



CGHC010142202020

AFR

## HIGH COURT OF CHHATTISGARH AT BILASPUR

### WPC No. 1571 of 2020

Gajendra Das S/o Late Santu Das Aged About 39 Years R/o Village Gandaikala, P.H. No. 6, Rajasva Nirikshak Mandal, Bodla, Tahsil Kawardha, District Kabirdham Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh

... **Petitioner(s)**

**versus**

**1** - State Of Chhattisgarh Through The Secretary, Revenue Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

**2** - The Collector Kabirdham, District Kabirdham Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh

**3** - Sub Divisional Officer Revenue, Kabirdham District Kabirdham Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh

**4** - Tahsildar Kawardha, District Kabirdham Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh

... **Respondent(s)**

### WPC No. 1569 of 2020

Sukrit Das, S/o Late Anand Das, Aged About 47 Years R/o Village Jarahtola Jamgaon, Tahsil And District Kabirdham Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh

--- **Petitioner(s)**

**versus**

**1** - State Of Chhattisgarh, Through - The Secretary, Revenue Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

**2** - The Collector, Kabirdham, District Kabirdham Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh

**3** - Sub Divisional Officer, Revenue, Kabirdham, District Kabirdham Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh

**4** - Tahsildar, Tahsil Kawardha, District Kabirdham Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh

--- **Respondent(s)**

{Cause Title Taken from Case Information System}

|                   |                                                                                                  |
|-------------------|--------------------------------------------------------------------------------------------------|
| For Petitioner(s) | : Mr. Ankit Pandey, Advocate.                                                                    |
| For Respondent(s) | : Mr. Vivek Sharma, Advocate General assisted by Mr. Shobhit Mishra, Deputy Government Advocate. |
| Date of Hearing   | : 03/07/2026                                                                                     |
| Date of Order     | : 23 /07/2026                                                                                    |

**Hon'ble Mr. Ramesh Sinha, Chief Justice**

**Hon'ble Mr. Ravindra Kumar Agrawal, Judge**

**Hon'ble Mr. Bibhu Datta Guru, Judge**

**C.A.V. Order**

**Per Ramesh Sinha, Chief Justice**

1. Heard Mr. Ankit Pandey, learned counsel for the petitioner. Also heard Mr. Vivek Sharma, learned Advocate General assisted by Mr. Shobhit Mishra, learned Deputy Government Advocate for the State/respondents.
2. By these petitions, filed under Article 226 of the Constitution of India, before the learned Single Judge of this Court, the respective petitioners seek for a relief to direct the respondents to confer Bhumiswami Rights on the petitioner(s) as per the direction of the Hon'ble High Court passed in WP. 537 of 1995, WP(C) No. 782/2014 and WP(C) No. 1515/2014.
3. These matters came up for hearing before a learned Single Judge on 23.11.2020 and thereafter, the matter got listed on various dates. On 09.04.2026, the learned Single Judge observed that the petitioners, being successors of erstwhile Kotwars, have preferred the present writ petitions seeking grant of Bhumiswami rights over the land in question, which was originally granted to their forefathers as service land by the ex-proprietors/Zamindars prior to the year 1950 for rendering services to the

village community. It was contended by the petitioners that in view of the provisions contained in Section 45(3) of the M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (*for short, the Abolition Act of 1950*), such persons, who were holding land on favourable terms for services rendered, stood declared as occupancy tenants from the date of vesting, and by virtue of Section 190 of the M.P./C.G. Land Revenue Code, 1959, the rights of Bhumiswami would subsequently accrue to them.

4. Learned counsel for the petitioners placed reliance upon the judgment rendered by a Division Bench of this Court in ***Vijay Das Manikpuri and others v. State of M.P.*** (W.P. No. 537/1995, decided on 18.08.2005), wherein, after considering the earlier decisions including ***Gaurishankar Choubey v. Baktha*** {1985 RN 228}, and ***Jiwanlal v. Board of Revenue***, {1961 MPLJ (SN) 78}, it was held that persons in continuous possession of such service land as Kotwars at the time of vesting would be treated as occupancy tenants and would be entitled to claim Bhumiswami rights, subject to verification of factual aspects by the competent revenue authority. It was submitted that in light of the settled legal position, the petitioners were entitled to be considered for grant of Bhumiswami rights in accordance with law.
5. On the other hand, learned State counsel, placing strong reliance upon the judgment rendered by a Division Bench of this Court in ***Gambhir Das Panika v. Chairman, Board of Revenue, Chhattisgarh & Others*** (along with connected matters decided on 30.11.2018) {AIR 2019 Chhattisgarh 1}, submitted that the issue was no longer *res integra* and stands conclusively settled against the petitioners. It was contended that the said Division Bench, after an elaborate consideration of the

provisions of the Abolition Act of 1950, the M.P./C.G. Land Revenue Code, 1959, and earlier precedents including **Gaurishankar Choubey** (supra) and **Kanak Chandra Dutta v. State of Assam**, {AIR 1967 SC 884}, has categorically held that land granted to a Kotwar as service land by the erstwhile Malguzar/Proprietor does not confer proprietary rights, and upon vesting, such land stands vested in the State free from all encumbrances. It was further held that a Kotwar holding such service land cannot, by virtue of such possession, claim the status of Bhumidhari or Bhumiswami, nor can his successors acquire such rights in absence of any statutory conferment.

6. Learned State counsel further submitted that the Division Bench has also declared earlier judgments taking a contrary view, namely **Chhabil Das & Others v. The State of Madhya Pradesh & another** {WP No. 2632/2000, decided on 30.10.2001}, **Tikaram & Others v. The State of Madhya Pradesh & Another** {WP No. 2064/2000, decided on 03.05.2021} and **Lalla Singh Chouhan v. State of Chhattisgarh** {WPC No. 782/2014, decided on 01.02.2018} as *per incuriam* and not laying down the correct law. Reliance was also placed on **State of M.P. v. Yakinuddin** {AIR 1962 SC 1916}; **Madhya Pradesh Rural Road Development Authority v. L.G. Chaudhary Engineers & Contractors** {(2012) 3 SCC 495}; **Bengal Immunity Co. Ltd. v. State of Bihar** {AIR 1955 SC 661}; **State of U.P. v. Synthetics and Chemicals Ltd.** {(1991) 4 SCC 139}; and **Municipal Corporation of Delhi v. Gurnam Kaur** {(1989) 1 SCC 101}, to buttress the submission regarding binding precedent and the doctrine of *per incuriam*. It was thus urged that the petitioners, being successors of ex-Kotwars, cannot claim Bhumiswami rights over the land in question under the provisions of the C.G. Land Revenue Code, 1959 or any other applicable law, and the writ petitions

deserved to be dismissed.

7. In view of the apparent conflict between the judgments rendered by two Division Benches of this Court on the issue involved in the present case, the learned Single Judge opined that the matter requires authoritative determination so as to ensure clarity and consistency in the legal position. The petitioners claimed entitlement to Bhumiswami rights on the strength of earlier Division Bench decisions, whereas the State placed reliance upon a subsequent Division Bench judgment taking a contrary view. As such, the existence of these divergent judicial pronouncements on the same question of law necessitated reference to a Full Bench. Accordingly, it the learned Single Judge has referred the following question to be answered by this Bench:

*“Whether, in light of the conflicting Division Bench judgments, service land granted to a Kotwar for rendering services prior to the abolition of proprietary rights can be recognized and converted into Bhumiswami rights in favour of such Kotwar or his successors under the provisions of the M.P./C.G. Land Revenue Code, 1959 and the M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950?”*

8. Mr. Ankit Pandey, learned counsel for the petitioners would submit that the above legal question depends upon the statutory source from which the petitioner/claimant derives title. Where the petitioner/claimant merely asserts rights because he was serving as Kotwar, no proprietary rights accrue merely by reason of office. However, where the petitioner/claimant establishes that the land was held before abolition under favourable terms attracting Section 45(3); the petitioner/claimant or his predecessor became an occupancy tenant by operation of statute; the subsequent provisions of the Revenue Codes became applicable; or the petitioner/claimant derives title from an independent hereditary,

occupancy or proprietary source, the matter cannot be concluded merely by describing the land as "Kotwar service land." The statute itself requires a separate enquiry into the origin and nature of each holding. According to Mr. Pandey, the following propositions emerge from the statutory scheme - (i) Section 3 of the Abolition Act vests proprietary rights in the State but does not extinguish every subordinate interest because Section 45 expressly preserves specified categories of rights. (ii) Section 45(3) creates a statutory occupancy tenancy by operation of law and not by executive grant or administrative recognition. (iii) The Abolition Act, the Madhya Pradesh Land Revenue Code, 1954 (for short, the 1954 Code) and the 1959 Code constitute one continuous legislative scheme and must be interpreted harmoniously; (iv) Service lands under Section 183 constitute only one category of Kotwar holdings. Hereditary holdings, occupancy holdings and independently acquired lands constitute separate juridical classes requiring independent adjudication. (v) Executive instructions cannot divest vested statutory proprietary rights in the absence of authority of law satisfying Articles 300A and 166 of the Constitution; (vi) The judgment in ***Gambhir Das Panika*** (supra) settles only the law relating to service lands governed by Section 183 of the CGLRC, 1959 and does not determine claims founded upon Section 45(3) of the Abolition Act of 1950, hereditary occupancy rights or independently accrued *Bhumiswami* rights.

