CGHC010016982022 2026:CGHC:33371

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 429 of 2022

Reserved on 08.07.2026

Pronounced on 03.08.2026

Harishankar S/o Sukhai Aged About 60 Years, Caste-Ahir, R/o Village-Govindgarh, Tahsil And District- Surajpur, Chhattisgarh

... Petitioner(s)

versus

1 - Ranglal S/o Mansai, Aged About 65 Years, Caste-Gond, R/o Village-Govindgarh, Tahsil And District- Surajpur, Chhattisgarh

2 - Sundari D/o Late Sarju Yadav, aged about 62 years, Caste-Ahir, R/o Village- Sanwaranwa, Tahsil Bhaiya-Than, District- Surajpur, Chhattisgarh

3 - Balobai W/o Mohit Panika Aged About 75 Years R/o Village-Govindgarh, Tahsil and District- Surajpur, Chhattisgarh

4 - The Commissioner, Surguja Division Ambikapur, Chhattisgarh

5 - State Of Chhattisgarh, Through The Collector, District- Surajpur, Chhattisgarh

... Respondent(s)

(Cause Title downloaded from CIS Periphery)

For Petitioner(s)	:	Mr. Ashok Kumar Shukla and Mr. Ravi Singh, Advocates
For Respondent No.1	:	Mr. Pradeep Kumar Jogi, Advocate appears on behalf of Mr. Vinod Kumar Tekam, Advocate
For Respondent/ State	:	Mr. Shreyansh Mehta, Panel Lawyer

SB: Hon'ble Mr. Justice Amitendra Kishore Prasad

C A V Order

1. By way of this petition, the petitioner has called in question the legality and validity of the order dated 7.12.2021 passed by the Commissioner, Sarguja Division at Ambikapur, whereby, the said authority has allowed the revision filed by respondent No.1 - Ranglal.
2. The petitioner seeks the following reliefs in the writ petition :

> *10.1 That, this Hon'ble Court may graciously be pleased to issue a writ of mandamus, certiorari or of like nature to quash the order dated 07/12/2021 (Annexure P/1) affirming the order passed by the Sub Divisional Officer, Surajpur (C.G.)*
>
> *10.2 That, a command/direction may kindly be issued to the respondent No. 2 to produce the entire records pertaining to the case of the petitioner for the kind perusal of this Hon'ble Court.*
>
> *10.3 Any other relief which is deemed fit and proper may also be awarded to the petitioner including cost of the petition.*

3. The background facts giving rise to this petition are that the Commissioner, Sarguja Division, allowed the Revision preferred by respondent No.1 - Ranglal vide the impugned order dated

