

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (PIL) No. 80 of 2016**

- Rakhi Rajput D/o Shri Bhikhu Rajput, Aged About 37 Years R/o Dipra Para, Near Talab, Tahsil & District Durg (Chhattisgarh), Civil & Revenue District Durg, (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Revenue, Mahanadi Bhawan, Mantralaya, Naya Raipur, (Chhattisgarh)
2. The Collector, Durg, District Durg, (Chhattisgarh)
3. Sub Divisional Officer, (Revenue), Durg, (Chhattisgarh)
4. Tahsildar, Durg, District Durg, (Chhattisgarh)
5. Ajay Singh Gupta, S/o Late Bahadur Singh Gupta, R/o In Front Of Irani Dera Near Nagar Nigam Office Utai Road, Durg, (Chhattisgarh)
6. Suresh Kumar Nilmarkar, S/o Budharuram Nirmarkar, R/o Dipra Para Near House Of Gulab Kirana Stores, Tehsil And District Durg, (Chhattisgarh)
7. Smt. Usha Sahu, W/o Maan Singh Sahu, R/o Dipra Para Near House Of Gulab Kirana Stores, Tehsil And District Durg, (Chhattisgarh)

--- Respondents

For Petitioner	:	Mr. Goutam Khetrapal, Advocate
For State	:	Mr. B. Gopa Kumar, Dy. Advocate General
For Respondent No. 5	:	Mr. Anup Majumdar, Advocate
For Respondents No. 6&7	:	Mr. Akhatar Hussain, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

11.05.2017

1. We have heard learned Counsel for the Petitioner, the learned Deputy Advocate General and the learned Counsel for the private Respondents.
2. The Petitioner has filed this Public Interest Litigation pleading that the Respondents No. 5 to 7 are unauthorisedly encroaching into the lands mentioned in the Writ Petition. According to the Petitioner the said item of land is a Talab which is a public pond.
3. The Respondents contended that the Petitioner is a fictitious entity and Rakhi Rajput who is shown as Petitioner has not actually instituted this Writ Petition. It is further submitted that Rakhi Rajput is a Government servant and therefore this Writ Petition should not be entertained.
4. The factor which is pointed out on behalf of the contesting Respondents is that the lands were actually mutated in favour of the predecessors of the private Respondents.
5. The issue relates to land revenue. Primarily therefore, it is within the domain of the second Respondent, the Collector to decide on a representation which may disclose cognizable complaint relating to encroachment of Government land or activities adversely entrusted in the pond (Talab). The Petitioner has submitted her representation before the second Respondent. Therefore, it would be appropriate that the second Respondent considers the said representation and decides the issue as

to whether the Talab is a public pond and eligible to be protected. If the Collector comes to the conclusion that the Talab is part of the Government land or whether the said Talab is a public water body, it is not only within the jurisdiction of the Collector but also within the duties of the Collector to ensure that the Talab is protected.

6. The question whether the Petitioner is justified in instituting the Writ Petition is raised making reference to the Respondent's plea that the Petitioner is a Government servant. Learned Counsel for the Petitioner does not deny the fact that the Petitioner is engaged or employed by the Government either on part-time or temporary basis. Whatever that be, even when Rule 20 of the Madhya Pradesh Civil Services (Conduct) Rules, 1965 applies, the prohibition therein is only regarding taking recourse to judicial forum for vindication of any official act which is a subject matter of adverse criticism. This is not such a situation. This is because the allegations raised by the Petitioner are against the private Respondents and not against the Government or any official. Not only that, the Petition is instituted in public interest.
7. With the aforesaid, we order this Writ Petition directing the Respondent No.2, the Collector to take up Annexure P/7 herein. Necessary directions be issued on appropriate decision as is found necessary on the facts and circumstances of the case. If the Collector finds that the Talab in question is to be protected and any encroachment is to be removed that shall be ensured. Any further encroachment which has to be prevented shall also be taken care of. We clarify that the Collector who also exercises his authority as District Magistrate under the Code of Criminal Procedure will pass such interlocutory order which may govern the facts and situation till

a final decision is taken by the Collector.

8. Needless to say that all the parties including private respondents shall be entitled to place their contentions before the District Collector. The Petitioner shall also be entitled to place further materials. We clarify that nothing stated in this judgment will preclude any mode of adjudication the Collector may resort to. It is clarified that this judgment does not express anything on merits of the rival contentions between the Petitioner and private Respondents. It will also be available to the parties to the litigation to demonstrate before the second Respondent Collector that the land is not, in fact, one which could be treated as Talab or grassland.
9. The present Writ Petition is ordered accordingly.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge