
(2018) 02 CHH CK 0247

Chhattisgarh High Court

Case No: Writ Petition No.3129 Of 2005

Bisahin Bai Kashyap And Ors

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision: Feb. 13, 2018

Acts Referred:

- Chhattisgarh Land Revenue Code, 1959 - Section 170B, 170B(3)

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: Somnath Verma, Avinash Singh

Final Decision: Allowed

Judgement

Sanjay K. Agrawal, J

1. Heard.

2. Ude Ram, aboriginal tribe, subsequently died and his LRs have been brought on record as respondents No.5-A and 5-B, filed an application under

Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (for short, 'the Code') which was rejected by the Sub Divisional Officer (Revenue). The

Collector has dismissed the appeal against the said order and affirmed the order of the SDO (R). The Board of Revenue allowed the revision filed by

Ude Ram against which this writ petition has been preferred.

3. Learned counsel for the petitioner submits that the SDO (R) has not made enquiry as contemplated under Section 170-B (3) of the Code, only

statements have been recorded and no opportunity of cross-examination has been given despite in earlier round, the matter was remitted by the

Collector.

4. No one appears for the private respondents though served.

5. Learned State counsel would support the impugned order.

6. Section 170-B (3) of the Code reads as under: -

170-B. Reversion of land of members of aboriginal tribe which was transferred by fraud.

(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.

7. The SDO (R) was obliged to make enquiry with regard to transaction as it is the case of the petitioners that the land in dispute was purchased after

due permission from the Collector on 2-1-1977 by Amrita Bai and from Amrita Bai, the petitioners have purchased the land. Non-making of due

enquiry is also apparent from the statements of witnesses recorded by the SDO (R). Only statements have been recorded and opposite party has not

been given opportunity to cross-examine the witnesses which is in teeth of the provisions contained in Section 170-B(3) of the Code, which cannot be

allowed to stand. The matter is remitted to the SDO (R) to afford opportunity of hearing to the parties in accordance with Section 170- B(3) of the Code and decide the case afresh after hearing the parties, within six months.

8. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).