

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 10-08-2018****Order delivered on 30-11-2018****WPC No. 7048 of 2007**

1. Gambhir Das Panika, aged about 46 years, S/o Shri Sundar Das Panika, R/o Village Harinbhattha , Tahsil Palari, District Raipur (CG).

---- Petitioner**Versus**

1. Chairman, Board of Revenue, Chhattisgarh, Bilaspur, Circuit Court Raipur (C.G.)
2. The Collector / Additional Collector, Baloda Bazar, District Raipur (C.G.)
3. The Sub Divisional Officer (Rev.), Baloda Bazar, District Raipur (C.G.)
4. The Tahsildar / Naib Tahsildar, Tahsil Palari, District Raipur (C.G.)
5. Sukh Sagar Das, S/o Ghasiya, Caste Panika, aged about 40 years, R/o Village Harinbhattha, Tah. Palari, Distt. Raipur (C.G.)

---- Respondent**WP227 No. 219 of 2014**

1. Smt. Dhanmoti, W/o Jaikishan, aged about 57 years, R/o Village Sanpanthi, P.H.No.10, Tehsil Saraipali, District Mahasamund (C.G.)

---- Petitioner**Versus**

1. Narsingh, S/o Chamru, R/o Village Sanpanthi, P.H.No.10, Tehsil Saraipali, District Mahasamund (C.G.)
2. Board of Revenue, Chhattisgarh, Bilaspur (C.G.)
3. Additional Commissioner, Raipur Division, Raipur (C.G.)

4. Sub-Divisional Officer, Saraipali, District Mahasamund (C.G.)
5. Naib-Tehsildar, Saraipali, District Mahasamund (C.G.)

---- Respondent

WPC No. 953 of 2012

1. Bhagwati W/o Shankh Ram, aged about 42 years, R/o Village Barliya Tah. - And Distt - Raigarh C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh through the Secretary, Revenue and Disaster Management Department, DKS Bhawan, Raipur, CG
2. The Collector Raigarh Distt. Raigarh C.G.
3. The Tahsildar, Raigarh, Distt. Raigarh C.G.

---- Respondent

WPC No. 1967 of 2018

1. Rajesh Sarthi S/o Dilharan Sarthi, Aged About 35 Years R/o Ward No. 14 Sarthi Colony, Janjgir, District- Janjgir-Champa, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through- Secretary, Department Of Revenue, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh.
2. Commissioner Bilaspur Division Bilaspur, Chhattisgarh.
3. Collector Janjgir, District- Janjgir-Champa, Chhattisgarh
4. Sub-Divisional Officer (Revenue) Janjgir, District- Janjgir-Champa, Chhattisgarh.
5. Tahsildar Janjgir, District- Janjgir-Champa, Chhattisgarh.

---- Respondent

For respective Petitioners	Shri Malay Shrivastava, Shri Roop Naik & Shri Sunny Agrawal, Advocate on behalf of Shri Chandresh Shrivastava, Advocates
For Respondent	Shri Prafull Bharat, Addl. Adv. General

Hon'ble Shri Justice Ajay Kumar Tripathi, CJ
Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

The following order of the Court was passed by
Prashant Kumar Mishra, J.

1. These writ petitions have been placed before the Division Bench to answer the following question :

“Whether a Kotwar (village servant) holding service land under Section 183(1) of the Chhattisgarh Land Revenue Code, 1959 can be granted *bhumiswami* right over such service land in view of the provision contained in Section 183(2) of the Code as held in **Chhabil Das** (supra) and **Tikaram** (supra)?”

2. The learned Single Judge has referred the aforesaid question for decision upon noticing that the decision rendered by the High Court of Madhya Pradesh in **Pahup Singh v Haridas**¹ followed by this Court in **Kamini Kumar v Bhaudas and Another**² has not been considered in two subsequent cases in the matters of **Tikaram and Others v The State of M.P. and another**³ and **Chhabil Das and Others v The State of**

1 1977 RN 467

2 AIR 2017 (NOC) 206 (Chh)

3 WP No.2064 of 2000 (decided on 3-5-2001)

Madhya Pradesh and Another⁴ while granting *bhumiswami* rights to the Kotwar on the land possessed by them.

3. In **Pahup Singh** (supra) the Single Bench of the High Court of Madhya Pradesh speaking through Hon'ble Shri G.P. Singh, J. (as His Lordship then was) held that transfer of service land by Kotwar is void, therefore, transferee cannot claim any right on land on the basis of such transfer. The ratio laid down in **Pahup Singh** (supra) was followed by this Court in **Kamini Kumar** (supra).

4. It is, therefore, required to first have a reading of what has been ordered by this Court in **Chhabil Das** (supra) & **Tikaram** (supra).

5. The first order passed by Hon'ble Shri W.A. Shishak, CJ in **Tikaram** (supra), which reads as under :

These 36 petitioners are Kotwars of District Durg. They were granted plots of land sometimes in the year 1950 and they are in possession of their respective plots of lands given to them. Thereafter, representations have been made to the competent authority to grant Bhoomiswami rights. Certain assurances were given to them. In fact, it is contended that even the Minister had given the assurance to them that Bhoomiswami rights would be granted. However, till date no such right has been granted. Hence this petition.

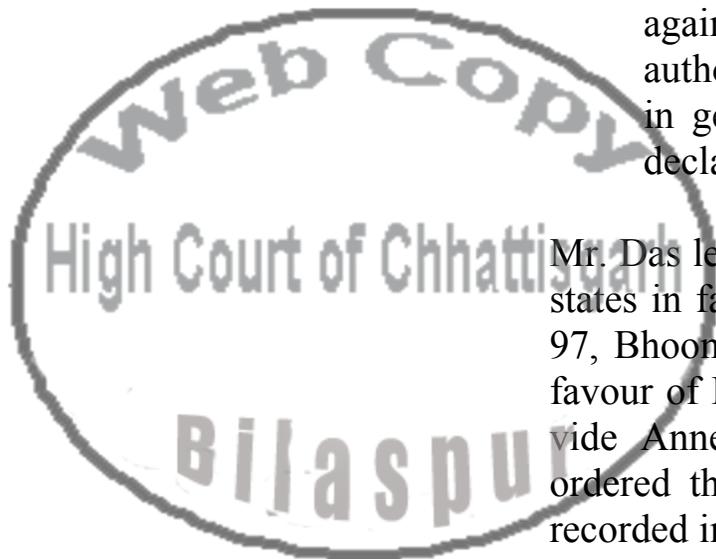
In para 4 of the return filed on behalf of the State, it is contended that inspite of

⁴ WP No.2632 of 2000 (decided on 30-10-2001)

the clear cut instructions of the State Government in regard to grant of Bhoomiswami rights in some of the sub divisions such rights have been granted in favour of the Kotwars. It is further stated in the said return which is as follows;-

“Such declaration of rights was evidently violative of the provisions of section 45 (2) of the Abolition of Proprietary Rights Act, 1950 and also contrary to the instructions issued by the State Government. At the same time the representations from the Kotwars and their unions kept on flowing with the State Government. The State Government has initiated appropriate action against the concerned revenue authorities which was instrumental in getting the Bhoomiswami rights declared in favour of the Kotwars”.

Mr. Das learned counsel for the petitioner states in fact that as late as in December, 97, Bhoomiswami rights were granted in favour of Kotwars of the district Bilaspur vide Annexure P-3. The Commissioner ordered that names of these kotwars be recorded in relevant revenue records. This order was passed sometime in January, 1988. It is further contended that some rights have been granted in respect of Kotwars of district Sarguja and Raigarh. It is therefore submitted that no discrimination can be meted-out to the present petitioners inasmuch as they are similarly situated with other kotwars of districts of Bilaspur, Sarguja and Raigarh. It is further submitted by Mr. Das that in fact no action has been initiated against any person for grant of Bhoomiswami rights in respect of other Kotwars though such averment has been made in the return filed by the State.



It appears to me that since the petitioners were given plots of lands in 1950 and since then they have been serving as Kotwars for all these years, even on humanitarian grounds, this prayer should be allowed. It would also be equitable that writ petitioners are granted Bhoomiswami rights; as the same has been done in respect of their counterparts in districts of Raigarh and Bilaspur.

In the result, this petition is disposed of with a direction that competent authority shall grant Bhoomiswami rights in respect of the writ petitioners. This order shall be carried-out within one month from the date of receipt of this order.

6. Subsequently, following **Tikaram** (supra), the following order was passed by Hon'ble Shri W.A. Shishak, CJ in

Chhabil Das (supra):

The case of the writ petitioners is that prior to 1950 the predecessors of the writ petitioners were in possession of some lands which are now in possession of the writ petitioners. It is further contended that the possession of the lands in question has been uninterrupted and continuous. The lands in question are clearly recorded in the Jamabandi i.e. revenue land record in the names of the predecessors of the writ petitioners. The petitioners are presently working as Kotwars. They are not claiming the said lands which are recorded in Jamabandi vide Annexure P/12 on the basis that they are Kotwars but on the basis that such lands have been granted by competent authority to the predecessors prior to 1950.

On perusal of the return filed on behalf of the respondents it appears that the fact of

possession is not controverted. It is contended in paragraph 4 of the return that certain actions have been taken by the revenue authorities in granting Bhumiswami rights in favour of some of the Kotwars but action is being contemplated.

Learned counsel for the petitioners submits that having been in continuous possession of the lands in question for such a very long time even on humanitarian consideration the petitioners should be given Bhumiswami rights. It is also further contended that in another case vide Writ Petition No. 2064 of 2000 disposed of on 03/05/2001 such direction was issued by this Court in respect of 36 Kotwars. It is further contended that even otherwise village Kotwars are also entitled to get some lands as Kotwars.

