NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 681 of 2018

Surajmal S/o Late Sitaram Mahar (Since Dead), Through Legal Heirs., (As Per Honble Court Order Dt. 16-08-2021)

1. Smt. Ganika Wd/o Late Surajmal Wasnikar, Aged About 52 Years, R/o. Village and Post Manpur, District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh
2. Smt. Neelima Ambade, D/o late Surajmal Wasnikar, wife of Chandra Shekhar Ambade, Aged about 48 years, R/o Village Havandi, Post Bedgaon, Tahsil Korchi, District Garchcharouli (Maharashtra)
3. Smt. Pratibha Meshram D/o Late Surajmal Wasnikar, W/o Panna Lal Meshram, Aged About 46 Years, R/o. Village Biharikala, Post Ambagarh Chowki, District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh
4. Shilbhadra Prakash Wasnikar, S/o Late Surajmal Wasnikar, Aged About 44 Years, R/o. Village and Post Manpur, District Rajnandgaon Chhattisgarh, District : Rajnandgaon, Chhattisgarh
5. Smt. Sushma Shukla D/o Late Surajmal Wasnikar, W/o Mukesh Shukla, Aged About 42 Years, R/o Pendri, Kanshinagar, Phase No.3, Rajnandgaon, District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh
6. Smt. Anima D/o Late Surajmal Wasnikar, W/o Shri Prashant Rangari, Aged About 42 Years, R/o. Village Kundurupara, Balod, District Balod Chhattisgarh, District : Balod, Chhattisgarh

---- Petitioners

Versus

1. Sukhdev S/o Shri Kalaram Gond, R/o Village Dhodhri, Tahsil Manpur, District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh
2. State Of Chhattisgarh, Through The Collector, Rajnandgaon, District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh

----Respondents

For Petitioners – Mr. Uttam Pandey and Mr. J.K. Gupta, Advocates.
For Respondent No.1 – None, though served.
For State/Respondent No.2 – Ms. Shriya Mishra, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

16-11-2021

1. This petition has been brought being aggrieved by the order dated 26-04-2018 passed by the Chhattisgarh Board of Revenue in Revenue Appeal Case No.A/15/R/A-21/01/2016 by dismissing the appeal and upholding the order of Commissioner Durg Division dated 17-12-2015 and the order of the Additional Collector Rajnandgaon dated 26-06-2014.

2. Deceased petitioner Surajmal had purchased agricultural lands from Kalaram Balaram and Budhwarinbai by a sale deed dated 02-06-1971 for a consideration of Rs.1500/-, the area of the land purchased was 24.4 acres. After passing of about more than 30 years respondent No.1 filed an application on 30-01-2002 before the SDO under Section 170B of the Chhattisgarh Land Revenue Code, 1959 making a prayer that the sale was fraudulent. Sub-Divisional Officer (Revenue) by order dated 29-12-2003 dismissed the application of respondent No.1 holding that due permission was obtained for execution of sale deed dated 02-06-1971. Respondent No.1 filed appeal before the Collector Rajnandgaon, which was disposed off by learned Additional Collector on 21-06-2004 and the appeal was dismissed. Respondent No.1 preferred revision before the Chhattisgarh Board of Revenue. The revision petition was allowed by order dated 07-02-2007 and the case was remanded to the Court of Additional Collector Durg.

The Additional Collector registered a Revenue Case No.01-A/21 year 2013-14 and by order dated 26-06-2014, the case was remanded back to the SDO (Revenue) Mohla. The petitioner being aggrieved by the order dated 26-06-2014 passed by the Additional Collector Rajnandgaon preferred appeal before the Commissioner Durg which was dismissed by order dated 17-12-2015. Subsequent to which, second appeal was preferred before the the Board of Revenue which has been dismissed by the impugned order.

3. It is submitted by learned counsel for the petitioners that the impugned order and the orders of the Commissioner and Additional Collector both suffer from grave infirmity. The issue raised by the respondent No.1 was already decided by the SDO (Revenue) by order dated 29-12-2003, which was confirmed by the order of the Additional Collector in appeal dated 21-06-2004. Therefore, there was no reason present to remand the case again. Relying on the judgment of M.P. High Court in the matter of **Baldeo Singh vs Sukka (Since Dead) By Lr And Ors,** AIR 1999 MP 91 and on another judgment of

M.P. High Court in the matter of **Ravinarayan Vs. State of M. P. and others**, 2000 Revenue Nirnay 161, it is submitted that after completion of the enquiry at one stage, the same cannot be re-opened. Hence, the petition be allowed and impugned order be set aside.

4. Respondent No.1 is not represented by any counsel, although notice has been returned served.

5. The State counsel opposes the submission on this ground that no error has been committed by learned Board of Revenue, the Commissioner and the Additional Collector in passing the orders for remanding the case. It is submitted that the petitioners shall have opportunity to present their case when the same is taken up by the SDO (Revenue). Hence, the present petition is not fit to be allowed, which may be dismissed.

6. Considered on the submissions. Perused all the documents filed along with the petition. In the previous round of litigation the learned Chhattisgarh Board of Revenue while passing the order dated 07-02-2007 observed that although the sale was transacted with the permission of the Collector, but no effort was made to enquire as to the sale consideration of 24.4 acres land of Rs.1500/- was reasonable. There is no mention of the guideline in force. Hence, element of fraud cannot be ruled out. For this reason the case was remanded to the Collector Rajnandgaon directing him to review the case under Section 51 read with Section 32 of the Chhattisgarh Land Revenue Code, 1959 (in short 'the Code, 1959') by granting permission for reviewing of the case. The Additional Collector Rajnandgon after grant of permission of review has reviewed the earlier order passed by it, in which opportunity of hearing was granted to the petitioner side. The learned Additional Collector has discussed in the order dated 26-06-2014 that the consideration of Rs.1500/- was paid for purchase of 24.4 acres, on which basis price of land was below Rs.100 per acre. Hence, it was held that the element of fraud cannot be ruled out in the case and the order was passed setting aside the permission granted for sale

and remanding the case to the SDO with direction to revert the land to respondent No.1. This order was challenged before the Commissioner in appeal which was dismissed by order dated 17.12.2015 and the second appeal filed before the Board of Revenue was dismissed by the impugned order.

7. The order of the board dated 7.2.2007 was specific on the point, that an inquiry was required to ensure the bonafidy of the sale transaction. The Additional Collector has reviewed the order and not only ordered withdrawal of permission given by Collector for sale of the disputed land, he further directed the SDO to pass orders of reversion under Section 170B of Chhattisgarh Land Revenue Code. The inquiry as ordered by the Board in order dated 7.2.2007 was never conducted. The authority having jurisdiction to make such inquiry is SDO, therefore, in case of reviewing the impugned order, the Additional Collector should have remanded the case to SDO with direction to make inquiry on the bonafidy of the transaction as per the provision under Section 170 B(3) of the Code, 1959. There is no need to mention that the inquiry means opportunity of hearing to both the parties, which includes production of document in evidence in support of the rival claims, hence, without there being any such inquiry the order passed by the Additional Collector dated 26.6.2014 is totally erroneous and against the provisions of law and further there is erroneous exercise of jurisdiction. Similarly, the order of Commissioner dated 17.12.2015 in appeal and impugned order which has been passed by the Board, both are illegal and arbitrary. Hence, on the basis of these observations, the impugned order, the order of Commissioner dated 17.12.2015 and the order of the Additional Collector dated 26.6.2014 all are quashed. The case is remanded to the SDO(Revenue), Mohla, District-Rajnandgaon with direction to make

compliance with the previous order of Board of Revenue dated 7.2.2007 and make inquiry regarding the bonafidy of the sale transaction between the parties concerned strictly in accordance with the procedure under Section 170B(3) of the Chhattisgarh Land Revenue Code, 1959 and pass appropriate order at the earliest.

8. With these observations, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Adil/Nisha