

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL No(s). 3122 OF 2019
(Arising out of SLP (C) No. 34559 of 2016)**

Pooran Singh

Appellant(s)

VERSUS

Dhaniram (since dead) thr. Legal Heirs and Anr

Respondent(s)

JUDGEMENT

Dr. Dhananjaya Y Chandrachud, J

Delay condoned.

Leave granted.

This appeal arises from a judgment of the High Court of Chhatisgarh at Bilaspur dated 25 February 2015 in a Second Appeal¹ under Section 100 of the Code of Civil Procedure.

Beniram Gond, who belonged to a notified Scheduled Tribe, executed a sale deed of the suit property consisting of agricultural land admeasuring 5.36 acres located at Village Naragaon, Tehsil Balod, District Durg in favour of Dhaniram, a non tribal. The sale on 9 October 1964 was for a consideration of Rs.2,400. The suit property is described thus:

"Agricultural Land bearing Survey No. 69/2, Area 1.10 Acre; Survey no. 69/5, Area 1.98 Acre; Survey No. 69/9, Area 0.50 Acre; Survey No. 69/12, Area 0.19 Acre; Survey No. 69/23, Area 0.61 Acre; Survey No.69/15, Area 0.28 Acre; Survey No.69/16, Area 0.29 Acre; Survey No. 172/2, Area 0.41 Acre; Total 8 Surveys comprising 5.35 Acres, Located at Village Naragaon, Tehsil Barod, District Durg, MP now Chhatisgarh"

The appellant is Beniram's son. The respondents are the legal heirs of Dhaniram, who has died.

On 24 October, 1980 Section 170B was inserted into the provisions of the MP Land Revenue Code 1959 by MP Act 15 of 1980. Section 170B, insofar as is material, reads as follows:

"170B. Reversion of land of members of aboriginal tribe which was transferred by fraud. - (1) Every person who on the date of 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 (67) 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 to the Sub-Divisional Officer in such form and in such manner as may be prescribed, all the information as to how he has come in possession 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.

3(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 of such land within three months from the date of receipt of the reference.

(3) On receipt of 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 transferor and, if he is dead, in his legal heirs."

Proceedings were initiated before the Sub Divisional Officer, Balod² at the instance of Beniram under Section 170B. On 28 July 1984, the plea was initially rejected by the SDO, Balod. However, on 5 June 1985, the Collector, Durg, allowed the Revenue Appeal³ against the order of the SDO Balod. The Collector directed the reversion of the land in favour of Beniram. On 11 June 1986, the Additional Commissioner Raipur Division dismissed the Appeal⁴ filed by Dhaniram. Dhaniram initiated writ proceedings⁵, before the High Court of Madhya Pradesh in order to challenge the order passed under Section 170B against him.

A learned single Judge of the High Court dismissed the petition on 16 February 1987 in the following terms:

"Petitioner by Shri R.N. Tiwari. He is heard. The sole question in the instant case which arises for consideration is whether the notice of appeal preferred by respondent no.5 before the Collector Durg, respondent no.3, had been served on the petitioner or not. That question essentially is a question of fact and the finding of the Collector and of Additional Commissioner in appeal that the petitioner had been served with notice, does not suffer from any manifest error of law or jurisdiction requiring interference under Article 226 of the Constitution of India.

The petitioner does not appear to have made any request either to the collector or to the additional

² SDO

³ No. 11-A/23 year 1984-85 titled as Beniram v Dhaniram

⁴ case No. 42/A-23/85-86

⁵ M.P. No. 367 of 1987

commissioner for permission to produce evidence to show that the notice said to have been served on him and purporting to bear his signature in fact does not bear his signature and that it contains a forged signature of the petitioner. He having failed to take this plea before the fact finding authorities, cannot take it for the first time under Article 226 of the Constitution. If the petitioner was given an opportunity by serving notice on him and he failed to appear without any sufficient cause, he alone is to be blamed for that.

It was then urged by counsel for the petitioner that in view of section 170C of the M.P. Land Revenue Code, no counsel could have appeared for respondent no.5 before the Collector without obtaining the permission of the Collector. The question as to whether counsel who appeared for respondent no. 5 had obtained any permission from the Collector or not, is again a question of fact and it should have been raised before the fact finding authorities. It cannot be raised for the first time in a writ petition.