7.12.2021, passed under Section 170-B of the CG Land Revenue Code, 1959 (hereinafter referred to as "the Code"), thereby setting aside the orders passed by the Additional Collector, Sarguja (now Surajpur) as well as the SDO (R), Surajpur. The Additional Commissioner has further directed the reversion of the subject land in favour of respondent No.1, who is the Legal Heir (son) of the original tribal owner namely Mansai Gond. Respondent No.1 (a member of aboriginal tribe) moved an application under Section 170-B of the Code before the Sub Divisional Officer (R), Surajpur alleging that respondent- Sarju Ahir (since deceased) belongs to the 'Ahir' Caste (a non-tribal community), although he had married Sonjhariya Gond, a member of aboriginal tribe, in the year 1940. Mansai Gond executed a registered sale-deed dated 9.2.1968 in favour of Sonjhariya Bai for a consideration of Rs.600/- in respect of subject land originally recorded under Khasra Nos.173/2, 174/2, 175/2 {admeasuring 0.10, 0.20 and 0.35 decimal}. The said land was subsequently renumbered during settlement as Khasra No.155 admeasuring 0.26 RA and remained in the actual possession of late Sonjharia Bai. Subsequently, vide a separate sale-deed dated 17.11.1975, Mansai Gond sold two other distinct land parcels bearing Khasra No.153 (admeasuring 0.09 RA) and Khasra No.330 (admeasuring 0.13 RA) in favour of Balobai – respondent No.3 herein {tribal}, (W/o Mohit Panika {non-tribal}). The above purchaser allegedly illegally purchased the same by falsely impersonating herself as Balobai D/o Manjhi Ram Gond. It was further alleged that taking undue advantage of the demise of Ranglal's father and the subsequent minority of Ranglal, the said purchaser occupied the subject land. It was contended that Sonjhariya Bai and Balobai, both had lost their tribal status by marrying Sarju Ahir (since deceased) and Mohit Panika respectively. In view of the fraudulent misrepresentation and illegal possession during the owner's minority, the transactions are non est in the eye of law, warranting immediate reversion of the land under Section 170-B of the Code. The concerned SDO, after initiating proceedings on an application filed by respondent No.1-Ranglal, issued notice to the respondents and called for a report from the concerned Patwari. After conducting a detailed enquiry, the SDO(R) recorded a finding that no element of fraud or illegal suppression of caste status was ever established during the enquiry. As such, the challenge under Section 170-B of the Code raised by respondent No.1 after substantial lapse of time, is misconceived. During the course of enquiry, the SDO (R) recorded the statements of Sarju Ahir and Balobai Panika, however, respondent No.1 – Ranglal did not adduce any oral or documentary evidence. In his statement and reply, Sarju Ahir stated that since Sonjharia Bai died issueless, the subject land was mutated in his name as her husband and legal heir. Mansai Gond, who sold the land to Sonjharia Bai, never disputed the validity of the subject transaction during his lifetime. Similarly, in her reply, Balobai stated that she has been in lawful possession of the subject land in pursuance of a registered sale-deed executed on 17.11.1975. Her father belonged to Gond Caste and her marriage to Mohit Panika took place in 1976 and the sale-deed was executed before her marriage. Thus, since the sale-deed was executed prior to her marriage, she held full tribal status at the time of the transaction. On the basis of the material on record, mainly the reply submitted by the respondents, the concerned SDO(R) recorded a categorical finding that when the subject land was transferred, both the parties were tribals and later on, due to the death of the wife of Sarju Ahir namely Sonjhariya Bai and inter-caste marriage of Balobai with Mohit Panika, the application has been moved by respondent No.1 regarding benami transfer of tribal land to non-tribal and reversion of the said land. The concerned SDO observed that the subject transactions were originally executed between two tribal persons and as such, the provisions of Section 170-B of the Code would not be attracted and thereby, dismissing the application vide order dated 16.3.2000. Aggrieved by the said order passed by the SDO (R), Surajpur, respondent No.1 filed a revenue appeal before the Collector, Sarguja (Ambikapur). The Collector, upon evaluating the record, affirmed the findings of the concerned SDO, holding that the transactions were inter-tribal in nature and further that Section 170-B of the Code has no application to transfers between tribal persons and thereby, dismissed the appeal vide order dated 31.3.2003. Pertinently, subsequent to the dismissal of the appeal, Sarju executed a sale-deed dated 7.10.2003 in favour of Harishankar (the present petitioner – a non-tribal). Aggrieved by the order of dismissal, respondent No.1 preferred a revision before the Commissioner, Sarguja Division at Ambikapur. In this revision, respondent No.1 contended that though the sale-deed was executed in favour of Sonjhariya Bai, actual physical possession of the land was held by Sarju, who belongs to 'Ahir' Caste (a non-tribal community). Respondent No.1 further contended that the revenue authorities committed an error of law in holding that Section 170-B of the Code is inapplicable only because the transactions were between two tribal persons. The Commissioner meticulously examined the matter and held that a transaction(s) cannot be held outside the purview of Section 170-B of the Code, only on the ground that it purports to be an inter-tribal transfer(s). It was observed that whether a transaction is fraudulent must be determined by examining whether the actual possession was transferred to a non-tribal person, particularly when the transaction was never notified before the competent revenue authority within the statutory time limit prescribed under Section 170-B of the Code. Further, non-tribal possession, coupled with the non-furnishing of mandatory information to the concerned SDO as required under Section 170-B(1), casts a cloud over the transaction(s), which renders it fraudulent and illegal under the Code. As a consequence, the statutory presumption under Section 170-B operates against the party currently in possession of land, who, in the present case, is the petitioner. Accordingly, vide impugned order dated 7.12.2021, the Commissioner directed the reversion of the land in favour of respondent No.1 (tribal). Being aggrieved by the impugned order dated 7.12.2021 passed by the Commissioner, Sarguja Division, the petitioner has filed the present petition on the ground that the same is not in accordance with law.

4. Mr. Ashok Kumar Shukla and Mr. Ravi Singh, Counsel for the petitioner submit that the provisions contained under Section 170-B of the Code are not attracted to the facts of the present case. The subject transaction was executed between two members of a Scheduled Tribe and the same remained unchallenged by late Mansai Gond, father of respondent No.1, during his lifetime. They further submit that the possession was duly delivered to and enjoyed by late Sarju Ahir and subsequently by his legal heir(s). Further, the requirement of furnishing information regarding occupation under Section 170-B is not attracted, as the subject land was initially acquired by Sonjhariya Bai, a member of Scheduled Tribe. After her demise, the property was inherited by her husband Sarju Ahir. Though a non-tribal, Sarju Ahir held the possession of the property in his capacity as the natural legal heir of his tribal wife. Learned counsel also submit that since both transferor- Mansai Gond and transferee Sonjharia Bai were members of Scheduled Tribe, the transaction falls outside the scope of the statutory restrictions. Additionally, Sonjharia's acquisition of the land remains unaffected by her marriage to a non-tribal, as she continues to retain her birth status as a member of the 'Gond' Scheduled Tribe. They further submit that the sale-deed dated 9.2.1968 was valid in law and upon passing of Sonjharia Bai, ownership of the property lawfully devolved upon

her husband Sarju Ahir, by right of succession. Hence, the sale-deed dated 7.10.2003 executed by Sarju Ahir in favour of Harishankar (the present petitioner) was in accordance with law and cannot be called in question. Learned counsel further submit that mere non-furnishing of information to the concerned authority would not *ipso facto* disentitle the petitioner to his lawful occupation of the land. The concerned Commissioner committed a grave error of law in setting aside the concurrent well-reasoned orders passed by the concerned SDO (R)/the Prescribed Officer and the concerned Additional Collector, vide the impugned order, which is liable to be quashed. Learned counsel further submit that the concerned SDO dismissed the application only on the ground that the transaction was between tribal parties and there was nothing to demonstrate any fraud, collusion, misrepresentation or benami transaction. As such, even if this Court concludes that Section 170-B of the Code is attracted to inter-tribal transactions, the matter requires a proper enquiry to establish whether the transaction was fraudulent and the matter may remanded back to the concerned SDO to conduct a proper enquiry and pass appropriate orders in accordance with law.

5. Per contra, Mr. Pradeep Kumar Jogi, Advocate on behalf of Mr. Vinod Kumar Tekam, learned counsel for respondent No.1 Ranglal submits that the Commissioner rightly appreciated the entire facts and circumstances of the case while ordering reversion of the subject land in favour of respondent No.1 (tribal), which warrants no interference. It is contended that the conclusion

previously arrived at by the revenue authorities i.e. the concerned SDO and the concerned Collector, to the effect that Section 170-B is inapplicable owing to the transaction being inter-tribal is legally unsustainable. He further submits that despite specific plea of fraud having been raised, the subordinate revenue authorities failed to evaluate the same. The Commissioner, upon a detailed analysis of the record, rightly held that Section 170-B of the Code can be invoked even in transactions between tribals, if fraud is alleged. Thus, the Commissioner rightly passed the order in favour of respondent No.1, son of late Mansai Gond, the original title holder of the subject land.

6. No one appears on behalf of respondents 2 & 3 herein.

7. Mr. Shreyansh Mehta, learned counsel for the State submits that there is no illegality in the impugned order passed by the Commissioner. After due consideration, the Commissioner rightly held that even transactions between tribals can be examined under Section 170-B of the Code, particularly since physical possession of the land was found to be with a non-tribal. Even otherwise, since Sarju Ahir, a non-tribal, did not report possession to the competent authority, the legal presumption under Section 170-B operates against the petitioner. He submits that the petitioner is a non-tribal, who purchased the land from Sarju Ahir, another non-tribal. However, since the subject land originally belonged to an aboriginal tribe, prior permission under Section 165 of the Code was mandatory, which was never obtained. Considering the totality of the circumstances, the Commissioner

was fully justified in passing the impugned order, which does not warrant any interference.

