

(2018) 01 CHH CK 0001
In the Chhattisgarh High Court
Case No : 3139 of 2017

Mohan Lal Sahu & Ors

APPELLANT

Vs

State of Chhattisgarh & Ors

RESPONDENT

Date of Decision : 30-01-2018

Acts Referred:

Constitution of India, Article 300-A -
Chhattisgarh Land Revenue Code, 1959, Section 110, Section 109, Section 70, Section 98

Citation : (2018) 01 CHH CK 0001

Hon'ble Judges : Sanjay K. Agrawal

Bench : Single Bench

Advocate : C.R. Sahu, Ankur Agrawal, Arun Sao, Ratan Pusty

Final Decision : Allowed

Judgement

1. Since common question of law and fact is involved in these two writ petitions, they are heard together and are being disposed of by this common order. {For the sake of convenience, W.P.(C) No.3139/2017 (Mohan Lal Sahu v. State of Chhattisgarh and others) is taken as lead case and facts involved therein are dealt with herein-below: -}

2. The petitioner herein purchased a piece of agricultural land at Village Raipura, Distt. Raipur bearing Khasra No.644/56, area 0.011 hectare (0.3 decimal), thereafter, he made an application under Sections 109 and 110 of the Chhattisgarh Land Revenue Code, 1959 (for short, "the Code") for mutation of his land in the revenue records. Learned Additional Tahsildar, Raipur, by its order dated 4-7-2017, rejected the application relying upon the memo dated 11-6-2014 issued by the State of Chhattisgarh and the circular dated 11-12-2014 issued by the Collector, Raipur, stating inter alia that the petitioner being purchaser of land less than 0.5 decimal, mutation cannot be done in his favour. Feeling aggrieved against the said order, this writ petition has been filed stating inter alia that such a rejection by the Additional Tahsildar is without

jurisdiction and without authority of law.

3. This Court issued notices and directed the Collector, Raipur to file his own affidavit with regard to the circular dated 11-12-2014 and the memo dated 11-6-2014 issued by the State of Chhattisgarh, which has been filed stating inter alia that in view of bar contained in the rules framed under Sections 70 and 98 of the Code, formation of subdivision with an area less than 0.05 acre of land is prohibited by issuing appropriate guidelines.

4. No rejoinder has been filed.

5. Mr. C.R. Sahu, learned counsel for the petitioner, would submit that the order of the learned Additional Tahsildar is bad in law, as the Transfer of Property Act does not bar such a transfer of less than 0.05 acre of land and Sections 109 and 110 of the Code permit mutation of such an area of land in favour of the petitioner. Apart from that, the statutory provisions contained in Sections 109 and 110 of the Code cannot be curtailed by executive instructions issued by the State Government dated 11-6-2014 and by the Collector dated 11-12-2014. Therefore, the order of the Additional Tahsildar be set aside and it be directed that mutation be done in favour of the petitioner.

6. Mr. Arun Sao, learned Deputy Advocate General and Mr. Ratan Pusty, learned Government Advocate appearing for the State/ respondents, would vehemently oppose the submissions of learned counsel for the petitioner and submit that once the rule framed under Sections 70 and 98 of the Code bars the formation of sub-division with an area less than 0.05 acre of land for the purpose of survey and for the purpose of fixing the standard rates of assessment, mutation is also barred and the circular rightly directs barring mutation of land if a particular person purchases land less than 0.05 acre, as such, the writ petition deserves to be dismissed.

7. I have heard learned counsel for the parties and also considered the rival submissions made herein-above and went through the record with utmost circumspection.

8. Admittedly, the petitioner has purchased agricultural land less than 0.05 acre. The Transfer of Property Act, 1882 does not prohibit such a transfer as such, the title is validly passed in favour of the purchaser of such land. The Chhattisgarh Land Revenue Code, 1959 which is a procedural law has been enacted as an Act to consolidate and amend the law relating to land revenue, the powers of Revenue Officers, rights and liabilities of holders of land from the State Government agricultural tenures and other matters relating to land and the liabilities incidental thereto in Chhattisgarh. Section 109 of the Code provides for acquisition of rights to be reported which states as under:- "109. Acquisition of rights to be reported.-(1) Any person lawfully acquiring any right or interest in land shall report orally or in writing his acquisition of such right to the patwari within six months from the date of such acquisition, and the patwari shall at once give a written acknowledgment for such report to the person making it in the

prescribed form:

Provided that when the person acquiring the right is a minor or is otherwise disqualified, his guardian or other person having charge of his property shall make the report to the patwari.

(2) Any such person as is referred to in sub-section (1) may also report in writing his acquisition of such rights to the Tahsildar within six months from the date of such acquisition."

9. A careful perusal of the aforesaid provision would reveal that a person lawfully acquiring any right or interest in land is required to report orally or in writing about his acquisition of such right to the Patwari of the concerned circle within six months from the date of such acquisition or he may under sub-section (2) also report in writing about his acquisition of such rights to the Tahsildar within six months from the date of such acquisition. Thereafter, Section 110 of the Code comes in which provides for mutation of acquisition of right in Field Book, which states as under: - "110. Mutation of acquisition of right in Field Book and other relevant land records.-(1) The Patwari shall enter into a register prescribed for the purpose every acquisition of right reported to him under section 109 or which comes to his notice from intimation from Gram Panchayat or any other source.

(2) The Patwari shall intimate all the reports regarding acquisition of right received by him under subsection (1) to the Tahsildar within thirty days of the receipt thereof by him.

(3) On receipt of the intimation from patwari under sub-section (2), the Tahsildar shall have it published in the village in the prescribed manner and shall also give written intimation thereof to all person appearing to him to be interested in the mutation and also to such other person and authorities as may be prescribed.

(4) The Tahsildar shall after affording reasonable opportunity of being heard to the persons interested and after making such further enquiry, as he may deem necessary, make necessary entry in the Field Book and other relevant land records."

10. The aforesaid provision clearly provides that the Tahsildar after providing a reasonable opportunity of being heard and after making such further enquiry, as he may deem necessary, make necessary entry in the Field Book and other relevant land records. Thus, right of mutation is a statutory right conferred by the provisions of the Code to the person lawfully acquiring title over the subject land.

11. Not only this, rules have also been framed for mutations in the Khasra and these rules are known as the Rules Regarding Record of Rights framed on 10-6-1965. Part-IV of these Rules provides for Mutations in the Khasra. Rules 24 to 33 of the Rules Regarding Record of Rights are relevant and state as under: - "IV-Mutations in the Khasra

24. The Patwari shall maintain a register in Form E in which he shall enter villagewise every change in ownership of land due to transfers by registered deeds, inheritance, survivorship, bequest or lease reported to him under Section 109 or which come to his notice from intimations received from Gram Panchayat or from any other source.

25. A copy of the entries made in the register during a month shall be sent by the Patwari at the end of each month to the Tahsildar. If no entry is made in any month in the register blank report shall be sent by the Patwari to the Tahsildar.

26. Certification of the entries in the mutation register shall be made at the Headquarters of the Gram Panchayat or at any other convenient centre in the Gram Panchayat area fixed for this purpose by the Tahsildar.

27. On receipt of the intimations from the Patwaris, or from the Registering Officers under Section 112, the Tahsildar shall have the intimations duly published by beat of drum in the village to which they relate and shall get a copy of the intimation posted at the chaupal, gudi or any other place of public resort in the village and shall also send a copy thereof to the Gram Panchayat of the village. He shall also give written intimation of the same to all persons appearing to him to be interested in the mutation.

28. On a date and place to be specified in the intimation the Tahsildar shall hear the parties concerned and certify the mutation entry, provided that, where a party remains absent after having been duly served with a notice, the entry will be certified ex parte.

29. The Tahsildar shall read out the entry in the presence of the parties interested, and where the correctness of the entry is admitted, shall record such admission in the mutation register, and add an endorsement under his signature that the entry has been duly certified and also indicate the modified entry that will be made in the khasra as a result of the certification.

30. All original documents produced before the Tahsildar shall be endorsed by him and returned to the parties as soon as orders have been passed.

31. The changes shall first be entered in the register of mutations villagewise. Where there are no disputes, the mutations shall be certified in the register itself by the Tahsildar, and suitable entries made in the Rasid Bahis. If there are disputes, separate cases shall be started for each person after taking extract from the register for starting cases separately. The Tahsildar shall give a certificate in the mutation register that entries in the Rasid Bahi have been made according to mutations sanctioned in undisputed cases and separate cases have been started for disputed entries.

32. Disputes shall be decided summarily by the Tahsildar on the basis of title and not possession. Any transfer by a person whose name is not recorded in the Khasra shall not be admitted in mutation by the Tahsildar. The order shall contain the names of the parties and witnesses and a brief summary of the evidence

produced by either side together with the Tahsildar findings thereon.

33. When the disputed cases are decided, the entries in the khasra and the Rasid Bahi shall be got corrected by the Tahsildar. The Tahsildar shall give a certificate in the mutation register that entries in the Rasid Bahi and khasra have been made according to the decisions in the disputed cases."

12. It is well settled law that mutation entries are only for the purpose of enabling the State to collect the land revenue from person concerned and it does not confer any title to the land whose name is recorded in the records.

13. In the matter of State of U.P. v. Amar Singh etc., AIR 1997 SC 1534 the Supreme Court has held as under: - "5. ... It is settled law that mutation entries are only for the purpose of enabling the State to collect the land revenue from the person in possession but it does not confer any title to the land. The title would be derived from an instrument executed by the owner in favour of an alienee as per Stamp Act and registered under Registration Act. The alienees being sons and daughters-in-law, the tenure-holder remained to be the owner and holder of the land. ..."

14. Similar proposition has been held by the Supreme Court in the matters of Balwant Singh and another etc. v. Daulat Singh (dead) by L.Rs. and others, AIR 1997 SC 2719 Calcutta Municipal Corpn. and others v. M/s. Shrey Mercantile Pvt. Ltd. and others, AIR 2005 SC 1879 R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P. Temple and another, AIR 2003 SC 4548 and recently in the matter of Union of India and others v. Vasavi Cooperative Housing Society Limited and others, (2014) 2 SCC 269 as such, mutation does not confer any right, title and interest over the suit property. Mutation only gives right to the State or the Corporation, as the case may be, to collect land revenue.

15. In the present case, the petitioner's application has been rejected by the Additional Tahsildar relying upon two circulars, first one is issued by the State of Chhattisgarh on 11-6-2014 which states as under: - "VERNACULAR MATTER OMITTED"

16. A focused perusal of the aforesaid circular clearly states that the State Government while issuing the circular has simply directed that the persons involved in illegal plotting shall be dealt with strictly and stringent measures should be taken against those persons and appropriate action be taken against them under the provisions of the Chhattisgarh Land Revenue Code, 1959 and the Chhattisgarh Panchayat Raj Adhiniyam, 1993, but no such direction of withholding or rejecting mutation of acquiring title over less than 0.05 acre land has been issued by the State Government by circular dated 11-6-2014.

17. Thereafter, the circular dated 11-12-2014 has been issued by the then Collector, Raipur, paragraphs 2 and 3 of which are relevant and are extracted herein-above: - "VERNACULAR MATTER OMITTED"

18. In this circular, the Collector, Raipur has directed that in case of transfer of

land less than 5 decimal, the dispute of division of survey and the dispute of demarcation are on higher side, therefore, it has been directed that mutation be not done.

19. Sections 109 and 110 of the Code is statutory power of the competent revenue authority i.e. the Tahsildar upon reporting of acquisition of right by the person concerned and statutory right of purchaser of land to get his land mutated. Mere increase in number of complaints received by the State Government regarding division of survey or enhancement of demarcation disputes cannot be ground to bar mutation which the person lawfully acquiring title over land is otherwise entitled by virtue of the provisions contained in Sections 109 and 110 of the Code, especially when the Transfer of Property Act does not prohibit such transfer. However, if the revenue officers are flooded with the disputes relating to division of survey number and demarcation disputes, they have to devise ways and means to deal with those cases effectively and that cannot be made a ground to stall the mutation under Sections 109 and 100 of the Code which is legally and statutorily permissible. In absence of mutation in the revenue record, the purchaser of land is deprived of his / her right to further alienate the property in case of medical need and for other purposes i.e. marriage etc., which cannot be ignored by revenue authorities. There is no such bar in the Land Revenue Code. Definitely, the rules made under Section 70 of the Code regarding division of survey numbers into sub-divisions and apportionment of assessment of survey number bar further sub-division with an area of less than 0.05 acre, but that again cannot be made a ground to stall the mutation which the land holder or purchaser is legally entitled under the provisions of the Code. Similar is the proposition with the rules made under Section 98 of the Code regarding assessment and reassessment of land in urban areas which also bars any sub-division with an area of less than 0.05 acre.

20. A Division Bench of the M.P. High Court in the matter of Kailash and others v. Sub-Registrar of Assurances, Indore and another, AIR 1985 MP 12 dealing with similar proposition has held that statutory authorities in discharge of statutory duties have to exclude such instructions, which have no foundation in law and held as under: - "16. ... The respondent No.1 while purporting to act in the discharge of his statutory duties has to exclude such instructions, which have no foundation in law. We are, therefore, constrained to hold that the respondent No.1, while refusing to register the document on the basis of some instructions from the Additional Collector, was certainly not acting in accordance with law. There could be no executive instructions contrary to law nor can such instructions have any overriding effect on the statutory provisions of law. It is painful to note that in fact of this Court's direction the appellate order dated 25-2-1993 (in M.P.No.59/84) should seek justification for refusal to register the document on the basis of such direction from the Additional Collector."

21. Article 300-A of the Constitution of India states as under: - "300A. Persons not to be deprived of property save by authority of law.-No person shall be

deprived of his property save by authority of law."

22. Thus, right to property is a constitutional right, though right to property is no longer a fundamental right and constitutional protection continues inasmuch as without authority of law, a person cannot be deprived of his property. Right to property is a human right as well as a constitutional right. (See Indian Handcrafts Emporium and others v. Union of India and others, (2003) 7 SCC 589). Thus, the right to acquire, hold and dispose of the property has ceased to be a fundamental right under the Constitution of India, but it continues to be a legal or constitutional right that no person can be deprived of his property save and except by and in accordance with law.

23. The Supreme Court in the matter of Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Coke & Chemicals Ltd. and others, (2007) 8 SCC 705 has held that right of property is now considered to be not only a constitutional right but also a human as well as a legal right. It was observed as under:- "54. The Declaration of Human Rights of 26-8-1789 enunciates under Article 17:

"17. Since the right to property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it and just and prior indemnity has been paid".

Further under Article 17 of the Universal Declaration of Human Rights, 1948 dated 10-12- 1948, adopted in the United Nations General Assembly Resolution it is stated that : (i) Everyone has the right to own property alone as well as in association with others. (ii) No one shall be arbitrarily deprived of his property.

55. Earlier human rights were existed to the claim of individuals right to health, right to livelihood, right to shelter and employment etc. but now human rights have started gaining a multifaceted approach. Now property rights are also incorporated within the definition of human rights. Even claim of adverse possession has to be read in consonance with human rights. As President John Adams (1797-1801) put it:

"Property is surely a right of mankind as real as liberty."

Adding,

"The moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence".

56. Property, while ceasing to be a fundamental right would, however, be given express recognition as a legal right, provisions being made that no person shall be deprived of his property save in accordance with law. "

24. Similarly, the Supreme Court in the matter of DLF Qutab Enclave Complex Educational Charitable Trust Vs. State of Haryana and others, (2003) 5 SCC 622 has held that right to transfer the land is incidental to right of ownership of the land and cannot be taken away without authority of law. It was observed as

under:- "54. In these cases, we are not concerned with the question as to whether the provisions of the Transfer of Property Act are applicable in the State of Haryana or not. Ownership of land jurisprudentially involves a bundle of rights. One of such rights is the right to transfer. Such a right, being incidental to the right of ownership, having regard to Article 300-A of the Constitution of India, cannot be taken away save by authority of law."

25. The Supreme Court in the matter of Jilubhai Nanbhai Kachar and others v. State of Gujarat and another, 1995 Supp (1) SCC 596 has held that right to property under Article 300-A of the Constitution of India is subject to State's restraints and regulation. It was observed as under:- "42. Property in legal sense means an aggregate of rights which are guaranteed and protected by law. It extends to every species of valuable right and interest, more particularly, ownership and exclusive right to a thing, the right to dispose of the thing in every legal way, to possess it, to use it and to exclude every one else from interfering with it. The dominion or indefinite right of use or disposition which one may lawfully exercise over particular things or subjects is called property. The exclusive right of possessing, enjoying, and disposing of a thing is property in legal parameters. Therefore, the word "property" connotes everything which is subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate or status. Property, therefore, within the constitutional protection, denotes group of rights inhering citizen's relation to physical thing, as right to possess, use and dispose of it in accordance with law. In Ramanatha Aiyar's The Law Lexicon, Reprint Ed. 1987 at p. 1031, it is stated that the property is the most comprehensive of all terms which can be used, inasmuch as it is indicative and descriptive of every possible interest which the party can have. The term property has a most extensive signification, and, according to its legal definition, consists in free use, enjoyment, and disposition by a person of all his acquisitions, without any control or diminution, save only by the laws of the land, in Dwarkadas Srinivas's case this court gave extended meaning to the word property. Mines, minerals and quarries are property attracting Article 300-A."

26. In the matter of Bishambhar Dayal Chandra Mohan and others v. State of Uttar Pradesh and others, (1982) 1 SCC 39 the Supreme Court has held that the "law" within the meaning of Article 300-A of the Constitution of India would mean the law enacted by competent legislature. It was observed as under:- "41. There still remains the question whether the seizure of wheat amounts to deprivation of property without the authority of law. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State Government cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. Article 162, as is clear from the opening words, is subject to other provisions of the Constitution. It is, therefore, necessarily subject to Article 300-A. The word "law"

in the context of Article 300-A must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order, having the force of law, that is positive or State-made law. The decisions in *Wazir Chand v. State of H.P.* [(1955) 1 SCR 408] and *Bishan Das v. State of Punjab* [(1962) 2 SCR 69] and others are an authority for the proposition that an illegal seizure amounts to deprivation of property without the authority of law. In *Wazir Chand's* case (supra), the police in India seized goods in possession of the petitioner in India at the instance of the police of the State of Jammu and Kashmir. The seizure was admittedly not under the authority of law, inasmuch as it was not under the orders of any Magistrate; nor was it under Sections 51, 96, 98 and 165 of the Code of Criminal Procedure, 1898, since no report of any offence committed by the petitioner was made to the police in India, and the Indian police were not authorised to make any investigation. In those circumstances, the Court held that the seizure was not with the authority of law and amounted to an infringement of the fundamental right under Art. 31(1). This view was reaffirmed in *Bishan Das's* case (supra)."

27. The word "law" under Article 300-A of the Constitution of India would mean a validly enacted law meaning thereby a just, fair and reasonable law. (See *Delhi Airtech Services (P) Ltd. v. State of U.P.*, (2011) 7 SCC 354).

28. The Supreme Court in the matter of *Tukaram Kana Joshi v. MIDC*, (2013) 1 SCC 353 has held that right to property is not only constitutional right, but also human right and held as under:- "6. The appellants were deprived of their immovable property in 1964, when Article 31 of the Constitution was still intact and the right to property was a part of fundamental rights under Article 19 of the Constitution. It is pertinent to note that even after the Right to Property seized to be a Fundamental Right, taking possession of or acquiring the property of a citizen most certainly tantamounts to deprivation and such deprivation can take place only in accordance with the "law", as the said word has specifically been used in Article 300-A of the Constitution. Such deprivation can be only by resorting to a procedure prescribed by a statute. The same cannot be done by way of executive fiat or order or administration caprice. In *Jilubhai Nanbhai Khachar v. State of Gujarat* [1995 Supp (1) SCC 596 : AIR 1995 SC 142], it has been held as follows: (SCC p. 627, para 48)

"48. In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There is no deprivation without due sanction of law.

Deprivation by any other mode is not acquisition or taking possession under Article 300- A. In other words, if there is no law, there is no deprivation."

7. The right to property is now considered to be, not only a constitutional or a statutory right, but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right

to shelter and employment etc. Now however, human rights are gaining an even greater multifaceted dimension. The right to property is considered, very much to be a part of such new dimension. (Vide: Lachhman Dass v. Jagat Ram, (2007) 10 SCC 448 Amarjit Singh v. State of Punjab, (2010) 10 SCC 43 State of M.P. v. Narmada Bachao Andolan, (2011) 7 SCC 639 State of Haryana v. Mukesh Kumar, (2011) 10 SCC 404 & Ors. AIR 2012 SC 559 and Delhi Airtech Services Pvt. Ltd. (supra)."

29. Thus, in the light of principles of law laid down by the Supreme Court in the aforesaid cases and in view of the discussion held herein- above, I have no hesitation to hold that the petitioner's application for mutation under Sections 109 and 110 of the Code cannot be rejected relying upon the circulars dated 11-6-2014 and 11-12-2014 issued by the respective authorities, as the petitioners having purchased the property by registered sale deed and in accordance with the provisions of the Transfer of Property Act, 1882, and taking into consideration that right to property is a constitutional right as well as human right and in absence of any provision barring such mutation in his favour under the provisions of the Chhattisgarh Land Revenue Code, 1959, the names of the petitioners deserve to be entered in the revenue record in accordance with the provisions contained in Sections 109 and 110 of the Code after due consideration.

30. As a fallout and consequence of the aforesaid discussion, the orders passed by the learned Additional Tahsildar / Tahsildar declining mutation of the petitioners' names in the revenue record, are hereby set aside. The said authority is directed to consider and mutate the names of the petitioners in the revenue record, in accordance with law.

31. The writ petitions are allowed to extent indicated herein-above leaving the parties to bear their own cost(s).