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Court : Madhya Pradesh

Decided On : Aug-04-2003

Reported in : AIR2004MP38; 2003(4)MPHT490; 2003(4)MPLJ290

Judge : A.K. Shrivastava, J.

Acts : Madhya Pradesh Revenue Code, 1959 - Sections 165(6) 170B, 170B(1), 170B(2) and 170B(3); [Constitution of India](#) - Article 227

Appeal No. : Writ Petition No. 1213/95

Appellant : Pema

Respondent : Galiya and ors.

Advocate for Def. : B.K. Gupta, Adv. and ;Sailendra Mukhati, Adv. for Respondent Nos. 3 to 6

Advocate for Pet/Ap. : S.G. Gokhale, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

A.K. Shrivastava, J.

1. By this petition filed under Article 227 of the [Constitution of India](#), the petitioner has challenged the pregnability of the order passed by revenue authorities viz., Collector, Commissioner and Board of Revenue whereby the alleged transaction took place between the petitioner and one Galiya whose legal representatives are respondent Nos. 1 (a) to (e), was held to be illegal.

2. Sans unnecessary details the facts lie in a narrow compass that on 15-2-71 vide registered sale deed, Galiya sold his agriculture land in question (hereinafter referred to as the 'disputed land') to the petitioner Pema. It has not been disputed that the seller as well as the buyer are Adiwasis meaning thereby they are the member of Aboriginal Tribe as envisaged under Section 170-B of the M.P. Land Revenue Code, 1959 (hereinafter referred to as the 'Code').

3. In the year 1970-80 a Committee was formed in which the Revenue Inspector of the Circle was one of the member and that Committee examined different cases and ultimately, so far as this case is concerned, the Revenue Inspector gave his report indicating therein that though the land was sold by Galiya to the petitioner-Pema but the land was being possessed by Narwarsingh who is not a member of Aboriginal Tribe. On the basis of the report of the Revenue Inspector, the S.D.O. took cognizance of the matter and initiated the enquiry as contemplated under Section 170-B of the Code. The S.D.O. after holding the enquiry found that the transaction which took place was a valid transaction and is not hit by Section 170-B of the Code and it was further held that Narwarsingh is not in possession of the land in question and even if he is in possession, Galiya by taking recourse to Section 250 of the Code may obtain possession from him. The order passed by Sub-Divisional Officer is Annexure P-3.

4. Feeling aggrieved by the order passed by Sub-Divisional Officer the legal representatives of the Galiya, as he died during the pendency of the litigation, filed an appeal before the Collector, Jhabua who on 14-7-86 allowed the appeal holding that the disputed land which has been sold, indeed was a benami transaction and in fact the land was sold to Narwarsingh who is admittedly not an Aboriginal Farmer. On these reasonings, the transaction which was clothed by the said sale deed was held to be hit by Section 170-B of the Code.

5. The petitioner Pema thereafter filed a revision before the Additional Commissioner which was rejected vide Annexure P-5 and the order was upheld by the Board of Revenue vide Annexure P-6 and in this manner the petitioner-Pema has filed this petition under Article 227 of the [Constitution of India](#) assailing the order passed by Collector, Commissioner and the Board of Revenue.

6. In this petition Shri Gokhale, learned Counsel for the petitioner has raised two contentions before me. His first contention is that the findings are based on no evidence, second submission of his is that the authorities hadnot discussed the evidence and hence, the impugned order passed by them can not be allowed to remain stand in the eye of law. In nut shell his submissions that the findings rendered by the Revenue Authorities are perverse.

7. Combating the aforesaid submission of Shri Gokhale it has been contended by Shri B.K. Gupta, learned Counsel for the legal representatives of Galiya that Revenue authorities viz., the Collector and Commissioner and ultimately the Board of Revenue which is the final authority of the Revenue Courts, on the basis of evidence adduced by the parties came to hold that the transaction was a benami transaction and Nanvarsingh respondent No. 2 is in possession and hence, the Authorities did not err in holding that the transaction was hit by Section 170-B of the Code. It has been further contended by Shri Gupta that the copy of the evidence has not been filed by the petitioner in this Court so as to demonstrate that which part of the evidence was not discussed. According to him the burden of proof was on the shoulders of Pema which he had not discharged. It has also been put forth by the learned Counsel that the sale deed has not been proved by Pema and it has not been proved by him that the consideration was paid and possession was also delivered to him. On these basis it has been strongly urged by the learned Counsel that the Revenue Authorities rightly passed the order in favour of Galiya. The findings as are based on appreciation of evidence and does not require any interference under Article 227 of the [Constitution of India](#).

8. After having heard the learned Counsel for the parties, I am of the view, that the petition deserves to be dismissed. My attention has been drawn to the orders passed by Collector (Annexure P-I), Additional Commissioner (Annexure P-5) and

the Board of Revenue (Annexure P-6). All these authorities, on the basis of the evidence, categorically held that the disputed land is being possessed by Nanvarsingh respondent No. 2 though the sale deed (Annexure P-2) dated 15-2-71 has been executed by Galiya in favour of Pema. Indeed the transaction was a Benami transaction and was hit by Section 170-B of the Code.

9. Even otherwise also if a person belonging to the community of Aboriginal Tribe who is in possession of the agricultural land transfers his right to any person, even to a person belonging to community of Aboriginal Tribe, is required to obtain permission as envisaged under Sub-section (6) of Section 165 of the Code because under Section 170-B the words 'every person' would also include 'Aboriginal Tribe'.

10. For better understanding it shall be apposite to rewrite Section 170-B which is as under :--

170-B. Reversion of land of members of Aboriginal Tribe which was transferred by fraud.-- (1) Every person who lib the date for commencement of Madhya Pradesh Land Revenue Code (Amendment) Act, 1980 (hereinafter referred to as the 'Amendment Act of 1980') is in possession of agricultural land which belonged to a member of a tribe which has been declared to be an Aboriginal Tribe under Sub-section (6) of Section 165 between the period commencing on the 2nd October, 1959 and ending on the date of the commencement of Amendment Act,1980 shall, within (two years) of such commencement notify theSub-Divisional Officer in such form and in such manner as maybe prescribed, all the information as to how he has come inpossession of such land.

(2) If any person fails to notify the information as required by Sub-section (1) within the period specified therein it shall be presumed that such person has been in possession of the agricultural land without any lawful authority and the agricultural land shall, on the expiration of the period aforesaid revert to the person to whom it originally belonged and if that person be dead, to his legal heirs.

(2-A) If a Gram Sabha in the scheduled area referred to in clause (1) of Article 244 of the Constitution finds that any person, other than a member of an Aboriginal

Tribe, is in possession of any land of a Bhumiswami belonging to an Aboriginal Tribe, without any lawful authority, it shall restore the possession of such land to that person to whom it originally belonged and if that person is dead to his legal heirs :

Provided that if the Gram Sabha fails to restore the possession of such land, it shall refer the matter to the Sub-Divisional Officer, who shall restore the possession to such land within three months from the date of receipt of the reference.

(3) On receipt of the information under Sub-section (1), the Sub-Divisional Officer shall make such enquiry as may be deemed necessary about all such transactions of transfer and if he finds that the member of Aboriginal Tribe has been defrauded of his legitimate right he shall declare the transaction null and void and pass an order revesting the agricultural land in the transferer and, if he is dead, in his legal heirs.

(3) On receipt of the information under Sub-section (1) the Sub-Divisional Officer shall make such enquiry as may be necessary about all such transactions of transfer and if he finds that the member of Aboriginal Tribe has been defrauded of his legitimate right he shall declare the transaction null and void and--

(a) where no building or structure has been erected on the agricultural land prior to such finding pass an order revesting the agricultural land in the transferer and if he be dead, in his legal heirs,

(b) where any building or structure has been erected on the agricultural land prior to such finding, he shall fix the price of such land in accordance with the principles laid down for fixation of price of land in the Land Acquisition Act, 1894 (No. 1 of 1894) and order the person referred to in Sub-section (1) to pay to the transferer the difference, if any, between the price so fixed and the price actually paid to the transferer:

Provided that where the building or structure has been erected after the 1st day of January, 1984 the provisions of clause (b) above shall not apply:

Provided further that fixation of price under clause (b) shall be with reference to the price on the date of registration of the case before the Sub-Divisional Officer.

11. On going through the above said provision it becomes luminously clear that a person who is in possession of the agricultural land which belong to a member of a Tribe who has been declared to be an Aboriginal Tribe under Sub-section (6) of Section 165 within period of 2-10-1959 and ending on the date of commencement of the Amendment Act, 1980, viz., 24-10-1980 within 2 years should supply all the information as to how he has come in possession of such land. It has been concurrently held by Collector, Commissioner and Board of Revenue that Galiya was the Bhumiswami of the disputed land and was possessing the same, thereafter respondent No. 2 Narwarsingh entered into possession. Admittedly, Narwarsingh is not a member of Aboriginal Tribe and hence, it was incumbent upon him to demonstrate under the purview of Sub-section (1) of Section 170-B of the Code that how he was possessing the disputed land. Though, it has been contended by Shri Gokhale, learned Counsel appearing for the petitioner that Narwarsingh was not possessing the disputed land and this has been so stated by him in the enquiry before the Sub-Divisional Officer. But, this piece of evidence has been considered by three Revenue Courts and decided against the petitioner. The findings rendered by them are based on evidence and are finding of fact and hence, they can not be assailed by the petitioner by invoking the jurisdiction of this Court under Article 227 of the [Constitution of India](#).

