
(2010) 09 CHH CK 0025
In the Chhattisgarh High Court
Case No : Writ Petition No. 1111 of 2002

Usha Mirani and Another

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Madhya Pradesh Co-operative Societies Act, 1960 — Section 41A(5)
Madhya Pradesh Land Revenue Code, 1959 — Section 165(7), 170B

Citation : (2011) 1 CG.L.R.W. 66 : (2011) 1 MPJR 89

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.K. Mishra, J.

Heard finally.

The petitioners have called in question the order passed by the Additional Commissioner, Bilaspur on 1-7-5-2002 (Annexure P-1) rejecting his revision preferred against the order passed by the Additional collector, Raigarh on 10-9-1999, which, in turn, had arisen out of an order passed by the Sub-Divisional Officer (Revenue), Kharsiya on 15-2-1999. The orders have been passed by the revenue authorities in exercise of powers u/s 170B of the Chhattisgarh Land Revenue Code, 1959 (henceforth "the Code"), The subject land has been directed to be reverted to respondent No.5 who is the widow of the original tribal holder Parmeshwar Kanwar.

The original tribal holder had obtained loan from Seva Sahakari Samiti, Botalda and on account of his failure to repay the loan amount, the land was auctioned in course of recovery proceedings.

One Omprakash the subject land admeasuring 4.90 acres in the auction held on 22-4-1979 and a sale certificate (Ex.P-6) was issued on 25-6-1976. The property was sold to Omprakash for Rs.12,000/-. The recovery officer executed the sale-

deed in favour of the auction purchaser on 20-9-1976. The said Omprakash thereafter executed a sale-deed in favour of the present petitioners on 19-6-1991 (Annexure P-8).

Respondent No.5 moved the application u/s 170B of the Code on 21-5-1998 alleging commission of fraud in the sale proceeding and also stating that the auction is contrary to the provisions contained in Section 165(7) of the Code. The Sub-Divisional Officer, by his order dated 15-2-1999, allowed the application after finding that the subject transaction is in violation of Section 165(7) of the Code as also in violation of Section 41-A(5) of the Chhattisgarh Co-operative Societies Act, 1960 (henceforth "the Act"). The order passed by the Sub-Divisional Officer has been affirmed by the Additional collector and the additional Commissioner.

Learned counsel for the petitioners has argued that the husband of respondent No.5 has himself agreed for sale of his land in auction during the execution proceeding and that the application was moved after 22 years from the date of auction. It is also submitted by him that the petitioners are the subsequent purchasers and the provisions contained in Section 170B of the Code are not applicable against them. Learned counsel would also submit that after purchase of the land, the petitioners have developed it and have raised some construction over it, therefore, the provisions contained in Section 170B of the Code are not applicable.

Learned counsel for respondent No.5 would submit that the present is a case of fraud committed on the member of aboriginal tribe and the same is in violation of the provisions contained in the Code and the Act/Learned counsel would further submit that the auction itself was illegal, therefore, in view of the proved facts, that the land belonging to tribal has been sold to a non-tribal, the provisions of Section 170B read with Section 165(7)(b) of the Code would be squarely attracted.

Section 165(7) of the Code reads thus:

165 Rights of transfer-xxxxxx xxxxx xxxx

(7) Notwithstanding anything contained in sub-section (1) or in any other law for the time being in force-

(a) xxxxx

(b) no land comprised in a holding of a Bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe under subsection (6) shall be liable to be attached or sold in execution of any decree or order;

(c)xxxxx:.

Provided that nothing in this sub-section shall apply where a charge has been created on the land by a mortgage.

Admittedly, the land sold in auction belonged to the original tribal holder Parmeshwar Kanwar, therefore, by virtue of the above-quoted provision contained in Section 165(7)(b) of the Code, auction of the land belonging to a tribal holder was not permissible in law. Thus, the Sub-Divisional Officer has not committed any illegality by holding that the subject transaction is hit by section 165(7) of the Code and the appellate and the revisional orders passed by the Additional Collector-and the Additional commissioner, respectively, affirming the order of the Sub-Divisional Officer, are also in accordance with law.

Once it is found that the auction itself was contrary to the provisions of law, the provisions contained in Section 170B of the Code would be attracted because the non-tribal member has come into possession of the land belonging to a tribal in violation of the provisions of law. The fact that the petitioners have not purchased it from the tribal holder, but have purchased the same in an auction would not make much difference because the attachment and auction of the subject land was in violation of Section 165(7)(b) of the code.

In the matter of Mangilal and another v. Chand Mohammad, 1994 Revenue Nirnaya 35, a Single Bench of High Court of Madhya Pradesh has taken a similar view.

The argument raised by learned counsel for the petitioners that since there was no objection by the holder of the land and also that the petitioners being subsequent purchasers, the provisions contained in Section 170B of the Code would not be attracted, has no substance because in view of express bar u/s 165(7) of the code, the consent of the tribal holder, even if treated as correct, would not make the provision of law inoperative. It is settled law that there is no estoppel against operation of law.

In the matter of Shiva v. Anandram and others, 1989 Revenue Nirnaya, 247, a Single Bench of High Court of Madhya Pradesh has held that in a case where provision contained in Section 165(7) of the Code has been violated, failure of the holder of the land to raise objection in executing court does not operate as constructive res judicata and such objection can be raised even in a collateral proceeding. In Shiva v. Anandram and others (supra), the High Court of Madhya Pradesh has relied on the Full Bench judgment of the High Court of Madhya Pradesh in the matter of Ramsingh v. Shankerlal, 1972 JIJ 275.

The Courts below have not committed any illegality by directing reversion of the land in favour of the tribal holder, i.e., respondent No.5.

The instant writ petition has no substance, which deserves to be and is hereby dismissed. There shall be no order as to costs.