

HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION (227) No. 908 of 2012

PETITIONER

Smt. Ramkunwar

V E R S U S

RESPONDENTS

Banshilal & Others

Revisioners

(Writ Petition under Article 227 of the Constitution of India)

Single Bench : Hon'ble Shri Satish K. Agnihotri, J.

Present :- Shri H.S. Patel, Advocate for the petitioner.

Shri V.V.S. Murthy, Dy. Advocate General with Shri Ajit Singh, Panel
Lawyer for the State.

ORDER

(Passed on this 11th day of April, 2013)

1. Heard learned counsel for the parties.
2. By this petition, the petitioner seeks to challenge the legality and validity of the order dated 17-10-2012 (Annexure – P/1) passed by the Commissioner, Bilaspur Division, Bilaspur, in revision No.463/A-23/2007-2008 (*Shri Banshilal & Another v. Smt. Ramkunwar & others*).
3. The indisputable facts, in brief, are that the land bearing khasra Nos.759 area 0.32 acres, khasra No.760 area 1.00 acre and khasra No.761/2 area 0.49 acre total area 1.81 acres was given by the grandmother of the revisionists (respondents No.1 & 2 herein) namely; Bundri Bai to the father of the defendants No.1 & 2 (petitioner & respondent No.3 herein) namely; Bhagauram for earning his livelihood, however, the said Bhagauram in a fraudulent manner mutated the name in his favour and thereafter, he sold the land in question to the husband of the petitioner namely; Reshamlal Chandra.

4. Being aggrieved, Ganeshi Bai (mother of the respondents No.1 & 2 herein), daughter of Munshir Gond & Bundri Bai filed an application under Section 170-B of the MP/CG Land Revenue Code, 1959 (for short “the Code, 1959”) before the Sub Divisional Officer, Sakti (for short “the SDO”), which was registered as revenue case No.338/A-23/96-97 (*Ganeshi Bai v. Ramkunwar*). The SDO by order dated 11-9-1997 (Annexure – P/6) held that the transaction of the land in question as void and the same be restored to the legal heirs of the earlier owner, who happen to be the aboriginal tribe.
5. Thereafter, an appeal was preferred before the Additional Collector, being appeal No.377/A-23/1996-97 (*Ramkunwar v. Ganeshi Bai & Others*). In appeal, the Additional Collector by order dated 29-1-1998 (Annexure – P/7) set aside the order of SDO holding that the transfer between the tribal and non-tribal was before the date of 2-10-1959 and, as such, the land transfer dated 10-4-1943 was bona fide. Against the order passed by the Additional Collector, the legal heirs of Ganeshi Bai preferred revision before the Commissioner. The Commissioner, by the impugned order dated 17-10-2012, allowed the revision by maintaining the order passed by the SDO and set aside the order passed by the Additional Collector. Thus, this petition.
6. Shri Patel, learned counsel for the petitioner, submits that since the sale deed was executed on 10-4-1943 and the transaction was made before the Code, 1959 came into existence, in the light of decision of the High Court of Madhya Pradesh rendered in *Balvant Rai v. Collector, Jhabua & Others*¹, the provisions of Section 170-B of the Code, 1959 is not attracted.

¹ 1988 RN 169

7. On the other hand, Shri Murthy, learned Dy. Adv. General appearing with Shri Ajit Singh, learned Panel Lawyer for the State, submits that the provisions of Section 170-B of the Code, 1959 does not indicate that the land, which has been transferred prior to coming into force of the Code, 1959, the provisions of Section 170-B will not be attracted. The judgment rendered in *Balvant Rai* (supra) is not based on proper merit and construction of the provisions of Section 170-B.
8. The question of law involved is whether the transaction of transfer of land belonging to the aboriginal tribe prior to coming into force of the provisions of the Code, 1959 cannot be examined under the provisions of Section 170-B of the Code, 1959 ?
9. Section 170-B of the Code, 1959 was introduced by MP Act No.15 of 1980 (w.e.f. 24-10-1980), which reads as under :

“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 Madhya Pradesh Land Revenue Code (Amendment) Act, 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.

[2-A] If a Gram Sabha in the Scheduled area referred to in clause (1) of Article 244 of the Constitution finds that any person, other than a member of an aboriginal

tribe, is in possession of any land of a Bhumiswami belonging to an aboriginal tribe, without any lawful authority, it shall restore the possession of such land to that person to whom it originally belonged and if that person is dead to his legal heirs.

Provided that if the Gram Sabha fails to restore the possession of such land, it shall refer the matter to the Sub-Divisional Officer, who shall restore the possession of such land within three months from the date of receipt of the reference.

(3) On receipt of the information under sub-section (1), the Sub-Divisional Officer shall make such enquiry as may be deemed necessary about all such transactions of transfer and if he finds that the member of aboriginal tribe has been defrauded of his legitimate right he shall declare the transaction null and void and pass an order revesting the agricultural land in the transferer and, if he is dead, in his legal heirs.

(3). On receipt of the information under sub-section (1), the Sub-Divisional Officer shall make such enquiry as may be necessary about all such transactions of transfer and if he finds that the member of aboriginal tribe has been defrauded of his legitimate right he shall declare the transaction null and void and -

(a) Where no building or structure has been erected on the agricultural land prior to such finding pass an order revesting the agricultural land in the transferer and, if he be dead, in his legal heirs.

(b) Where any building or structure has been erected on the agricultural land prior to such finding pass, he shall fix the price of such land in accordance with the principles laid down for fixation of price of land in the Land Acquisition Act, 1894 (No.1 of 1894) and order the person referred to in sub-section (1) to pay to the transferer the difference, if any, between the price so fixed and that price actually paid to the transferor;

Provided that where building or structure has been erected after 1st day of January, 1984 the provisions of clause (b) above shall not apply.

Provided further that fixation of price under clause (b) shall be with reference to the price on the date of registration of the case before the Sub-Divisional Officer.””

10. In *Balvant Rai* (supra), it was held that Section 170-A of the Code, 1959 is attracted in case of acquisition of Bhumiswami rights under Section 190 (2-A). Provisions of Section 170-A of the Code, 1959 are not attracted in the facts of the case and, as such, it was held that provisions Section 170-A would not be attracted in case of transfer between the period commencing on 2-10-1959 and ending on 29-11-1976. Thus, in *Balvant Rai* (supra) is not applicable to the facts of the present case, as the same was considered under the provisions of Section 170-A.
11. On bare perusal of the provisions, which is unambiguous and admits no other interpretation, it is the intention of the legislature that any person who is in possession of a land, which originally belong to an aboriginal tribe, be examined and if under sub-section (3) it is found that member of aboriginal tribe has been defrauded of his legitimate right, the transaction be declared null and void and revesting the agricultural land in the transferer and if he is dead, in his legal heirs, will be passed.
12. In the case on hand, the Additional Collector committed error in holding that the provisions of Section 170-B of the Code, 1959 are not attracted in case of the transfer of land prior to 2-10-1959. Transfer under Section 190 of the Code, 1959 is not the criteria for applying the provisions of Section 170-B of the Code, 1959. All transfers prior to 2-10-1959 when the Code, 1959 came into force have to be examined under Section 170-B of the Code, 1959.
13. The Commissioner has rightly considered all the aspects of the matter and set aside the order passed by the Additional College. It was found, on examination, that the original tribe was defrauded while transferring his land to the non-tribe and, as such, no interference is warranted. The order passed by the Commissioner is just & proper.

14. As a sequel, the writ petition, *sans substratum*, is liable to be and is hereby dismissed. No order asto costs.

Gowri

J u d g e