CGHC010010172022 2026:CGHC:46374

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 161 of 2022

Judgment Reserved On :25.09.2026.

Judgment Delivered On :03.11.2026.

1 - Premchand S/o Late Kewalchand Aged About 60 Years

2 - Mohan Lal S/o Late Kewalchand Aged About 55 Years

3 - Shantilal S/o Late Kewalchand Aged About 53 Years

4 - Suresh Kumar S/o Late Kewalchand Aged About 50 Years

5 - Kantilal S/o Late Kewalchand Aged About 48 Years

6 - Lalit S/o Late Kewalchand Aged About 46 Years

7 - Manju D/o Late Kewalchand Aged About 49 Years

8 - Shimati Kanchanbai W/o Anoopchand Aged About 46 Years

9 - Shrimati Kiran Bai W/o Ashok Kumar Aged About 44 Years.
Respondent Nos.1 to 9 are R/o In Front Of Ram Mandir, Bazarpara, Kondagaon, Tehsil And District- Kondagaon, C.G.

10 - Rajendra Kumar (Died Through Lrs) As Per Hon'ble Court Order Dated 14-08-2026.

10A - Manish Kumar S/o Late Rajendra Kumar Aged About 44 Years

10B - Sunny Kumar S/o Late Rajendra Kumar Aged About 42 Years

10C- Rohit Kumar S/o Late Rajendra Kumar Aged About 32 Years

10 D - Neetu Modi D/o Late Rajendra Kumar Aged About 50 Years

10 E - Soniya Chawla D/o Late Rajendra Kumar Aged About 48 Years

10 F- Pooja Bhatnagar D/o Late Rajendra Kumar Aged About 46 Years

10 G - Seema Narula D/o Late Rajendra Kumar Aged About 45 Years.
All R/o Hospital Ward Kondagaon, Tehsil And District Kondagaon, C. G.

... Petitioner(s)

versus

1 - State Of Chhattisgarh Through- The Commissiner Baster Division, Jagdalpur, District- Baster (C.G.)

2 - Collector Kondagaon, District- Kondagaon (C.G.)

3 - Sub Divisional Officer (Revenue) Kondagaon, District- Kondagaon (C.G.)

4 - Gajendra Dhruw S/o Late Murlidhar Dhruw Aged About 50 Years R/o Bazarpara, Kondagaon, Tehsil And District- Kondagaon (C.G.)

... Respondent(s)

For Petitioner(s)	:	Shri Shobhit Koshta, Advocate.
For State/respondent	:	Shri Abhuday Tripathi, PL.
For Respondent No.4	:	Shri Pravin Kumar Tulsyan and Shri Karan Kumar Baharani, Advocates.

Hon'ble Mr. Justice Amitendra Kishore Prasad
C A V Order

1. This Writ Petition has been filed against the order dated 05.10.2021 (Annexure P/3) passed by the Commissioner, Baster Division, Jagdalpur in Revision case No.202007950100018 / 09 / A-23 / 19-20 whereby, revision filed by the petitioners under Section 50 of the Chhattisgarh Land Revenue Code, 1959 (for short "**The Code of 1959**") against the order dated 09.07.2020 passed by the Collector, District Kondagaon has been dismissed.

2. The dispute pertains to land bearing Khasra No. 423, admeasuring 0.17 acres (hereinafter referred to as “the disputed land”), situated within the municipal limits. The Respondent No. 4 claims that the disputed land was recorded in the name of his ancestors in the year 1934–35 and alleges that the petitioners and their ancestors illegally occupied the said land. on 04.11.2016, respondent No. 4 filed an application under Section 170B of the Code of 1959, seeking restoration of possession of the disputed land on the ground that the petitioners and their ancestors had illegally occupied the same. Petitioners filed their reply to the aforesaid application, specifically contending that as reflected in the maintenance Khasra records for the years 1953–54 and 1956–57, the disputed land was recorded as Nazul land and not as agricultural land. It was, therefore, contended that the provisions of the Code of 1959 as invoked by respondent No. 4 were not applicable to the disputed land in the manner alleged by him. The petitioners further submitted that the disputed land had been transferred through registered sale deeds executed several decades prior to the filing of the application by respondent No. 4. The ancestors of respondent No. 4, namely, Shambhunath, son of Jagannath, had sold a portion of the disputed land, admeasuring approximately 12 decimals (5,304 square feet), to the father of petitioner Nos. 1 to 9, namely, Kewalchand, by way of a registered sale deed dated 23.01.1960. Pursuant to the aforesaid registered sale deed, the father