According to Shri Deep Kesharwani a village Kotwar is entitled to ten acres of land. The petitioners are in possession of the lands recorded in Annexure-P/12 inasmuch as those lands were in possession of their predecessors who were also village Kotwars.

According to the learned counsel for the petitioners the land in question is Mafi land and not service land. Shri Deep Kesharwani controverts this statement. Be that as it may, it seems to me that the petitioners are claiming Bhumiswami rights over the lands which were granted to their predecessors prior to 1950 and the said lands were duly recorded in documents Annexure -P/12.

On perusal of the relevant documents placed before me and after hearing learned counsel of both sides, I am of the view that it will be just and fair to allow the claim of the writ petitioners.

In the result, this petition is disposed of with the direction that the competent authority shall grant Bhumiswami rights in respect of the lands recorded in Jamabandi vide Annexure-P/12 in favour of the writ petitioners. This order shall be carried out within one month from the date of receipt of this order.

7. During pendency of the present matters before the Division Bench, another Single Bench (Hon'ble Shri Goutam Bhaduri, J.) rendered the judgment in **Lalla Singh Chouhan & Others v State of Chhattisgarh & Others**⁵ and other connected matters, holding thus in paras 33 to 36 :

33. Applying the aforesaid principles in the instant case, the omnibus direction to mutate all the lands held by Kotwars as a service land/Kotwari land cannot therefore be sustained. The State Government, however, has right to restrict the use of land in terms of section 183 of the Code of 1959 to the Kotwars which were granted to them for rendering service but for the fact that a Kotwar holds a land as a Bhumiswami will not change the status of that land for the reason that he is a 'Kotwar'. Therefore, there cannot be a general direction to revert back the revenue records and register the entire lands held by Kotwars as Kotwari lands. Consequently the direction (iv) contained in letter dated 10th March 2014 which takes away the right of Kotwars amounts to deproprietary in nature and without any authority of law. Further more, the direction that the possession of the lands be taken back cannot be sustained as no person can be dispossessed from his possession except only in accordance with law.

⁵ WPC No.782 of 2014 (decided on 1-2-2018)

34. As a result of the aforesaid discussion, it is held that the direction given in circular issued by Joint Secretary dated 10.03.2014 i.e. the clause (iv) being without authority of law is quashed and cannot be given effect to. It is further directed that the State Government shall not dispossess any Kotwar from his possession of the land otherwise than in due course of law.

35. It is further observed that the State Government, if so advised, shall be free to make an enquiry with respect to the nature of holding of land by Kotwars to determine and carve out the Bhumiswami holding lands and service land separately.

36. It is further directed that on such enquiry if the right of Bhumiswami is found to be accrued in favour of the petitioners Kotwars in terms of provisions of Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, the Bhumiswami right is to be conferred on the petitioners and with respect to the service lands, the rights would be governed by the provisions of Section 183 of C.G. Land Revenue Code, 1959. With such observations/direction, these petitions stand allowed.

8. Before dealing with the relevant provisions of law, it may be necessary to notice the origin of the office of the Kotwar or village servant vis-a-vis the provisions applicable to them during the pre independence era. The British governed India in two ways. The first category fell the areas directly under their administrative control such as the provinces and presidencies and the second category was the areas under

control of the princes. This second category had a few sub classes such as big Zamindars (Proprietors) and the Landlords. They were named differently in different areas. The princes and zamindars were given authority by the Britishers through legislations to regulate their domestic affairs, leaving to the Crown the responsibility of protecting the territory and communications. The arrangement was legalised under the Government of India Act, 1935 (for short 'the GOI Act, 1935'). This Act also created 10 Schedules.

The Sixth Schedule of which related to provisions as to franchise. It provided for who could be a voter for elections to Provisional Assembly. The Sixth Schedule itself was then divided into various parts province wise. Part VIII related to the Central Provinces and Berar. Under para 3 of this part (Qualifications dependent on property etc) para 3 (a) related to a person living in the Central Provinces holding property as a proprietor or thekedar of an estate or mahal the land revenue or kamil jama of which is not less than two rupees. In para 3 (b) the proprietor or thekedar was required to hold proprietary right, sir land or khudkasht, or as malik makbuza, raiyat or tenant agricultural land being sir land or khudkasht or agricultural land.

9. The expression “Kotwar” is available in para 8 of this part which relates to (*Additional qualifications for members of the scheduled caste*). Para 8 is reproduced herein –

“8. Subject as aforesaid, a member of a scheduled caste shall also be qualified to be included in the electoral roll for any territorial constituency if he is a kotwar, a jaglia, or a village mahar holding office.”

The expression “holding office” clearly implies that kotwar is a form of employment and it can never be a class of land holder. In fact the expression conveys an existence of a “master servant relationship”.

10. In para 10 of part VIII, as mentioned above, dealt with

Interpretation of words and expressions used under this part.

A few expressions defined therein are reproduced herein –

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“estate”, “mahal”, “malik makbuza”, “kamil jama”, “sir land” and “khudkasht” have the meanings respectively assigned to them in section 2 of the Central Provinces Land Revenue Act, 1917.

“estate or mahal” includes a part of an estate or a mahal.

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“proprietor” includes an inferior proprietor and a plot proprietor, but does not include a transferee of proprietary rights in possession, or a mortgagee with possession.

XXX XXX XXX

“thekedar” includes a gaontia and a protected headman.

“hold” in relation to land or an estate or mahal, means to be recorded in the records maintained under Chapter V of the Central Provinces Land Revenue Act, 1917, or Chapter X of the Berar Land Revenue Code, 1928, or, in the case of the Melghat Taluq of the Amraoti District, in the land records prescribed by the Provincial Government, as the person in possession of the land, estate or mahal.

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11. In addition to the above, the expression kotwar is also found in the GOI Act, 1935 in Part XI of Sixth Schedule which is with respect to Orissa. Under para 9 of Part XI which is with respect to – Special provision as to the district of Sambalpur.

Para 9 (d) clearly records as under –

9. Subject as aforesaid, a person shall be qualified to be included in the electoral roll for any constituency situated wholly or partly in the district of Sambalpur if, in that district, he either -

(a) xxxx

(b) xxxx

(c) xxxx

(d) is a village servant holding office as a jhankar, ganda, kotwar, jagalia or mahar, and holds land recorded in the record of rights as service land :

12. Para 9 (d) of Part XI read in context of para 8 of Part VIII of Sixth Schedule leave no trace of doubt that kotwar is an employment and the fact that the expression has been

similarly used with respect to Central Provinces and Orissa of which present day Chhattisgarh forms part it cannot be doubted that a master servant relationship existed since the very creation of office of kotwar.

13. Section 196 of the Central Provinces Land Revenue Act, 1917 (for short 'the CPLR Act, 1917') made provision for appointment of Kotwars. The provision is reproduced hereunder :

196 (1) For each village or group of villages there shall be appointed, in accordance with rules made under Section 227, one or more kotwars or village watchmen.

(2) The Deputy Commissioner shall, subject to rules made under Section 227, fix the remuneration which kotwars or village watchmen are entitled to recover from the proprietors, malik-makbuzas, tenants, holders of survey-numbers and residents of the village or villages for which they are appointed.

14. A plain reading of the above provision would clearly indicate that the remuneration of the Kotwar fixed by the Deputy Commissioner shall be paid by the proprietors, malik-makbuzas, tenants, holders of survey-numbers and residents of the village or villages for which they are appointed. Usually a proprietor or Zamindar either paid the remuneration in cash, or by parting with some land, for earning livelihood. Merely because a Kotwar is

provided land by the Zamindar or Proprietor or malik-makbuzas in lieu of remuneration, he would not become the tenant of the property. His status *qua* the land, allotted to him, remains as that of the Kotwar holding the service land.

15. Interpreting the provision as to the right of a Kotwar to occupy the land granted to him by the proprietor by way of remuneration, the Nagpur High Court in **Sheocharan v Shah Mahomed**⁶ held that the right to hold village service holding goes with the office and the person holding such office is entitled to be put in possession after ejection of the person who is dismissed from the office.

16. The CPLR Act, 1917 made arrangements for payment of remuneration through proprietors etc. for the reason that the proprietors and like persons were ruling their respective areas by virtue of the treaty, grant, usage, sufferance or otherwise. However, upon enactment of the Indian Independence Act 1947 (for short 'the Independence Act') the control of the Crown over the Indian States lapsed, and so did all treaties and agreements in force on the date of passing of the Act between His Majesty and the rulers of the Indian States. The authority exercisable by His Majesty on that date in relation to Indian States by treaty, grant, usage, sufferance or otherwise came to end. (See: Section 7 (1) of the Independence Act).

⁶ (1928) 11 NJL 129

17. We shall now discuss the effect of provisions contained in the Madhya Pradesh/Chhattisgarh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (for short 'the Abolition Act, 1950') which was enacted to give effect to Article 31A of the Constitution of India.
18. Article 31A provided for "saving of laws providing for acquisition of estates, etc.". The expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure holder, raiyat, under-raiyat or other intermediary and any rights or privileges with respect of land revenue. The Abolition Act, 1950 was enacted with the object to provide for the acquisition of the rights of proprietors in estates, mahals, alienated villages and alienated lands in Madhya Pradesh (including Chhattisgarh) and to make provisions for other matters connected therewith.
19. The expression 'proprietor' was defined under Section 2 (m) of the Abolition Act, 1950 in the following manner :

2. Definitions.--In this Act, unless there is anything repugnant in the subject or context,--

(m) “proprietor”, in relation to –

(i) the Central Provinces, includes an inferior proprietor, a protected thekedar or other thekedar, or a protected headman;

(ii) the merged territories, means a muafidar including an ex-Ruler of an Indian State merged with Madhya Pradesh, a Zamindar, Ilaquedar, Khorposhdar or Jagirdar within the meaning of the Wajib-ul-arz, or any sanad, deed or other instrument, and a gaontia or a thekedar of a village in respect of which by or under the provisions contained in the wajib-ul-arz applicable to such village the muafidar, the gaontia or the thekedar, as the case may be, has a right to recover rent or revenue from persons holding land in such village.