12. Apart from the above, it has been concurrently held by the Collector, Commissioner and the Board of Revenue that the transaction was a Benami transaction because the purchaser Pema at no point of time has stated that he was in possession of the disputed land. It has been decided by the revenue authorities that respondent No. 2 Narwarsingh was possessing the land in question and hence it was held that the transaction was a Benami transaction. This Court is of the view that if the Benami transaction has taken place it would be under the purview of Section 170-B of the Code and the sale can not be said to be a valid sale and the transaction would be void ab initio. Though it has been strongly urged by Shri Gokhale, learned Counsel appearing for the petitioner that there is no evidence on record to hold that Narwarsingh was in possession of the

disputed land. But the three Revenue Authorities by appreciating the evidence came to hold that indeed the possession on the disputed land was of Narwarsingh and this is a factor which can not be marginalised and blinked away. This Court after perusing and considering the reasons ascribed by the Revenue Authorities finds that the finding in regard to possession and thereby holding that the transaction was benami are cogent and based on appreciation of the evidence. It is well settled in law that while exercising the jurisdiction under Article 227 of the Constitution re- appreciation of evidence for arriving at a different conclusion is not permissible under the law. As finding accorded by the Revenue Authorities are cogent, I feel myself unable to deviate from the reasons assigned by them.

13. This Court has already held here in above that even if there is a transaction in between the member of Aboriginal Tribe, obtaining permission from the competent authority under the Code is pre-supposed. As there is no permission for alienating the land, on this count also the sale deed (Annexure P-I), dated 15-2-1971 is hit by Section 170-B of the Code. In the latest pronouncement of the Apex Court in the case of Bhajji v. Sub-Divisional Officer, Thandla and others, (2003) 1 SCC 692, it has been held that nowhere in the entire scheme of sub-sections (1), (2) and (3) of Section 170-B of the Code as enacted in 1980, there is the least indication of confining the applicability of the provision to such transaction of transfer as where entered into by a member of an Aboriginal Tribe in favour of a member not belonging to an Aboriginal Tribe. Their Lordships has further held that there is no exception in the enactment so as to exclude from the purview of Section 170-B of the Code that the inter se transfer of Aboriginal Tribe is not hit by Section 170-B of the Code. Had it been so the legislature had specifically said so. In this context it would be profitable to rely Para 8 of the case of Bhajji (supra), which reads thus:--

It is well known that some of the Aboriginal Tribes are nomadic and some indulge in crimes traditionally and historically. The purpose of settling land with the tribals mostly which is done at very concessional rates and at times even without involving an obligation to pay the land revenue, is so done with a view to see that the aboriginals settle at one place abandoning nomadism and picking up tilling the solid as their vocation by settling at one place and earning livelihood by labour and toil. It is also well known that creamy layers have developed and even as amongst

socially unprivileged some have acquired affluence. An affluent shrewd tribal may indulge in exploiting his fellow beings. Possibility can not be ruled out where a non-tribal may manage to have land transferred apparently but not in reality in the name of a tribal and taking advantage of his status, affluence or any other means, conferring him with capacity to exploit, may till the land to his own advantage depriving the Aboriginal Tribal from the benefits of the land settled by the State with him. All such cases are taken care of by Section 170-B. The purpose of enacting Section 170-B of the Code is very wide. The object sought to be achieved, as its drafting indicates, is to gather and make available all statistics with the State officials so as to find out how much land belonging to Aboriginal Tribals is in possession of anyone to whom it does not belong as on the cut-off date. The information having been collected, the enquiry under Sub-section

(3) shall be directed towards finding out the nature of transaction resulting in transfer of land - whether such transaction of legitimate right in the land. Sub-sections (1),

(2) and (3), as enacted in 1980, have to be read as part of one whole scheme. If the submission of Shri Gambhir is correct then the object of enquiry under Sub-section

(3) would have been to find out if such transaction of transfer has resulted in an Aboriginal Tribal having been defrauded of his legitimate right by a person not belonging to an Aboriginal Tribe. But that is not so. Nowhere in the entire scheme of sub-sections (1),

(2) and

(3) of Section 170-B, as enacted in 1980, there is the least indication of confining the applicability of the provision to such transaction tribe in favour of a member not belonging to an Aboriginal Tribe. No exception has been enacted by the legislature so as to exclude from the purview of Section 170-B transactions of transfer between two persons both of whom are members of Aboriginal Tribes. Had it been so, the legislature would have specifically said so. The language of the section as drafted in 1980 is clear and unambiguous and does not admit of any doubt so far

as this aspect is concerned.

14. I have considered the reasons assigned by the Collector, Commissioner and Board of Revenue and I find them to be in accordance to the law, they are based on evidence and I do not want to deviate myself from the reasonings ascribed by the said authorities and by this order, I hereby give my stamp of approval to them.

15. In the result, the petition sans substance, the same is hereby dismissed with costs. Counsel fee Rs. 1,000/- is pre-certified.

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