

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 501 of 2017****Reserved on 29.11.2017**
Pronounced on 07.12.2017

(Arising out of judgment/order dated 10.07.2017 in W.P.(C) No. 17172016 of the learned Single Judge)

- Gustaf Lakda S/o Late Patras Lakda Aged About 79 Years Occupation Ex Serviceman Caste Schedule Tribe R/o Ring Road Kedarpur Tahsil Ambikapur District Surguja Chhattisgarh. (Appellant)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary Department Of Revenue New Mantralay Mahanadi Bhawan New Mantralay Raipur Chhattisgarh.
2. Union Of India, Through The Secretary Ministry Of Defense , New Dehli
3. The Collector, District Surguja Chhattisgarh.
4. Surguja Zila Sainik Kalyan Kendra, Ambikapur District Surguja Chhattisgarh Through The Authorized Officer. (Non Applicants)

---- Respondents

For Appellant	:	Shri Palash Tiwari, Advocate.
For Respondents 1, 3 & 4	:	Shri U.N.S.Deo, Govt. Advocate

Hon'ble the Chief Justice
Hon'ble Shri Justice Sanjay Agrawal, J

C A V Order / Judgment**Per Justice Sanjay Agrawal**

1. Heard on admission.
2. This appeal has been preferred by the writ-petitioner under Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 questioning the order dated 10.07.2017 passed by the learned Single Judge in W.P.(C) No.1717/2017, by which, the claim of the petitioner has been dismissed.

3. The undisputed facts of the case are that the writ-petitioner, by way of filing the petition invoking the jurisdiction prescribed under Article 226/227 of the Constitution of India, has questioned the propriety of the order dated 19.10.2015 (Annexure P/7) passed by respondent No.4/Surguja Zila Sainik Kalyan Kendra, Ambikapur, District Surguja in compliance of the order dated 18.08.2015 whereby the writ-petitioner has been directed to vacate the premises with regard to the land bearing Plot No. 1990/12 situated at Kedarpur, Ambikapur Distt. Surguja as the same was allotted to Zila Sainik Kalyan Adhikari and possession thereof was accordingly delivered by the Nazul Officer on 26.09.2015. It is pleaded that the writ-petitioner was an Ex-Army man and after attaining superannuation from service of the Indian Army, had shifted to his hometown in the year 1959-60 and being a retired Army man had applied for the said Government open Nazul land for allotment and had raised the *Khapraposh* (tiled house) construction over Kh.No.1990/1 admeasuring 3.69 hectares and is in possession thereof continuously without any disturbance. It is pleaded further that after his retirement from the Defence service, no benefit, as provided under the relevant rules, was provided to him and, instead the order impugned dated 19.10.2015 has been passed, which is, therefore, liable to be set aside.

4. Respondents No., 1, 3 & 4 have contested the aforesaid claim by submitting, inter alia, that the Collector, District Surguja, while exercising its power provided under the Revenue Book Circular, has allotted the area of 7000 sq.ft., i.e., 0.16 acres of Nazul Plot No. 1990/1 situated at Kedarpur, Dist. Surguja to Zila Sainik Welfare Board, Ambikapur, vide order dated 18.08.2015, in Nazul Case No. 4-A-20(1)/2014-15 and in the said proceedings, no objection whatsoever was ever raised by the writ-petitioner. It is contested further on the ground that during the pendency of the said allotment proceedings, a report was submitted by the concerned Revenue Inspector (Nazul), Ambikapur wherein it was found that the writ-petitioner has encroached upon the same by

constructing a boundary wall over there and the matter was, therefore, referred to the Tahsildar, Ambikapur, for initiation of removal of alleged encroachment. The Tahsildar, in turn, while initiating the proceedings in this regard under Section 248 of the Chhattisgarh Land Revenue Code, 1959 (for short, 'the Code of 1959') has directed vide its order dated 29.11.2013 for its removal on the basis of writ-petitioner's own admission and the said order, by efflux of time, has attained its finality.

5. After hearing the parties, the learned Single Judge, vide order impugned, has come to the conclusion that the proceeding for removal of encroachment by the writ-petitioner was initiated against him on 22.10.2013 and based upon his admission, the order of removal of alleged encroachment was passed by the Tahsildar, Ambikapur, on 29.11.2013. It observed further that since the said order has attained its finality, therefore, under such circumstances, the writ-petitioner is not entitled to question the same and accordingly, the petition has been dismissed.

6. Being aggrieved, the writ-petitioner has preferred this appeal. Mr. Palash Tiwari, learned counsel for the appellant submits that while passing the order impugned, the learned Single Judge has completely overlooked the relevant document, particularly, memo dated 05.05.1992 (Annexure P/2) issued by the Joint Director, Town and Country Planning giving no objection to the petitioner for domestic use of the land in question and thereby has committed an illegality in dismissing the petition.

7. We have heard learned counsel for the appellant and perused the entire record carefully.

8. Undisputedly, the appellant is claiming his right, title and interest upon the land in question bearing Kh.No.1990/1 admeasuring 3.79 hectares, which is a

Government land. It is also not in dispute that the alleged land was allotted to respondent No.4 by the Collector, District Surguja, vide order dated 18.08.2015 while exercising its powers enumerated under the Revenue Book Circular. Pertinently to be observed further that during the pendency of the said allotment proceedings, a report was submitted by the concerned Revenue Inspector (Nazul), Ambikapur, Dist. Surguja, in which, it was found that the writ-petitioner has encroached the alleged land by constructing a boundary wall. In pursuance to the said report, the matter was referred to the Tahsildar (Nazul), Ambikapur, who, in turn, had initiated the proceedings, as provided under Section 248 of the Code of 1959 for removal of alleged encroachment of the writ-petitioner while registering the case on 22.10.2013 as Revenue Case No. 85-A/68/2012-13 and on the basis of his own admission with regard to alleged encroachment, the order of eviction was passed on 29.11.2013 and the same has attained its finality by efflux of time. The status of the writ-petitioner upon the land in question is thus of an encroacher and he cannot claim any interest whatsoever over the land in question. In view of the said fact, the learned Single Judge has rightly come to the conclusion that since the said order, which has not been challenged by him, has attained its finality, the appellant/petitioner is, therefore, not allowed to question the same.

9. The contention of the Mr. Palash Tiwari that the order impugned has been passed without considering the said memo dated 05.05.1992 (Annexure P/2) issued by the Joint Director, Town and Country Planning, giving no objection to him for domestic use of alleged land, is noted to be rejected as the writ-petitioner had approached the concerned authorities after obtaining the no objection as such for allotment of the Government land but the same was dismissed on his non-prosecution vide order dated 28.09.2000 (Annexure-R/1-5). Consequently, the considered opinion of this Court is that the writ-petitioner, from any angle, cannot claim his right, title or interest over the land in question.

The order impugned, as passed by the learned Single Judge, therefore, deserves to be and is hereby affirmed.

10. In view of foregoing discussions, we do not find any substance in this appeal. The appeal, being devoid of merit, is liable to be and is hereby dismissed at admission stage itself. No order as to costs.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sanjay Agrawal)
Judge