20. The manner in which the word ‘proprietor’ has been expressed and defined in Section 2 (m) of the Abolition Act, 1950, as produced *supra*, has to be understood in the context of Section 7 of the Independence Act and Article 31A (2) of the Constitution of India, therefore, a combined reading of the above provisions manifests that a ruler, zamindar, gaontia, muafidar, thekedar, etc. were all based upon a grant made by

the competent authority. The Crown exercised its control through its agents namely; Viceroy, Governors in Provinces, etc. It is these agents and officers by a duly authorized sanad, deed or other instrument legalized the land holdings by a ruler, zamindar [with similar expressions used in section 2 (m) of the Abolition Act, 1950], gaontia, muafidar, thekedar.

21. Section 3 of the Abolition Act, 1950 ended the legal force of all such sanad, deed or other instrument by implying legal fiction which caused vesting of proprietary rights in the State.

22. Section 3 of the Abolition Act, 1950 is quoted below for ready reference :

3. Vesting of proprietary rights in the State. – (1) Save as otherwise provided in this Act, on and from a date to be specified by a notification by the State Government in this behalf, all proprietary rights in an estate, mahal, alienated village or alienated land, as the case may be, in the area specified in the notification, vesting in a proprietary of such estate, mahal, alienated village, alienated land, or in a person having interest in such proprietary rights through the proprietor, shall pass from such proprietor or such other person to and vest in the State for the purposes of the State free of all encumbrances.

(2) After the issue of a notification under sub-section (1), no right shall be acquired in or over the land to which the

said notification relates, except by succession or under a grant or contract in writing made or entered into by or on behalf of the State; and no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with such rules as may be made by the State Government in this behalf.

(3) Different dates may be specified under sub-section (1) for different areas.

(4) The State Government may vary the date specified under sub-section (1) at any time before such date.

23. The Supreme Court in **Maharaja Pravir Chandra Bhanj Deo Kakatiya v. State of Madhya Pradesh**⁷ was dealing with the submission of formal ruler of Maharaja Bastar who contended that the villages mentioned in the Schedule to the writ petition were reserved for his wife, the Queen of Bastar. These villages are personal property of the Ruler, as the same were always excluded from the revenue settlements of the Bastar State. It was, thus, argued that the lands being **maufi land** were not covered in the process of vesting under the Abolition Act, 1950. The writ petition was dismissed by the Full Bench of the Nagpur High Court in **Pravir Chandra Bhanj Deo Kakatiya v. The State of Madhya Pradesh**⁸. The Supreme Court held that the ordinary meaning of 'maufi' is "Released, exempted, exempt from the payment of rent or

⁷ AIR 1961 SC 775; (1961) 2 SCR 501

⁸ AIR 1953 Nagpur 86; 1952 SCC Online MP 156

tax, rent free” and maufidar is “A holder of rent free land, a grantee”. The Supreme Court further held that the expression “maufidar” cannot be confined to a grantee from a State or a Ruler of a State. A maufidar could be any person who was the holder of land which was exempted from the payment of rent or tax. It was held that the appellant came within the expression “maufidar” besides being an “ex-Ruler” of an Indian State merged with Madhya Pradesh.

24. It is settled legal principle that legal fiction commands the Court to believe an imaginary set of things and when a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what purpose and between what persons the statutory fiction is to be resorted to and given full effect. We may profitably refer to the decisions rendered by the Supreme Court in **State of Bombay v. Pandurang Vinayak & Others**⁹ and **State of Karnataka v. State of Tamil Nadu & Others**¹⁰.

25. Section 215 of the Madhya Pradesh Land Revenue Code, 1954 (for short ‘the MPLRC, 1954’) provided for appointment of Kotwars and their remuneration whereas Section 216 made provides for remuneration of Kotwar in

9 AIR 1953 SC 244

10 (2017) 3 SCC 362

Mahakushal Region. The appointment of Kotwar and the mode of payment of remuneration as has been referred in Part VIII of the Sixth Schedule and Part XI of the GOI Act, 1935 together with Section 196 of the CPLR Act, 1917 leave no room of doubt or speculation that Kotwar is a village servant. In fact, he is a Government employee, a revenue officer of the lowest cadre. Even if a Kotwar is employed by a malguzar or a gaontia during the pre independence era he can, by no stretch of imagination, be given absolute ownership over his service land because the Abolition Act, 1950 effectively terminated their ownership and therefore, the malguzar or the gaontia even if had granted some land to kotwar by way of remuneration to earn livelihood, in lieu of services of Kotwar rendered to the area in control of Zamindar, the said grant would be covered by Section 3 of the Abolition Act, 1950.

26. It is noteworthy to notice that under the Abolition Act, 1950 and the MPLRC, 1954 a Kotwar appointed by the Zamindar, malguzar or the gaontia has been substituted by the State as its employer in place of the proprietor, malguzar or the gaontia. The master-servant relation therefore continues by force of statute and similarly grant made by the proprietor to his Kotwar cannot be free from rigor of Section 3 as it clearly says in sub-section (1) that “person having interest in such

proprietary rights through the proprietor, shall pass from such proprietor or such other person to and vest in the State for the purposes of the State free from all encumbrances”. Further sub-section (2) of Section 3 says that “no right shall be acquired in or over the land to which the said notification relates, except by succession or under a grant or contract in writing made or entered into by or on behalf of the State; and no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with such rules as may be made by the State Government in this behalf.”

27. Moving back again to **Pravir Chandra Bhanj Deo Kakatiya** (supra) it is to notice that the Supreme Court clearly held that the expression “proprietor” cannot be interpreted in a narrow technical sense therefore, the very factum of land being a “maufi” land held by the malguzar or gaontia has to be established first as the case of Pravir Chandra Bhanj Deo the High Court and also the Supreme Court confirmed that only a land free from revenue can be termed as maufi land. The concerned Kotwar thus will have to first establish that the land in question was free from revenue and tax. The question of the malguzar and or the gaontia being duly recognized by the government would be the second step, it is only after

satisfying the two requirements in terms of judgment of Pravir Chandra Bhanj Deo can a Kotwar lay claim to any kind of ownership, however, then also the legal fiction and law following enactment of the Abolition Act, 1950 would not make it possible for a Kotwar to own a land granted by way of maufi because his status as a servant will not change as is evident from the provisions of the Sixth Schedule to the GOI Act, 1935. The master-servant relationship between the malguzar or the gaontia and the Kotwar passes on to the State by virtue of Section 3 of the Abolition Act, 1950. Under the MPLRC, 1954 and thereafter, the CGLRC, 1959 provisions have been made for appointment of Kotwar, their duties and remuneration. In the present Code i.e. the CGLRC, 1959 these provisions are contained in Sections 230 and 231 dealing with the issue as to the status of a Kotwar as to whether he is holder of a civil post, this Court speaking through one of us (Prashant Kumar Mishra, J.) in **Smt. Rina Bai v State of Chhattisgarh and others**¹¹ and in **State of Chhattisgarh v Gopal Agrawal and others**¹² referred to the Supreme Court decision in the matter of **The State of Assam & Others v Kanak Chandra Dutta**¹³ to hold that Kotwar is a holder of civil post.

11 WP227 No. 2921 of 2008 decided on 15-06-2015

12 WPC 2082 of 2007 decided on 14-09-2017 by Hon'ble Shri Sanjay K. Agrawal, J.

13 AIR 1967 SC 884

28. In **Kanak Chandra Dutta** (supra) the Supreme Court has held that the post of Mauzadar in the Assam Valley rendered services akin to Kotwar and the said Mauzadar was held to be holder of civil post.
29. In **Gaurishankar Choubey v Baktha**¹⁴, Hon'ble Shri J.S. Verma, J. (as His Lordship then was) held that in the light of Section 45 (3) of the Abolition Act, 1950 a Kotwar even if he is given service land by the malguzar he is not a personal servant of the proprietor and as such after elimination of malguzari he at best is an occupancy tenant of the State from the date of vesting.
30. It appears at the time of hearing of **Chhabil Das** (supra), **Tikaram** (supra) and **Lalla Singh Chouhan** (supra), the decisions rendered by this Court in **Smt. Rina Bai** (supra), **Gopal Agrawal** (supra); the decision of the Madhya Pradesh High Court in **Gaurishankar Choubey** (supra) and that of the Supreme Court in **Kanak Chandra Dutta** (supra) and **Pravir Chandra Bhanj Deo Kakatiya** (supra) were not placed before the concerned Benches and had, thus, escaped the attention of the Court. Therefore, the law laid down by this Court in **Chhabil Das** (supra), **Tikaram** (supra) and **Lalla Singh Chouhan** (supra), are per *incuriam*.

31. It is the well settled that *per incuriam* means *per ignorantim*, therefore, the decisions rendered in **Chhabil Das** (supra), **Tikaram** (supra) and **Lalla Singh Chouhan** (supra), being *per incuriam* are erroneous in law and have no value as precedents and cannot be relied as having laid down correct law, having binding precedent. (See: **Madhya Pradesh Rural Road Development Authority & Another v L.G. Chaudhary Engineers and Contractors**¹⁵, **Bengal Immunity Co. Ltd. v State of Bihar & Others**¹⁶, **State of UP & Another v Synthetics and Chemicals Ltd. & Another**¹⁷ and **Municipal Corporation of Delhi v Gurnam Kaur**¹⁸).
32. At this stage, it would be worth referring two other judgments of this Court rendered in **Charandas & Others v State of Chhattisgarh & Others**¹⁹ and **Mela Das & Another v State of Chhattisgarh & Others**²⁰. SLP against the judgment of this Court rendered in **Charandas** (supra) has been dismissed by the **Supreme Court on 4-10-2010 in Special Leave to Appeal Civil No.29377 of 2010**.
33. In **Charandas** (supra) it was held by this Court that “the question regarding conferral of Bhoomiswami rights to the

15 (2012) 3 SCC 495

16 AIR 1955 SC 661

17 (1991) 4 SCC 139

18 (1989) 1 SCC 101

19 WP 227 No. 3640 of 2009 decided on 09-03-2010 by Prashant Kumar Mishra, J.

20 WPC 1148 of 2010 decided on 23-03-2010 by Hon'ble Shri Sunil Kumar Sinha, J. (as His Lordship then was)

Kotwar can be gone into only when sufficient material is furnished by the person claiming such right with regard to the nature of land held and mentioned in Jamabandi, as to whether such property was spared from being vested in the State at the time of abolition of proprietor's right under the relevant provisions of the Chhattisgarh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 and whether such land was directed to be settled in the name of Kotwar who was serving the proprietor/Malgujar at that point of time. Because if the land was recorded as service land and was not saved to the Kotwar as his personal property on account of personal services rendered to the Ex Malgujar, the property cannot be declared to the Bhumiswami land of the Ex Kotwar.

34. After the order passed by this Court in **Chhabil Das** (supra) the State Government conferred *bhumiswami* rights on some Kotwars. Thereafter, the Collector, Raigarh passed an order on 25/30-9-2004 restricting transfer of such land without permission from the Revenue Officer not below the rank of Collector. This order was assailed in WPC No.1148 of 2010. Negating the challenge this Court speaking through Hon'ble Shri Sunil Kumar Sinha, J. (as His Lordship then was) held that under sub-section (3) of Section 158 of the CGLRC, 1959

a person holding land allotted by the State Government being conferred *bhumiswami* right shall not transfer such land within a period of 10 years. Thereafter, referring to sub-section (7-b) of Section 165 together with Section 158 (3) above, it is held that restriction on transfer can be imposed by the Collector. This Court also observed that direction issued by the Collector to make an entry in the khasra papers to the effect that land has been allotted by the State non transferable does not contravene any provision and it is line with the object of Sections 165 (7-b) & 158 (3) of the CGLRC, 1959. The writ petition filed by Kotwar Mela Das & Another was dismissed.

35. In **Tikaram** (supra) the State Government had raised the specific defence by referring Section 45 (2) of the Abolition Act, 1950, however, this Court allowed the *bhoomiswami* rights in favour of Kotwar on mere sympathy without discussion as to whether such conferment of ownership by declaring them *bhoomiswami* has any statutory sanction or not.

36. It is settled law that sentiment or sympathy alone would not be a guiding factor in determining the rights of the parties which are otherwise clear and unambiguous. (See: **Omprakash and Others v Radhacharan and Others**²¹).

²¹ (2009) 15 SCC 66

37. In **Lalla Singh Chouhan** (supra), the Single Bench (Hon'ble Shri Goutam Bhaduri, J.) has reproduced Sections 41 & 45 of the Abolition Act, 1950, however, the legal effect of Section 45 (2), which says that any person holding land as village service land shall be deemed to be holding it from the State and shall be governed by the provisions contained in sections 42 to 48 of the Central Provinces Tenancy Act, 1920, has not been discussed. In para 13 it proceeds to observe that "*lands were settled in the name of the predecessors*", however, for this observation there is no reference to any statutory backing as to how this settlement in favour of predecessors of the petitioners have taken place. Contrary to the legal fiction enumerated in Section 3 of the Abolition Act, 1950 it is held in para 13 of **Lalla Singh Chouhan** (supra) that "*sir lands are synonymous with the 'Kamat' and 'Zirat' which means private land of the proprietor.*" Any land to be declared a private land of the proprietor for the same being saved in favour of proprietor, there has to be an order to this effect by the Deputy Commissioner under the provisions of the Abolition Act, 1950 without which the land would vest in the State and cannot be settled in favour of any other person. The meaning of the term 'sir land' or 'kamat land' appears to have been read in isolation and not in the context of the provisions

of Section 196 of the CPLR Act, 1917; the GOI Act, 1935 or Section 3 of the Abolition Act, 1950.

