(2010) 03 CHH CK 0033

In the Chhattisgarh High Court

Case No : Writ Petition No. 329 of 1997

Sitaram (Dead) Through Lrs. Smt. Pyari Bai and Others — APPELLANT

Vs

Sub-Divisional Officer, Balod and Others — RESPONDENT

Date of Decision : 16-03-2010

Acts Referred:
Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Land Revenue Code, 1959 — Section 165(6), 170B

Citation : (2011) 4 CGLJ 138

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Division Bench

Advocate : Ashish Surana, for the Appellant; Sangeeta Mishra, Panel Lawyer, for the State/ respondents No. 1 to 3, Shri Anil Kumar Pandey, Advocate, for the Respondent No. 5, for the Respondent

Final Decision : Dismissed

Judgement

Hon''ble Shri Prashant Kumar Mishra, J.—In the present petition under Article 226/227 of the Constitution of India, the petitioners, who are the legal representatives of the original petitioner Sitaram, are seeking quashment of the orders passed by the Sub-Divisional Officer, Balod on 30-4-1994 (Annexure A-7), the order passed by the Additional Collector, Durg on 9-1-1995 (Annexure A-9) and the order passed by the Additional Commissioner, Raipur Division, Raipur on 30-3-1996 (Annexure A-10). The original order (Annexure A-7) was passed by the Sub-Divisional Officer (Revenue), Balod in exercise of powers u/s 170-B of the Chhattisgarh Land Revenue Code, 1959 (henceforth ''the Code, 1959'') and the said order has been affirmed by the Additional Collector in appeal and by the Additional Commissioner in revision. As a consequence of these orders, the subject lands bearing Khasra No.101/2 area 6 acres and Khasra No. 101/5 area.2.66 acres situated at Village Godri, Patwari Halka No.35, Tahsil Balod, District Durg has been ordered to be reverted to the original tribal owner Sunderlal (respondent No.5), who shall be referred elsewhere in this order as ''the tribal holder''.

2. The case of the original petitioner Sitaram is that the subject lands originally belonged to the tribal holder, who sold Khasra No.101/2 to one Bhagiram Gond on 7-4-1972. The said Bhagiram obtained permission for sale of this land to the petitioner as required u/s 165 (6) of the Code, 1959 on 2-9-1974 (Annexure A-2) and thereafter the said Bhagiram executed a sale-deed of Khasra No.101/2 in favour of the petitioner on 4-9-1974. The other land bearing Khasra No.101/5 was purchased by one Hiraman, respondent No.6 herein, who was also a tribe and, thus, there was no requirement for him to seek permission from the Collector u/s 165 (6) of the Code, 1959, however, since the petitioner has extended financial assistance to respondent No.6 Hiraman in purchasing the land of Khasra No.101/5, the petitioner used to cultivate this land also with the consent of Hiraman as mentioned in paragraph 5.5 of the writ petition.

3. The tribal holder moved an application before the Sub-Divisional Officer (Revenue) u/s 170-B of the Code, 1959 in which an enquiry was conducted and after recording statements of the witnesses, the Sub-Divisional Officer (Revenue), vide his order dated 25-8-1984 (Annexure A-4), found that the transaction in relation to both the khasra numbers are fraudulent transfers inasmuch as the original transactions are Benami and the petitioner Sitaram was in actual cultivating possession. The matter was taken up in appeal by the present petitioner Sitaram along with his brothers and respondent No.6 Hiraman before the Collector, Durg, who passed an order of remand on 17-5-1985 (Annexure A-5) and directed the Sub-Divisional Officer (Revenue) to conduct fresh enquiry and thereafter pass final orders. Against this order of remand, the tribal holder preferred a revision before the Additional Commissioner, Raipur Division, Raipur which was dismissed vide order dated 21-11-1986 (Annexure A-6).

4. The Sub-Divisional Officer (Revenue), thereafter, proceeded to conduct fresh enquiry and on the basis of evidence adduced and material submitted by the parties in course of enquiry and after giving complete opportunity of hearing to the parties, came to the conclusion that the subject transactions are, in fact, Benami transactions and that the sale-deed between the tribal holder and Bhagiram as well as the sale-deed between the tribal holder and Hiraman were, in fact, executed for the benefit of the petitioner Sitaram, who is a non-tribal holder and as such the said transactions are fraudulent transactions covered by the legal implication of Section 170-B of the Code, 1959 and as such the said transactions were declared void and the lands were reverted to the tribal holder. The Sub-Divisional Officer (Revenue) directed that since non-tribal holder Sitaram has constructed a house on 0.02 hectare land from Khasra No. 101/ 5, the order of reversion shall not affect the said area on which he has constructed a house. The Sub-Divisional Officer (Revenue) has discussed all the statements made by the parties in course of enquiry and after thread bare appreciation recorded the finding of fraud.

5. The present petitioner Sitaram as well as Hiraman, the purchaser of Khasra

No. 101/5 preferred an appeal before the Additional Collector, Durg. The said appeal was dismissed vide order dated 9-1-1995 (Annexure A-9). The present non-tribal holder Sitaram preferred a revision against the order dated 9-1-1995 (Annexure A-9) passed by the Additional Collector, Durg on the appeal filed by Hiraman. The said revision was dismissed by the Additional Commissioner, Raipur Division, Raipur on 30-3-1996 (Annexure A-10).

6. Learned counsel for the petitioners has argued that the orders passed by the revenue authorities are bad in law, without jurisdiction and on the basis of perverse findings. He submits that when once the order was passed by the Sub-Divisional Officer (Revenue) in Case No.322-A/23/81-82 and Case No.325-A/23/81-82 (Case numbers as mentioned in Annexure A-5), permission granted by the Collector for review of previous order was bad in law and that the petitioner Sitaram has lawfully purchased the property and his possession is in accordance with law.

7. Respondents No.1 to 3 have filed their return and learned Panel Lawyer appearing on their behalf has supported the orders passed by the revenue authorities by submitting that the concurrent orders passed by the revenue authorities in favour of the tribal holder do not call for any interference.

8. Learned counsel for respondent No.5, i.e., the tribal holder has argued that the orders passed by the revenue authorities are based on appreciation of evidence after due enquiry in which all the parties were granted fullest opportunity and that it is proved that the petitioner Sitaram, the non-tribal holder is a Benami purchaser of the land and as such the subject transactions are result of fraud committed upon him and as such no interference is called for. Learned counsel for respondent No.5 has submitted statements of respondent No.6 Hiraman, the petitioner Sitaram and respondent No.5/the tribal holder Sunderlal.

9. Having appreciated the arguments advanced by learned counsel appearing for the parties and after going through the documents filed by the parties, this Court is not impressed with the arguments advanced by learned counsel for the petitioners. It is to be seen that when the impugned order Annexure A-7 was passed by the Sub-Divisional Officer (Revenue) on 30-4-1994 after holding fresh enquiry on remand, he admitted that the land bearing Khasra No. 101/5 was purchased by him in the name of tribal Hiraman, respondent No.6. Similarly, Bhagiram has admitted in his statement that though sale-deed dated 7-4-1972 was executed in his favour by the tribal holder yet in fact it was purchased by Sitaram and it is he who is in cultivating possession of the land bearing Khasra No. 101/2. He admitted that he was a servant of Sitaram. One Manglu, son of Sukhdeo, who is the attesting witness of the sale-deed, has also stated that it was Sitaram, who had purchased the land in the name of Bhagiram and Hiraman. It has been mentioned in the order passed by the Sub-Divisional Officer (Revenue) that another witness Hinchharam has supported the plea of Benami transaction and that the said witness was not cross-examined by the petitioner

Sitaram even after the petitioner was granted opportunity and his application seeking permission to cross-examine this witness was allowed by the Sub-Divisional Officer (Revenue). Thus, the order passed by the Sub-Divisional Officer (Revenue) is a detailed and reasoned order and the fact that the subject transactions were Benami has been fully established. The said finding is a pure finding of fact, which has subsequently been confirmed in appeal by the Collector and in revision by the Additional Commissioner.

10. Plea of learned counsel for the petitioners that the subsequent orders are barred under the principle of res judicata in view of the order Annexure A-3 passed by the Sub-Divisional Officer (Revenue) on 15-7-1982, do not hold ground because in the appeal preferred by the petitioner Sitaram before the Collector, Durg against the second order of Sub-Divisional Officer (Revenue) (first order being the order of reversion, Annexure A-4), the Collector allowed the appeal of the petitioner and remanded the matter for fresh enquiry. It appears from this order of remand by the Collector, Durg (Annexure A-5) that the first order passed by the Sub-Divisional Officer (Revenue) on 15-7-1982, whereby the proceedings were closed was reviewed and recalled and thereafter the order of remand was passed. The petitioner Sitaram did not challenge this order of remand or reopening of the case before the appellate or revisional authority and instead participated in the enquiry held by the Sub-Divisional Officer (Revenue) after the remand. Thus, after participation in the enquiry before the Sub-Divisional Officer (Revenue) after remand and by not preferring any appeal or revision against the order of Collector, Durg (Annexure A-5), whereby the matter was reopened and remanded, the petitioner Sitaram is estopped from raising a plea of absence of jurisdiction of the authority concerned for deciding the matter afresh. Learned counsel for the petitioners has relied on an order passed by the High Court of Madhya Pradesh in Writ Petition No. 4475/1997 (Ravi Narayan Vs. State of M.P. and others) in support of his plea of res judicata. The said judgment is distinguishable on facts inasmuch as in the present case after passing of the first order by the Sub-Divisional Officer (Revenue) in 1982, the tribal holder/ respondent No.5 has immediately moved the application in 1983, thus, the review of the earlier order is within reasonable time, as held by the Hon''ble Supreme Court in The State of Gujarat Vs. Patil Raghav Natha and Others, . Further, the order passed by the Collector permitting review is a detailed and reasoned order. Even otherwise, the petitioner Sitaram has not challenged the order whereby review was ordered by filing an appeal or revision and instead he participated in the enquiry.

11. Though the petitioner has preferred this petition, both under Articles 226 and 227 of the Constitution of India yet in essence the present petition seeks to challenge the orders passed by the revenue authorities, which is essentially a petition under Article 227 of the Constitution of India. This Court, in exercise of powers under Article 227 of the Constitution of India, has very limited jurisdiction to unsettle the findings of fact and to interfere with the concurrent orders passed by the subordinate Courts and tribunals. Scope of interference in a petition under

Article 227 of the Constitution of India has been settled by the Hon''ble Supreme Court in Ms. Celina Coelho Pereira and Others Vs. Ulhas Mahabaleshwar Kholkar and Others, .

12. In view of the fact that the finding regarding the subject transactions being Benami is a pure finding of fact based on appreciation of evidence and the said finding having been affirmed concurrently by the Additional Collector in appeal and the Additional Commissioner in revision, this Court does not find any ground for interference in this writ petition.

13. As a result, the instant writ petition fails and is hereby dismissed. There shall be no order as to costs.

