2022:CGHC:20686

2026:CGHC:15034

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 3810 of 2021

Reserved on 11/03/2026

Pronounced on 01/04/2026

Urmila Devi W/o Late Muneshwar Sai, Aged About 66 Years, Caste Kanwar, R/o Village Chetwa, Tahsil Kansabel, District- Jashpur (C.G.)

(Non-Applicant No.1)

... Petitioner

versus

1 - Vikas Kumar Agrawal S/o Brajbhushan, Aged About 39 Years, Caste Agrawal, R/o Village Kunkuri, Tahsil Kunkuri, District- Jashpur (C.G.) **(Applicant)**

2 - Mukesh Kumar Agrawal S/o Ramniwas Agrawal,

3 - Radheshyam Agrawal S/o Ramniwas Agrawal,

4 - Gouri Shankar Agrawal S/o Manohar Agrawal,

5 - Poonam Chandra Agrawal S/o Manohar Agrawal,

6 - Umesh Agrawal S/o Manohar Agrawal,

The respondents No.2 to 6 belong to Caste Agrawal, R/o Village Kansabel, District- Jashpur (C.G.)

(Non-Applicants No. 2 to 6)

7 - The Commissioner, Surguja Division (Ambikapur), District- Surguja (C.G.),

8 - The Collector Jashpur, District- Jashpur (C.G.),

9 - The Sub Divisional Officer (Revenue) Bagicha, District Jashpur (C.G.)

... Respondents

For Petitioner	:	Shri Dhiraj Kumar Wankhede, Advocate appears along with Shri Sanchit Bhatt, Advocate.
For Respondents No.1 to 6	:	Shri B. P. Sharma, Advocate appears along with Shri M. L. Sakat and Ms. Koushiki Kumari, Advocates.
For State/Respondents No.7 to 9	:	Shri Dharmesh Shrivastava, Deputy Advocate General.

Single Bench:Hon'ble Shri Sanjay S. Agrawal, J

CAV Judgment

1. By virtue of this petition, the petitioner being an aboriginal has questioned the legality and propriety of the order dated 10.08.2021 passed by the Commissioner, Surguja Division (Ambikapur), Chhattisgarh in Revenue Revision Case No. 202103960100022/29/A-23/2020-21, whereby the Revisional Court has dismissed the application filed by the petitioner under Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (hereinafter referred to as 'the Code, 1959'), while reversing the order dated 19.02.2021 passed by the Collector, Jashpur in Appeal Revenue Case No.201911030100011/6/2019-20 affirming the order dated 04.10.2019 passed by the Sub Divisional Officer (Revenue), Bagicha, District Jashpur in Revenue Case No.13/A-23/14-15 for restoration of the land in question.

2. The facts, which are essential for adjudication of this petition, are that the land bearing Khasra No.427/3 and 427/4 admeasuring 0.725 hectare and 0.721 hectare, respectively, total admeasuring 1.446 hectare situated at Village Chetva, Tehsil Kansabel, District Jashpur was originally held by one Muneshwar Sai (since deceased now represented by his widow - Urmila Devi), who was the *Kanwar* by caste belonging to the aboriginal and, vide registered deed of sale dated

06.03.1973, he had sold the alleged suit land to one Sadhu Sai for a consideration of Rs.3,000/-, while putting him in possession thereon. Perusal of the record would reveal further that said Sadhu Sai after obtaining the permission for its alienation from the Collector, Jashpur vide order dated 28.06.1974 (Annexure P-3) as required under Section 165(6) of the Code, 1959, sold it to one Manohar Lal Agrawal, the predecessor-in-interest of the respondents, by executing a registered deed of sale dated 18.07.1974 for a consideration of Rs.3,500/- and, the revenue papers were, accordingly, recorded in his name, who, then applied for partition while approaching the court of Nayab Tehsildar, Jashpur, where the said authority vide its order dated 11.07.1980 has divided the land in question amongst his heirs.

3. The aforesaid transaction made in favour of said Sadhu Sai was held to be benami at the instance of said Manohar Lal Agrawal, and therefore, the transaction made in his (Manohar Lal Agrawal) favour on 18.07.1974 was, accordingly, held to be a fraudulent one in an enquiry held by the Sub Divisional Officer (Revenue), Bagicha under Section 170-B of the Code, 1959 based upon the application moved by said Muneshwar Sai on 23.01.2015 and, the order as passed by the said authority on 04.10.2019 was affirmed further by the Collector, Jashpur vide its order dated 19.02.2021 in an appeal preferred by respondent No.1 – Vikas Kumar Agrawal.

4. Being aggrieved with the aforesaid order, a revision was preferred by respondent No.1 before the Commissioner, Surguja, who, in turn, vide its order impugned has reversed the aforesaid order and, being aggrieved, the instant petition has been filed by the petitioner, who is

the widow of said Muneshwar Sai, the erstwhile owner of the land in question.

5. Shri Dhiraj Kumar Wankhede, learned counsel appearing for the petitioner/aboriginal submits that the finding recorded by the Commissioner, Surguja holding that the alleged transactions are not benami, while reversing the order of the Collector, Jashpur affirming the findings of the Sub Divisional Officer (Revenue), is apparently contrary to the materials available on record, inasmuch as, the evidence led by the petitioner/aboriginal and her witnesses recorded before the court of Sub Divisional Officer (Revenue) has not been scanned in its proper manner and, thereby erred in holding that the alleged transaction is a valid one. Further of his contention is that the predecessor-in-interest of the respondents, namely, Manohar Lal Agrawal had, in fact, purchased the alleged land for his own benefit, while forwarding to said Sadhu Sai, therefore, the Sub Divisional Officer as well as the Collector, Jashpur after considering the evidence of the petitioner/aboriginal and her witnesses has concurrently held the alleged transaction to be a benami one, which ought not to have been disturbed by the Commissioner, Surguja, while exercising its revisional jurisdiction. In support, he placed his reliance upon the decision rendered by the Supreme Court in the matter of ***Bhaiji vs. Sub-Divisional Officer, Thandla And Others*** reported in **(2003) 1 SCC 692**.

6. On the other hand, learned counsel appearing fo the respondents, while inviting attention towards the application dated 23.01.2015, made by said Muneshwar Sai, submits that since said aboriginal was in need of money and was searching for a purchaser, therefore, said Manohar

Lal Agrawal in order to help him, got the alienation of his land in favour of said Sadhu Sai while producing himself to be one of the witnesses of the transaction made in his favour on 06.03.1973. As such, it cannot be said that while forwarding him (Sadhu Sai), he had purchased the land in question benami in his name for his own benefit. While placing reliance upon the principles laid down by the Supreme Court in the matter of ***Khora (Dead) through legal heirs and others vs. Mohar Sai and Others*** reported in **(2023) 14 SCC 767** submits further that the Revenue Authorities have no jurisdiction to examine the issue of benami, therefore, neither the alleged transaction made in favour of said Sadhu Sai was a benami one, nor could it be held to be benami by the said Revenue Authorities. The order impugned passed by the Commissioner, Surguja, therefore, does not suffer from any infirmity, so as to call for any interference in this petition.

7. I have heard learned counsel appearing for the parties and perused the entire record carefully.

8. Admittedly, one Muneshwar Sai, the husband of the petitioner, was the erstwhile owner of the land in question bearing Khasra No.427/3 and 427/4 admeasuring 0.725 hectare and 0.721 hectare, respectively, total admeasuring 1.446 hectare situated at Village Chetva, Tehsil Kansabel, District Jashpur. The alleged land held by him was purchased by one Sadhu Sai from him, who was also the aboriginal, under the registered deed of sale dated 06.03.1973 for a consideration of Rs.3,000/- and the revenue papers were, accordingly, recorded in his name, who after sometime, i.e., on 06.07.1973, moved an application before the Collector, Jashpur seeking permission to alienate the alleged land to

