CGHC010224992023 2026:CGHC:30854

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 3230 of 2023

Order Reserved on 06.07.2026

Order Delivered on 21.07.2026

1 - Amar Sai S/o Gattu Aged About 63 Years R/o Village Kardoni, Tahsil Lundra, District : Surguja (Ambikapur), Chhattisgarh

... Petitioner(s)

versus

1 - State Of Chhattisgarh Through Secretary, Revenue Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Atal Nagar, Nawa Raipur, District : Raipur, Chhattisgarh

2 - Commissioner Ambikapur, District : Surguja (Ambikapur), Chhattisgarh

3 - Sub Divisional Officer Ambikapur, District : Surguja (Ambikapur), Chhattisgarh

4 - Nayab Tehsildar Lundra, Tahsil Lundra, District : Surguja (Ambikapur), Chhattisgarh

5 - Radhelal S/o Nanki S/o Sahdev Aged About 64 Years R/o Village Rata, Tahsil Lundra, District : Surguja (Ambikapur), Chhattisgarh

... Respondents

(Cause-title taken from the Case Information System)

For Petitioner :- Mr. Anurag Singh, Advocate

For State :- Mr. Amit Nayak, P.L.

Fro Respondent No.5 :- Mr. Ajeet Kumar Yadav, Advocate

SB- Hon'ble Shri Justice Amitendra Kishore Prasad

CAV Order

1. The petitioner, by way of the instant writ petition, has challenged the legality, validity and propriety of the order dated 17.05.2023 passed by the Board of Revenue, Bilaspur, whereby the revision preferred by respondent No. 5 has been allowed, the order passed by the Commissioner, Surguja Division has been set aside, and the orders passed by the S.D.O. and Tahsildar have been affirmed.

2. The case of the petitioner is that the land situated at Village Rata, Tahsil Lundra, comprising of 11 plots admeasuring 1.379 hectares, was settled in the name of Sahdev in the Surguja State Settlement, who belonged to an aboriginal tribe. It is submitted that Sahdev had one daughter namely, Nanki, and one son namely, Nanhu. After the death of Sahdev, the name of Nanhu was recorded in the revenue records, and thereafter the land in question was transferred by Nanhu in favour of his sister Nanki vide registered sale deed dated 27.12.1996. It is further the case of the petitioner that Nanki, who belonged to an aboriginal tribe, married one Mansai, who was a non-tribal, and out of the said wedlock respondent No. 5 namely, Radhelal was born. Since respondent No. 5 acquired the status of his father, he was treated as a non-tribal. It is alleged that Nanki executed a Will dated 09.07.2001 in favour of respondent No. 5 in respect of the land in question. On the basis of the said Will, respondent No. 5 moved an application for mutation before the Naib-Tahsildar, Lundra. The said application was objected to by Kaushalya Bai, wife of Nanhu, on the ground that respondent No. 5 being a non-tribal had no right to succeed or acquire the disputed land, as the transfer in his favour through the Will was contrary to the provisions of Sections 165 and 170-B of the Chhattisgarh Land Revenue Code. The Naib-Tahsildar, Lundra, vide order dated 07.12.2002, allowed the application preferred by respondent No. 5 and directed recording of his name in the revenue records. While passing the said order, it was held that there was no violation of any provision of the

Chhattisgarh Land Revenue Code and that the Will executed in favour of respondent No. 5 was validly executed and duly proved. The aforesaid order passed by the Naib-Tahsildar was challenged by Kaushalya Bai before the S.D.O. in appeal, wherein a specific ground was raised that the transaction in favour of respondent No. 5 was in violation of Sections 165 and 170-B of the Chhattisgarh Land Revenue Code. However, the S.D.O., vide order dated 05.06.2006, dismissed the appeal preferred by Kaushalya Bai. Being aggrieved by the order dated 05.06.2006, Kaushalya Bai preferred a further appeal before the Commissioner, Surguja Division. During the pendency of the said appeal, Kaushalya Bai expired and the present petitioner was substituted as her legal heir on the basis of the Will dated 02.11.2015 executed by Kaushalya Bai. The Commissioner, vide order dated 18.09.2008, allowed the appeal and set aside the orders passed by the S.D.O. and Naib-Tahsildar. It was held that the transaction in favour of respondent No. 5 was in contravention of Section 170-B of the Chhattisgarh Land Revenue Code and, therefore, respondent No. 5 had no right, title or interest over the disputed property. The order passed by the Commissioner was thereafter challenged by respondent No. 5 by filing a revision before the Board of

Revenue, Bilaspur. The Board of Revenue, vide the impugned order dated 17.05.2023, allowed the revision preferred by respondent No. 5 and set aside the order passed by the Commissioner, while affirming the orders passed by the S.D.O. and Naib-Tahsildar. While allowing the revision, the Board of Revenue held that since the Will was executed in favour of respondent No. 5, he had acquired right over the disputed property and was entitled to have his name recorded in the revenue records. Being aggrieved by the said order, the petitioner has preferred the present writ petition.

3. Following reliefs have been prayed in this petition:-

> *"10.1] That, this Hon'ble Court may kindly be pleased to issue a writ/writs, order/orders, direction/directions quashing the impugned order dated 17.05.2022 (Annex.P/1) passed by Board of Revenue and the order passed by Commissioner, Surguja dated 4 48.09.2008 (Annex.P/6) may kindly be upheld in the interest of justice.*
>
> *10.2] That, this Hon'ble Court may kindly be pleased to grant any other relief(s), which is deemed fit and proper in the aforesaid facts and circumstances of the case."*

4. Mr. Anurag Singh, learned counsel appearing for the petitioner submits that the impugned order passed by the Board of Revenue is wholly illegal, arbitrary and contrary to the provisions of the Chhattisgarh Land Revenue Code, 1959. It is contended that the learned Board of Revenue has committed an error of law in allowing the revision preferred by respondent No. 5 and in restoring the orders passed by the S.D.O. and Naib-Tahsildar, without properly appreciating the statutory bar contained under Sections 165 and 170-B of the Chhattisgarh Land Revenue Code. Learned counsel for the petitioner submits that respondent No. 5 is admittedly a non-tribal person and, therefore, he could not have acquired any right, title or interest over the land belonging to an aboriginal tribe. It is submitted that the land in question originally belonged to Sahdev, who was an aboriginal tribe, and merely on the basis of a Will executed by Nanki, who herself belonged to an aboriginal tribe, respondent No. 5, being the son born out of wedlock with a non-tribal person, cannot claim any right over the said property. It is further submitted that the learned Board of Revenue failed to appreciate the mandatory provisions of Section 165 of the Chhattisgarh Land Revenue Code, which prohibits transfer of land belonging to an aboriginal tribe in favour of a non-tribal without prior permission of the Collector.

5. According to learned counsel, the execution of a Will in favour of respondent No. 5 would also amount to transfer within the meaning of the said provision, as the effect of such transaction is to divest the aboriginal holder of the land and vest the same in favour of a non-tribal person. Learned counsel further submits that the question as to whether respondent No. 5 acquired any right, title or interest on the basis of the Will is a matter which could only be adjudicated by the competent Civil Court and the revenue authorities could not have conclusively determined the validity and effect of the Will while exercising summary jurisdiction in mutation proceedings. It is argued that the Board of Revenue has exceeded its jurisdiction by recognizing the right of respondent No. 5 solely on the basis of the Will. It is further submitted that the learned Board of Revenue has failed to consider the fact that the mother of respondent No. 5, namely Nanki, had married Mansai, who was admittedly a non-tribal, and therefore respondent No. 5 acquired the status of his father and cannot claim the benefit of being an aboriginal tribe. Consequently, any transaction whereby land belonging to an aboriginal tribe is sought to be transferred in favour of respondent No. 5 would clearly attract the bar contained under Section 170-B of the Chhattisgarh Land Revenue Code.

6. Learned counsel for the petitioner submits that the very object and purpose behind incorporation of Sections 165 and 170-B of the Chhattisgarh Land Revenue Code is to protect the interest of aboriginal tribes, who are socially and economically weaker sections of society, and to ensure that they are not deprived of their agricultural land through indirect or fraudulent modes of transfer. It is submitted that the protective provisions of the statute are required to be interpreted liberally so as to advance the object of the legislation. It is further argued that though the term "transfer" has not been specifically defined under the Chhattisgarh Land Revenue Code, the same cannot be given a narrow or restricted interpretation. The expression "transfer" has to be construed in a wider sense so as to include every mode or transaction which has the effect of depriving an aboriginal tribe of his/her land and conferring rights upon a non-tribal person. Learned counsel submits that merely because a registered Will has been executed in favour of respondent No. 5, the same would not confer any legal right upon him in respect of the property belonging to an aboriginal tribe, particularly when no prior permission of the Collector, as mandated under Section 165 of the Chhattisgarh Land Revenue Code, was obtained. It is contended that the Board of Revenue has failed to appreciate this legal position and has erroneously upheld the claim of respondent No. 5.

7. Learned counsel for the petitioner has also placed reliance upon the judgments of this Court as well as the Hon'ble Supreme Court to contend that the land belonging to an aboriginal tribe cannot be transferred in favour of a non-tribal person without compliance of the mandatory provisions contained under Section 165 of the Chhattisgarh Land Revenue Code, 1959.

8. In the case of **Joseph Vs. Dhaneshwar Sao, Second Appeal No.197 of 1993, decided on 03.12.2018**, this Court has held that the provisions contained under Section 165 of the Chhattisgarh Land Revenue Code are mandatory in nature and any transfer of land belonging to an aboriginal tribe without obtaining prior permission of the Collector is void and cannot confer any right, title or interest upon the transferee. Similarly, in **Laxmi Bai Vs. State of Chhattisgarh, W.P.(C) No.3097 of 2005**, this Court, while considering the object behind Section 165 of the Chhattisgarh

Land Revenue Code, has held that the restriction imposed on transfer of tribal land is intended to protect the interest of aboriginal tribes and any transaction made in violation of such statutory restriction cannot be sustained in the eyes of law.

9. Learned counsel for the petitioner has further relied upon the judgment of the Hon’ble Supreme Court in **Anjan Kumar Vs. Union of India, (2006) 3 SCC 257**, wherein the Hon’ble Supreme Court has recognized the necessity of protecting the rights and interests of members of Scheduled Tribes and has held that protective provisions enacted for the benefit of tribal communities must be interpreted in a manner which advances the object of such legislation. Reliance has also been placed upon the judgment of the Hon’ble Supreme Court in **Ram Charan Vs. Sukhram, 2025 SCC OnLine SC 1465**, wherein the Hon’ble Supreme Court reiterated that statutory restrictions imposed for protecting the rights of weaker sections cannot be defeated by adopting a technical or narrow interpretation of the provisions. Further, reliance has been placed upon the judgment in **Ankush Tiwari Vs. State of Madhya Pradesh and Others, 2025 SCC OnLine MP 1200**, wherein the importance of statutory safeguards relating to tribal land and the necessity of strict compliance with such provisions has been emphasized.

10. Mr. Ajeet Kumar Yadav, learned counsel appearing for respondent No. 5 opposes the submissions made on behalf of the petitioner and supports the order passed by the Board of Revenue. It is submitted that the impugned order has been passed after proper appreciation of the facts and law applicable to the case. Learned counsel submits that the land in question was transferred in favour of respondent No. 5 by way of a duly executed and registered Will dated 09.07.2001 by Nanki, who was the recorded holder of the property. The said Will has not been challenged by the petitioner or any competent person before the Civil Court and, therefore, the same has attained finality. It is contended that the revenue authorities have rightly recorded the name of respondent No. 5 on the basis of the said Will. It is further submitted that mutation proceedings are only for fiscal purposes and the revenue authorities are not required to decide the question of title in such proceedings. Since respondent No. 5 has acquired the property through testamentary succession, the provisions relating to transfer under Sections 165 and 170-B of the Chhattisgarh Land Revenue Code are not attracted. Learned counsel further submits that respondent No. 5 being the legal heir of Nanki is entitled to inherit the property and the mere fact that his father was a non-tribal would not deprive him of the rights conferred upon him through the Will executed by his mother. It is argued that the petitioner has failed to establish any illegality or jurisdictional error in the order passed by the Board of Revenue. On these grounds, learned counsel for respondent No. 5 prays for dismissal of the writ petition and submits that the impugned order passed by the Board of Revenue deserves to be upheld.

11. Mr. Amit Nayak, learned State counsel appearing for the State submits that the matter has been decided by the Board of Revenue after considering the relevant facts and material available on record. It is submitted that the State has no independent grievance in the matter and the dispute essentially pertains to the rival claims of the petitioner and respondent No. 5 over the land in question. Learned State counsel submits that the Court may consider the legality and validity of the impugned order passed by the Board of Revenue in accordance with the provisions of the Chhattisgarh Land Revenue Code and the settled legal position.

12. I have heard learned counsel for the parties and perused the material available on record.

13. The short question which arises for consideration in the present writ petition is as to whether the land belonging to an aboriginal tribe can be transferred by way of a Will in favour of a non-tribal person without obtaining prior permission of the Collector as contemplated under Section 165 of the Chhattisgarh Land Revenue Code, 1959.

14. Before proceeding further, it would be appropriate to notice the object and scheme behind incorporation of the protective provisions contained under the Chhattisgarh Land Revenue Code. Section 165 of the Chhattisgarh Land Revenue Code places restrictions on transfer of land belonging to aboriginal tribes to non-tribal persons. The legislative intent behind such restriction is to safeguard the agricultural holdings of aboriginal tribes, who historically have been vulnerable to exploitation and deprivation of their land holdings by various modes of transfer.

15. Section 165(6) of the Code as originally stood prior to amendment states as under:-

> "165(6): Notwithstanding anything in sub-section (1) the right of Bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe by the State Government by a notification in that behalf for whole or part of the area to which this Code applies, shall not be transferred to a person not belonging to such tribe without the permission of Revenue Officer not below the rank of Collector,

given for reasons to be recorded in writing."

16. Sub-section (6) of Section 165 of the Code was substituted by M.P. 61 of 1976 w.e.f. 29.11.1976 which states as under:-

> "165(6) Notwithstanding anything contained in sub-section (1) the right of Bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe by the State Government by a notification in that behalf, for the whole or part of the area to which this Code applies shall-
>
> (i) in such areas as are predominately inhabited by aboriginal tribes and from such date as the State Government may, by notification, specify, not be transfered nor it shall be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe in the area specified in the notification;
>
> (ii) in areas other than those specified in the notification under clause (i), not to be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe without the permission of a Revenue Officer not below the rank of Collector, given for reasons to be recorded in writing.
>
> Explanation.-For the purposes of this sub-section the expression "otherwise" shall not include lease."

17. The Hon'ble Supreme Court, while considering similar protective provisions contained in various State Land Revenue Laws, has consistently held that such provisions are enacted with the object of protecting the interest of tribal communities and preventing alienation of their lands in favour of non-tribals. The restrictions imposed by the statute are not merely procedural in nature but are mandatory and have to be strictly complied with.

18. The Supreme Court in the matter of **Keshabo and another v. State of M.P. and others 1996 7 SCC 765** while considering the nature and object of the MP Land Revenue Code qua the provisions contained in Section 165(6) as it stood prior to 1976 amendment, held that MP Land Revenue Code is a welfare legislation made to protect the ownership rights in the land of the Scheduled Tribe. It was observed as under:-

> "It is welfare legislation made to protect the ownership rights in the land of a Scheduled Tribe to effectuate the constitutional obligation of Articles 39(b) and 46 of the Constitution read with the Preamble. Economic empowerment of a tribal to provide economic democracy is the goal. Prevention of their exploitation due to ignorance or indigency is a constitutional duty under Article 46. Agricultural land gives status to the tiller. Therefore, any alienation of land in contravention of the above objectives is void."

19. In the matter of **Murlidhar Dayandeo Keshkar v. Vishwanath Pandu Barde and another 1995 Supp (2) SCC 549**, the Supreme Court while dealing with refusal to alienate permission to the Scheduled Tribe to non-tribal under the Bombay Revenue Code held that right to development is an inalienable right by virtue of which every human person is entitled to participate in contribution to and to enjoy economic, social, cultural and political development, in which all human rights and fundamental freedom can be fully realised. It was held as under:-

> "The prohibition from alienation is to effectuate the constitutional policy of economic empowerment under Articles 14, 21, 38, 39 and 46 read with preamble of the Constitution. Accordingly it was held that refusal to permit alienation is to effectuate the constitutional policy."

20. Similarly, in the matter of **R. Chandevarappa and others v. State of Karnataka and others (1995) 6 SCC 309** while considering Section 43(5) of the Karnataka Revenue Code, the Supreme Court held that once relevant rules prohibit alienation of property granted to depressed class for all times to come, it cannot be got over by grant made contrary to statutory rules and prohibiting clause is absolute in its term and held as under:-

> "6. Having given our anxious considerations to the respective contentions, the first question that arises for determination is what would be the nature of the right given to the assignee Dasana Rangaiah Bin Dasaiah. Article 39(b) of the Constitution of India envisages that the State shall in particular direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Admittedly, Scheduled Castes and Scheduled Tribes are the weaker sections of the society who have been deprived of their economic status by

> obnoxious practice of untouchability and the tribes living in the forest area far away from the civilised social life. To augment their economic status and to bring them on par into the main stream of the society, the State with a view to render economic justice envisaged in the Preamble and Articles 38 and 46 of the Constitution distributed the material resources, namely, the land for self-cultivation. It is an economic empowerment of the poor. It is common knowledge that many a member of the deprived classes live upon the agriculture either by cultivation on lease hold basis or as agricultural labour. Under these circumstances, the State having implemented the policy of economic empowerment to do economic justice assigned lands to them to see that they remain in possession and enjoy the property from generation to generation."

21. In the matter of **Chebrolu Leela Prasad Rao v. State of A.P. AIRONLINE 2020 SC 488**, the Hon'ble Supreme Court has reiterated that protective legislations relating to tribal rights are enacted with the constitutional objective of safeguarding the interests of Scheduled Tribes and other vulnerable sections and must be interpreted in a manner which advances such object.

22. Similarly, in **Samatha v. State of Andhra Pradesh 1997 (8) SCC 191**, the Hon'ble Supreme Court has emphasized that the underlying object of restrictions on transfer of tribal land is to prevent exploitation of tribal people and to ensure that their lands are not alienated in favour of non-tribal persons. The Court held that the protective provisions relating to tribal land have to be interpreted keeping in view the constitutional mandate contained under Articles 46 and 244 of the Constitution of India.

23. The Supreme Court in the matter of **Lincai Gamango v. Dayanishi Jena (2004) 7 SCC 437** relying upon the matter of **Amrendra Pratap Singh v. Tej Bahadur Prajapati (2004) 10 SCC 65** has held that no right can be acquired by adverse possession on such inalienable property, adverse possession operates on an alienable right. It was also held that non-tribal would not acquire a right or title on the basis of adverse possession. It was held as under:-

> “7. We find both these reasons given by the High Court are not sustainable. Coming first to the second point, we find that there is a decision of this Court directly on the point. It is reported in Amrendra Pratap Singh v. Tej Bahadur Prajapati. The matter related to transfer of land falling in tribal area belonging to the Schedule Tribes. The matter was governed by Regulations 2, 3 and 7-D of the Orissa Scheduled Area Transfer of Immovable Property (By Scheduled Tribes) Regulations, 1956 viz. the same Regulations which govern this case also. The question involved was also regarding acquisition of right by adverse possession. Considering the matter in detail, in the light of the provisions of the aforesaid Regulations, this Court found that one of the questions which falls for consideration was 'whether right by adverse possession can be acquired by a non-aboriginal on the property belonging to a member of aboriginal tribe? In context with the above question posed, this Court observed in para 23 of the judgment as follows : (SCC p. 80)

> "23.....The right in the property ought to be one which is alienable and is capable of being acquired by the competitor. Adverse possession operates on an alienable right. The right stands alienated by operation of law, for it was capable of being alienated voluntarily and is sought to be recognised by doctrine of adverse possession as having been alienated involuntarily, by default and inaction on the part of the rightful claimant......."

24. In the matter of **Ram Karan (Dead) Through Legal Representative and others v. State of Rajasthan and others (2014) 8 SCC 482** the Supreme Court while considering the transfer prohibited by proviso to Section 42 of the Rajasthan Tenancy Act, 1955 held that transfer of landholding by member of Schedule Caste in favour of person not belonging to Schedule Caste being forbidden and unenforceable, such transfer would unlawful under Section 23 of the Contract Act as it is statutorily barred.

25. The Supreme Court in the matter of **Rajasthan Housing Board v. New Pink City Nirman Sahkari Samiti Ltd. (2015) 7 SCC 601** relying upon the matter of **Lincai Gamango** (supra) and **Amrendra Pratap Singh** (supra) has held that transfer between Schedule Caste and non-Scheduled Caste is void under Section 42 of the Rajasthan Tenancy Act, 1955 being prohibited by law and held as under:-

> "26. In the instant case, the transaction is ab initio void, that is, right from its inception and is not voidable at the volition by virtue of the specific language used in Section 42 of the Rajasthan Tenancy Act. There is declaration that such transaction of sale of holding "shall be void". As the provision is declaratory, no further declaration is required to declare prohibited transaction a nullity. No right accrues to a person on the basis of such a transaction. The person who enters into an agreement to purchase the same, is aware of the consequences of the provision carved out in order to protect weaker sections of Scheduled Castes and Scheduled Tribes. The right to claim compensation accrues from right, title or interest in the land. When such right, title or interest in land is inalienable to non-SC/ST, obviously the agreements entered into by the Society with the Khatedars are clearly void and decrees obtained on the basis of the agreement are violative of the mandate of Section 42 of the Rajasthan Tenancy Act and are a nullity. Such a prohibited transaction opposed to public policy, cannot be enforced. Any other interpretation would be defeasive of the very intent and protection carved out under Section 42 as per the mandate of Article 46 of the Constitution, in favour of the poor castes and downtrodden persons, included in the Schedules to Articles 341 and 342 of the Constitution of India."

26. In the present case, admittedly, the land originally belonged to Sahdev, who was an aboriginal tribe. It is also not in dispute that Nanki, who inherited the said property, belonged to an aboriginal tribe. The case of respondent No. 5 is founded solely on the basis of the Will dated 09.07.2001 executed by Nanki in his favour.

27. The Board of Revenue, while allowing the revision preferred by respondent No. 5, has proceeded on the premise that since the Will was executed in his favour by the recorded holder of the land, respondent No. 5 acquired right over the property and the provisions contained under Sections 165 and 170-B of the Chhattisgarh Land Revenue Code would not come into play. The said approach adopted by the Board of Revenue, in the considered opinion of this Court, is not sustainable in law. Merely because the mode of transfer is by way of testamentary disposition, the statutory prohibition imposed under Section 165 of the Chhattisgarh Land Revenue Code cannot be defeated. The substance and effect of the transaction has to be considered rather than the form in which it is executed.

28. Section 165 of the Chhattisgarh Land Revenue Code has been enacted with a specific object to prevent alienation of tribal land in favour of non-tribal persons. If the interpretation adopted by the Board of Revenue is accepted, the very purpose of the protective provision would be frustrated, as an aboriginal holder could easily transfer his/her land to a non-tribal person by executing a Will, thereby defeating the mandatory requirement of obtaining prior permission of the Collector.