38. With reference to the provisions contained in Section 3 of the Abolition Act, 1950 regarding vesting of proprietary rights in an estate the Supreme Court in **The State of M.P. v Yakinuddin**²² has held that all proprietary rights in an estate vesting in a proprietor of such an estate or in a person having interest in such proprietary rights through the proprietor, shall vest in the State for the purposes of the State, free from all encumbrances. It is held that whatever may have been the nature of the grant by the outgoing proprietors by contracts to convey proprietary rights to grantees, those grants have no legal effect as against the State except in so far as the State may have recognized them. The provisions of the Act have no manner of doubt that the rights claimed by the grantees could not have been enforced against the State, if the later was not prepared to respect those rights and the rights created by the transactions between the grantees and their grantors did not come within any of the saving clauses of Section 5.
39. **Lalla Singh Chouhan** (supra) has proceeded on the reasoning that under the MPLRC, 1954 the Kotwar or his successor in interest became *bhumidhari* and thereafter, under the provisions of the CGLRC, 1959 they became occupancy

²² AIR 1962 SC 1916

tenant, which entitled them to be called *bhumiswami* subsequently. However, under Section 147 of the MPLRC, 1954 the following classes of persons can be *bhumidhari* :

- (a) every person in respect of land held by him as an occupancy tenant in the Mahakushal Region excluding merged territories.
- (b) every person in respect of land held by him as a raiyat or raiyat sarkar. [Mahakushal Region excluding merged territories]
- (c) every person in respect of land held by him as a raiyat or tenant in the merged territories.

Such *bhumidhari* was required to pay the land revenue as provided under Section 148 of the MPLRC, 1954 and thereafter, the said MPLRC, 1954 provides for conferral of *bhumiswami* right on *bhumidhari*.

40. Sections 148 & 150 of the MPLRC, 1954 are quoted below for ready reference :

148. Land Revenue payable by tenure-holders--Every person becoming a Bhumiswami under section 146 or a Bhumidhari under Section 147 shall pay as land revenue-

- (a) if he was paying land revenue in respect of the lands held by him – such land revenue, and
- (b) if he was paying rent in respect of the lands held by him – an amount equal to such rent.

XXX XXX XXX

150. Conferral of Bhumiswami right on Bhumidhari.--

(1) Subject to rules made under this Code, a Revenue Officer may, except in such areas as the State Government may, by notification, exclude from the operation of this section, on an application made by a Bhumidhari and on his depositing three times the revenue for the time being assessed on the holding, declare such Bhumidhari to be a Bhumiswami of the land comprised in the holding;

Provided that no such application shall lie in respect of a part of a holding.

(2) A declaration made under subsection (1) shall take effect from the commencement of the agricultural year next following the date of such declaration.

41. A conjoint reading of the provisions contained in Sections 145 to 150 of the MPLRC, 1954 makes it apparent that a person holding service land as a Kotwar through the proprietor or malguzar free of land revenue can never become a *bhumidhari*, as he never held the land as occupancy tenant in the Mahakushal Region or as raiyat or raiyat sarkar or a tenant either in the Mahakushal Region or merged territories, therefore, the status of Kotwar vis-à-vis the service land remain a grant from the proprietor in lieu of services rendered to the malguzar or village.

42. If the petitioners' forefathers became *bhumidhari* under the MPLRC, 1954 there is absolutely no reason why their

forefathers or after their demise the present petitioners did not move application for conferral of *bhumiswami* rights under Section 150 of the MPLRC, 1954 or the CGLRC, 1959 for last about seven decades. There is no proof that the petitioners or their forefathers had ever paid the land revenue under Section 148 of the MPLRC, 1954. As a matter of fact, this provision by itself exposes the fallacy in the petitioners' argument because a *bhumidhari* is required to pay the same land revenue, which he was paying in respect of lands held by him and the same rent if he was paying rent in respect of lands held by him. It is the petitioners' own case and it is the case of all Kotwars who were enjoying service land before coming into force the CGLRC, 1959 that they were exempted from payment of land revenue.

43. For all the above stated reasons, we are of the considered view that **Lalla Singh Chouhan** (supra) has not laid down the correct law and the finding that lands held by Ex-Kotwars as a grant from malguzar would be saved to them as *bhumiswami* land is erroneous particularly in view of the provisions of Section 3 of the Abolition Act, 1950 read with Sections 147, 148 and 150 of the MPLRC, 1954. Resultantly, the orders/judgments in the matters of **Chhabil Das** (supra), **Tikaram** (supra) and **Lalla Singh Chouhan** (supra) stand overruled.

44. The question referred for decision is answered accordingly.

45. *Ex consequenti*, all the writ petitions are liable to be and are hereby dismissed, leaving the parties to bear their own cost(s).

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Gowri

Sd/-

(Prashant Kumar Mishra)
Judge

