

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1494 of 2016**

1. Shankar Pandey S/o Bahadur Pandey, Aged About 50 Years R/o. Village Nandinikundani, Ward No. 20, Post Office Nandanikhundani, Police Station Nandani Nagar, Tahsil Dhamdha, District Durg Chhattisgarh.
2. Vishnu S/o Milau Chandrakar, Aged About 70 Years R/o. Village Nandinikundani, Ward No. 20, Post Office Nandanikhundani, Police Station Nandani Nagar, Tahsil Dhamdha, District Durg Chhattisgarh.
3. Chhediram S/o Mahadev Gond, Aged About 65 Years R/o. Village Nandinikundani, Ward No. 20, Post Office Nandanikhundani, Police Station Nandani Nagar, Tahsil Dhamdha, District Durg Chhattisgarh.
4. Dinesh S/o Gangu Patel, Aged About 36 Years R/o. Village Nandinikundani, Ward No. 20, Post Office Nandanikhundani, Police Station Nandani Nagar, Tahsil Dhamdha, District Durg Chhattisgarh.
5. Kamlesh S/o Khuman Patel, Aged About 35 Years R/o. Village Nandinikundani, Ward No. 20, Post Office Nandanikhundani, Police Station Nandani Nagar, Tahsil Dhamdha, District Durg Chhattisgarh.
6. Khelu S/o Makhan Satnami, Aged About 46 Years R/o. Village Nandinikundani, Ward No. 20, Post Office Nandanikhundani, Police Station Nandani Nagar, Tahsil Dhamdha, District Durg Chhattisgarh.
7. Ramdhar S/o Raru, Aged About 55 Years R/o. Village Nandinikundani, Ward No. 20, Post Office Nandanikhundani, Police Station Nandani Nagar, Tahsil Dhamdha, District Durg Chhattisgarh.
8. Shivcharan S/o Lakhan Yadav, Aged About 55 Years R/o. Village Nandinikundani, Ward No. 20, Post Office Nandanikhundani, Police Station Nandani Nagar, Tahsil Dhamdha, District Durg Chhattisgarh.
9. Gaucharan S/o Late Lakhan Yadav, Aged About 40 Years R/o. Village Nandinikundani, Ward No. 20, Post Office Nandanikhundani, Police Station Nandani Nagar, Tahsil Dhamdha, District Durg Chhattisgarh.
10. Devendra S/o Late Nilkanth Chauhan, Aged About 40 Years R/o. Village Nandinikundani, Ward No. 20, Post Office Nandanikhundani, Police Station Nandani Nagar, Tahsil Dhamdha, District Durg Chhattisgarh.
11. Balbir S/o Ratan Nishad, Aged About 45 Years R/o. Village Nandinikundani, Ward No. 20, Post Office Nandanikhundani, Police Station Nandani Nagar, Tahsil Dhamdha, District Durg Chhattisgarh.
12. Holi S/o Late Balla Yadav, Aged About 25 Years R/o. Village Nandinikundani, Ward No. 20, Post Office Nandanikhundani, Police Station Nandani Nagar, Tahsil Dhamdha, District Durg Chhattisgarh.
13. Prahlad S/o Ramji Yadav, Aged About 37 Years R/o. Village Nandinikundani, Ward No. 20, Post Office Nandanikhundani, Police Station Nandani Nagar,

Tahsil Dhamdha, District Durg Chhattisgarh.

14. Raj Banjara S/o Shankar Banjara, Aged About 26 Years R/o. Village Nandinikhundani, Ward No. 20, Post Office Nandanikhundani, Police Station Nandani Nagar, Tahsil Dhamdha, District Durg Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh Through : Secretary, Revenue Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur (Chhattisgarh)
2. Collector, Durg, District Durg Chhattisgarh.
3. Tahsildar, Durg, District Durg Chhattisgarh.
4. Nayab Tehsildar, Ahiwara, District Durg, Chhattisgarh.

---- Respondents

WPC No. 1495 Of 2016

1. Rambai W/o Late Shri Malchand Aged About 51 Years R/o. Village Nandinikhundani, Ward No. 13, Post Office Nandanikhundani, Police Station Nandani Nagar, Tahsil Dhamdha, District Durg Chhattisgarh.
2. Laxmibai W/o. Late Shri Radhe Aged About 48 Years R/o Village Nandinikhundani, Ward No. 13, Post Office Nandanikhundani, Police Station Nandani Nagar, Tahsil Dhamdha, District Durg Chhattisgarh.
3. Kumar Lodhi S/o Late Shri Vishram Lodhi, Aged About 58 Years R/o Village Nandinikhundani, Ward No. 13, Post Office Nandanikhundani, Police Station Nandani Nagar, Tahsil Dhamdha, District Durg Chhattisgarh.
4. Sishupal S/o Late Shri Lakhan Yadav, Aged About 40 Years R/o Village Nandinikhundani, Ward No. 13, Post Office Nandanikhundani, Police Station Nandani Nagar, Tahsil Dhamdha, District Durg Chhattisgarh.

---- Petitioners

Vs

1. State Of Chhattisgarh Through : Secretary, Revenue Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur (Chhattisgarh)
2. Collector, Durg, District Durg Chhattisgarh.
3. Tahsildar, Durg, District Durg Chhattisgarh.

---- Respondents

And

WPC No. 1496 Of 2016

- Khubiram S/o. Mansharam, Aged About 38 Years R/o. Village Nandinikundani, Ward No. 20, Post Office Nandanikhundani, Police Station Nandani Nagar, Tahsil Dhamdha, District Durg Chhattisgarh.

---- Petitioner

Vs

1. State Of Chhattisgarh Through : Secretary, Revenue Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur (Chhattisgarh)
2. Collector, Durg, District Durg, Chhattisgarh.
3. Tahsildar, Durg, District Durg Chhattisgarh.
4. Nayab Tahsildar, Ahiwara, District Durg, Chhattisgarh.

---- Respondents

For Petitioners	:	Shri Manoj Paranjpe, Shri Vaibhav P. Shukla and Shri Lekhram Dhruw, Advocates.
For Respondents/State	:	Shri Prafull N. Bharat, Additional Advocate General.

HON'BLE THE VACATION JUDGE

Order On Board

09/06/2016

1. As the facts and issues involved in these writ petitions are similar and identical, they are being disposed of by this common order. For convenience, the leading case shall be Writ Petition (C) No.1494 of 2016.
2. The challenge in the present writ petitions is the notice date 01.06.2016 (Annexure P/1) whereby the petitioner have been asked to move out of their houses as they have been found to have encroached upon the said property.
3. Learned counsel appearing for the petitioners submits that the petitioners are residents of the said village since more than five decades and having constructed Pakka houses in the said place and are in continuous and uninterrupted possession over the said houses. They have also obtained all

the civic rights from the local bodies being resident of the said houses. Suddenly on 01.06.2016 (Annexure P/1) notice of removal of encroachment has been served upon the petitioners with a direction to remove the encroachment i.e. dwelling houses/shops within a period of seven days and also to pay a fine of Rs. 100/- each leading to the filing of these writ petitions.

4. The counsel for the petitioners submits that admittedly the impugned order is appealable but the reason they have approached the writ court is because of the fact that the manner in which the respondents have issued the impugned notice speaks of their malafide.
5. Learned counsel for the petitioners submit that the order declaring the petitioners to be encroacher has not been supplied by the Naib Tehsildar in spite of request being made by them. He further submits that the period of seven days provided by the authorities concerned for vacating the house is not at all reasonable. According to the petitioners, they have been staying in the said houses or in occupation of the said property for decades and suddenly asking them to leave their houses and find an alternative shelter is too harsh a decision and hits Article 21 of the Constitution of India. He submits that the said order is an appealable order but unless the said order is supplied to them, they could not have preferred an appeal and within that period the respondents may take a coercive steps as mentioned in the notice itself.
6. Learned Additional Advocate General, appearing for the State at this stage submits that Section 44 of the Land Revenue Code specifically provides remedy of preferring Appeal before the Sub Divisional Officer against the order passed by the Naib Tehsildar. He further fairly submits that in case if the grievance of the petitioners is only that of not granting of the order passed under Section 248 of the Land Revenue Code by the Naib Tehsildar, he shall ensure serving of a copy of the said order to the petitioners within a period of seven days from today and further prays for rejection of the writ petitions for

having statutory alternative remedy. He also submits that after providing a copy of the order passed by the Naib Tehsildar, the petitioners may be directed to prefer statutory appeal as provided under Section 44 of the Land Revenue Code within a stipulated period, to which the counsel for the petitioners have no objection.

7. In the light of aforesaid facts and circumstances, it is directed that the concerned respondent i.e. Tehsildar/Naib Tehsildar in all the cases shall provide a copy of order passed by him under Section 248 of the Land Revenue Code to the petitioners within a period of 7 days from today, and thereafter within a further period of 10 days, the petitioners would have the liberty to prefer appeal before the Appellate authority.
8. It is directed that in the event if the petitioners prefer an appeal along with an application for interim relief within the stipulated period, the appellate authority shall take into consideration and decide the same as expeditiously as possible.
9. It is further directed that during the period of providing copy of orders passed by the Naib Tehsildar to the petitioners and thereafter for a further period of ten days for preferring an appeal along with stay application, no coercive steps shall be taken by the respondent authorities against the petitioners as per notice dated 01.06.2016 (Annexure P/1).
10. With the aforesaid directions, all the writ petitions stand finally disposed of.

Sd/-
(P. Sam Koshy)
VACATION JUDGE