9. Mr. Pandey would further submit that the State has proceeded on assumption that every land held by a Kotwar is a service land which is contrary to the statutory framework as a Kotwar may derive title through hereditary succession; as an occupancy tenant recognised under Section 45; by independent settlement; through statutory conferment under the Revenue Codes; and through service tenure. Each source

gives rise to distinct legal consequences. Unless the source of title is first identified, the question whether Bhumiswami rights accrued cannot be answered. The entire controversy therefore turns not upon the office held by the petitioner/claimant but upon the source of title and its origin of the land itself. The present reference has to be considered and answered by examining the complete statutory evolution of tenure rights rather than by treating Section 183 of the Land Revenue Code as the sole governing provision in every case involving a Kotwar. Section 45 of the Abolition Act of 1950 occupies a pivotal position in the statutory framework. While Section 3 transfers proprietary rights to the State, Section 45 determines the legal consequences affecting persons who were already in lawful possession under the former proprietors. The Legislature consciously recognised that numerous cultivators were in possession under varying legal relationships and that their rights required statutory protection after abolition. Section 45 therefore preserves existing occupancy tenancies and, by virtue of sub-section (3), creates a statutory occupancy tenancy in favour of persons who were holding lands on favourable terms because of services rendered. The conferment under Section 45(3) is not dependent upon any subsequent executive order. It flows directly from the statute itself. Once the statutory conditions stand fulfilled, the consequence follows by operation of law.

- 10.** Mr. Pandey would next submit that there is a distinction between vesting and saving. While Section 3 determines what rights pass from the intermediary to the State, Section 45 determines what rights continue in favour of persons who were already cultivating the land. The two provisions therefore operate in different legal fields and cannot be treated as mutually destructive. If Section 3 alone is considered while Section 45 is ignored, the statutory scheme becomes incomplete. It is further

submitted that conversely, Section 45 cannot operate independently of Section 3 because it presupposes vesting. The correct interpretative approach is therefore one of harmonious construction, giving full effect to both provisions simultaneously. He would submit that the Hon'ble Division Bench in ***Gambhir Das Panika (supra)***, correctly recognized the legal effect of Section 3 of the Abolition Act of 1950. However, the present reference also invites consideration of the scope and effect of Section 45, particularly sub-section (3) which constitutes the principal statutory saving provision governing persons holding lands from proprietors on favourable terms in consideration of services rendered. A harmonious construction of Section 3 and 45 would give full effect to the legislative scheme embodied in the Abolition Act. The judgment in ***Gambhir Das Panika*** (supra) extensively dealt with the doctrine of statutory vesting but provisions of Section 45(3) was not considered. Once Section 45(3) is omitted from consideration, the subsequent statutory evolution under the Revenue Codes appears disconnected and such an interpretation does not reflect the integrated legislative design. ***Gambhir Das Panika*** (supra) itself notices the earlier interpretation that person holding lands on favourable service conditions become occupancy tenants under Section 45(3) in paragraph 28 of the judgment while referring to the judgment of ***Gauri Shankar Choubey*** (supra). However, while answering the reference before it, in the case of ***Gambhir Das Panika*** (supra), the judgment proceeds upon the premise that a Kotwar holding service land never acquired occupancy tenancy. These two propositions cannot stand together unless confined to different factual situations. The judgment does not expressly undertake such distinction. Consequently, the legal consequences flowing from Section 45(3) of the Abolition Act of 1950 remains unanswered in the case of



**Gambhir Das Panika** (supra). The existing judicial decision in **Gambhir Das Panika** (supra) have primarily considered upon the historical character of Kotwar service. Comparatively, little or no attention has been devoted to the statutory consequences flowing from Section 45(3) of the Abolition Act of 1950. As a result, the transition from occupancy tenancy to the statutory tenures recognized under the 1954 Code has remained largely unexplored. This omission has resulted in an incomplete interpretation of the legislative scheme.

