NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 642 of 2014

Order Reserved On : 08.02.2021

Order Delivered On : 15.03.2021

1. Rama, S/o Late Makhanlal Chandrakar, Aged About 45 Years.
2. Lachchhu, S/o Makhan, Aged About 46 Years.
3. Yas Kumar, S/o Late Makhanlal Chandrakar, Aged About 52 Years.
4. Tekram, S/o Makhanlal Chandrakar, Aged About 55 Years.

All are the R/o Village/ Post Office- Achhoti, P.S./Tahsil- Kurud, District- Dhamtari (C.G.)

--- Petitioners

Versus

1. Lokesh Kumar, S/o Baldau Chandrakar, Aged About 39 Years.
2. Ku. Preetibala Chandrakar, D/o Baldau Chandrakar, Aged About 44 Years.

Both are R/o Village/ Post Office- Achhoti, P.S./Tahsil- Kurud, District- Dhamtari (C.G.)

--- Respondents

For Petitioners : Mr. Somnath Verma, Advocate.

For Respondents : Dr. N.K. Shukla, Sr. Advocate with Ms. Rashika Soni, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV ORDER

1. This writ petition has been brought praying for invoking power under Article 227 of the Constitution of India, seeking indulgence

of this Court to quash the order dated 14.08.2014 (Annexure P/1) passed by the Chhattisgarh Board of Revenue, Bilaspur in Revenue Revision Case No. R.N./04/R/A-70/358/2013, dismissing the revision petition filed by the petitioners.

2. The facts of this case, in brief, is this that, Late Makhanlal Chandrakar was father of the petitioners, who executed a sale deed dated 10.04.1972 in favour of Prabhakar Rao, S/o Narayan Rao, regarding the disputed land. The Sub Divisional Officer, Dhamtari registered a Ceiling Case No. 163-B/90(3)/1974-75 under the provisions of the Chhattisgarh Ceiling on Agricultural Holdings Act, 1960 (for short "the Ceiling Act") by order dated 29.10.1984 (Annexure P/2). The above mentioned transfer was declared void. Purchaser- Prabhakar Rao challenged this order before the Board of Revenue by preferring Appeal No. 29-V/85, which was dismissed vide order dated 02.01.1986 (Annexure P/3). The order of the Board of Revenue, was challenged in the High Court of Madhya Pradesh in M.P. No. 1610/1986. This petition was dismissed vide order dated 27.02.1987 (Annexure P/4).

3. The respondents purchased the disputed property from Prabhakar Rao by sale deed dated 19.06.2006 and on that basis, the respondents filed an application under Section 250 of the Chhattisgarh Land Revenue Code, 1959 (for short "the Code, 1959") seeking relief of possession. The Tahsildar, Kurud, District- Dhamtari, made an enquiry and passed the order dated 08.08.2011 (Annexure P/5), by which, the application was

dismissed. The respondents then, challenged the order of the Tahsildar before the court of Sub Divisional Officer, Kurud, District- Dhamtari, in Revenue Appeal Case No. 98A/70 Year 2010-2011, which was again dismissed by order dated 30.03.2012 (Annexure P/6). The respondents, then preferred Second Appeal before the Additional Commissioner, Raipur Division, Raipur in Revenue Appeal Case No. 407-A/70 Year 2012-13, which was allowed in favour of the respondents by order dated 21.06.2013 (Annexure P/7) and ordered for eviction of the petitioners from the disputed property, was passed. The petitioners, then preferred Revenue Revision Case No. R.N./04/R/A-70/358/2013 before the Chhattisgarh Board of Revenue, Bilaspur and this revision petition has been dismissed by the impugned order.

4. It is submitted by learned counsel for the petitioners, that the sale deed executed by Makhanlal Chandrakar in favour of Prabhakar Rao on 10.04.1972 was *void ab initio*. The order of Sub Divisional Officer dated 29.10.1984 (Annexure P/2) was rightly passed. Sub-section 3 of Section 4 of the Ceiling Act, provides that any person aggrieved by an order of the competent authority under this section may prefer an appeal against such order to the Board of Revenue. The decision of the Board shall be final, which cannot be further challenged before any court of law.

5. It is further submitted that Prabhakar Rao had no authority to execute sale deed dated 19.06.2006, as he had no title on the

disputed property. Hence, the sale deed executed by him is void. The application of the respondents under Section 250 of the Code, 1959, was rightly dismissed by the Tahsildar vide order dated 08.08.2011 (Annexure P/5). The appeal against this order, was again rightly dismissed by Sub Divisional Officer vide order dated 30.03.2012 (Annexure P/6). The order of the Additional Commissioner dated 21.06.2013 (Annexure P/7) is totally erroneous. Therefore, the impugned order of the Chhattisgarh Board of Revenue is also illegal.

6. It is further submitted that there had never been a case present in favour of the respondents under Section 250 of the Code, 1955, as the petitioners were in possession of the disputed property from the very beginning and there had never been a case of dispossession of the respondents within two years prior to the date of filing of application under Section 250 of Code, 1959. Reliance has been placed on the judgment of the Supreme Court in **Smt. Sooraj & others Vs. S.D.O., Rehli & others**, reported in **1995 AIR SCW 677**. It is prayed that the impugned order and the order of Additional Commissioner, both suffer from infirmity and illegality, which are liable to be quashed.

7. Learned counsel for the respondents opposes the submissions and submits that Late Makhanlal Chandrakar had sold the disputed property to Prabhakar Rao by valid sale deed. The property sold was not in excess of the ceiling area as prescribed under the Ceiling Act, therefore, any enquiry with respect to such transaction, was not permissible under the law. Father of the

respondents filed a civil suit against Makhanlal Chandrakar and others, in which, Makhanlal Chandrakar had pleaded in his written statement that he has sold the disputed property to Prabhakar Rao on consideration and that sale deed was not executed for the purpose of saving the property from ceiling. Therefore, the purchaser of the property Prabhakar Rao came in possession of the disputed property and he passed on his possession to the respondents by registered sale deed dated 19.06.2006, who were then dispossessed by the petitioners consequent to which, application under Section 250 of the Code, 1959, was filed. The Additional Commissioner and the Board of Revenue, both have passed the proper and legal order, which are not assailable.

8. Reliance has been placed on the judgment of High Court of Madhya Pradesh in **Nathu Vs. Dilbande Hussain & others**, reported in **AIR 1967 Madhya Pradesh 14**, which is on the point that the order passed on provisions under Section 250 of the Code, 1959, is not subject to challenge before Civil Court. Hence, it is submitted that the present writ petition is totally without any substance, which may be dismissed.

9. I have heard learned counsel for the parties and perused the documents placed on records.

10. Considered on the submissions. There is no dispute that Late Makhanlal Chandrakar executed a sale deed on 10.04.1972 in favour of Prabhakar Rao, which was subject to examination

before Sub Divisional Officer in the revenue case. It was observed by the Sub Divisional Officer that the sale deed was executed to defeat the provisions of Section 4 of the Ceiling Act, therefore, the sale deed was declared void. The appeal against this order was dismissed by the Revenue Board according to the provisions under Section 4 (3) of the Ceiling Act. The order of the Board was final order, which was not subject to challenge, however, the order was challenged in High Court of Madhya Pradesh in M.P. No. 1610/1986 and the same was again dismissed by order dated 27.02.1987.

11. After declaration made by the Sub Divisional Officer in his order dated 29.10.1984 (Annexure P/2), the sale deed dated 10.04.1972, was void, the sale transaction in favour of Prabhakar Rao was nullified. Therefore, Prabhakar Rao had no title over the disputed property on the basis of sale deed dated 10.04.1972, but the question of possession has remained unanswered in all these orders. The transaction of sale implies transfer of possession also. The order of Sub Divisional officer (Annexure P/2), the order of the Board of Revenue (Annexure P/3) and the order in M.P. No. 1610/1986 (Annexure P/4), neither speak about restoration of possession to any party nor about vesting of the disputed property with the State Government and nothing has been brought to the notice of this Court, regarding any order declaring the disputed land surplus under Section 6-BB of the Ceiling Act. Hence, under these circumstances, the factual situation would be that the disputed

land was transferred to Prabhakar Rao by sale deed dated 10.04.1972 along with transfer of possession. This sale deed was declared as illegal, but there was no order for restoration of possession.

12. This Court is not going to examine the validity of sale deed in favour of the respondents. The claim of the respondents that they were placed in possession subsequent to the sale deed that was executed by Prabhakar Rao in their favour on 19.06.2006. Without going into the question of legality of the sale deed, this statement in the such sale deed regarding transfer of possession, needs consideration. The respondents side has filed copies of Khasra Panch Shala for the year 1972-73, which shows the possession of Prabhakar Rao over the disputed property and the documents have also been filed showing mutation in favour of the respondents.

13. The application under Section 250 of the Code, 1959 was filed by the respondents in the year 2007-08, which can be ascertained according to the revenue case no. that, the year of filing is 2007-08. On perusal of the order dated 08.08.2011 (Annexure P/5), it is found that the respondents have pleaded that they came in possession of the disputed property in the year 2006, but the petitioners have started interruption in their possession and then, they were dispossessed. In the enquiry, there had been rival claim of possession made by both the sides.

14. In this context, the provisions under Section 250 of the Code, 1959 needs to be looked into. Section 250 (1-a) of the Code, 1959 provides, that if a bhumiswami is dispossessed of the land otherwise then in due course of law or if any person unauthorisedly continues in possession of any land of the bhumiswami to the use of which such person has ceased to be entitled under any provision of this Code, the bhumiswami or his successor-in-interest may apply to the Tahsildar for restoration of the possession. The limitation for filing such application for restoration of possession to bhumiswami, who is not a member of aboriginal tribe is within two years from the date of dispossession according to Clause (b) of Sub-section (1-a) of Section 250 of the Code, 1959.

15. The first condition which is requisite for entitlement to file such application is this that the persons dispossessed must be bhumiswami. In this case, although, the respondents plead their claim over the disputed property on the basis of sale deed dated 19.06.2006, in which, the vendor of the sale deed was Prabhakar Rao. The sale deed dated 10.04.1972 in favour of Prabhakar Rao has already been declared void by order of Sub Divisional Officer vide Annexure P/2 and the same has been confirmed by the Appellate order of the Board of Revenue vide Annexure P/3 and also challenged in the writ petition, which has been dismissed vide order Annexure P/4.

16. Hence, in such circumstances and the legal position regarding the sale deed in favour of Prabhakar Rao, it can be assumed

that Prabhakar Rao had no title over the disputed property to passed it on to any other person. Hence, the finding of the Tahsildar in order dated 08.08.2011 (Annexure P/5) and the Appellate order of Sub Divisional Officer dated 30.03.2012 (Annexure P/6), had been proper and lawful orders. The learned Additional Commissioner vide order dated 21.06.2013 (Annexure P/7) has taken altogether incorrect view that the respondents have valid title on the basis of the sale deed dated 10.04.1972. Similarly, the Board has also committed error by passing similar order.

17. On the basis of the discussion made hereinabove and the conclusion drawn, I am of this view that the impugned order dated 14.08.2014 (Annexure P/1) and order of Additional Commissioner dated 21.06.2013 (Annexure P/7), both have been passed in excess to the jurisdiction available to these authorities. Hence, these orders are unlawful, which are liable to be and are hereby quashed. The order of the Tahsildar dated 08.08.2011 (Annexure P/5) is restored.

18. In view of the above, the instant writ petition is allowed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Arun