

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1148 of 2015

Laxminarayan Dubey S/o Late Mukhichand Dubey Aged About 60 years R/o
Bhatapara Bodri Tah. Bilha P.S. Chakarbhata Dist. Bilaspur Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary Mantralaya Of Revenue Depart Mahanadi Bhavan New Raipur Chhattisgarh.
2. Collector Bilaspur, P.S. Civil Line Tah. & Dist. Bilaspur
3. Sub Divisional Officer (Revenue) Bilha Tah. Bilha Dist. Bilaspur Chhattisgarh.
4. Chief Municipal Officer, Nagar Panchayat Bodri Tah. Bilha Dist. Bilaspur Chhattisgarh.

---- Respondents

For Petitioner	-	Shri Amit Kumar, Advocate
For Respondent/State	-	Shri Manish Nigam, Panel Lawyer

Order On Board

17/07/2015

Heard.

By this petition, the petitioner has assailed the proceedings and order dated 01.07.2015, by which, the Sub-Divisional Officer directed the steps to be taken for removal of encroachment.

2. Learned counsel for the petitioner submits that he has not encroached upon any land outside the land of which he is Bhumiswami and which has been recorded in his name as such.

3. Learned counsel for the petitioner submitted that if at all, the petitioner has to be evicted, due and proper proceedings under Section 248 of the Land Revenue Code ought to be drawn by the competent authority and as he has not received any notice nor he is in the knowledge of any order of eviction, nor any order of eviction served upon him, the action of the respondent authorities in proceedings to evict him by treating him as encroacher is illegal and highhanded.

4. Learned State counsel was directed to seek instruction in the matter and on the last date of hearing, it was stated that against the petitioner and some other encroachers proceeding under Section 248 of Land Revenue Code were drawn by the Tehsildar. On the last date of hearing, the petitioner seriously disputed the initiation of such proceedings by stating that the respondent authorities have initiated the proceedings only after this Court noticed respondents.

5. Taking into consideration the nature of allegation, this Court had directed the State counsel to produce before the Court, the original records of eviction proceedings. The original records of eviction proceedings revenue case No.189/A-68/2014-15, State Vs. Laxminarayan, S/o Late Mukhichand Dubey, Village Bodri and Revenue Case No.188/A-68/2014-15 State Vs. Baliram, S/o Arjun Yadav, Village Bartori were perused. Revenue case No.188/A-68/2014-15 was opened on 24.04.2015 whereas Revenue Case No. 189/A-68/2014-15 was opened on 26.05.2015 i.e. after the case against Baliram and others.

6. The records produced before this Court as also the submission on affidavit placed before this Court reveals that initially, when the revenue authority found that the petitioner has encroached upon open land, proceedings were initiated against him and notice under Section 248 Land Revenue Code was issued. The record shows that the process server had taken notice, which the petitioner refused to accept it contained signature of two witnesses also. Thereafter, the Tehsildar proceeded to pass an order of eviction against the petitioner.

7. It has been vehemently argued that the petitioner was never served with notice and all the records are fabricated. This submission of learned counsel for the petitioner is without any basis and foundation. I have perused the original records which contains proceedings duly signed by Tehsildar. Once, there is report submitted by the process server and the Tehsildar has proceeded to pass an order of eviction, the submission that the petitioner was not served, with the notice is a matter, which is in the realm of fact finding enquiry. This will require leading of oral evidence.

8. On the face of the proceedings, it cannot be said that no order of eviction has been passed and petitioner is being dispossessed without there being any order of eviction under the law.

9. The next submission of learned counsel for the petitioner that as the SDO, himself, has directed removal of encroachment, filing of appeal would be illusory, deserves to be rejected.

10. The proceedings of encroachment has been directed by the SDO after the order was passed by the Tehsildar. That appears to be only in the nature of the administrative action. That does not mean that the SDO will not decide the appeal, if any, filed by the petitioner

against the order of eviction passed by Tehsildar under the provisions of the Land Revenue Code. Under the provisions of land Revenue Code against the order passed by Tehsildar, appeal would lie before the Appellate Authority. In these circumstances, this apprehension of the petitioner has no foundation.

11. The petitioner claimed to be ignorant about the proceedings whereas the original records show that an order of eviction has been passed by the Tehsildar. The petition, therefore, is liable to be dismissed and is accordingly dismissed.

Sd/-

Manindra Mohan Shrivastava

J U D G E

Rekha