11. Mr. Vivek Sharma, learned Advocate General appearing for the State/ respondents assisted by Mr. Shobhit Mishra, learned Deputy Government Advocate would submit that the law laid down by a Division Bench of this Court in **Gambhir Das Panika** (supra) is the correct law which should be followed. Mr. Sharma would submit that the judgment of Gambhir Das Panika (supra) takes into account the various decisions rendered by other co-ordinate Single Benches viz. **Smt. Reena Bai v. State of Chhattisgarh & Others** {WP227 No. 2921/2008, decided on 15.06.2015}, **State of Chhattisgarh v. Gopal Agrawal & Others** {WPC 2082/2007, decided on 14.09.2017}, **Lalla Singh Chouhan** (supra), **Tikaram, Kotwar & Ors v. State of M.P.** {WP/2064/2000, decided on 03.05.2001}, a judgment of the Nagpur High Court in **Sheocharan v. Shah Mahomed** {(1928) 11 NLJ 129}, judgment of the Apex Court in **State of Bombay v. Pandurang Vinayak & Others** {AIR 1953 SC 244} and **State of Karnataka v. State of Tamilnadu & Others** {(2017) 3 SCC 362}, **Maharaja Pravir Chandra Bhanj Deo Kakatiya v. State of Madhya Pradesh** {AIR 1961 SC 775 : (1961) 2 SCR 501}, **Pravir Chandra Bhanj Deo Kakatiya v. The State of Madhya Pradesh** {AIR 1953 Nagpur 86 : 1952 Online MP 156}, **Kanak Chandra Dutta** (supra), **Gaurishankar Choubey** (supra). The Hon'ble

Division Bench, in ***Gambhir Das Panika*** (supra), observed that at the time of hearing of ***Chhabil Das*** (supra), ***Tikaram*** (supra) and ***Lalla Singh Chouhan*** (supra), the decisions rendered by the learned Single Judge in Smt. Rina Bai (supra), Gopal Agrawal (supra), the decision of the Madhya Pradesh High Court in Gaurishankar Choubey (supra) and of the Apex Court in ***Kanak Chandra Dutta*** (supra), ***Pravir Chandra Bhanj Deo Kakatiya*** (supra) were not placed before the concerned Benches and had thus escaped the attention of the Court and the law laid down by this Court in ***Chhabil Das*** (supra), ***Tikaram*** (supra) and ***Lalla Singh Chouhan*** (supra) were declared *per incuriam*. All these judgments have a direct bearing on the nature of the office held by a Kotwar and the legal incidents attached thereto.

12. Learned Advocate General next contended that the doctrine of *per incuriam* constitutes a well-recognised exception to the principle of *stare decisis*, and where a judgment has been rendered in ignorance of a binding statutory provision or a binding precedent of a superior Court or a larger Bench, such judgment loses its precedential value. According to him, the Division Bench in ***Gambhir Das Panika*** (supra) has correctly invoked the said doctrine after undertaking a detailed comparative analysis of the earlier authorities and has authoritatively settled the legal position. Learned Advocate General would further submit that the judgment rendered by the Division Bench in ***Gambhir Das Panika*** (supra) has attained finality and, therefore, binds this Court. Elaborating the sequence of events, he submitted that the judgment dated 30.11.2018 was assailed before the Hon'ble Supreme Court by filing Special Leave Petition (Civil) Diary No. 28169 of 2021. The Hon'ble Supreme Court, after condoning the delay in preferring the Special Leave Petition, considered the matter and, by order dated 25.02.2022, dismissed the

Special Leave Petition. It was argued that although dismissal of a Special Leave Petition by itself may not amount to a declaration of law under Article 141 of the Constitution, the consequence of such dismissal is that the judgment of the High Court continues to hold the field and remains operative and binding inter partes as well as within the territorial jurisdiction of this Court. Learned Advocate General further pointed out that even thereafter an attempt was made by the Kotwar Association of Chhattisgarh to reopen the controversy by filing proceedings before the Hon'ble Supreme Court questioning the judgment dated 30.11.2018 as well as the subsequent order passed in review proceedings dated 01.07.2025. However, the Hon'ble Supreme Court, by order dated 24.11.2025, declined to entertain the challenge and dismissed the proceedings on the ground of an inordinate delay of 2409 days in approaching the Court. According to the learned Advocate General, despite repeated attempts made by the aggrieved parties to challenge the correctness of the Division Bench judgment, the same has remained undisturbed and continues to operate with full force. It was, therefore, submitted that the controversy sought to be raised in the present reference is no longer *res integra*. Once the Division Bench has authoritatively interpreted the legal position after considering all the relevant statutory provisions and binding precedents, and the said judgment has continued to remain undisturbed, judicial discipline requires that the same be followed. It was accordingly urged that the reference deserves to be answered by affirming the view taken in *Gambhir Das Panika* (supra), holding that the earlier decisions in *Chhabil Das* (supra), *Tikaram* (supra) and *Lalla Singh Chouhan* (supra) do not lay down the correct law and cannot be treated as binding precedents.

13. We have heard learned counsel appearing for the parties, and perused the judgments relied on by the parties.
14. At the outset, it may be observed that the learned counsel for the petitioner has advanced several submissions touching upon different facets of the matter. Many of the submissions advanced before this Court by the learned counsel for the petitioner, according to learned State counsel, were never argued before the learned Single Judge and as such, they may not be taken into consideration while answering the question referred. Since the present proceedings arise out of a reference made by the learned Single Judge to this Full Bench, we consider it appropriate to confine ourselves solely to the question referred for determination. Before the learned Single Judge, the petitioners have placed reliance on the judgment rendered by a Division Bench in ***Vijay Das Manikpuri & Others*** (supra), which had considered the decision of rendered by the Madhya Pradesh High Court in ***Gaurishankar Choubey*** (supra) and ***Jivanlal*** (supra). Conversely, the State had placed reliance on the decision rendered by another co-ordinate Division Bench in ***Gambhir Das Panika*** (supra), which also takes note of the decisions rendered in ***Gaurishankar Choubey*** (supra) and ***Jiwanlal*** (supra). The other issues sought to be raised by the petitioner neither fall within the scope of the present reference nor require adjudication at this stage. Accordingly, we refrain from expressing any opinion on those aspects, leaving them open to be considered, if necessary, in appropriate proceedings.
15. The origin of office of 'Kotwar' or 'village servant' has been discussed in para 8 of the judgment of ***Gambhir Das Panika*** (supra), which reads as under:

*“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 –*

xxx xxx xxx

*“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.*

xxx xxx xxx

*“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.*

xxx xxx xxx

*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."*

16. Section 215 of the M.P. Land Revenue Code, 1954 and Section 230 of the Chhattisgarh Land Revenue Code, 1959 provides for appointment of Kotwar and their remuneration whereas Section 216 of MPLRC (Section 231 of the CGLRC, 1959) provides for remuneration of Kotwar in Mahakaushal region. The appointment of Kotwar and the mode of payment of remuneration has been referred in Part VIII of Sixth Schedule and Part XI of the Government of India Act, 1935, together the Section 196 of CPLR Act, 1917, leave no room of doubt of 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 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 of 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 service of Kotwar rendered to the area in control of Zamindar. The said grant would be covered by Section 3 of the Abolition Act of 1950.
17. Under the Abolition Act of 1950 and the MPLRC, 1954, a Kotwar appointed by Zamindar, Malguzar or the Gaontia has been substituted by the State as its employer in place of 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 of the Abolition Act of 1950 as it clearly says in sub-section (1) that "person having interest in such proprietary right through the proprietary, shall pass from such proprietor or such other person to

and vest in the State for the purpose of State free from all encumbrances. 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." Section 3 of the Abolition Act of 1950 reads as under:

**"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 proprietor of such estate, mahal, alienated village, alienated land, or in a person having interest in such proprietary right 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 Subsection (1) at any time before such date."*

18. The effect of provisions contained in the Abolition Act of 1950, has been discussed by the Division Bench of this Court and matter of **Gambhir Das Panika** (supra). The Abolition Act of 1950, was enacted to give effect to Article 31A of Constitution of India. In **Gambhir Das Panika** (supra), a Division Bench of this Court observed as under:

"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".*

19. The Madhya Pradesh High Court, in **Jiwan Lal** (supra) has held that there is a distinction between the village servant and malguzari servant. The Court has further held that the person holding land as remuneration for service of ex-proprietor, his right to land ends with the termination of service and person is not entitled for protection under Section 45 (3) of the Abolition Act of 1950. The Hon'ble Supreme Court in **Yakinuddin** (supra) has discussed the provisions contained in Section 3 of Abolition Act of 1950 and has held that all the 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 estate for the purposes of the estate, free from all encumbrances. In the matter of **Gauri Shankar Choubey** (supra) it has been held service land given to the Kotwar by Malguzar, in that case Kotwar is not a personal servant of proprietor but Kotwar is an occupancy tenant of the State. In the matter of **Kanak Chandra Dutta** (supra), the Hon'ble Supreme Court has held that "Civil Post" means post not connected with defence outside regular civil services. Further, it was held that post is service or employment and a person holding a post under a State and is under administrative control of State Office. It was also held that there is a relationship of master and servant between State and Person said to be holding post under it. In the matter of **Tikaram, Kotwar & Ors v. State of M.P.** {WP/2064/2000, decided on 03.05.2001}, it was held by the Single Bench of Hon'ble High Court of Chhattisgarh, that the competent authority shall grant Bhumiswami rights in respect of writ petitioners. In the matter of **Chhabil Das** (supra), it was held by the Single Bench of Hon'ble High Court of Chhattisgarh, that the competent authority shall grant Bhumiswami rights in respect of lands recorded in Jamabandi in favour of petitioner. In the matter of **Vijay Das Manikpuri** (supra), a Division

Bench of this High Court observed as under:

*"4) On a reading of the provisions of Sub-section (3), of Section 45 of the M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, we find that any person holding land other than sir land from the proprietor on favourable terms for service rendered by him has been declared to be an occupancy tenant of the State from the date of vesting and the Dy. Commissioner is required to fix the rent to be paid by such occupancy tenant to the State. It further appears that from a reading of Section 190 of M.P. Land Revenue Code 1959 which after its adoption by the Government of Chhattisgarh is titled as C.G. Land Revenue code, 1959 that the rights of a Bhumiswami will accrue to the occupancy tenant in respect of the land held by him with effect from the dates specified therein. It also appears from the decision of the MP High Court in the case of Gaurishankar Choubey Vs. Baktha (supra) that a Kotwar in continuous possession of the land given to him for service rendered to the village community by the proprietor of the land has been held to be an occupancy tenant of the State from the date of vesting. It also appears that the aforesaid decision of the M.P. High Court in the case of Gaurishankar Choubey vs. Baktha (supra) has been rendered on the basis of the law laid down in the case of Jiwanlal vs. Board of Revenue (1961 MPLJ-SN-78). But the petitioners can be recorded as Bhumiswami in respect of the land in question only if their fathers were village Kotwars in occupation of the lands given to them by the ex-proprietors for service to the village community at the time of vesting. As to whether or not a person is a Kotwar or is a son of a Kotwar and was in occupation of land given to him by the ex-proprietor of land for service rendered to the village community at the time of vesting is a factual question to be decided by the competent authority and cannot be decided by us in the present writ petition under Article 226 of the Constitution.*

*5). For the aforesaid reasons, we dispose of the writ petition with a direction that the petitioners may file appropriate applications before the Tehsildar in whose jurisdiction the land claimed by the petitioners falls and the Tehsildar on receipt of such application will make an enquiry into the aforesaid factual aspect and pass orders on the application of the petitioners in accordance with law as discussed above."*

20. In the year 2003, the State Government passed an order dated 21.04.2003, whereby the State Government in compliance of the Court's order passed in WP/2632/2000, and WP/2064/2000, granted Bhumiswami rights to all the Kotwars to whom the service land had been

granted prior to year 1950. In the matter of **Charan Das Vs. State of Chhattisgarh**, {WP (227)/3640/2009, decided on 09.03.2010}, by Single Bench of this Court, it was held :

*"(6) On perusal of the impugned orders this Court finds that the orders passed by the Collector and Board of Revenue have been passed after appreciating the entire facts and the law applicable thereon. The question regarding conferral of Bhoomiswami rights to the Kotwar on a land which was held by the Kotwar as Maufi land 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 the Jamabandi, as to whether such property was spared from the 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 as to 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 by the Ex Malgujar, the property cannot be declared to be the Bhoomiswami land of the Ex Kotwar.*

*(7) In the opinion of this Court the Collector as well as the Board of Revenue has not committed any illegality by holding that neither the petitioner nor the respondent no. 5 can be declared Bhoomiswami with respect to the subject land. The writ petition being devoid of substance is hereby dismissed at the admission stage."*

21. A special leave petition was preferred against the judgment of **Charan Das** (supra) before the Apex Court which was dismissed on 04.10.2010, in Special Leave to Appeal Civil No. 29377/2010.
22. In the year 2014, the State Government passed the order dated 10.03.2014, whereby the previous order dated 21.04.2003, was quashed and as such the sale of the service land by the Kotwars was declared "untransferable" as the land were sold without the permission of the Collector. After issuance of such direction, a bunch of petitions were filed by the Kotwars challenging the aforesaid order dated 10.03.2014, before

this High Court {**Lalla Singh Chouhan (supra)**} which was decided on 01.02.2018, by a learned Single Judge of this High Court. It was held that the State Government shall be free to make an enquiry with respect to the nature of the holding of land by Kotwars to determine and carve out the Bhumiswami holding lands and service land separately. It was 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 the provisions of Abolition Act, 1950, the Bhumiswami right was 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 Chhattisgarh Land Revenue Code, 1959.

23. Section 183 of Chhattisgarh Land Revenue Code, 1959 is reproduced herein below for ready reference:

**“183. Service land** - (1) *Any person holding land on the condition of rendering service as village servant shall cease to be entitled to such a land if he diverts such land to non-agricultural purposes.*

(2) *A transaction by which a village servant attempts to transfer his interest in his services land by sale, gift, mortgage, sub-lease or otherwise except by a sub-lease for a period not exceeding one year, shall be void.*

(3) *If the holder of such land dies, resigns or is lawfully dismissed the land shall pass to his successor in office.*

(4) *The right of the holder in such land shall not be attached or sold in execution of a decree nor shall a receiver be appointed to manage such land under Section 51 of the Code of Civil Procedure, 1908 (V of 1908).”*

24. In **Gambhir Das Panika** (supra), the learned Division Bench had answered the reference made to the following question:

*"Whether a Kotwar (village servant) holding service land under Section 183 (1) of 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)?”*

25. While answering the above question, the learned Division Bench held that **Lalla Singh Chouhan** (supra) did not lay 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 provisions of Section 3 of Abolition Act, 1950, read with Section 147, 148 and 150 of the MPLRC, 1954. The judgments in the matter of **Chhabil Das** (supra), **Tikaram** (supra) and **Lalla Singh Chouhan** (supra) stood overruled.
26. From the above, it is clear and evident that the Division Bench of this Hon'ble Court in **Vijay Das Manikpuri** (supra) has not dealt with Section 3 of Abolition Act, 1950 and also with Section 183 of Land Revenue Code. Further, on perusal of Division Bench judgment of this Hon'ble Court in **Gambhir Das Panika** (supra), it transpires that it has dealt with Section 3 of Abolition Act as well as all the relevant case laws. While deciding the **Gambhir Das Panika** (supra) the learned Division Bench has held order/judgments in the matters of **Chhabil Das** (supra) **Tikaram** (supra) and **Lalla Singh Chouhan** (supra) as per incuriam.
27. On a careful perusal of the **Gambhir Das Panika** (supra) judgment, the Division Bench has dealt with Section 3 of Abolition Act, 1950 and has correctly held that Kotwar is a village servant and was prior to 1950 appointed by the Zamindar, Malguzar or the Gaontia. The Zamindar, Malguzar or the Gaontia has been substituted by the State as its employer and the master-servant relationship continue by force of Abolition Act 1950. The master-servant relationship between the malguzar, proprietor and the Kotwar passes onto the State by virtue of

Section 3 of Abolition Act, 1950. After going through all the judgments it is evident that it has been held that the individuals claiming the Bhoomiswami rights over the properties have to establish that how the land in question is registered in their name. As per the Section 3 of Abolition Act, 1950 there is no doubt that the ownership of the land has been vested with the State Government after the Abolition Act, 1950 came into the force. From the date of the notification by the State under Section 3 of the Act, all the 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. The consequences of the such vesting are laid down in Section 4 of Abolition Act, 1950 and on bare reading of the provisions of Clause (a) of Section 4(1) that whatever rights the proprietor or a person claiming interest had been ceased on the vesting of estate in the State.

28. The challenge made to the judgment passed by the learned Division Bench in ***Gambhir Das Panika*** (supra) in Special Leave Petition (Civil) Diary Nos. 28169/2021 stood dismissed by the Hon'ble Apex Court vide its order dated 25.02.2022. Another Special Leave Petition (Civil) Diary No. 56990/2025 was filed by Kotwar Association of Chhattisgarh challenging the order dated 30.11.2018 passed by the learned Division Bench in ***Gambhir Das Panika*** (supra) as well as the order dated 01.07.2025 by which the review petition being REVP No. 158/2025, filed seeking review of the order dated 30.11.2018 was dismissed. The said SLP also stood dismissed on 24.11.2025 on the ground of inordinate delay of 2409 days in filing the petition.
29. Reliance placed on the decision of a three-Judge Bench of the Supreme

Court in ***The State of Maharashtra & Others v. Atma Ram Sadashiv Dongarwar*** {(1978) 4 SCC 170}, is misplaced as the said judgment primarily dealt with the issue of water irrigation. It was observed by the Bench that the right of free irrigation which accrued to the occupancy tenants and malguzars under the aforesaid Sections 45 to 47 of the Abolition of Proprietary Rights Act were not only not destroyed but were also saved by Section 239 of the MPLRC, 1954 and were, therefore, to continue to be enjoyed by the occupancy tenants and malguzars without being affected, curtailed or whittled down in any manner despite the repeal of Sections 45 to 47 of the Abolition Act by Section 238 of the Code. The said judgment does not take note of the judgment rendered by the Constitution Bench of the Apex Court in ***Yakinuddin*** (supra).

30. In ***Yakinuddin*** (supra), the issue before the Constitution Bench of the Apex Court was whether the respective grants made by the outgoing proprietors in favour of the respondents convey any right to them, which could be enforced against the State after the coming into effect the Abolition Act of 1950. In ***Gambhir Das Panika*** (supra), placing reliance on the above judgment, a Division Bench of this Court observed that 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 ***Yakinuddin*** (supra) 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.

31. It would also be necessary to examine the effect of the order passed by the Hon'ble Supreme Court in the Special Leave Petition arising out of the judgment of the Division Bench in ***Gambhir Das Panika*** (supra). The record would reveal that the delay in filing the Special Leave Petition was condoned by the Hon'ble Supreme Court, whereafter the petition came to be dismissed. The legal consequences of such dismissal are governed by the doctrine of merger, the contours whereof have been authoritatively explained by the Hon'ble Supreme Court in ***Kunhayammed v. State of Kerala***, {(2000) 6 SCC 359} and reiterated in subsequent decisions. The doctrine postulates that merger is not a doctrine of universal or unlimited application; its applicability depends upon the nature of the jurisdiction exercised by the superior Court and the character of the order passed. Merely because a Special Leave Petition is dismissed does not, by itself, result in merger of the judgment of the High Court with that of the Supreme Court. However, where the Supreme Court has applied its mind to the matter after condoning the delay and declined to interfere, the judgment of the High Court undeniably attains finality between the parties and continues to operate as a binding precedent within the territorial jurisdiction of the High Court, unless displaced by a larger Bench or by a subsequent authoritative pronouncement of the Hon'ble Supreme Court.
32. In the present case, the judgment rendered by the Division Bench in

***Gambhir Das Panika*** (supra) has not only held the field for several years but has also withstood scrutiny before the Hon'ble Supreme Court. No contrary declaration of law has been made by the Apex Court, nor has the ratio laid down therein been diluted or overruled. Consequently, the legal principles enunciated in ***Gambhir Das Panika*** (supra) continue to bind this Court in terms of the doctrine of precedent and judicial discipline. A Bench of co-equal strength cannot disregard or take a view inconsistent with the law declared therein, and any departure therefrom would be permissible only by referring the matter to a larger Bench. The finality attached to the judgment after the proceedings before the Hon'ble Supreme Court reinforces the need for certainty, consistency and stability in the administration of justice, which are foundational principles underlying the doctrine of precedent.

33. The judgment rendered by a co-ordinate Division Bench in ***Vijay Das Manikpuri*** (supra), relied on by the petitioners which had taken note of the judgment rendered by the Madhya Pradesh High Court in ***Gaurishanker Choubey*** (supra), which in turn was passed on the basis of ***Jiwanlal*** (supra). The judgment of ***Vijay Das*** (supra) did not at all considered the provisions of Section 3 of the Abolition Act of 1950 and as such, it cannot lay down the correct law.
34. From the above it is clear that after coming into the force of the statute Abolition Act, 1950 all the estate vested in the name of malguzar, proprietors etc. has been transferred to State and in the same manner the malguzars, proprietors who have prior to 1950 have transferred their land to the person, who were called Kotwars, for rendering their services towards village has also been transferred to the State. After coming into the force of the Abolition Act, 1950 the master-servant relationship

continued between the State and the Kotwars. Further, on perusal of Section 183 of Land Revenue Code, 1959 it is evident that the Kotwars are vested with the land on the condition of rendering the service as village Servant and he shall cease to be entitled to such a land once he resigns or is lawfully dismissed from the post of Kotwar and the subject land shall pass to successor in the office. In the matter of **Charan Das** (supra), it has been held that enquiry must be held before conferring the Bhoomiswami rights to the person as to how such land has been transferred and whether such transfer has been recognised by the State. Further, it is also held that if there is any service land which is directed to be settled in the name of Kotwar as he was rendering his services towards village in such cases the property cannot be declared to be the Bhoomiswami land of such Kotwar.

35. In the light of the above discussion, the reference made by the learned Single Judge to this Bench is answered in **negative**.
36. Registry is directed to list these petitions before the Bench having the Roster to decide the same on merits.

Sd/-  
(Bibhu Datta Guru)  
**JUDGE**

Sd/-  
(Ravindra Kumar Agrawal)  
**JUDGE**

Sd/-  
(Ramesh Sinha)  
**CHIEF JUSTICE**

**Head Note**

*Service land granted to a Kotwar for rendering services prior to the abolition of proprietary rights cannot be recognized and converted into Bhumiswami rights in favour of such Kotwar or his successors under the provisions of the M.P./C.G. Land Revenue Code, 1959 and the M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950.*