

(2015) 04 CHH CK 0006
In the Chhattisgarh High Court
Case No : Writ Petition No. 275 of 2003

Vidyadhar Aghariya

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Chhattisgarh Land Revenue Code, 1959 — Section 50
Constitution of India, 1950 — Article 227
Madhya Pradesh Land Revenue Code, 1959 — Section 165(6), 170-B, 44(2)

Citation : (2015) 04 CHH CK 0006

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : H.S. Patel, Counsel, for the Appellant; Sangharsh Pandey, Deputy Govt. Advocate, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Sanjay K. Agrawal, J.—Invoking supervisory jurisdiction of this court under Article 227 of the Constitution of India, the petitioner herein calls in question the legality, validity and correctness of order dated 13.05.2002 passed by the Additional Commissioner, Raipur division in case No. 190/A-23/99-2000.

2. Facts in brief necessary to find out as to whether petitioner is entitled for the reliefs claimed in this writ petition, are as under:--

"2.1 Kapoor Singh/non-applicant No. 2 before the trial court sold the subject land to the petitioner/Vidyadhar Aghariya by registered sale deed dated 03.11.1971 area 6.42 Acres, thereafter, his daughter Smt. Khurai Bai/respondent No. 3 (who died during the pendency of this writ petition and her legal representatives were brought on record) filed an application before the Sub Divisional Officer, Saraipali (for short, S.D.O.) for reversion of land under Section 170-B of MP/CG Land Revenue Code, 1959 (for short, the Code).

2.2 The Sub-Divisional Officer (Revenue), by its order dated 16.01.1980 held

that respondent No. 3/Smt. Khurai Bai failed to prove that she is a member of Scheduled Tribe, and as such provisions under Section 165(6) as well as under Section 170-B of Code is not attracted at all.

2.3 Smt. Khurai Bai/respondent No. 3 filed an appeal under Section 44(2) of the Code before the Collector, Raipur. The Collector, Raipur, by its order dated 21.10.1980 allowed the appeal and remanded the matter to S.D.O. (Revenue) to verify and find out as to whether smt. Khurai Bai is a member belonging to aboriginal tribe so as to maintain an application under 170-B of Code and thereafter to proceed in accordance with law.

2.4 The S.D.O., by order dated 16.02.2000 held that respondent No. 3/Smt. Khurai Bai is a member of Scheduled Tribe and as such there is violation of provisions of Section 170-B of the Code and as such directed the land to be reverted in her favour and passed order therein.

2.5 The petitioner herein preferred an appeal before the Collector, Mahasaund. The Collector, Mahasamund, by its order dated 24.07.2000 allowed the appeal holding that inquiry has not been made with regard to tribal status of Khurai Bai/respondent No. 3 in accordance with law, and again remanded the matter to S.D.O. for making inquiry and thereafter to pass appropriate orders in accordance with law after hearing the parties.

2.6 Against the said order, Khurai Bai filed a revision before the Commissioner, Raipur division. The Commissioner, by order impugned allowed the revision holding that it has been proved that Khurai Bai is a member of Scheduled Tribe, and as such, there is no need to make any further inquiry and set-aside the order of Collector and restored the order of S.D.O. dated 16.02.2000."

3. The petitioner/purchaser has filed this writ petition under Article 227 of the Constitution of India stating inter alia that the learned Commissioner has committed grave error in granting the revision ignoring the fact that S.D.O. while complying the order of Collector, neither made any inquiry with regard to caste status of Khurai Bai nor given an opportunity to the petitioner to adduce evidence as verification of caste is a serious matter and advantage given to the members of Scheduled Caste and Scheduled Tribe cannot be extended to the person not belonging to Scheduled Tribe, and therefore, order of Commissioner be set aside and order of Collector dated 24.07.2000 be restored.

4. Shri Raghvendra Pradhan, learned counsel appearing for the private respondents vehemently opposing the submission of petitioner would submit that the Commissioner is absolutely justified in holding that there is no need to make further inquiry and it has rightly been held that Khurai Bai/respondent No. 3 is member of aboriginal tribe and the land in dispute has rightly been reverted by the S.D.O. in his favour and as such writ petition deserves to be dismissed.

5. The State counsel has not taken any stand with regard to validity of the order impugned as the Additional Commissioner has exercised the revisional

jurisdiction vested it by law under Section 50 of Chhattisgarh Revenue Code, 1959.

6. I have heard the learned counsel appearing for the parties, given thoughtful consideration to the submissions made therein and also gone through the records with utmost circumspection.

7. The short question that falls for consideration is as to whether the learned Additional Commissioner is justified in holding that deceased Khurai Bai/respondent No. 3 is a member of schedule tribe?

8. It is well settled law that caste scrutiny of a person is a serious matter and as such the same is required to be inquired thoroughly so that a person not belonging to Scheduled Tribe may not take advantage of benefits and privilege admissible to the members of Scheduled Tribe. It appears that the order of Collector directing the S.D.O. to make inquiry with regard to caste of Khurai Bai was not given proper consideration by the S.D.O. as no proper inquiry was made and straightway on the basis of some documents/evidence it has been held that deceased Khurai Bai/respondent No. 3 is a member of Scheduled Tribe which has been set aside by the Collector in its appellate jurisdiction.

9. The Supreme Court in the matter of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, AIR 1995 SC 94 : (1994) 5 JT 488 : (1994) 3 SCALE 935 : (1994) 6 SCC 241 : (1994) 3 SCR 50 Supp formulated scheme for verification of tribal status and held that any application for verification of her tribal status as a scheduled tribe should be carried out by such committee and issued direction for issuance of social caste certificate, their scrutiny. The directions issued are as under:--

"13. ... (1) The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such Officer rather than at the officer, taluk or mandal level.

(4) All the State Governments shall constitute a Committee of three officers, namely, (i) an Additional or Joint Secretary or any officer higher in rank of the Director of the Department concerned, (ii) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (iii) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

(5) Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in overall charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually

resides or in case of migration to the town or city, the place from which he originally hailed from. The Vigilance Officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste, etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deities, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. by the castes or tribes or tribal communities concerned, etc.

(6) The Director concerned, on receipt of the report from the Vigilance Officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the Director concerned should issue a show-cause notice supplying a copy of the report of the Vigilance Officer to the candidate by a registered post with acknowledgment due or through the head of the educational institution concerned in which the candidate is studying or employed.....

* * *

(9) The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant."

10. Quite recently following the principles laid down in *Madhuri Patil (supra)* in the matter of *Collector, Bilaspur Vs. Ajit P.K. Jogi and Others*, (2011) 11 SCALE 526, the Supreme Court has held that the verification of validity of the caste certificate and the determination of the caste status should therefore be done only by scrutiny committee constituted as per direction in *Madhuri Patil* or in terms of in statute made by appropriate government in that behalf.

11. Reverting back to the factual score of the case; it would appear that the Additional Commissioner in its impugned order did not consider the matter in its proper prospective. He failed to consider whether the caste status of the *Khurai Bai* has to be examined by High Level Caste Scrutiny Committee as constituted in terms of *Madhuri Patil's* case (*supra*) and also did not look in to the order-sheet recorded by the Sub-Divisional Officer after remand which clearly indicates that no proper opportunity of hearing was afforded to the petitioner to lead evidence with regard to the tribal caste status of *Smt. Khurai Bai*, as such the impugned order of the Additional Commissioner setting aside the order of Collector and restoring the order of Sub-Divisional Officer holding *Khurai Bai* to be member of

Schedule Tribe is hereby set aside.

12. As a fallout and consequence of aforesaid discussion, the petition is allowed. Order impugned dated 13.05.2002 passed by the Additional Commissioner is quashed and the order of Collector dated 24.07.2000 is hereby restored with a modification that caste status of respondent No. 3/or her legal representative shall be verified by the Caste Scrutiny Committee and the S.D.O., Saraipali, is directed to send to matter to the High Level Caste Scrutiny Committee constituted by State Government as per directions in Madhuri Patil's case for determination of the caste status of Smt. Khurai Bai/her legal representative and upon receipt of the finding of the Caste Scrutiny Committee, the S.D.O. will decide the revenue case finally in accordance with law.

13. Accordingly, writ petition is allowed to the extent indicated hereinabove. No cost(s).