8. Heard learned counsel for the parties and also perused the documents annexed with the petition.

9. Upon a meticulous anaylsis of the rival submissions, the following **Questions** arise for determination by this Court :

> ***1)*** *Whether a transaction between members of a Scheduled Tribe falls outside the purview of enquiry under Section 170-B of the Code?*
>
> ***2)*** *Whether the non-tribal spouse of a tribal woman can alienate land originally belonging to her to a non-tribal purchaser, treating it to be non-tribal land, without obtaining permission from the Collector under Section 165(6) of the Code?*
>
> ***(3)*** *Whether the transaction in question has ever been enquired by the Prescribed Authority in accordance with law?*

<u>Question No.1</u>

10. In addressing this question, it is pertinent to bear in mind the legislative intent behind Section 170-B of the Code. It was enacted as a protective measure to stop and undo fraudulent transfers of tribal land. The clear object of the statute is to prevent illegal alienations and protect tribal owners from exploitation by non-tribals. Time and again, the Hon'ble Supreme Court as well as this Court have held that even where a transaction appears on record to be between tribal persons, it requires an enquiry. In

numerous instances, while the transaction was purportedly shown between tribals, the actual possession of the tribal land was found to be held by non-tribals under the guise of a benami transaction. Further, under the said provision, the SDO(R) being the prescribed authority, is empowered to initiate proceedings suo motu or on the basis of a report or complaint submitted by the revenue officials. Upon taking cognizance of the matter, the officer is competent to conduct an enquiry and pass appropriate orders for the reversion of the land to the tribal owner.

11. For ready reference, Section 170-B is reproduced below :

> ***170-B Reversion of land of members of aboriginal tribe which was transferred by fraud.***
>
> (1) *Every person who on the date of commencement of the 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 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 who 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 persons 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 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 transferor 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 [Right to Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (No.30 of 2013)] and order the person referred to in sub-section (1) to pay to the transferor the difference, if any, between the price so fixed and the price actually paid to the transferor :

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.

12. In the matter of ***Bhaiji v. Sub-Divisional Officer, Thandla and others***, reported in **(2003) 1 SCC 692 : 2002 SCC OnLine SC 1207,** the Hon'ble Supreme Court held the following in in para 8 **:**

8. 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 soil as their vocation by settling at one place and earning livelihood by labour and toil. <u>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 cannot 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 transfer has resulted in the aboriginal tribal having been defrauded of his 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 transactions of transfer as were entered into by a member of an aboriginal tribe in favour</u>

> *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.*
>
> *(emphasis supplied)*

13. From a bare reading of provisions of Section 170-B of the Code and the principles laid down by the Hon'ble Supreme Court in the aforesaid judgment, it is apparent that Section 170-B of the Code, would also attract in a transaction between members of the tribe.

14. Now, coming back to the facts and circumstances of the present case, the initial transaction in the present case was between two tribal individuals namely Mansai Gond and Sonjharia Bai. However, a perusal of the record shows that Sonjharia Bai was married to Sarju Ahir (a non-tribal), who remained in actual possession and occupation of the subject land even during her lifetime. After the death of Sonjharia, the land was got mutated in the name of Sarju Ahir. Taking advantage of this mutation, Sarju Ahir sold the property to the present petitioner, who is also a non-tribal. When an application was moved by respondent No.1 Ranglal S/o Mansai Gond alleging a fraudulent transaction, the SDO dismissed the application without conducting any due enquiry, only on the ground that since the initial transaction was between two tribals, as such, it fell outside the purview of Section

170-B of the Code.

15. It is unfortunate that the concerned Additional Collector committed a material irregularity by failing to appreciate that an allegation of fraud committed against a tribal must be duly examined, notwithstanding that the subject transaction was purportedly between two members of Scheduled Tribe. Conversely, the Commissioner, Sarguja Division rightly examined the matter in its true perspective, observing that inter-se tribal transactions warrant close scrutiny under Section 170-B of the Code, particularly when the actual possession rests with a non-tribal and specific pleas of fraud are raised by respondent No.1. However, having found that the prescribed authority had failed to conduct the enquiry contemplated under Section 170-B, the Commissioner ought not to have proceeded to finally direct reversion of the land. The question as to whether the transaction was fraudulent and whether the statutory presumption stood rebutted could have been determined only after a full-fledged enquiry by the competent authority. To that extent, the impugned revisional order cannot be sustained.

