

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1984 of 2017**

Amit Rathi S/o Shri Laxminarayan Rathi Aged About 38 Years R/o 35, Maitri Vihar Colony Dhamtari, District Dhamtari Chhattisgarh.

---- Petitioner

Versus

1. Union Of India S/o Through Chief Manager South East Central Railway, Garden Reach, Kolkata (West Bengal).
2. Senior Divisional Engineer (Works), South East Central Railway Compound. W. R. S. Colony, Raipur Chhattisgarh.
3. State Of Chhattisgarh Through Collector, Dhamtari (Chhattisgarh)
4. Tahsildar, Dhamtari District Dhamtari Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Upendra Bharat and Mr. Goutam Khetrpal, Advocates.
For Respondent No.2	:	Mr. H.S. Ahluwalia, Advocate.
For Respondents/State	:	Mr. Arun Sao, Dy. Adv. General.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****10/11/17**

1. The petitioner calls in question the notice dated 09.05.2017 issued by respondent No. 2 directing eviction of the petitioner holding the petitioner as an encroacher upon the Railway land against which this writ petition has been preferred.
2. Learned counsel for the petitioner would submit that the impugned order is unsustainable and bad in law.
3. On the other hand, learned counsel appearing on behalf of respondent No. 2- SECR would support the impugned order.

4. I have heard learned counsel for the parties, has carefully gone through the records and perused the impugned order with utmost circumspection.

5. In the return filed by the respondents stating *inter-alia* that the petitioner has filed a Civil suit No. 303-A/2006 *Amit Rathi v. General Manager and Others* that has been dismissed by order dated 12.09.2007 and Civil Appeal No. 77-A/2009 which has also been dismissed on 17.03.2010 holding that the land in question is owned by the Union of India. This order has not been challenged by the petitioner and it attained finality.

6. From the aforesaid narration of the facts it is clear that the petitioner's civil suit as well as the civil appeal has been dismissed by the Civil Court and it has not been challenged by the petitioner and hence it attained finality. Thus, the writ petition is barred by the principle of *res-judicata* and principle of constructive *res-judicata* and the petitioner cannot be allowed to maintain this writ petition on the new ground once the civil suit and the civil appeal preferred by him has been dismissed and has attained finality.

7. In accordance with directions issued by this Court in WPC No. 110/2016, subject land was demarcated and in which subject land has been held to be belonging to the Central Government. The demarcation report has not been challenged either in this writ petition or in appropriate Revenue proceeding, that has attained finality.

8. Accordingly, the writ petition deserves to be and is hereby dismissed. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge