals with the words "shall presume, i.e., where the [Evidence Act](#) has directed that the Court shall presume a fact unless and until it is disproved. The third variety is what is referred to as "conclusive proof". When one fact is declared to be conclusive proof of another, the Court shall, on proof of one fact, regard the other as proved and shall not allow evidence to be given for the purpose of disproving it. Sub-section (2) of Section 170-B of the Code merely uses the words "shall be presumed" and does not indicate that it shall amount to conclusive proof and does not bar any evidence being adduced for the purpose of disproving it. The presumption under Sub-section. (2) must, therefore, be regarded as a rebuttable presumption.

9. As explained in Dhirendra Nath Sharma's case(AIR 1986 Madh Pra 122) even in a case governed by Sub-section (2) of Section 170-B of the Code, there must be show cause notice and enquiry. In reply to show cause notice, it is open to the vendee in possession to aver that his possession is by lawful authority. It must be open to him to adduce evidence in support of his contention that his possession is by lawful authority. If the S.D.O. is satisfied on the materials before him either produced by the vendee or received from other sources that the vendee's possession is based on lawful authority, the presumption is rebutted. That is the end of the operation of Sub-

section (2). It is important to know that the presumption has nothing to do with the aspect whether the document is obtained by fraud or other unfair means or whether the document is substantially unfair and constitutes fraudulent transaction affecting legitimate rights of the tribals. The presumption is confined only to one aspect in a narrow compass namely. Whether the possession is without lawful authority.'

12. The principle as laid down in the case mentioned herein-above very clearly applies to this case also, therefore, I am of this view that the impugned order dated 25.7.2011, the order of the Additional Collector dated 6.7.1998 and the order of the Sub-Divisional Officer dated 2.2.1996 all have been passed without exercise of the jurisdiction under sub-section (3) of Section 170(b) of the Code, 1959. Hence, the proceedings drawn and conducted before these authorities could not be held to be in accordance with the procedure provided under Section 170(b)(3) of the Code, 1959. Accordingly, the present petition deserves to be allowed, which is allowed. The impugned order dated 25.7.2011, the order of the Collector dated 6.7.1998 and the order of Sub-Divisional Officer dated 2.2.1996 all are quashed and it is ordered that the proceeding before the SDO is restored, with direction that the application of respondent No.1 be considered afresh by strictly following the procedure as laid down in Section 170(b)(3) of the Chhattisgarh Land Revenue Code after giving opportunity of adducing evidence to both the parties.

13. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge