



2026:CGHC:24528

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 2351 of 2023

Judgment Reserved On :24.04.2026.

Judgment Delivered On : 18.06.2026.

Vijay S/o Panchram Aged About 30 Years R/o Village Raitra Khurd, Tahsil Lormi, District Mungeli (C.G.)

... Petitioner(s)

versus

1 - State of Chhattisgarh Through The Collector, District Mungeli (C.G.).

2 - The Board Of Revenue Chhattisgarh Bilaspur (C.G.)

3 - The Sub Divisional Officer (Revenue) Lormi, District Mungeli (C.G.).

4 - The Tahsildar Lormi, District Mungeli (C.G.)

5 - Shriram Sahu S/o Nekuram Sahu, R/o Village Raitra Khurd, Tahsil Lormi, District Mungeli (C.G.)

... Respondent(s)

For Petitioner(s)	:	Shri Bhupendra Singh, Advocate.
For State/Res(s)	:	Shri Shaleen Singh Baghel, Govt. Advocate.

Hon'ble Mr. Justice Amitendra Kishore Prasad
CAV Order

1. This Writ Petition has been filed against the order dated 24.03.2023 (Annexure P/1) passed by the Chhattisgarh Board of Revenue, Bilaspur in Revenue Revision case No.RN/25/R/A-21/113/2022, whereby revision filed by the petitioner against the order dated 10.03.2022 passed by the Collector, District



Mungeli in Case No.009/02/A-21/2020-21 wherein, the Collector rejected the application of the petitioner for grant of permission to sell his land under Section 165 (6) of the Chattisgarh Land Revenue Code, 1959 (hereinafter “**the Code 1959**”), has been rejected.

2. Through this Petition, the petitioner has prayed for the following reliefs:-

10.1 That, this Hon'ble Court may kindly be pleased to call the records pertaining to the case from the respondent authorities.

10.2 That, this Hon'ble Court may kindly be pleased to set-aside the impugned orders dated 24.03.2023 and 10.03.2022 and further be pleased to grant permission in favour of petitioner for sale out the land in question in favour of respondent no. 5 in accordance with law.

10.3 To kindly grant any other relief which may be deem fit in the given facts and circumstances of the instant case.

3. Facts of the case are that the petitioner is the recorded and lawful owner of land bearing Khasra Nos. 44/3, 102, 115/1, 101, 123/1 & 130 situated at Village Rairakhurd, P.H. No. 17, Tahsil–Lormi, District–Mungeli (C.G.). The petitioner is under heavy financial debt and is required to repay loan amounts borrowed from different persons. For repayment of the said debt and to meet his domestic necessities, the petitioner decided to sell a small portion of land bearing Khasra No. 130, total admeasuring area 0.162 hectare, situated at Village Rairakhurd. Accordingly, the petitioner executed an agreement to sell in respect of land admeasuring 0.03¹/₂ acre out of Khasra No. 130 in favour of respondent No. 5 for a total sale consideration of Rs. 1,25,000/- on 20.07.2021. On the said date, the petitioner received an advance amount of Rs. 25,000/- from respondent No. 5. The petitioner belongs to the Scheduled Tribes community, therefore, in compliance with Section 165(6) of the Code, 1959, the petitioner submitted an application before the Collector, Mungeli, seeking prior permission to sell the



aforesaid land in favour of respondent No. 5 for his bona fide domestic needs. Upon receipt of the application, respondent No. 1 directed respondent No. 3 to submit a report. Thereafter, respondent No. 3 directed respondent No. 4 to conduct an enquiry and submit a report regarding the petitioner's application for grant of permission. Respondent No. 4 recorded the statements of the petitioner, other co-owners and respondent No. 5. The respondent No. 4 also obtained the value of the land from the concerned Registry Office and conducted a detailed enquiry regarding the remaining land of the petitioner after the proposed sale of 0.03 acre from Khasra No. 130. Upon enquiry, it was found that even after the proposed sale, land admeasuring about 1.246 acre (3.076 hectare) would remain in possession of the petitioner, which is sufficient for his livelihood. After conducting due enquiry and preparing a detailed report, Respondent No. 4 submitted the same before respondent No. 3 with a clear recommendation to grant permission to the petitioner for sale of the proposed land in favour of respondent No. 5. However, while forwarding the report to respondent No. 1, respondent No. 3 disagreed with the recommendation of respondent No. 4 and recommended rejection of the petitioner's application on the ground that the remaining land of the petitioner would be less than 5 acres and that a minimum of 5 acres should remain with him. On the basis of the recommendation made by respondent No. 3, respondent No. 1, vide order dated 10.03.2022, rejected the application filed by the petitioner under Section 165(6) of the Code, 1959. Being aggrieved by the order dated 10.03.2022 passed by respondent No. 1, the petitioner preferred a revision before the learned Board of Revenue (respondent No. 2). However, without properly considering the bona fide domestic need of the petitioner and the favourable enquiry report, respondent No. 2, vide impugned



order dated 24.03.2023, dismissed the revision and affirmed the order passed by the Collector. Hence, the present petition.

4. Learned counsel for the petitioner submits that the impugned orders dated 10.03.2022 passed by respondent No.1 and 24.03.2023 passed by respondent No.2 are bad in law, arbitrary, perverse and contrary to the object and spirit of Section 165(6) of the Code, 1959, and are therefore liable to be set aside/quashed. He submits that the petitioner is in bona fide domestic and financial need for repayment of borrowed amounts and for meeting urgent family obligations, including marriage expenses of his sister. The concept of “legal necessity” has consistently been recognized by courts as a valid ground for alienation of property. The so-called “5 acre rule” cannot operate as an absolute bar where genuine legal necessity is established. The petitioner intends to sell only a small portion of land bearing Khasra No. 130 to meet the aforesaid bona fide need. The primary object of restrictions under Section 165(6) is to prevent exploitation and marginalization of members of Scheduled Tribes and not to create an unreasonable embargo on their right to deal with property for genuine survival needs. The requirement of retaining 5 acres is not an inflexible statutory mandate, and the authorities are empowered to exercise discretion where valid and compelling reasons for sale are demonstrated, as in the present case. He submits that even after the proposed sale, approximately 3.076 acres of land would remain with the petitioner, which is sufficient for the livelihood of the petitioner and his family. Where a proposed sale is demonstrably in the best interest of the tribal landholder such as to discharge crippling debt, the Collector, acting as a guardian authority, ought to exercise discretion in favour of permission. There is no binding statutory condition under Section 165(6)



mandating that a minimum of 5 acres must remain with the applicant in every case. He submits that respondent No. 5 is purchasing the land at a consideration higher than any person belonging to the caste as of petitioner, which demonstrates that the proposed transaction is fair, voluntary and not exploitative in nature. Learned counsel for the petitioner submits that after conducting due enquiry and recording statements of all concerned parties, respondent No. 4 recommended grant of permission in favour of the petitioner. While interpreting Section 165(6) of the Code, the Collector must record cogent reasons in writing while rejecting an application, particularly where bona fide necessity is established and sufficient land remains for sustenance. In the present case, the Collector failed to independently assess the material on record and passed a mechanical order solely on the premise of a non-statutory 5 acre requirement. The petitioner has already received an advance consideration of Rs. 25,000/- from respondent No. 5, which has been utilized for domestic needs of his family. The refusal of permission at this stage causes grave prejudice and financial hardship to the petitioner. Hence, the impugned orders deserve to be set aside in the interest of justice.

5. Learned State counsel submits that the present writ petition is devoid of merit and is liable to be dismissed as the impugned orders dated 10.03.2022 passed by the Collector and 24.03.2023 passed by the learned Board of Revenue are legal, proper and in accordance with Section 165(6) of the Code, 1959. Section 165(6) of the Code, 1959 is a beneficial and protective provision enacted to safeguard members of the Scheduled Tribe community from alienation of their land and consequent marginalization. The provision casts a statutory duty upon the Collector to ensure that transfer of tribal land is not permitted in a manner



that defeats the object of the legislation. He submits that upon receipt of the petitioner's application, a detailed enquiry was conducted by the competent revenue authorities. Though respondent No. 4 submitted a report, the same was only recommendatory in nature and not binding upon the Collector. The ultimate discretion under Section 165(6) vests exclusively with the Collector. Upon consideration of the entire material on record, including the extent of land proposed to be sold and the remaining land holding of the petitioner, the Sub-Divisional Officer (respondent No. 3) found that after the proposed sale, the remaining land would fall below the benchmark considered necessary for ensuring economic viability and sustenance of a tribal agriculturist. Accordingly, respondent No. 3 recommended rejection of the application. He submits that the so-called "5 acre benchmark" is not an arbitrary invention but a reasonable administrative yardstick evolved to protect tribal landholders from gradual fragmentation and distress sale. The object is to prevent a situation where, under the pretext of domestic need, tribal land gets reduced below an economically sustainable level.

6. Having heard learned counsel for the parties and upon perusal of record, it appears that the petitioner is a land owner of Khasra No.44/3, 102, 115/1, 101, 123/1 & 130 situated at village Raitrakhurd, PH No.17, Tahsil Lormi, District Mungeli Chhattisgarh. The petitioner was faced with financial debt as he was required to repay the loan amount. Therefore, the petitioner decided to sale out his piece of land bearing Khasra No.130, rakba 0.03¹/₂ acre situated at village Raitrakhurd. The petitioner belongs to Scheduled Tribes Category, as such, he is required permission of Collector concerned under Section 165 (6) of the Code, 1959. The petitioner accordingly moved an application before the Collector,



District Mungeli, C.G. for selling out piece of land bearing Khasra No.130, rakba 0.03¹/₂ acre situated at Rairakhurd, PH No.17, Teshil Lormi due to need of money for the purposes of his children's marriage. The Collector vide order dated 22.09.2021 sent the matter to Sub-Divisional Officer (Revenue), Lormi to prepare a investigation report in the matter. The SDO (Revenue), Lormi, District Mungeli C.G. accordingly vide order dated 01.10.2021 sent the matter to Tehsildar Lormi for obtaining investigation report. Thereafter, the Tehsildar Lormi on the basis of the report of the Halka Patwari and the statements of the applicant, the buyer and independent witnesses, vide order dated 07.01.2022 sent the matter for permission to the applicant/petitioner herein to sell piece of land registered in his name bearing Khasra No.130, rakba 0.03¹/₂ acre situated in village Rairakhurd, PH No.17, Tehsil Lormi in favour of respondent No. 5 to Collector through SDO. The Tehsildar observed that applicant /seller has joint accounts (total 3 accounts), first account 0.405 hectare, in second account 0.263 hectare and in third account 0.591 hectare land is recorded in his favour in the land records. The present value of the land is Rs.16,20,000/-, as per guideline it is Rs.3,56,000/-. The applicant's land, Khasra No. 130, measuring 0.162 hectares, is adjacent to the main Bodtara-Patharra road and is of residential/commercial importance. After the sale of the land, out of the joint ancestral property bearing Khasra Nos. 44/3, 102, 115/1, 101, 123/1, 130, total remaining area 1.246 hectares still continues to remain in the ownership and possession rights of the petitioner.

7. The SDO Lormi, District Mungeli vide order dated 11.02.2022, being not satisfied with the recommendation of Tehsildar, did not recommend for sale of land and



observed that after sale of land, the petitioner will be left out with 1.246 hectare, however for livelihood, at least 5 acres must be left with the petitioner.

8. The Collector, vide order dated 10.03.2022, rejected the application of the petitioner for sale of land as after sale of land, only 3.076 acres of land will remain with the petitioner which is against the provision of Code, 1959 because according to the Code, 1959, an *Adivasi* bhumiswami, after sale of land, must be left with atleast 5 acres of irrigated land and 10 acres of non-irrigated land.
9. Aggrieved thereby, the petitioner approached Board of Revenue who vide order dated 24.03.2023, rejected the revision petition of the petitioner as he was not left with atleast 5 acres of land as per Section 165 (6-a) of the Code of 1959 and affirmed the order of Collector.
10. For the sake of convenience, it would be appropriate to quote 165 (6-a) of the Code of 1959, which reads as under:-

(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 Acquisitions, Rehabilitation and Resettlement Act, 2013 (No. 30 of 2013).



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

(6-a) Notwithstanding anything contained in sub-section (1), the right of a bhumiswami other than a bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6), in the land excluding the agricultural land shall not be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to aboriginal tribe without the permission of the Collector given for reasons to be recorded in writing :

Provided that every such transfer effected after the 9th day of June, 1980 but before the 20th April, 1981 which is not in accordance with the provisions herein contained shall, unless such transfer is ratified by the Collector in accordance with the provisions hereinafter contained, be void and shall be of no effect whatsoever, notwithstanding anything contained in this Code or any other law for the time being in force.

