

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3267 of 2015

1. Benjamin Sikka S/o I. D. Sikka, Aged About 40 Years Occupation Service, Presently Posted As Naib Tahsildar And Posted At Kabeerdham, Now Working As Patwari At Tahsil Office, Pithora, District Mahasamund, R/o Village Lakagarh, Tahsil Pithora, Distt. Mahasamund, (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Revenue, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (Chhattisgarh)
2. Collector, Mahasamund, Distt. Mahasamund, (Chhattisgarh)
3. Sub Divisional Officer, (Revenue), Pithora, Distt. Mahasamund, (Chhattisgarh)
4. Tahsildar, Pithora, District Mahasamund Chhattisgarh
5. Naib Tahsildar, Pithora, District Mahasamund, (Chhattisgarh)
6. Revenue Inspector, Pithora, Distt. Mahasamund, (Chhattisgarh)
7. Balraj Naidu, R/o Ward No.5, Ratna Bhawan, Thana Chowk, N H 53, Pithora, District Mahasamund, (Chhattisgarh)

---- Respondent

For Petitioner	Shri Rajeev Shrivastava, Advocate
For Respondent/State	Shri Sangarsh Pandey, Dy. Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

15/09/2015

1. This petition under Article 226 of the Constitution of India has been

preferred to seek quashment of the order of suspension dated 15-5-2015; the charge sheet dated 25-6-2015 constituting the departmental enquiry against the petitioner; and the memo dated 30-7-2015 issued by the Sub Divisional Officer (Revenue), Pithora, whereby the said officer has sought permission from the Collector to lodge FIR against the petitioner.

2. It is argued that the petitioner has been placed under suspension and the enquiry has been initiated on the ground of issuance of 16 point document by showing the Government land as private land, which has resulted in commission of fraud and, thus, the petitioner is said to have committed misconduct, however, the petitioner was posted at the relevant place from 2006 to 2010 and the revenue records of the subject khasra numbers were created much prior to that, therefore, there is no basis for initiating enquiry against the petitioner. It is also argued that initiation of enquiry is *mala fide* inasmuch as the petitioner has already been promoted to the post of Naib Tahsildar, however, the impugned order has been passed only to delay or restrain him to join on the promoted post.
3. Perusal of the papers, annexed with the writ petition, would indicate that the subject land was recorded as forest land. It was allotted on lease to different persons, however, by interpolation in the revenue records, the petitioner issued 16 points document to certify that the land is bhoomiswami land and, thereafter, it was sold to different persons whereas according to the rules lessee of Government

forest land has no right to sale the land, as it is the property of the Government.

4. It is settled principle of law that neither the disciplinary proceedings nor the charge-sheet be quashed at a initial stage as it would be a premature stage to deal with the issues. (See: **Secretary, Ministry of Defence And others v. Prabhash Chandra Mirdha**¹).
5. In the case at hand, there are disputed questions of facts pertaining to Government land, which cannot be gone into in this petition. Annexure – P/1 indicates that some Government records are missing. The issue as to who interpolated the Government records to confer undue benefit to the sellers or the purchasers is to be determined after examining the record and oral evidence.
6. Similarly, the order of suspension is an appealable order. In **Union of India and Others v. Major General Shri Kant Sharma and Another**², the Supreme Court has held that when statutory remedy is available, High Court should not entertain the petition. Thus, challenge to Annexure – P/1 also cannot be entertained.
7. Petitioner has also assailed the document Annexure – P/3 whereby the SDO (Revenue) has sought permission from the Collector to lodge the FIR against the petitioner.

1 (2012) 11 SCC 565

2 (2015) 6 SCC 773

8. After placing reliance upon various decisions of the Supreme Court, this Court in **Amarnath Agrawal v. Jai Singh Agrawal & Others**³, held that before lodging of FIR the prospective accused need not be afforded opportunity of hearing.
9. Even otherwise, after issuance of the memo dated 30-7-2015, the Tahsildar, Pithora, has already lodged the FIR against the petitioner, therefore, relief in so far as it concerns the memo of the SDO (Revenue) dated 30-7-2015 has been rendered infructuous. The other part of relief pertaining to memo of Tahsildar dated 21-8-2015 is, in substance, a relief for quashing the FIR.
10. It is the settled law that relief for quashing the FIR should not be entertained at the initiating stage unless the FIR is *ex facie* mala fide or it involves civil dispute, which has been given the colour of an offence (See: **Rishipal Singh v. State of Uttar Pradesh and Another**⁴).
11. As a result, the writ petition, *sans* merit, is liable to be and is hereby dismissed.

Sd/-

Judge

Prashant Kumar Mishra

Gowri

3 2015 (2) CGLJ 261

4 (2014) 7 SCC 215