of petitioner Nos. 1 to 9 constructed a permanent residential house over the land purchased by him and remained in continuous possession thereof. The petitioners further submitted that the remaining portion of the disputed land, admeasuring approximately 2,100 square feet, was sold to Shyamlal, son of Deuram, by way of a registered sale deed dated 03.12.1974. The petitioners thus asserted that their possession over the disputed property was based on the aforesaid transactions and had continued for several decades. The petitioners specifically contended before the revenue authorities that the transactions in question had taken place in the years 1960 and 1974, respectively, whereas the application seeking restoration of possession was filed by respondent No. 4 only on 04.11.2016, after an inordinate delay of several decades. On the aforesaid grounds, the petitioners disputed the allegations of illegal occupation and prayed for dismissal of the application filed by respondent No. 4. Sub-Divisional Officer (Revenue), after considering the rival submissions and the material available on record, vide order dated 13.10.2017 (Annexure P/1), rejected the application filed by respondent No. 4 holding that disputed land was situated within the municipal limits and was not agricultural land and, therefore, the provisions of Section 165(6) of the Code of 1959, were not applicable to the case, in consequence, Section 170B of the Code of 1959 was also not attracted. Being aggrieved by the aforesaid order dated 13.10.2017, Respondent No. 4 preferred an

appeal before the Collector, Kondagaon. The learned Collector, vide order dated 09.07.2020 (Annexure P/2), partly allowed the appeal, holding that the subordinate court's conclusion regarding the non-agricultural nature of the disputed land is valid. However, the conclusion reached regarding the legal transfer of the disputed land to the petitioners herein is not justified and they have not obtained permission from the competent authority for the purchase or sale of the disputed land. It was further held that the Revenue Board, Chhattisgarh, Bilaspur has issued an order regarding the applicability of the provisions of Section 165 (6) / 165 (7) (b), under Section 8 of the Code of 1959, dated 27.10.2015. In the said order under Section 8, Board of Revenue held that provisions of Section 165 (6) and Section 165 (7) (b) will be applicable to lands located in Nazul land / municipal land irrespective of whether the land is diverted or not. Board of Revenue deleted Clause 4 of the said order issued under Section 8 and following clause has been inserted:-

> "भू-राजस्व संहिता की धारा 165 (6) (एक) में अधिसूचित क्षेत्र में आदिम जनजाति वर्ग के भूमिस्वामी के भूमि के अंतरण के संबंध में उल्लेखित प्रतिबंध नगरीय क्षेत्र की भूमि तथा परिवर्तित भूमि (diverted land) पर भी लागू होगा।"

3. The Collector vide order dated 09.07.2020 accordingly held that the disputed land is not agricultural land, but rather urban land. The disputed land was transferred from the tribal party to the non-tribal

party without the permission of the competent authority. Thus, order dated 13.10.2017 of the subordinate court, Sub-Divisional Officer (Revenue), Kondagaon, is set aside/ quashed.

4. Against the said order dated 09.07.2020 of the Collector, petitioners moved a revision before the Commissioner, Baster Division, Jagdalpur in Revision case No.202007950100018 / 09 / A-23/ 19-20 who vide order dated 05.10.2021 rejected the revision of the petitioners and affirmed the findings of the Collector. The Commissioner observed that the Revenue Board has clarified that in case of transfer of tribal land to a non-tribal person, the restrictions provided under Section 165(6) of Code of 1959 applies to the land belonging to tribal landowners in the notified area irrespective of whether that land is situated in urban areas or in diverted land. This provision covers the entire Bastar division. Against the said order of Commissioner, the petitioners preferred a revision before the learned Board of Revenue, however, the learned Board of Revenue returned the revision petition on the ground that the same was not maintainable, hence this petition for the following reliefs:-

> *“10.1) This Hon'ble Court may kindly be pleased to issue appropriate writ and quash/set-aside the impugned order dated 5/10/21 (Annexure P-3) and other merged orders dated 9/7/20 and 13/10/17 in the interest of justice.*
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> *10.2) This Hon'ble Court may kindly be pleased to call for the entire records of the instant case, for kind perusal of this Hon'ble Court.*

10.3) Any other relief which this Hon'ble Court deem fit and proper may also kindly be granted to the petitioners in the interest of justice. ”

5. Leaned counsel for the petitioners firstly submits that the provision of Section 170B of the Code of 1959 is not applicable in facts of the present case and the same is barred by principles of delay and laches and non-joinder of necessary party. It is well settled that in order to set aside the transaction u/s 170B of Code of 1959, it is necessary that fraud or non bonafide transaction must be proved. In the present case, the learned SDO (Revenue) in its order held that the sale deed and transactions is of the year 1960 and the same was never challenged by either Shambunath or his son namely Premsingh or by Murlidhar S/o Premsingh and now Gajendra Dhruw S/o Murlidhar who is aged about 35 years has challenged the transaction which shows that the transaction was bonafide and not effected by fraud which has also not been denied by the Collector and Commissioner in their order.

6. Learned counsel for the petitioner submits that the Hon’ble Supreme Court in the case of ***Shakuntala v. The State Of Karnataka***, **(2024) 17 SC 287**, has considered a similar issue. In the said case, father of respondent No. 5 was allotted 4 acres of agricultural land under government grant on 22-3-1957. In the year 2007, respondent No. 5, whose father was granted land, filed application before the Assistant Commissioner under Section 4 of the Scheduled Castes and

Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act of 1978 praying that the sale transaction in respect of subject land be declared null and void and to deliver possession to him, which was allowed by the Sub Divisional Officer. Appeal preferred against that order was dismissed, writ petition as well as writ appeal were also dismissed. Considering the facts of aforesaid case and particularly considering the delay and latches in filing the application by respondent No. 5 for reversion of land, Hon'ble Supreme Court observed in para 15 to 19 as under:-

> *"**15.** The admitted facts indicate that Somalanayak was granted this agricultural land in 1957 and chose to sell it in the year 1964. The 1978 Act came into force on 1-1-1979 but it was only in 2007 that Respondent 5 woke up and filed a petition under Section 4 thereof. In the meantime, the land changed hands four times.*
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> ***16.** The effect and impact of delay and laches in the context of the 1978 Act is no longer res integra. In Nekkanti Rama Lakshmi v. State of Karnataka [Nekkanti Rama Lakshmi v. State of Karnataka, (2020) 14 SCC 232] , this Court noted that Section 4 of the 1978 Act did not prescribe the period within which an application thereunder could be made nor did it prescribe the period within which suo motu action could be taken, but held that an application for resumption of land under Sections 4 and 5 of the 1978 Act made after a delay of 25 years would be barred and no annulment of the transfer could be granted thereon.*
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> ***17.** Again, in Vivek M. Hinduja v. M. Ashwatha [Vivek M. Hinduja v. M. Ashwatha, (2020) 14 SCC 228] , this Court had*

occasion to deal with this issue. The delay in that case was just 20 years, when compared with the delay of 43 years presently, but despite the same, this Court held that the annulment of the illegal transfers under the 1978 Act could not be sustained owing to that delay. It was pointed out that, even if no limitation is prescribed in the statute, the party concerned ought to approach the competent court or authority within reasonable time, beyond which no relief could be granted. This principle was held applicable to suo motu actions also. Referring to the earlier decisions in Chhedi Lal Yadav v. Hari Kishore Yadav [Chhedi Lal Yadav v. Hari Kishore Yadav, (2018) 12 SCC 527 : (2018) 5 SCC (Civ) 427] and Ningappa v. Commr. [Ningappa v. Commr., (2020) 14 SCC 236] , this Court reiterated the settled legal position that irrespective of whether a statute provided for a period of limitation, provisions of the statute must be invoked within a reasonable time. This Court, therefore, had no hesitation in holding that the application for restoration of the land made after a delay of 25 years was liable to be dismissed on that ground. The judgments of the Karnataka High Court which held to the contrary were overruled.

18. *In Ningappa [Ningappa v. Commr., (2020) 14 SCC 236] , the delay in seeking cancellation of the sale transactions and restoration of the land in question was 16 years. In that scenario, this Court held that the application of the grantees should have been rejected on the short ground that there was considerable delay in filing the same as all acts have to be done within a reasonable period of time even if no limitation is prescribed by the statute.*

19. *In Civil Appeal No. 6212 of 2013, titled Shivanna v. State of Karnataka [Shivanna v. State of Karnataka, (2024) 19 SCC 485 : 2021 SCC OnLine SC 3445] , decided on 25-11-2021, this Court again considered the issue. In that case*

also, the sale transaction was prior to the 1978 Act coming into force, as it was in the year 1971. However, it was only in the year 2000 that an application for annulment of the transfer was filed under Section 4 of the 1978 Act. This Court, therefore, noted that annulment of the sale transaction was sought 21 years after the 1978 Act came into force and 30 years after the transaction itself. It was also noted that the legal heir of the original grantee took no steps till 12 years after he attained the age of majority. It was, accordingly, concluded that such inordinate delay could not be condoned, as by no stretch of imagination could it be said to be reasonable. "

7. Learned counsel for the petitioners submits that in the present case, the transaction/ sale deed in question are of the Year 1960 and 1974, which is sought to be challenged by the Respondent No.4, whose grandfather has effected the sale deed on 4/11/2016 and 3/12/1974, by filing application u/s 170B of the Code of 1959 which is after 56 years and 42 years after the subject transactions and hence, the delay in filing the application by the respondent no. 4 shows that the application was clearly barred by delay and laches and cannot be entertained in light of order of Hon'ble Supreme Court as mentioned above. Further, the original respondent no. 4 has not impleaded Shyamlal S/o Deuram, as party in the present case who has in turn sold the land to the original petitioner No. 10 namely Premchand in the Year 1980-81 and as such in absence of Shyamlal and his legal heirs being made party in the present case who is a necessary party as the respondent no. 4 has called into question the transaction dated 3/12/1974 which is in

between Late Shambunath and Shyamlal, the application of respondent no. 4 is bad in law for non-joinder of necessary party which has not been appreciated by the courts below.

8. Learned counsel for the petitioners also submits that prior permission u/s 165 (6) of the Code of 1959 is not required in the present case. It has been recorded by the SDO (Revenue), Kondagaon that the disputed land is situated in urban area bearing Plot No.- 423 and hence the same is not agricultural property. This Court in ***Dau Ram v. Hifjul Jamil through LR's and Others***, **2020 SCC Online Chh 1337**; held while adjudicating a similar issue in respect of land situated in District-Kanker which is also a schedule area:-

> *" **8.** It is not in dispute that the suit property is situated in urban area and it is Nazul land bearing Sheet No. 5B, Plot No. 8/1, Layout Plan 35/1 area 431 square feet situated at Shitla Para, Kanker, District Kanker.*
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> ***9.** The question as to whether Section 165(7-b) contained in Chapter XII of the Code applies to Nazul land in urban area is no longer res-integra and it has already been authoritatively adjudicated by the High Court of Madhya Pradesh in the matter of Alidas (supra), in which it has been clearly held that Section 165(7-b) which contained in Chapter XII of the Code is not applicable in urban area and held as under:—*
>
> *"12. As such, the said Act is applicable to the property of aboriginals, who are members of the scheduled tribes and who have property in the rural areas. Any property in the urban area is specifically excluded from the operation of the*

said Act. It was for the first time when the M.P. Land Revenue Code, 1954, was enacted, which came into force with effect from 1-10-1955, that Chapter 8 of the said Code was enacted regarding assessment and re-assessment of land in urban areas. As such, there can be no doubt that Chapter 8 of the said Code would govern the lands situated in urban areas. The M.P. Land Revenue Code, 1954, was subsequently repealed by the M.P. Land Revenue Code, 1959, which also made similar provisions. Chapter 7 of the 1959 Code provides for revenue survey and settlement in non-urban areas; while Chapter 8 of the 1959 Code makes provisions for assessment and re-assessment of land in urban areas. As such, there can be no doubt that Chapter 8 of the M.P. Land Revenue Code, 1959, will be applicable to lands situated in urban areas. But it is not possible to accept the contention of the learned counsel for the respondents that the other Chapters of the M.P. Land Revenue Code, 1959, will be applicable to Nazul lands situated in urban areas. As such, we are clearly of the opinion that Section 165 of the M.P. Land Revenue Code, 1959, which forms part of Chapter 12 of the Code, would not be applicable to Nazul lands in urban areas. We may observe that Section 157 of the Code, which is the first Section in Chapter 12, lays down that there shall be only one class of tenure-holders of lands held from the State to be known as Bhumiswami. But it does not mean that the provisions of Chapter 12 in their entirety can be made applicable to such plot proprietors of Nazul land in urban areas, who are also known as Bhumiswamis."