11. From a bare reading of the aforesaid provision, it appears that if the sale is in consequence of transaction of loan to a person not belonging to aboriginal tribe then permission of the Collector is required to be taken and unless and until, permission is granted, the transaction cannot be given effect to.
12. Section 165(6) and Section 165(6-a) deal with restrictions upon transfer of land by a tribal bhumiswami to a non-tribal person and merely require prior permission of the competent authority.
13. Whereas Section 165(7) operates in an altogether different field relating to attachment or sale of land in execution of a decree or order. The embargo contained in Section 165(7) is thus applicable only in proceedings relating to coercive attachment or auction sale in execution proceedings and cannot be extended to voluntary transfer by way of sale after obtaining permission from the Collector. Section 165 (7) (a) reads as under:-

(7) Notwithstanding anything contained in sub-section (1) or in any other law for the time being in force-



(a) where the area of land comprised in a holding or if there be more than one holding the aggregate area of all holdings of a bhumiswami is in excess of five acres of irrigated or ten acres of unirrigated land, then only so much area of land in his holding or holdings shall be liable to attachment or sale in execution of any decree or order as is in excess of five acres of irrigated or ten acres of unirrigated land;

14. The authorities have travelled beyond the scope of Section 165(6) and 165(6-a) by importing a condition which is not contemplated under the statute, namely, that after transfer the tribal bhumiswami must necessarily retain 5 acres of irrigated land or 10 acres of unirrigated land.
15. The said provision applies where the land comprised in a holding or holdings, the aggregate area of all holdings of a Bhumiswami is in excess of five acres of irrigated or ten acres of unirrigated land, then only so much area of land in his holding or holdings shall be liable to attachment or sale in execution of any decree or order as is in excess of five acres of irrigated or ten acres of unirrigated land, meaning thereby, if the property is required to be attached or for sale in execution of any decree or order, then only, if the Bhumiswami is having excess of 5 acres of irrigated land and 10 acres of non-irrigated land in his possession, then only rest of the land can be attached or sold in execution of any decree or order. Perhaps, it seems that the concerned Collector and the Board of Revenue misinterpreted the provisions contained in Section 165 of the Code of 1959, and have wrongly rejected the application of the petitioner for grant of permission to sell his land on the grounds that the petitioner will only be having 3.076 acres of land after sale, which is less than 5 acres of land.
16. When a permission was granted by Additional Collector under Section 165 (6) (ii) of the Code of 1959 for sale of land which resulted in execution of a registered



sale deed was challenged by the State of Madhya Pradesh before the Hon'ble Supreme Court in the matter of **State of Madhya Pradesh vs. Dinesh Kumar and Others** reported in **2025 SCC OnLine SC 754**, the Hon'ble Supreme Court dismissed the appeal holding that Additional Collector has powers to grant permission by reasons recorded in their permission. Relevant paragraphs 8 and 11, are extracted hereinbelow:-

“8. Section 165(6) specifically refers to the ‘Rights of transfer’, obviously of landowners, wherein sub-section (6) deals with the lands belonging to the members of the indigenous tribes (referred to in the Statue as ‘aboriginal’, in the alternative referred as ‘indigenous’ by us in this judgment). Sub-section (6) of Section 165 has two limbs, in clause (i) and clause (ii). Clause (i) provides a blanket prohibition in so far as the transfer of lands situated in an area predominantly inhabited by indigenous tribes, as notified by the Government, owned by a person belonging to that indigenous tribe, to persons other than that of the specific indigenous tribe. This does not apply in the instant case, since admittedly the land is not situated in a notified area in Ratlam District as seen from Annexure A-1, produced along with the counter affidavit of the appellant filed pursuant to order dated 20.03.2025. In the district of Ratlam the notification applies only to two Tehsils, namely Sailan and Bhajna. It is also an admitted position that respondent Nos. 2 to 5, the land owners, who made the sale, are members of an indigenous tribe, enabled to transfer the lands in their ownership, situated in areas not covered by the Government notification as stipulated in Clause (i), but only with the prior permission of a revenue officer not below the rank of Collector; which permission also has to be recorded in writing.

11. In this context, we must consider the arguments raised by the learned counsel for the State that sub-section (6-c) has not been complied with, which consideration requires the above provision to be extracted, which reads thus:—

“(6-c) The Collector shall in 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 shall have due regard to the following:—



(i) whether or not the person to whom land is being transferred is a resident of the Scheduled Area;

(ii) the purpose to which land shall be or is likely to be used after the transfer;

(iii) whether the transfer serves, or is likely to serve or prejudice the social, cultural and economic interest of the residents of the Scheduled Area;

(iv) whether the consideration paid is adequate;

(v) whether the transaction is spurious or benami; and

(vi) such other matters as may be prescribed.