16. In view of the above, Question No.1 is answered accordingly.

Question No.2

17. To properly appreciate the statutory restriction regarding the transfer of land, it is relevant to reproduce Section 165(6) of the Code which reads as below:-

165. Rights of transfer.

xxxx

(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 transferred nor it shall be transferable either by way of sale or otherwise or as a consequence of transaction of loan [or will (bequest)] 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 [or will (bequest)] 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*

[Provided that the provision of this sub-section shall not be applicable to the land acquired under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (No. 30 of 2013).]

Explanation. - For the purposes of this sub-section the expression "otherwise" shall not include lease.

xxxx

18. A plain reading of the aforesaid clause reveals that Section 165(6) of the Code begins with a non-obstante clause which imposes

restrictions upon the transfer of land belonging to Bhumiswami who is a member of a notified Schedule Tribe. The intention of the legislature is clear i.e. not merely to impose ordinary restraint upon alienation of land but to grant statutory protection to preserve tribal ownership and prevent landlessness and economic dispossession of Schedule Tribes. Any interpretation deviating from the objective of Section 165(6) would frustrate the very purpose for which the provision was enacted.

19. In **Amrendra Pratap Singh v. Tej Bahadur Prajapati and others**, reported in ***(2004) 10 SCC 65 : 2003 SCC OnLine SC 1308***, wherein the Court explained the purposive interpretation to be accorded to protective legislation governing tribal land. The relevant paragraphs are reproduced below *:*

> ***15.*** *Tribal areas have their own problems. Tribals are historically weaker sections of the society. They need the protection of the laws as they are gullible and fall prey to the tactics of unscrupulous people, and are susceptible to exploitation on account of their innocence, poverty and backwardness extending over centuries. The Constitution of India and the laws made thereunder treat tribals and tribal areas separately wherever needed. The tribals need to be settled, need to be taken care of by the protective arm of the law, and be saved from falling prey to unscrupulous device so that they may prosper and by an evolutionary process join the mainstream of the society. The process would be slow, yet it has to be initiated and kept moving. The object sought to be achieved by the 1950 Act and the 1956 Regulations is to see that a member of an aboriginal tribe indefeatably continues to own the property which he acquires and every process known to law by which title in immovable property is extinguished in one person to vest in another person, should remain so confined in its operation in relation to*

tribals that the immovable property of one tribal may come to vest in another tribal but the title in immovable property vesting in any tribal must not come to vest in a non-tribal. This is to see and ensure that non-tribals do not succeed in making inroads amongst the tribals by acquiring property and developing roots in the habitat of tribals.

16. *In support of the proposition that the expression "transfer of immovable property" is capable of being assigned an extended meaning depending on the context and the setting in which it has been used so as to include therein such transactions as would not otherwise and ordinarily be included in its meaning, we may refer to a few decided cases.*

18. *In Pandey Oraon v. Ram Chander Sahu [1992 Supp (2) SCC 77] the term "transfer" as used in Section 71-A of the Chota Nagpur Tenancy Act, 1908, came up for the consideration of the Court. "Transfer" was not defined in the Act. It was held that considering the situation in which the 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 Section 71-A 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". Their Lordships observed: (SCC p. 80, para 7)*

> *"7. The provision is beneficial and the legislative intention is to extend protection to a class of citizens who are not in a position to keep their property to themselves in the absence of protection. Therefore when the legislature is extending special protection to the named category, the court has to give a liberal construction to the protective mechanism which would work out the protection and enable the sphere of protection to be effective than limit by (sic) the scope."*

Their Lordships referred to three earlier decisions of this Court, namely, Manchegowda v. State of Karnataka [(1984) 3 SCC 301 : (1984) 3 SCR 502] , Lingappa Pochanna Appelwar v. State of Maharashtra [(1985) 1 SCC 479 : (1985) 2 SCR 224] , Gamini Krishnayya v. Guraza Seshachalam [AIR 1965 SC 639 : (1965) 1 SCR 195] and a decision of the House of Lords in D (a minor) v. Berkshire County Council [(1987) 1 All ER 20 : 1987 AC 317 : (1986) 3 WLR 1080 (HL)] laying down the proposition that a broad and liberal construction should be given to give full effect to the legislative purpose.

19.*State of M.P. v. Babu Lal [(1977) 2 SCC 435] is an interesting case showing how this Court dealt with an artistic device employed by a non-tribal to deprive a tribal of his land. The M.P. Land Revenue Code, 1959 imposed restrictions on the transfer of land by members of a Scheduled Tribe. Babu Lal, a non-tribal, filed a suit for declaration against Baddiya, a Bheel, notified Scheduled Tribe, for declaration that his name be recorded in the revenue record as bhumiswami over the land of Baddiya. Baddiya did not contest the suit and the parties filed a compromise conceding to the claim of Babu Lal. The State Government intervened and filed a petition in the High Court seeking a writ of certiorari, submitting that the entire proceedings in the suit were in contravention of sub-section (6) of Section 165 of the M.P. Land Revenue Code, 1959. The judgment of the civil court based on compromise was sought to be quashed. The High Court dismissed the petition holding that the State could pursue the alternative remedy of filing a suit for declaration that the decree was null and void. In appeal by special leave, this Court set aside the judgment of the High Court and issued a writ of certiorari to quash the judgment and decree passed in the civil suit. It was held: (SCC p. 436, para 5)*

> *"5. One of the principles on which certiorari is issued is where the Court acts illegally and there is*

error on the face of record. If the Court usurps the jurisdiction, the record is corrected by certiorari. This case is a glaring instance of such violation of law. The High Court was in error in not issuing writ of certiorari.”

20. *The law laid down by this Court is an authority for the proposition that the court shall step in and annul any such transaction as would have the effect of violating a provision of law, more so when it is a beneficial piece of social legislation. A simple declaratory decree passed by a civil court which had the effect of extinguishing the title of a member of a Scheduled Tribe and vesting the same in a non-member, was construed as “transfer” within the meaning of Section 165(6) of the M.P. Land Revenue Code, 1959. Thus, we are very clear in our minds that the expression “transfer of immovable property” as defined in clause (f) of para 2 of the 1956 Regulations has to be assigned a very wide meaning. Any transaction or dealing with immovable property which would have the effect of extinguishing title, possession or right to possess such property in a tribal and vesting the same in a non-tribal, would be included within the meaning of “transfer of immovable property”*

20. Coming back to the facts of the present case, in light of the principles laid down in the aforesaid judgment of the Hon'ble Supreme Court, and taking into consideration the objective of Section 165(6) of the Code, this Court is of the considered view that that if Section 165(6) is interpreted by examining only the identity of the transferor at the time of sale, it would amount to a literal construction of the provision, which would frustrate the very purpose for which it was enacted. The necessary legal implication of such construction would be that if an aboriginal tribal woman dies leaving her non-tribal husband as her only legal heir, the land

would lose its protective character and the statutory shelter granted under Section 165(6) would no longer be applicable. It is quite well settled that whenever a legislation is beneficial in nature, it must always be interpreted in a manner that advances and furthers its objective, rather than circumvention. Where two interpretations are possible, the Court must adopt the one that advances and furthers the objective of the legislation.

21. Admittedly, the word “transfer” used in Section 165(6) of the Code must be given an expansive meaning, otherwise the restriction imposed by the statute would be diluted merely because the ownership has devolved by way of inheritance upon a non-tribal spouse. Adopting a contrary interpretation would result in the erosion of the statutory shelter granted under this provision.

22. In view of the above, this Court is of the view that it is imperative that the safeguards prescribed under Section 165(6) of the Code is strictly complied with before alienating such land in favour of a non-tribal purchaser.

23. In view of the aforesaid, Question No.2 is answered accordingly.

Question No.3

24. Another important aspect requiring consideration is whether any enquiry as contemplated under Section 170-B of the Code, was conducted by the prescribed authority. A perusal of the order dated 16.3.2000 passed by the concerned SDO, it appears that the SDO was perhaps influenced solely by the fact that the transaction was between tribals and thereby, completely failing to

examine the allegation of fraud committed by Sarju Ahir, as complained by respondent No.1.