No other point has been pressed.

In the result, the petition is dismissed."

On 19 July 1986, possession was restored to Beniram, the predecessor-in-interest of the appellant.

After the dismissal of the writ petition by the High Court, Dhaniram filed a suit⁶ before the Civil Judge Class II, Balod against the appellant seeking a permanent injunction, possession and a declaration that the order dated 5 June 1985 of the Collector was null and void. The appellant contested the suit. The suit was rejected on 11 December 1995. However, in a first appeal⁷, the District Judge, Durg set aside the order of the Trial Court and decreed the suit. The appellant unsuccessfully challenged the order of the first appellate court in a Second Appeal. The Second Appeal having been dismissed on 25 February 2015, these proceedings were instituted.

After the rejection of the suit on 11 December 1995, Section 257 (L-1) was introduced by an amendment of the Madhya Pradesh Land Revenue

⁶ No. 20A of 1992

⁷ Civil Appeal No. 6-A/1996

Code in order to bar the jurisdiction of the civil court to entertain suits pertaining to orders under Section 170B. Section 257, insofar as is material, reads as follows:

“257. Except as otherwise provided in this Code, or in any other enactment for the time being in force, no Civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the State Government, the Board, or any Revenue Officer is by this Code, empowered to determine, decide or dispose of, and in particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the following matters :-

- a) any decision regarding the purpose to which land is appropriated under Section 59;
- (b) any question as to the validity or effect of the notification of a revenue survey or any question as to the term of a settlement;
- (c) any claim to modify a decision determining abadi made by a Settlement Officer or Collector;
- (d) any claim against the State Government to hold land free of land revenue, or at less than the fair assessment, or to be assigned in whole or in part the land revenue assessed on any land;
- (e) the amount of land revenue assessed or reassessed under this Code or any other enactment for the time being in force;
- (f) any claim against the State Government to have any entry made in any land records or to have any such entry omitted or amended.
- (g) any question regarding the demarcation of boundaries or fixing of boundary marks under Chapter X;
- (h) any claim against the State Government connected with or arising out of, the collection of land revenue or the recovery of any sum which is recoverable as land revenue under this Code or any other enactment;
- (i) any claim against the State Government or against a Revenue Officer for remission or suspension of land revenue, or for a declaration that crops have failed in any year;
- (j) any decision regarding forfeiture in cases of certain transfers under Section 166;
- (k) ejectment of a lesser of a bhumiswami under sub-

section (4) of Section 168;

1(l) any claim to set aside transfer by a bhumiswami under subsection (1) of Section 170 and clauses (a) and (b) of sub-section (2) of Section 170-A;]

2(l-1) any matter covered under Section 170-B.]”

The High Court by its impugned order held that:

- (i) no enquiry had been made by the Collector under Section 170B;
- (ii) the presumption under Section 170B is rebuttable;
- (iii) the amendment introducing Section 257 (L-1) on 15 December 1995

would have no application to the suit which was instituted on 18

February 1992; and

- (iv) in view of (ii), the bar of jurisdiction was not attracted.

The basic issue which falls for consideration is whether it was open to the respondent to institute a suit to challenge the order passed by the Collector, Durg on 5 June 1985, when an earlier challenge to the legality of the order had culminated in the final judgment of the High Court on 16 February 1987. The answer to that issue must lie in the negative. The order of the Collector was placed in issue before the High Court in MP 367 of 1987. The order which has been extracted in the earlier part of the judgment indicates that the challenge was on the ground that the notice of the appeal before the Collector had not been served on the original respondent, Dhaniram. The judgment of the High Court enquired into the legality of the order passed by the Collector. The High Court came to the conclusion that the order was in accordance with law. The writ petition was dismissed. Once the order of the Collector was affirmed in the final judgment and order of the High Court dated 16 February 1987, it was not open to a civil court to arrive at a conclusion to the contrary. The High Court, in our view, has manifestly erred in ignoring the

clear effect of the earlier order dated 16 February 1987.

For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High court dated 25 February 2015. In consequence, we restore the judgment of the Trial Court, dismissing Civil Suit No. 20A of 1992 instituted by the respondent. There shall be no orders as to costs.

.....J.
(Dr. Dhananjaya Y Chandrachud)

.....J.
(Hemant Gupta)

New Delhi;
March 14, 2019