The decision of the Collector granting or refusing to grant the permission under sub-section (6-a) or ratifying or refusing to ratify the transaction of transfer under sub-section (6-b), shall be final, notwithstanding anything to the contrary contained in this Code.

Explanation.-For the purpose of this sub-section,-

(a) "Scheduled Area" means any area declared to be a Scheduled Area within the State of Madhya Pradesh under paragraph 6 of the Fifth Schedule to the Constitution of India;

(b) the burden of proving that the transfer was not spurious, fictitious or benami shall lie on the person who claims such transfer to be valid."

17. If the present case is examined in light of the aforesaid provisions and law laid down by the Hon'ble Supreme Court, firstly Mungeli district does not fall within a Scheduled Area, which is predominantly inhabited by aboriginal tribes as mentioned in the Schedule, only Katghora and Bilaspur has been mentioned as a Scheduled Area.
18. From the perusal of the application of the petitioner under Section 165 (6) of the Code of 1959 for permission to sell his land, it transpires that the petitioner is selling the land as he needs to repay his debt and for the purposes of marriage of his children. The petitioner has also stated that nobody belonging to his caste is willing to purchase his land in excess of the amount proposed by respondent No.5 i.e. for a total sale consideration of Rs. 1,25,000/- and the petitioner has



also received advance amount from respondent No.5 to the tune of Rs.25,000/-.

After sale of proposed land, approximately 3.07 acres of land will be left with the petitioner, which according to the petitioner is sufficient for his sustenance.

19. From perusal of statements recorded in the court of Tehsildar, this Court finds nothing perverse and there is no element of fraud laced in the transaction in question. In the order dated 07.01.2022 of the Tehsildar, report of Halka Patwari reflects that the land which has been proposed to sell is of residential and commercial importance. Further, guideline value of the land proposed to sell is Rs.3,56,000/- and market value of the same is Rs. 16,20,000/-.
20. In view of the aforesaid discussion, this Court finds that the Collector as well as the Board of Revenue committed an error in rejecting the petitioner's application solely on the ground that after the proposed sale, the petitioner would be left with less than 5 acres of land. A plain reading of Section 165(6) of the Code, 1959 nowhere prescribes any mandatory condition that a tribal bhumiswami must retain minimum 5 acres of irrigated land or 10 acres of unirrigated land before permission for transfer can be granted. The authorities appear to have misconstrued the provisions of Section 165(7) of the Code and mechanically applied the same while deciding the petitioner's application under Section 165(6).
21. It is also evident from the record that the petitioner sought permission to sell only a small portion of land owing to bona fide domestic and financial necessity for repayment of debt and marriage expenses. The enquiry conducted by the Tehsildar revealed that even after the proposed sale, substantial land would continue to remain in possession of the petitioner and there was no allegation of fraud, coercion or exploitation in the proposed transaction. The Tehsildar, after



conducting detailed enquiry and recording statements of all concerned persons, had recommended grant of permission.

22. The object of Section 165(6) is undoubtedly to protect members of Scheduled Tribes from exploitation and distress alienation of land, however, such protective provision cannot be interpreted in a manner that completely defeats the genuine livelihood and domestic necessities of a tribal landholder. The discretion vested in the Collector is required to be exercised reasonably and upon proper appreciation of the facts and circumstances of each case.

23. Accordingly, the impugned orders dated 10.03.2022 passed by the Collector, District Mungeli and dated 24.03.2023 passed by the Board of Revenue, Bilaspur are hereby set aside/quashed. The matter is remanded back to the concerned Collector/competent authority to reconsider the petitioner's application afresh in accordance with law, keeping in view the observations made hereinabove, particularly with regard to the bona fide necessity of the petitioner, the extent of remaining land available for sustenance, the fairness of the proposed transaction and the true scope of Section 165(6) of the Code, 1959 and also considering this aspect of the matter that market value and guideline value of the land is in excess to what has been agreed between the parties. The competent authority shall afford due opportunity of hearing to all concerned parties and pass a reasoned order bearing in mind that the application was filed by the petitioner on 22.09.2021, strictly in accordance with law, and preferably within a period of three months from the date of receipt of certified copy of this order.



24. With the aforesaid observations and directions, the present writ petition stands disposed of.

Sd/-
(Amitendra Kishore Prasad)
Judge

Avinash

The date when the judgment is reserved	The date when the judgment is pronounced	The date when the judgment is uploaded on the website	
		Operative	Full
24.04.2026	18.06.2026	-----	18.06.2026