(2012) 04 CHH CK 0027

In the Chhattisgarh High Court

Case No : W P No 1734 of 1998

Bharatram and Another — APPELLANT

Vs

Ishwar Prasad and Others — RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:
Madhya Pradesh Land Revenue Code, 1959 — Section 170B, 49(3)

Citation : (2012) 04 CHH CK 0027

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Division Bench

Advocate : Sanjay K. Agrawal and Mr. Sourabh Sharma, for the Appellant; Avinash K. Mishra Panel Lawyer for the State, for the Respondent

Final Decision : Allowed

Judgement

Hon''ble Shri Prashant Kumar Mishra, J.—Petitioners have challenged the order passed by the Commissioner, Bilaspur Division on 27/02/1998 (Annexure P/3) whereby while deciding the revision petition preferred by the applicants an order adverse to their interest has been passed directing reversion of land in favour of original holder Ishwar and Samelal, the respondent No. 1 & 2. According to learned counsel for the petitioners the Commissioner is not empowered to call for fresh report from the Revenue Inspector or consider any new material or evidence while hearing revision petition and decide the matter considering the any such fresh evidence without giving any opportunity to rebut the new evidence/material.

2. Learned State counsel has supported the impugned order.

3. The subject land belonged to Ishwar and Samelal. They sold the land in favour of one Amolwati, a tribal, and thereafter the said Amolmati alienated the land in favour of pe;titoiners and these facts are not in dispute. After coming into force of Chhattisgarh Land Revenue Code Amendment Act, 1980 report was submitted by the concerned Patwari and notices u/s 170-B of the Chhattisgarh Land

Revenue Code were issued to the petitioners as well as to non-triblas Duberam and Putlu. The Sub Divisional Officer, by its order dated 22/09/1994 concluded that the petitioners are in possession of land and since they are tribals provision contained in Section 170-B is not attracted. Ishwar and Samelal preferred an appeal before the Additional Collector and the said appellate authority partly allowed the appeal and remanded the matter directing the Sub Divisional Officer to record statement of Amolmati and inquest witnesses Saliram Kanwar, Mangalram, Chunnilal Rathiya, Ishwar Prasad Sidar, Ramlal Sidar, Jailal Kotwar as also the owners of neighbouring agricultural fields and decide the matter afresh on merits after obtaining record of the sale-deeds and documents.

4. The order of remand by Additional Collector was challenged in Revision by the present petitioners before Commissioner Bilaspur Division. The revisional authority called for a report from the Revenue Inspector after making spot inspection. The concerned Revenue Inspector made spot inspection and submitted a report to the effect that on Khasra No. 12/1 Narayan S/o Putlu Kalar is in possession and similarly Khasra No. 12/2 is occupied by Duberam S/o Libhuram. Accepting the report Commissioner concluded that since these two persons are non-tribals, there is violation of the provision contained in Section 170-B of M.P. Land Revenue Code and directed for reversion of land in favour of Ishwar and Samelal.

5. Section 50 of the Chhattisgarh Land Revenue Code confers revisory power on the Commissioner. The said provision does not state that the revisional authority may direct for any further enquiry or additional evidence to be taken or may itself takes such additional evidence like the powers conferred upon appellate authority u/s 49(3) of the Code. Thus, power to take additional evidence conferred on the appellate authority is not available to the revisional authority under the Land Revenue Code.

6. In view of the limited nature of jurisdiction available with the revisional authority obtainment of report from Revenue Inspector and acting upon it is not justified and the same has occasioned error of jurisdiction in the impugned order. It further appears that the sale-deeds executed between the parties and the revenue records are probably not available and it is for this reason the appellate authority of Additional Collector directed the Sub Divisional Officer to record statement of parties, inquest witnesses, owners of adjoining land, obtain copies of sale-deeds and thereafter pass fresh order. This order of remand should not have been interfered with by the Commissioner because any order passed without recording evidence of witnesses and obtaining sufficient documents is not in accordance with law and the Additional Collector had rightly remanded the matter to the Sub Divisional Officer for fresh enquiry.

7. In view of the above, while setting aside the impugned order of Commissioner, Bilaspur Division it is directed that the Sub Divisional Officer (Revenue) Kharsiya, District Raigarh shall pass fresh orders after making fresh enquiry in terms of the remand order passed by the Additional Collector, Raigarh on 20/02/1997 in

Revenue Appeal Case No. 25/A-23/94.95 village Sonbarsa, Tahsil Kharsiya, District Raigarh. With the above observation, the writ petition stands allowed.