said Manohar Lal Agrawal, the non-aboriginal, under Section 165(6) of the Code of 1959. In the said proceeding, a report, dated 23.02.1974 was submitted by the Sub Divisional Officer (Revenue), before the Collector, Jashpur opining the prevailing rate of the land in question, which is “Tand” in nature, to be Rs.364/- per acre and, the sale consideration for alienation of the land in question was, thus, opined to be justified as it was more than the prevailing rate and, upon its due consideration, the permission was accorded by the Collector, Jashpur vide its order dated 28.06.1974 in the said proceeding registered as Revenue Case No.211/A-21/1972-73 and, thereafter, he (Sadhu Sai) sold the alleged land to him under the registered deed of sale dated 18.07.1974. After acquiring the land in question as such, he, then, applied for its partition and was partitioned, accordingly, amongst his sons, namely, Ramniwas Agrawal, Gauri Shankar Agrawal, Poonam Chandra Agrawal and Umesh Agrawal by the Nayab Tehsildar, Jashpur vide its order dated 11.07.1980.

9. After the afflux of four decades, an application was made by said erstwhile owner – Muneshwar Sai before the Sub Divisional Officer (Revenue) on 23.01.2015 under Section 170-B of the Code of 1959 for restoration of the land in question with the allegation that said Manohar Lal Agrawal, the predecessor-in-interest of the respondents, the non-aboriginal, while forwarding said Sadhu Sai, the aboriginal, had purchased his land under the registered deed of sale dated 06.03.1973 at Jashpur in his presence and his known witness, namely, Sone Sai, who was the resident of a different Village, i.e., Village Jumaikela and got the revenue papers recorded in his (Sadhu Sai) name, while

retaining the possession to himself and, thereafter got the registered deed of sale dated 18.07.1974 in his name after obtaining the sanction from the Collector, Jashpur vide order dated 28.06.1974 passed in Revenue Case No.211/A-21/1972-73 and obtained the revenue papers recorded in his name. It was, thus, alleged by him that while forwarding him (Sadhu Sai) as such, he succeeded to get the registered deed of sale executed in his favour fraudulently and, therefore, entitled to get it restored.

10. In response to the aforesaid application, it was stated by the respondents that the alleged land was not purchased by their predecessor-in-interest, namely, Manohar Lal Agrawal benami while forwarding said Sadhu Sai, as alleged by the petitioner and instead, he had purchased the same from him on 18.07.1974 for a consideration of Rs.3,500/- only after due permission of the Collector as required under Section 165(6) of the Code, 1959. It is, therefore, contended that the application as framed much after the period of 40-41 years, deserves to be rejected.

11. In order to consider the aforesaid allegation, it is necessary to examine the said application, made on 23.01.2015, which reads in its verbatim as under:-

न्यायालय श्रीमान् अनुविभागीय अधिकारी महोदय कांसाबेल,
जिला–जशपुर (छ.ग.)

उर्मिला देवी पति स्व. मुनेश्वर साय, उम्र 61 वर्ष, जाति कंवर निवासी– चेटवा तहसील कांसाबेल जिला–जशपुर (छ.ग.)

बनाम

रामनिवास अग्रवाल पिता स्व. मनोहर लाल अग्रवाल एवं अन्य 3

सभी निवासी कांसाबेल, तहसील–कांसाबेल
जिला–जशपुर (छ.ग.)

अनावेदकगण

आवेदन पत्र अन्तर्गत धारा 170 (ख) छ.ग. भू–राजस्व संहिता आवेदक श्रीमान् से निम्न निवेदन करता हैः–

01 यह कि आवेदक एवं अनावेदकगण उपरोक्त दर्शित पते के स्थायी निवासी हैं।

02 यह कि ग्राम – चेटवा, प.ह.नं. –90 रा.नि.मं.–कांसाबेल, विकासखण्ड कांसाबेल तहसील– कांसाबेल, जिला–जशपुर (छ.ग.) में आवेदक के नाम से ख.नं. 427 रकाब 3.253 है भूमि, भूमि स्वामी हक की भूमि स्थित थी।

03 यह कि आवेदक कंवर जाति का है जो अनुसूचित जनजाति के श्रेणी में आते हैं।

04 यह कि अनावेदकगण के पिता तथा अनावेदक क. 4 के दादा स्व. मनोहर लाल अग्रवाल फरवरी 1973 में आवेदक के पास आया और कहा कि आप लोग गौंटिया है इतनी जमीन क्या करेंगे रोड किनारे की जमीन जो ख.नं. 427 रकबा 3.253 है, भूमि हमको दे दीजिए हम आप का नाम करेंगे।

05 यह कि अनावेदकगण के पिता तथा दादा स्व. मनोहर लाल अग्रवाल के कहने पर आवेदक ने अनावेदकगण के पिता मनोहर लाल अग्रवाल से कहा मैं कंवर जाति का निवासी हूं। आप गैर आदिवासी है, आप मेरी जमीन कैसे ले सकते हैं। रजिस्ट्री मेरी जमीन का आपके नाम से नहीं हो सकता है, अतः मुझे माफ कीजिए।

06 यह कि आवेदक के परिवार में पैसे की आवश्यकता होने के कारण वह पैसे के लिए इधर–उधर पैसे का तलाश कर रहा था, इसी बीच पता लगने पर अनावेदकण के पिता स्व. मनोहर लाल अग्रवाल ग्राम चेटवा के निवासी साधू साय जो आदिवासी है, को सामने कर उक्त भूमि मुनेश्वर साय से कय करवा कर पंजीकृत विकयनामा दिनांक 06.03.1973 को जशपुरनगर में अपने गवाह, सोन साय जो ग्राम जुमईकेला का रहने वाला है तथा दूसरा गवाह स्वयं बनकर उक्त पंजीकृत बैनामा निष्पादित कराया।

07 यह कि अनावेदकगण के पिता स्व. मनोहर लाल अग्रवाल साधु साय को सामने करके मुनेश्वर साय कंवर की जमीन को जो कि आदिवासी है को कय करवाया तथा कय करवाने के पश्चात् स्वयं खर्च कर अनावेदकगण के पिता स्व. मनोहर लाल अग्रवाल मुनेश्वर की जमीन पर राजस्व अभिलेखों में मुनेश्वर का नाम कटवाकर भूमि में साधु साय का नाम दर्ज करवाया तथा उपरोक्त भूमि पर अपना कब्जा बनाये रखा।

08 यह कि अनावेदकगण के पिता स्व. मनोहर लाल अग्रवाल ख.नं. 427 रकबा 3.253 है भूमि पर साधु साय का नाम होने का लाभ उठाते हुए तथा खिला पिलाकर साधु साय को अपने पक्ष में करते हुए तथा पैसे देकर दिनांक 06.07.1973 को साधु साय से एक आवेदन भूमि बिकी गैर आदिवासी को करने के संबंध में आवेदन पत्र न्यायालय कलेक्टर रायगढ़ (म.प्र.) के यहां प्रस्तुत करवाया जो

राजस्व प्रकरण क. 211/अ–21/1972–1973 है।

09 यह कि दिनांक 28.06.1976 को कलेक्टर से अनुमति मिलने के पश्चात् उक्त भूमि अनावेदकगण के पिता स्व. मनोहर लाल अग्रवाल साधु साय से दिनांक 18.07.1974 को पंजीकृत विकय पत्र के माध्यम से अपने नाम पर कराकर राजस्व अभिलेखों में अपने नाम से नामांतरण करा लिया है।

10 यह कि अनावेदकगण के पिता स्व. मनोहर लाल अग्रवाल अपने पक्ष में उक्त भूमि का खाता विभाजन करने हेतु नायब तहसीलदार जशपुर के न्यायालय में आवेदन प्रस्तुत किया जो प्रकरण क. 03/अ–27/1979–80 है जिसमें दिनांक 11.07.1980 को नायब तहसीलदार द्वारा आदेश करने के पश्चात् उक्त भूमि का खात विभाजन अनावेदकगण क. 1, 2, 3 तथा 4 अनावेदकगण के पिता ओम प्रकाश अग्रवाल के पक्ष में खाता विभाजन हुआ।

11 यह कि उक्त भूमि अनावेदकगण क. 1, 2, 3 तथा 4 के पिता ओम प्रकाश अग्रवाल के नाम पर राजस्व अभिलेखों में 30.07.1980 को दर्ज किया गया है।

12 यह कि अनावेदकगण के पिता स्व. मनोहर लाल अग्रवाल के द्वारा कपट पूर्वक एवं षडयंत्र रचकर तथा छल से आवेदक मुनेश्वर साय कंवर आदिवासी से उक्त भूमि अपने नाम करने के पश्चात् अपने पुत्रों के नाम अर्थात अनावेदकगण क. 1, 2, 3 तथा 4 के पिता ओम प्रकाश अग्रवाल के नाम पर कराया गया है।

13 यह कि उक्त भूमि का हस्तांतरण आदिवासी से गैर आदिवासी का होना 170 (ख) छ.ग. भू–राजस्व संहिता के अन्तर्गत आता है।

14 यह कि आवेदक उक्त भूमि को वापस लेना चाहता है।

15 यह कि आवेदक अपने आवेदन पत्र के साथ खसरा पांचशाला सन 1972–73 एवं पंजीकृत विकयनामा दिनांक 06.03.1973 तथा पंजीकृत विकयनामा दिनांक 18.07.1974 न्यायालय कलेक्टर रायगढ़ (म.प्र.) का आदेश दिनांक 28.06.1974 की प्रमाणित प्रतिलिपि संलग्न कर रहा है।

अतः श्रीमान से निवेदन है कि आवेदन पत्र स्वीकार कर उक्त भूमि आवेदक को कब्जा वापस दिलाने का आदेश प्रदान करने की दया हो।

स्थान कांसाबेल अधिवक्ता वास्ते आवेदक आवेदक

दिनांक 23.01.2015

12. It is, thus, alleged, as reflected from a bare perusal of the aforesaid application that since the said aboriginal – Muneshwar Sai was in need of money, therefore, upon knowing the said fact, the predecessor-in-interest of the respondents, namely, Manohar Lal Agrawal, while

forwarding said Sadhu Sai had purchased his land benami under the registered deed of sale, dated 06.03.1973 though the possession was retained by himself and, thereafter, got it purchased from him under the registered deed of sale, dated 18.07.1974 after obtaining the permission of its alienation from the Collector, Jashpur vide order, dated 28.06.1974.

13. An enquiry based upon the aforesaid allegation was conducted by the Sub Divisional Officer (Revenue) under Section 170-B of the Code, 1959, where the petitioner – Urmila Devi, in her evidence, has specifically stated that said Manohar Lal Agrawal had come in possession over the alleged land only after its purchase from said Sadhu Sai. The relevant admission to this effect reads as under:-

> .... यह कहना सही है कि साधु साय से मनोहर लाल अग्रवाल उक्त जमीन कय करने के बाद कब्जा मनोहर लाल लोग करने लगे।''

14. In view of the aforesaid admission, it is, thus, evident that he came in possession over the alleged land only after its purchase from said Sadhu Sai and, had not come over it when his vendor – Sadhu Sai had purchased the same from her husband, as alleged in the said application filed under Section 170-B of the Code, 1959 and, as was observed by the Sub Divisional Officer (Revenue), Bagicha, vide its order dated 04.10.2019 (Annexure P-4), affirmed by the Collector, Jashpur vide its order dated 19.02.2021 in an appeal preferred by respondent No.1. The observation of the said revenue authorities, therefore, cannot be held to be sustainable in view of the specific

admission of said Urmila Devi, the widow of said aboriginal-Muneshwar Sai.

