

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 336 of 2017**

Arising out of order dated 17.08.2017 passed in W.P.(C) No. 2225 of 2017 by the
learned Single Judge

- Sadharam, S/o Shri Subedar, aged about 54 years, R/o Village Bodara, Post Rasani, P.S. & Tahsil Arang, District Raipur (C.G.)

---- Appellant

Versus

1. State of Chhattisgarh, Through: The Secretary, Revenue Department, Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.)
2. State of Chhattisgarh, Through: The Secretary, Forest Department, Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.)
3. Divisional Forest Officer (D.F.O.), Division Raipur, Aranya Bhawan, Medical College Road, Raipur
4. Ranger, Range Arang, District Raipur (C.G.)
5. Collector, Raipur, District Raipur (C.G.)
6. Tahsildar, Tahsil Arang, District Raipur (C.G.)

---- Respondents

For Appellant	:	Smt. Meena Shastri, Advocate
For State	:	Shri Praful Bharat, Additional Advocate General

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

Judgment on Board

Per, Thottathil B. Radhakrishnan, Chief Justice

14/09/2017

1. We have heard the learned counsel for the Appellant and the learned Additional Advocate General.

2. The Appellant is the writ petitioner. He challenged proceedings initiated and a consequential order issued to evict him from what the statutory authority called as government land. The learned Single Judge came to the conclusion that the order impugned in the writ petition was one appealable under Section 44(1) of the Land Revenue Code, 1959 and the issue of jurisdiction which is now sought to be raised can very well be agitated before that Appellate Authority.

3. The learned counsel for the Appellant, making reference to the judgment of the Apex Court in **(2006) 5 SCC 173 (Municipal Council, Sujanpur vs. Surinder Kumar)**, **(2013) 7 SCC 25 (State of Madhya Pradesh and Others vs. Sanjay Nagayach and Others)** and the decision of the Madhya Pradesh High Court in **Harish Kumar and another vs. The State of M.P. and others, AIR 1994 NOC 214 (MADH. PRA.)**, argued for the position that in the case in hand, the documents produced by the Appellant before the learned Single Judge along with the writ petition disclose that the lands to be issued are actually private lands and not government lands. On this basis, she further argued that the writ court would be well within its jurisdiction to ascertain whether the jurisdictional facts required for initiating action under the Land Revenue Code existed, for the statutory authority to make the order impugned before the learned Single Judge.

4. Even in matters where jurisdiction is relatable to be existence of certain facts which ought to be found the foundation for initiation of proceedings, if any party to whom a show cause notice is issued as regards any proceedings, intends to dispute the alleged jurisdictional fact, it is for that party to raise such dispute before the authority which had proceeded to initiate action. It is not in dispute that the Tehsildar had the jurisdiction to act in terms of the provisions of the Land Revenue Code and resultantly evict

an occupant of government land. The only question that would be germane for decision is as to whether the parcel of land which is occupied by the Petitioner is a piece of government land or is a private land. That is an issue of fact which may have a bearing on the issue of jurisdiction and therefore one which ought to have been raised only before the authority which is proceeding to exercise of jurisdiction. We do not find that there is any situation where the Tehsildar had acted without any authority under the Land Revenue Code, though the question of jurisdiction could be raised before that authority based on the identity of land in issue. Under such circumstances, we are unable to persuade ourselves to disagree with the learned Single Judge for having exercised the discretionary jurisdiction under Article 226 of the Constitution, by refusing to consider the issue raised and leaving the writ petitioner to seek remedies in terms of the extant statute.

5. Hence, the writ appeal is dismissed, however, clarifying that the pendency of the writ petition before the learned Single Judge and this writ appeal until now, may be considered sympathetically, if any application for condonation of delay in instituting the statutory appeal is made, if it is otherwise in accordance with law.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge