(2012) 01 CHH CK 0039

In the Chhattisgarh High Court

Case No : Writ Petition C. No. 7012 of 2008

Moharlal Sahu and Ram Kumar APPELLANT

Vs

State of Chhattisgarh and Others RESPONDENT

Date of Decision : 16-01-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Land Revenue Code, 1959 — Section 165(6), 165(9), 170B, 50

Citation : (2012) 01 CHH CK 0039

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hon''ble Mr. T.P. Sharma, J.

(Writ Petition under Article 226 of the Constitution of India)

1. By this writ petition under Article 226 of the Constitution of India the petitioners have challenged the legality and propriety of the order dated 24.10.2008 passerby the Board of Revenue in Review Case No. RW/11/R-A-23/65/2007, whereby the Board of Revenue while reviewing its own order dated 23.8.2007 passed in Revision CaseNo.R.N./11/R-A-23/986/2006 has reversed the order passed by the Additional Collector, Manendragarh in Revenue CaseNo.5/A-23/2005-06 u/s 50 of the Chhattisgarh Land Revenue Code, 1959 (for short ''the Code'') remanding the case to Sub Divisional Officer, Manendragarh and has restored the order passed by the Sub Divisional Officer, Manendragarh dated 25.3.2006, whereby the Sub Divisional Officer, Manendragarh has directed for return of possession of the land to Sumaru Singh and legal representatives of Vishwanath and Hiralal, who have mortgaged the land to co-operative society.

2. As per undisputed facts of the case, Vishwanath and his brother have mortgaged the disputed property to Co-operative Society, Bhalour and have

taken the loan, but they have failed to pay the loan, then recovery officer appointed under C.G. Co-operative Societies Act, 1960 (for short ''the Act, 1960'') has sold the land to one Sudhakar Parode on 24.5.1974, Sudhakar Parode has sold the land to Ravel Singh and Ravel Singh has sold the land to present petitionerNo.1. Proceeding u/s 170-B of the Code has been initiated by the Sub Divisional Officer, Manendragarh and the Sub Divisional Officer has directed for return of possession to Sumaru Singh and legal representatives of Vishwanath and Hiralal. Same was challenged before the Additional Collector, Manendragarh who has reversed the order passed by the Sub Divisional Officer, Manendragarh, which was challenged before the Board of Revenue and the Board of Revenue by its review order reversed the order passed by the Additional Collector, Manendragarh.

3. I have heard learned counsel for the parties, perused the order impugned, order passed by the Additional Collector, Manendragarh, order passed by the Sub Divisional Officer, Manendragarh and other documents filed on behalf of the petitioners.

4. Learned counsel for the petitioners submits that Vishwanath or his brother or their legal representatives have never objected any such mortgage or sell, they have not filed any application before the Sub Divisional Officer, Manendragarh for return of possession of the land, therefore, the Sub Divisional Officer was not competent to pass any order for return of possession of the land to the persons who have not claimed. Learned counsel further submits that land was mortgaged to co-operative society and co-operative society was competent to sell such land without any permission u/s 165(6) of the Code. Learned counsel also submits that Section 165(9-a) and (9-b) of the Code authorizes co-operative society or bank to transfer mortgage property in recovery of the loan, therefore, by transferring or alienating the property co-operative society has not committed any illegality and in absence of any claim on behalf of Vishwanth or his brother or their legal representatives, proceeding before Sub Divisional Officer, Manendragarh was not maintainable.

5. On the other hand, learned counsel for respondents No. 1 and 3 to 6 opposes the petition and submits that the lands old in violation of Section 165(6) of the Code was fraudulent transaction and no any application or objection was required at the instance of a member of aboriginal tribe and it was duty of the Sub Divisional Officer to hold an inquiry and pass the order for return of possession.

6. Mr. Shailendra Shukla, learned counsel for respondentsNo.7 to 9 submits that co-operative society was not competent to sale any land or interest therein to a person not belonging to such tribe in accordance with sub-section (5) of Section 410-A of the Act, 1960.

7. As per undisputed facts of the case, Vishwnath and Samaru were members of aboriginal tribe, they have mortgaged the land to Co-operative Society, Bhalour. Co-operative Society has sold the land in recovery of loan to one Sudhakar

Parode, who has sold the land to Ravel Singh and Ravel Singh has sold the land to present petitioner No.1.These all purchasers were not members of such aboriginal tribe i.e. Gond. In accordance with Section 165(9-a) and (9-b) of the Code Bhumiswami is not authorized to prevent from transferring any right of his land to secure payment of an advance made to him by commercial Bank or by Dandakaranya Development Authority. Section 165(9-a) and (9-b) of the Code reads as under:-

165. Rights of transfer.

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) xxx xxx xxx

(6) xxx xxx xxx

(7) xxx xxx xxx

(8) xxx xxx xxx

(9) xxx xxx xxx

(9-a) Nothing in this section shall prevent a Bhumiswami who is a displaced person from transferring any right in his land to secure payment of an advance made to him by the Dandakaranya Development Authority or shall affect the right of that Authority to sell such right for the recovery of such advance.

Explanation.-In this sub-section "displaced person" means a person displaced from the territories now comprised in East Pakistan who is resettled in Madhya Pradesh on or after the1st day of April, 1957, under any scheme of resettlement of displaced persons sanctioned by the Central Government or the State Government.

(9-b) Nothing in this section shall prevent a Bhumiswami from transferring any right in his land to secure payment of an advance made to him by a Commercial Bank for purpose of agriculture or improvement of holding or shall affect the right of any such Bank to sell such right for the recovery of such advance.

(10) xxx xxx xxx

8. Rider has been created in transferring the mortgage property by way of sell by co-operative society belonging to a member of aboriginal tribe to a person not belonging to such tribe under sub-section (5) of Section 41-A of the Act, 1960 which reads as under:

41-A. Right to society to acquire and dispose of immovable property.

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) Nothing in this section shall be construed to empower the society to sell any land or interest therein of a person belonging to an aboriginal tribe which has been declared to bean aboriginal tribe by the State Government by notification under sub-section (6) of section 165 of the Chhattisgarh Land Revenue Code, 1959 (No. 20 of 1959) to a person not belonging to such tribe.

(6) xxx xxx xxx

9. Admittedly, in the present case, co-operative society was not competent to sell the property or interest therein belonging to an aboriginal tribe to a person not belonging to such tribe, but co-operative society has sold the property mortgaged to it by a member of aboriginal tribe to a person not belonging to such tribe in violation of sub-section (5) of Section 41-Aof the Act, 1960. Therefore, first sale deed and all subsequent sale deeds were illegal and executed by the persons/authority not competent to execute it in terms of sub-section (5) of Section 41-A of the Act, 1960. Rider has been created in the Act, 1960 upon the co-operative societies. Sub-section (9-a) and (9-b) of Section 165 of the Code will not come into way of sub-section (5) of Section 41-A of the Act, 1960 and co-operative society was not competent to sell the aforesaid land in terms of Sub-section (9-a) and (9-b) of Section 165 of the Code. Therefore, the Sub Divisional Officer, Manendragarh has rightly directed for return of possession of the land and by maintaining such order the Board of Revenue has not committed any illegality warranting interference in exercise of revisional jurisdiction.

10. Consequently, the writ petition being devoid of merit is liable to be dismissed and it is hereby dismissed. No order as to costs.