

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1233 of 2016

Smt. Meenabai Kanwar W/o Shri Kumar Singh Kanwar, Aged About 26 Years
Sarpanch, Gram Panchayat Udta, Post Nunera, Vikaskhand Pali, P.S. & Tehsil Pali,
District Korba, (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Panchayat And Rural Development, Mahandi Bhawan, Mantralaya, Naya Raipur, (Chhattisgarh)
2. State Of Chhattisgarh, Through Its Secretary, General Administration Department, Mahandi Bhawan, Mantralaya, Naya Raipur, (Chhattisgarh)
3. The Collector, District Korba, (Chhattisgarh)
4. The Chief Executive Officer, Janpad Panchayat, Pali, District Korba, (Chhattisgarh)
5. The Sub Divisional Officer (Revenue) Katghora, District Korba, (Chhattisgarh)
6. The Sub Divisional Officer, Rural Engineering Services, Sub Division Pali, District Korba, (Chhattisgarh)

---- Respondents

Shri Shailendra Dubey, counsel for the petitioner/s.
Shri B.Gopa Kumar, Dy.A.G. for the Stat / respondents 1 to 3, 5 and 6 on advance copy.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

10/05/2016

The petitioner has filed this petition aggrieved by initiation of proceedings under Section 92 of the Panchayat Raj Adhiniyam, 1993 (for short 'the Act of 1993') in the matter of recovery against the petitioner, who is a Sarpanch.

2. Learned counsel for the petitioner submits that the petitioner has knocked the doors of justice because even after submission of reply to show cause notice, no final order has been passed and without passing any order by taking into consideration the reply filed by the petitioner, the Sub-Divisional Officer has

directed the petitioner to deposit the amount. Learned counsel for the petitioner draws attention of the Court to order dated 07/04/2016 and 25/04/2016.

3. Learned State counsel submits that at present, only a show cause notice has been given, to which, reply has been filed by the petitioner and therefore, this petition is pre-mature.

4. The power conferred on the competent authority under Section 92 of the Act of 1993 is drastic in nature. In the event of non-compliance of the direction to deliver money or record of article as provided under Section 92 (1) of the Act, the prescribed authority may cause him to be apprehended and he may be confined in Civil Jail for a period of 30 days. The statutory scheme engrafted under Section 92 (4) provides a protection by creating an important right of being afforded a reasonable opportunity to show cause against proposed action. This right of hearing which is rule of *audi alteram partem* has been incorporated in the statutory rule and is mandatory. It is not an empty formality. On rational construction and interpretation, rule requires issuance of notice and opportunity of hearing. It goes without saying that upon submission of reply to show cause notice, prescribed authority is required to take a decision in the matter by passing a speaking order. The direction to deposit the money, may follow only in the event, reply is not found satisfactory, for the reasons to be recorded in the order.

5. In the present case, though show cause notice was issued and reply has been submitted, the Sub-Divisional Officer, without deciding the matter, has directed the petitioner to deposit money. This is contrary to the protection provided under Section 92(4) of the Act.

6. In view of the above consideration, respondents are restrained from making any recovery, until a speaking order is passed upon consideration of petitioner's reply submitted in response to show cause notice.

7. The petition is accordingly disposed off.

Sd/-

**(Manindra Mohan Shrivastava)
Judge**