10. *In view of principle of law laid down by the High Court of Madhya Pradesh in Alidas (supra), it cannot be held that Section 165(7-b) of the Code would be applicable to Nazul land situated in urban areas as in the present case, as*

such, the argument deserves to be rejected as the suit land is Nazul land situated at Kanker (urban area) and in Nazul land, provision of Section 165(7-b) of the Code is not attracted, as such, both the Courts below are justified in holding that the transaction is not hit by Section 165(7-b) of the Code."

9. Learned counsel for the petitioners further relies in the case of ***Marsa Baxla and Others v. Neera Bai and Others*** {***2014 SCC Online Chh 429}***, it was held by this Court in respect of interplay with Section 165 (6) and 170B of the Code of 1959 as under:-

"***10.*** *The submission of learned counsel for the petitioner that in the matter of transaction between the tribal to tribal also, the provisions of Section 165(6) become applicable requiring sanction of the Collector, cannot be accepted in view of the specific language of the provisions contained in Clause (II) Sub- Section (6) of Section 165 of the Land Revenue Code. The use of words "a person not belonging to such tribe" sufficiently indicates that the transaction with a person belonging to tribe is outside the rigor of sub section 6 of Section 165. The judgment of the Supreme Court in the case of Bhaiji v. Sub-Divisional Officer, Thandla {(2003) 1 SCC 692}, is not applicable in the present case. That was a case where the Supreme Court considered the scope and ambit of provisions contained in Section 170(B) of the Land Revenue Code to hold that there is nothing in those provisions to come to the conclusion that Section 170(B) will not apply where transaction has taken place between the tribal and tribal. This was so because the Supreme Court did not find any specific provision otherwise. However, in so far as provisions contained in Section 165(6) of the Land Revenue Code is concerned, there is a specific provision in that*

regard as referred to herein above. Therefore the submission that permission was necessary cannot be accepted and has to be rejected."

10. Learned counsel for the petitioners submits that the land in question is situated in the Nazul land/ municipal area and as such, it cannot be termed to be an agricultural land, and in view of the above case laws, in the present case, provisions of Section 165 (6) and Section 170B of the Code of 1959 are not applicable even if the land belongs to tribal person when there is no express provision for applicability of said sections to Scheduled Area in respect of non-agricultural land.

11. Learned counsel for the petitioners submits that admittedly transaction between the parties took place way back on 23.01.1960 when grandfather of Respondent No.4 namely Shambhunath, S/o Jagannath executed a registered sale deed for the land in question about 12 dismil, 5304 sq. feet. He submits that since the seller has not challenged the said transaction alleging fraud, the grandson now after an inordinate delay of about 60 years cannot contest claim alleging fraud.

12. *Per contra*, counsel for the Respondent No.4 submits that the learned Commissioner rightly passed the order and held that provisions of Section 165 (6) and Section 170B would be applicable in the present case and no interference is warranted by this Court.

13. Learned State counsel submits that the order passed by the Commissioner is in accordance with law as the Commissioner has considered each and every aspect of the matter while upholding the order dated 09.07.2020 passed by the Collector who also considered the grievance of the petitioners in detail and since land in question falls in Baster, a Scheduled area then it cannot be said that since land is a Nazul land, provisions under Section 165 (6) and Section 170B would not be applicable. The Commissioner has also held that provisions of Section 165 (6) and Section 170B would be applicable even in respect of Nazul land , Municipal land or diverted land.

14. I have heard counsel for the parties and perused the documents annexed with the petition carefully.

15. The principal question that arises for consideration is whether the Collector and the Commissioner were justified in holding that the provisions of Sections 165(6) and 170-B of the Code of 1959 were applicable to the disputed land, notwithstanding its location within municipal limits and its asserted classification as Nazul land, and whether the impugned orders warrant interference in the exercise of writ jurisdiction. The questions relating to the effect of delay and laches, the nature of the transactions and the objection regarding non-joinder of necessary parties also arise for consideration.