29. It is a settled principle of law that a statute enacted for protection of a weaker section of society must be interpreted purposively so as to advance the object of the legislation. The expression "transfer" cannot be given a restricted meaning so as to exclude testamentary disposition when the consequence of such disposition is the same, i.e., divesting the tribal holder of his/her land and vesting the same in favour of a non-tribal person.

30. In the present case, admittedly, no prior permission of the Collector as required under Section 165 of the Chhattisgarh Land Revenue Code was obtained before creation of any right in favour of respondent No. 5. The fact that the transaction was effected through a Will cannot override the mandatory requirement of the statute. Further, respondent No. 5 admittedly claims through Nanki, whose husband was a non-tribal person. The claim of respondent No. 5 is not that he is an aboriginal tribe himself, but that he acquired the property through the Will executed by his mother. However, such mode of succession cannot confer a better right than what the transferor herself was legally entitled to transfer. A person cannot acquire a right which is prohibited by law. The contention of learned counsel for respondent No. 5 that the Will has not been challenged before the Civil Court and has attained finality is also of no assistance. The issue involved in the present proceedings is not regarding the genuineness or validity of the Will, but regarding the legal consequence of such Will in view of the statutory restrictions contained under Section 165 of the Chhattisgarh Land Revenue Code.

31. The Hon'ble Supreme Court in **Karnataka Board of Wakf v. Government of India (2004) 10 SCC 779** has held that no person can claim a right contrary to the statutory provisions and any transaction prohibited by law cannot be validated merely on the ground of long standing possession or recognition by authorities.

32. In the matter of **Pandey Orson v. Ram Chander Sahu and others AIR 1992 SC 195** the Supreme Court considered term 'transfer' occurring in Section 71A of the Chhotanagpur Tenancy Act, 1908, as that was not defined in the Act. That provision was the beneficial piece of legislation intended to protect the weaker sections of citizens who could not protect their land otherwise. Their Lordships chose to adopt liberal construction so as to give full effect to the legislative purpose and held as under:-

> *"In S. 71A in the absence of a definition of transfer and considering the situation in*

> *which exercise of jurisdiction is contemplated, it would not be proper to confine the meaning of transfer to transfer under the Transfer of Property Act or a situation where transfer has a statutory definition. What exactly is contemplated by transfer in S. 71A is where possession has passed from one to another and as a physical fact the member of the Scheduled Tribe who is entitled to hold possession has lost it and a non-member has come into possession would be covered by transfer and a situation of that type would be amenable to exercise of jurisdiction within the ambit of S. 71A. "*

33. Thus, this Court is of the considered view that the land belonging to an aboriginal tribe cannot be alienated in favour of a non-tribal person by way of a Will without obtaining prior permission of the Collector as mandated under Section 165 of the Chhattisgarh Land Revenue Code. The Board of Revenue has committed an error of law in holding otherwise and in granting recognition to the claim of respondent No. 5 solely on the basis of the Will.

34. Consequently, the impugned order dated 17.05.2023 passed by the Board of Revenue, Bilaspur is unsustainable and is liable to be set aside. The order dated 18.09.2008 passed by the Commissioner, Surguja Division, whereby the transaction was held to be contrary to the provisions of the Chhattisgarh Land Revenue Code, deserves to be restored.

35. Resultantly, the writ petition is **allowed.** The order dated 17.05.2023 passed by the Board of Revenue, Bilaspur is hereby quashed and set aside. The order dated 18.09.2008 passed by the Commissioner, Surguja Division is restored. The revenue authorities are directed to take consequential steps in accordance with law. In view of the aforesaid, respondent No. 5 shall not be entitled to claim any right, title or interest over the disputed land on the basis of the Will dated 09.07.2001 and the possession of the land shall be dealt with in accordance with the provisions of the Chhattisgarh Land Revenue Code.

36. No order as to costs.

Sd/-

(Amitendra Kishore Prasad)
Judge

Vishakha