25. The concerned prescribed authority is vested with broad statutory powers under Section 170-B of the Code to enquire into land transaction and scrutinize whether any such transfer is vitiated by fraud. This includes benami or fake deals where the land is shown on paper to be between two tribals, but actual physical possession is kept by a non-tribal. Moreover, an enquiry of this nature mandates that the SDO record oral and documentary evidence of both the parties, which is an essential procedural requirement that was omitted in the present case.

26. In the matter of **Jagdeesh Choudhary Vs. The Board of Revenue and others** reported in **2013 SCC Online Chh 27**, the following has been held in para 7 & 8:

> *7. The Legislature has empowered the Sub-Divisional Officer to pass an order of return of land to the original owner, member of aboriginal tribe, under sub-sections (1) & (2) of Section 170B of the Code in case the person in possession of the land originally owned by the member of aboriginal tribe, failed to notify the same to the Sub-Divisional Officer. As per intent of the legislature, under sub-section (3) of Section 170B of the Code the Sub-Divisional Officer is also empowered to enquire into the matter on the basis of information received inter aliathe Sub-Divisional Officer is under obligation to hold an enquiry under sub-section (3) of Section 170B of the Code before passing final order on the basis of information received.*
>
> *8. As per order impugned the Sub-Divisional Officer has initiated inquiry under subsection (3) but exercised the*

> *jurisdiction and passed the order under sub-section (1) & (2) of Section 170B of the Code. Considering the fault on the part of the petitioner, which has been explained by the petitioner, by passing the order impugned without holding any inquiry in terms of sub-section (3), the Sub Divisional Officer has committed an illegality and failed to follow the procedure prescribed and also failed to exercise the jurisdiction vested in it. The said order has been affirmed by the first appellate Court and the revisional Court i.e. the Collector and the Commissioner, and thereby all the aforesaid revenue authorities have committed an illegality resulting into miscarriage of justice. Right vested upon the person on the basis of an legal document cannot be brushed without following the procedure prescribed but in the present case aforesaid revenue authorities have failed to exercise their jurisdiction in accordance with law and to follow the procedure prescribed. Therefore, all the orders impugned are not sustainable under the law and require interference in exercise of supervisory jurisdiction in terms of Article 227 of the Constitution of India.*

27. Reverting to the facts of the present case, considering the procedural and substantive defects, this Court is of the view that a proper enquiry, as envisaged under Section 170-B of the Code, ought to be conducted by the concerned SDO (R). The SDO(R) shall call for a report from the subordinate revenue authorities, afford due opportunity to the parties to lead oral as well as documentary evidence and thereafter, pass a reasoned order in accordance with law, either directing reversion of the land or otherwise.

28. In view of the aforesaid, Question No.3 is answered accordingly.

29. In light of the foregoing discussion, without expressing any opinion

on the merits of the case, this Court is of the considered opinion that the matter requires a proper enquiry and adjudication afresh by the concerned SDO (R). Accordingly, the order dated 16.3.2000 passed by the concerned SDO and the order dated 31.3.2003 passed by the concerned Additional Collector are hereby set-aside and the impugned order dated 7.12.2021 passed by the Commissioner, Sarguja Division (Ambikapur), so far as it relates to reversion of the subject land to respondent No.1, is also set-aside. The matter is remanded back to the concerned SDO (R) to conduct a proper enquiry and pass an appropriate order in accordance with law, after affording a due opportunity of hearing and leading evidence to all the parties.

30. Considering that the dispute pertains to the year 2000 and the subject sale deed pertains to the year 09.02.1968, the concerned SDO(R) is directed to conclude the proceedings and pass a reasoned order within three months from the date of receipt of a copy of this order.

31. The parties are directed to appear before the concerned SDO **on 10.8.2026.**

32. Registry is directed to send a copy of this order to the concerned SDO forthwith.

33. With the aforesaid observations/directions, the Writ Petition is finally disposed of.

Sd/-

(Amitendra Kishore Prasad)
Judge

Shyna Ajay