16. Before proceeding further, it would be appropriate to refer to the relevant statutory provisions.

17. Section 165 (6) of the Code of 1959 reads as under:-

> *(6) Notwithstanding anything contained in sub-section (1) the right of bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe by the State Government by a notification in that behalf, for the whole or part of the area to which this Code applies shall-*
>
> *(i) in such areas as are predominately inhabited by aboriginal tribes and from such date as the State Government may, by notification, specify, not be transferred nor it shall be transferable either by way of sale or otherwise or as a consequence of transaction of loan [or will (bequest)] to a person not belonging to such tribe in the area specified in the notification;*
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> *(ii) in areas other than those specified in the notification under clause (i), not to be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan [or will (bequest)] to a person not belonging to such tribe without the permission of a Revenue Officer not below the rank of Collector, given for reasons to be recorded in writing.*
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> *[Provided that the provision of this sub-section shall not be applicable to the land acquired under the Right to Fair Compensation and Transparency in Land Acquisitions, Rehabilitation and Resettlement Act, 2013 (No. 30 of 2013).*
>
> *Explanation. For the purposes of this sub-section the expression "otherwise" shall not include lease.*
>
> *[(6-a) Notwithstanding anything contained in sub-section (1), the right of a Bhumiswami other than a Bhoomiswami belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6), in the land excluding the agricultural land shall not be transferred or be transferable*

either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to aboriginal tribe without the permission of the Collector given for reasons to be recorded in writing:

Provided that every such transfer effected after the 9th day of June, 1980 but before the 20th April, 1981 which is not in accordance with the provisions herein contained shall unless such transfer is ratified by the Collector in accordance with the provisions hereinafter contained, be void and shall be of no effect whatsoever, notwithstanding anything contained in this Code or any other law for the time being in force.

18. Section 170B of the Code of 1959 reads as under:-

Section 170-B. Reversion of land of members of aboriginal tribe which was transferred by fraud.

(1) Every person who on the date of commencement of the Chhattisgarh Land Revenue Code (Amendment), 1980 (hereinafter referred to as the Amendment Act of 1980) is in possession of agricultural land which belonged to a member of a tribe which has been declared to be an aboriginal tribe under sub-section (6) of Section 165 between the period commencing on the 2nd October, 1959 and ending on the date of the commencement of Amendment Act, 1980 shall, within two years of such commencement, notify to the Sub-Divisional Officer in such form and in such manner as may be prescribed, all the information as to how he has come in possession of such land.

(2) If any person fails to notify the information as required by sub-section (1) within the period specified therein it shall be presumed that such person has been in possession of the agricultural land without any lawful authority and the agricultural land shall, on the expiration of the period

aforesaid revert to the person to whom it originally belonged and if that person be dead, to his legal heirs.

19. In the present case, it is not in dispute that the disputed land is situated within the Bastar Division, which is a Scheduled Area, and that the original transferor belonged to a notified tribal community. It is also the case of the petitioners that the disputed land was recorded as Nazul land and was situated within municipal limits.

20. The petitioners have placed considerable reliance upon the nature and classification of the disputed land to contend that the restrictions contained in Section 165(6) of the Code of 1959 are inapplicable. The revenue authorities, however, have relied upon the order dated 27.10.2015 passed by the Board of Revenue under Section 8 of the Code of 1959, clarifying that the restrictions contained in the relevant provisions of Section 165 extend to land situated in Nazul and municipal areas, irrespective of whether such land has been diverted.

21. The Collector and the Commissioner have proceeded on the basis that the location of the disputed land within municipal limits does not, by itself, exclude the operation of the restrictions imposed upon transfers of land belonging to members of notified aboriginal tribes in the circumstances contemplated by the Code.

22. The question whether the classification of land as Nazul land or its location within an urban area excludes the operation of Section 165(6)

of the Code of 1959 must be considered in the context of the statutory provision and the applicable legal position.

23. Section 165(6) expressly imposes restrictions upon the transfer of rights of a Bhumiswami belonging to a notified aboriginal tribe to a person not belonging to such tribe. The provision does not, in its text, expressly exclude land situated within municipal limits merely on account of its urban location.

24. The petitioners have relied upon the decision in ***Dau Ram*** *(supra)*, wherein this Court considered the applicability of Section 165(7-b) to Nazul land situated in an urban area. However, the applicability of that decision to the present controversy must be examined in the context of the precise statutory provision involved, the nature of the land in question and the subsequent clarification issued by the Board of Revenue.

25. The Collector and the Commissioner have relied upon the order dated 27.10.2015 of the Board of Revenue, which specifically addresses the applicability of the restrictions to Nazul, municipal and diverted land. In the absence of any material establishing that the aforesaid clarification has been set aside or rendered inapplicable by a competent court, the petitioners cannot succeed merely by asserting that the disputed land is situated within municipal limits.

26. Accordingly, the contention that the restrictions under Section 165(6) are necessarily inapplicable solely because the disputed land is classified as Nazul land or is situated in an urban area does not, by itself, furnish sufficient ground for interference with the impugned orders.

27. The petitioners have also relied upon ***Marsa Baxla*** *(supra)*, to contend that permission under Section 165(6) is not required in every transaction involving tribal land.

28. The aforesaid decision, however, dealt with the interpretation of the statutory language governing transfers between persons belonging to notified tribes and persons not belonging to such tribes. The principle laid down therein must be understood in the context of the facts and the precise question that arose for determination in that case.

29. In the present matter, the original transferor is stated to have belonged to a notified tribal community, whereas the transfers in question were made in favour of persons who did not belong to that community. The petitioners have not disputed that the requisite permission of the competent authority was not obtained before execution of the sale deeds.

30. Consequently, the aforesaid decision does not, by itself, establish that the transactions in question were exempt from the restrictions imposed by Section 165(6) of the Code of 1959.

31. The next contention raised by the petitioners concerns the applicability of Section 170-B of the Code of 1959.

32. The statutory provision expressly refers to agricultural land belonging to a member of a notified aboriginal tribe and prescribes the consequences arising from failure to furnish the requisite information regarding possession in the circumstances contemplated therein.

33. The petitioners contend that the disputed land was not agricultural land but was recorded as Nazul land within municipal limits. The Sub-Divisional Officer accepted this contention and rejected the application filed by respondent No. 4.

34. However, the Collector and the Commissioner have considered the aforesaid objection in the light of the clarification issued by the Board of Revenue dated 27.10.2015. They have held that the restrictions relating to the transfer of land belonging to members of notified aboriginal tribes are applicable even where the land is situated in a Nazul or municipal area.

35. The petitioners have not established any sufficient ground warranting interference with the concurrent conclusions of the Collector and the Commissioner on the basis of the urban location of the disputed land alone.

36. It is, however, necessary to distinguish the restrictions governing transfers under Section 165(6) from the conditions specifically

prescribed under Section 170-B. The latter provision must be applied in accordance with its own language and statutory requirements. The applicability of Section 170-B cannot be determined solely by reference to the scope of Section 165(6), without considering the conditions prescribed under Section 170-B itself. Nevertheless, having regard to the findings recorded by the revenue authorities and the clarification relied upon by them, the petitioners have not demonstrated sufficient grounds to warrant interference with the impugned orders in the present proceedings.

37. The petitioners have next contended that the application filed by respondent No. 4 is liable to be rejected on the ground of delay and laches, as the transactions in question were effected in 1960 and 1974, whereas the application under Section 170-B was filed only on 04.11.2016. In support of this contention, learned counsel has placed reliance upon the decision of the Supreme Court in ***Shakuntala*** *(supra).*

38. In the aforesaid decision, the Supreme Court reiterated the settled principle that, even where a statute does not prescribe a specific period of limitation, the power conferred upon the competent authority must be exercised within a reasonable period. The Court relied upon its earlier decisions in ***Nekkanti Rama Lakshmi***, ***Vivek M. Hinduja***, ***Ningappa*** and ***Shivanna***, wherein proceedings seeking annulment of transfers and restoration of land after considerable delay were examined.

39. The principle emerging from these decisions is that the absence of an express period of limitation does not necessarily confer an unrestricted power to initiate proceedings at any point of time. The question of reasonable time must be considered in the light of the statutory scheme, the nature of the proceedings, the circumstances of the case and the prejudice, if any, arising from the delay.

40. In the present case, the sale deeds relied upon by the petitioners were executed on 23.01.1960 and 03.12.1974, whereas respondent No. 4 initiated proceedings under Section 170-B only on 04.11.2016.

41. The delay between the respective transactions and the initiation of proceedings is undoubtedly substantial. The petitioners have also asserted that the original transferor and his immediate successors did not challenge the transactions during their lifetime and that the purchasers remained in possession of the disputed land for several decades.

42. However, the question cannot be determined merely by calculating the elapsed period. It is necessary to consider the precise nature of the statutory remedy invoked and the circumstances in which the authority is empowered to order reversion of land under Section 170-B.

43. The Collector and the Commissioner have proceeded on the footing that the absence of a prescribed period of limitation permits the proceedings to be maintained notwithstanding the lapse of several

decades. Such an approach, if understood as dispensing altogether with the requirement of reasonable time, would not be consistent with the principle explained by the Supreme Court in ***Shakuntala*** and the decisions referred to therein.

44. At the same time, the applicability of the aforesaid decisions, rendered in the context of a different statutory enactment, must be assessed having regard to the language and scheme of Section 170-B of the Code of 1959.

45.In the present case, the petitioners have not demonstrated that the statutory proceedings were initiated in circumstances that, when examined in the context of the governing provision and the material on record, necessarily render the action of the revenue authorities unsustainable in the exercise of writ jurisdiction.

46. Accordingly, the contention based upon delay and laches, though raising a substantial question of law, does not warrant interference with the impugned orders on the material placed before this Court.

47. The petitioners have further raised an objection regarding non-joinder of necessary parties, contending that Shyamlal and his legal representatives were not impleaded, although the transaction dated 03.12.1974 and the subsequent transfer in favour of petitioner No. 10, Premchand, were questioned.

48. The necessity of impleading a party depends upon the nature of the relief sought and whether an effective adjudication can be made in that party's absence. In the present case, the petitioners have not established that the absence of the aforesaid parties, by itself, invalidates the orders passed by the revenue authorities. The objection regarding non-joinder, therefore, does not independently furnish sufficient ground for interference with the impugned orders.

49. The petitioners have also contended that the transactions were bona fide, having been executed through registered sale deeds several decades ago, and that no allegation of fraud was raised by the original transferor during his lifetime.

50. The registration of a sale deed and the passage of time are relevant circumstances in examining the nature of a transaction. However, registration of a document does not, by itself, establish that the transaction complied with every statutory restriction applicable to the transfer. Where a statutory provision restricts the transfer of land belonging to a member of a notified aboriginal tribe to a person not belonging to such tribe, compliance with the prescribed requirements must be independently established. The fact that the original transferor did not challenge the transaction during his lifetime cannot, by itself, dispense with a mandatory statutory requirement, if such requirement was applicable to the transaction.

51. In the present case, it is not disputed that permission from the competent authority was not obtained before execution of the sale deeds. The petitioners have not established that the transactions were exempt from the applicable restrictions or that the competent authority had otherwise ratified them in accordance with law.

52. Upon consideration of the submissions advanced by learned counsel for the parties and the material available on record, this Court finds that the Collector and the Commissioner have proceeded on the basis that the restrictions contained in Section 165(6) of the Code of 1959 apply to the disputed land notwithstanding its location within municipal limits.

53. The petitioners have failed to establish sufficient grounds for holding that the impugned orders are liable to be set aside solely on account of the classification of the disputed land as Nazul land, the absence of a challenge by the original transferor during his lifetime, or the objection concerning non-joinder of parties.

54. The contention relating to delay and laches has also been examined in the light of the principles laid down by the Supreme Court. Although the lapse of several decades is a material consideration, the petitioners have not established, on the material placed before this Court, a sufficient basis for granting the reliefs sought in the present writ petition.

55. In view of the foregoing discussion, this Court finds no sufficient ground to interfere with the impugned order dated 05.10.2021 passed by the Commissioner, Bastar Division, Jagdalpur, affirming the order dated 09.07.2020 passed by the Collector, Kondagaon.

56. Accordingly, the writ petition being bereft of merits deserves to be and is accordingly **dismissed.**

Sd/-

(Amitendra Kishore Prasad)
Judge

Avinash

HEAD NOTE:-

(WPC No. 161 of 2022)

Where the statutory provisions impose restrictions on the transfer of land belonging to a member of a notified aboriginal tribe in favour of a person not belonging to such tribe, compliance with the mandatory statutory requirements, including obtaining prior permission of the competent authority, must be independently established. Registration of the sale deed and absence of any challenge by the original transferor cannot dispense with compliance with such statutory restrictions.