15. Moreover, as revealed from the proceeding held under sub-section (6) of Section 165 of the Code, 1959, as observed herein-above, the prevailing rate of the land in question was found to be Rs.364/- per acre and only after considering the adequacy of the sale consideration, permission to alienate the land in question was accorded by the Collector, Jashpur to said Sadhu Sai vide order, dated 28.06.1974 and only thereafter, the registered deed of sale dated 18.07.1974 was executed in his (Manohar Lal Agrawal) favour for a consideration of Rs.3,500/-, i.e., more than a consideration what was assessed in the said proceeding, which has already attained its finality by efflux of time.

16. In view of such circumstances, it is, thus, evident that the alleged sale was made upon due consideration of the price of the land in question and, it cannot be said that any kind of fraud was committed by said Manohar Lal Agrawal with the said erstwhile owner of the land in question at the time of execution of the registered deed of sale made in favour of said Sadhu Sai, or could it be held to be benami, as alleged in the said application.

17. Be that as it may, the aforesaid Revenue Authorities were not competent enough to hold the alleged transaction as a benami, as the issue to consider the same is beyond its jurisdiction in view of the principles laid down by the Supreme Court in the matter of ***Khora (Dead) through legal heirs and others vs. Mohar Sai and Others***, reported in **(2023) 14 SCC 767**. As in the said case, a suit was instituted by respondent No.1/plaintiff, an aboriginal, seeking

declaration of title and injunction based upon a deed of sale, dated 02.04.1981, said to have been executed in his favour by an aboriginal. It was contested by the appellants/defendants on the ground that the alleged sale, though purchased in his (plaintiff) name, but was a benami one, as the same was executed for the benefit of his master, who was not a tribal and, the alleged transaction was held to be as such, i.e., a benami transaction, by the Revenue Authorities which has attained its finality. In that factual scenario, a question was, therefore, raised therein, that the claim as made was not only barred by jurisdiction under Section 257 of the Code, 1959, but would also be hit by the principles of res judicata. The defence, so raised, was turned down by the Supreme Court on the ground that the Revenue Authorities have no jurisdiction to hold the alleged transaction to be a benami one and, the civil court cannot be held to be barred by jurisdiction to entertain the authenticity of the alleged transaction. The relevant observations made therein at paragraphs 7, 8 and 9 read as under:-

> "**7.** ……………...Admittedly Respondent 1 who filed the suit on the strength of the sale deed executed in his favour was also a tribal person. In such circumstances, the question as to whether Respondent 1 was only the ostensible owner and not the beneficial owner could not have been gone into by the Revenue Authorities. It is true that under Section 165(6-c), the Collector is entitled to go into the question whether the transaction is spurious or benami. But the power conferred by Section 165(6-c) is to be exercised while passing an order under sub-section (6-a), granting or refusing to grant permission or under sub-section (6-b), ratifying or refusing to ratify the transaction. Such a power is not expressly extended to avoidance of transfers under Section 170."

> "**8.** ………………...An attempt was made by the appellants

herein to show that the transaction was hit by the benami Transaction (Prohibition) Act, 1988. That was also rejected by the trial court. Since all these questions could not have been gone into by the Revenue Authorities, the findings recorded by them could not have operated as res-judicata."

"**9.** …………...The question whether the purchase by a tribal was a sham and nominal transaction for the benefit of a non-tribal, may not fall exclusively within the jurisdiction of the Authorities……."

18. In view of the principles laid down by the Supreme court in the above referred matter, the findings recorded by the said Revenue Authorities holding the alleged transaction to be a fraudulent one because it was a benami, thus, cannot be held to be sustainable in the eye of law and the Commissioner, Surguja vide its order impugned has, therefore, not committed any illegality in reversing the same while rejecting the application filed under Section 170-B of the Code, 1959 for restoration of the land in question.

19. Insofar as the principles laid down by the Supreme Court in the matter of ***Bhaiji vs. Sub-Divisional Officer, Thandla And Others*** (supra), as relied upon by the counsel appearing for the petitioner, is concerned, the same is, however, of no use as the enquiry was conducted in the instant matter under Section 170-B of the Code, 1959.

20. Consequently, the petition being devoid of merit is dismissed.

No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE

Nikita