

(2013) 02 CHH CK 0007
In the Chhattisgarh High Court
Case No : W.P. No. 3916/2000

Jagdeesh Choudhary

APPELLANT

Vs

The Board of Revenue, Additional Commissioner, Additional
Collector and Sub-Divisional Officer

RESPONDENT

Date of Decision : 06-02-2013

Acts Referred:

Citation : AIR 2013 Chh 60 : (2013) 2 BLJ 341 : (2013) 1 CGBCLJ 472 : (2013) 2 CGLJ 363 : (2013) 2 MPHT 74 : (2013) 4 MPJR 28

Hon'ble Judges : T.P. Sharma, J

Bench : Single Bench

Judgement

T.P. Sharma, J.—By this petition the petitioner seeks to invoke supervisory jurisdiction in terms of Article 227 of the Constitution of India against the order dated 17.11.1999 (Annexure P-1) passed by the Additional Commissioner, Raipur Division, Raipur in Case No. 102/A-23/94-95 affirming the order dated 15.9.1989 passed by the Additional Collector, Raipur in Revenue Appeal No. 453/A-23/1988-89 and the order dated 18.5.1999 passed by the Sub-Divisional Officer (R), Mahasamund in Revenue Case No. 158/A-23/1987-88 whereby the Sub-Divisional Officer has directed for return of land to the respondent No. 5 on the ground that the petitioner has failed to notify the transaction u/s 170B of the C.G. Land Revenue Code, 1959 (for short "the Code"). Heard learned counsel for the parties and perused the orders impugned.

2. Learned counsel for the petitioner submits that after revision no other remedy is available to the petitioner and the revenue Courts concerned have committed illegality by ignoring the provisions of Section 170B of the Code and the affidavit submitted by the respondent No. 5 before them that his father has sold the land to the petitioner after obtaining necessary permission from the Collector u/s 165(6) of the Code and thereby caused irreparable loss and prejudice to the petitioner. Therefore, supervisory jurisdiction is required to be invoked in terms of Article 227 of the Constitution of India.

3. Learned counsel for the respondents No. 2 to 4 has formally opposed the writ petition. Whereas, learned counsel for respondent No. 5 has not submitted anything.

4. As per order dated 18.5.1999 (Annexure P-3) passed by the Sub-Divisional Officer (R), Mahasamund, competent authority u/s 170B of the Code has passed the order of return of land against the petitioner only on the ground that the transaction has not been notified to the competent authority under sub-section (1) of Section 170B of the Code. As per order impugned, the competent authority i.e. Sub-Divisional Officer (R), Mahasamund, has received the information from the Patwari under sub-section (3) of the Section 170B of the Code and thereafter it has conducted inquiry and passed the order. Undisputedly, the Sub-Divisional Officer has initiated proceedings under sub-section (3) of Section 170B of the Code.

5. Section 170B of the Code reads thus;-

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 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 (67) 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.

1. 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.

2. On receipt of 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 revisiting the agricultural land in the transferer and, if he is dead, in his legal heirs.

(3). On receipt of 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 revisiting the agricultural land in the transferer and, if he is 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 transferer;

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.

6. The Legislature has empowered the Sub-Divisional Officer to pass an order of return of land to the original owner, member of aboriginal tribe, under sub-sections (1) & (2) of Section 170B of the Code in case the person in possession of the land originally owned by the member of aboriginal tribe, failed to notify the same to the Sub-Divisional Officer. As per intent of the legislature, under sub-section (3) of Section 170B of the Code the Sub-Divisional Officer is also empowered to enquire into the matter on the basis of information received inter alia the Sub-Divisional Officer is under obligation to hold an enquiry under sub-section (3) of Section 170B of the Code before passing final order on the basis of information received.

7. As per order impugned the Sub-Divisional Officer has initiated inquiry under sub-section (3) but exercised the jurisdiction and passed the order under sub-section (1) & (2) of Section 170B of the Code. Considering the fault on the part of the petitioner, which has been explained by the petitioner, by passing the order impugned without holding any inquiry in terms of sub-section (3), the Sub-Divisional Officer has committed an illegality and failed to follow the procedure prescribed and also failed to exercise the jurisdiction vested in it. The said order has been affirmed by the first appellate Court and the revisional Court i.e. the Collector and the Commissioner, and thereby all the aforesaid revenue

authorities have committed an illegality resulting into miscarriage of justice. Right vested upon the person on the basis of an legal document cannot be brushed without following the procedure prescribed but in the present case aforesaid revenue authorities have failed to exercise their jurisdiction in accordance with law and to follow the procedure prescribed. Therefore, all the orders impugned are not sustainable under the law and require interference in exercise of supervisory jurisdiction in terms of Article 227 of the Constitution of India.

8. Consequently, the writ petition is allowed and all the orders impugned are hereby set aside. However, the respondent No. 5 is at liberty to make fresh application before the competent authority in case of any grievance to him. No order as to costs. Certified copy as per rules.