

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1833 of 2015

1. Vishwanath Das Panika S/o Chhumuk Das Panika, Aged About 55 Years

2. Rameshwar S/o Derha, Aged About 57 Years

Both are R/o Village Semaridih, Tahsil Balodabazar, District Balodabazar Bhatapara (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh Through : The Secretary, Revenue Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (Chhattisgarh),

2. Collector, District Balodabazar Bhatapara (Chhattisgarh)

3. Nayab Tahsildar, Balodabazar, District Balodabazar Bhatapara (Chhattisgarh)

4. Manager (Land Acquisition), Shree Cement Limited, House No. 31/ 248, Civil Line, Near C. M. House, Raipur, District Raipur (Chhattisgarh),

---- Respondent

And

WPC No. 919 Of 2016

1. Moji Ram S/o Ram Lal, Aged About 44 Years

2. Prem Das S/o Rup Singh, Aged About 38 Years

3. Munge Lal S/o Shiv Charan, Aged About 52 Years

4. Dhani Ram S/o Ramnath, Aged About 38 Years

5. Manoj Kumar S/o Ramnath, Aged About 35 Years

All are R/o Village Bharuvadih, Tahsil Balodabazar, District Balodabazar-Bhatapara (Chhattisgarh)

---- Petitioners

Vs

1. State Of Chhattisgarh Through : The Secretary, Revenue Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (Chhattisgarh)
2. Collector, District Balodabazar Bhatapara (Chhattisgarh)
3. Sub Divisional Officer (Revenue), Balodabazar, District Balodabazar Bhatapara (Chhattisgarh)
4. Nayab Tahsildar, Balodabazar, District Balodabazar Bhatapara (Chhattisgarh)
5. Manager (Land Acquisition), Shree Cement Limited, House No. 31/248, Civil Line, Near C.M. House, Raipur, District Raipur (Chhattisgarh)

---- Respondents

And

WPC No. 1682 Of 2016

1. Bali Ram S/o Muni Lal, Caste Satnami, Aged About 52 Years,
2. Santosh Kumar, S/o Hem Lal, Aged About 36 Years, Caste Satnami
3. Chhattu Ram S/o Dharmu, Aged About 49 Years
4. Ramavtar, S/o Governdhan, Aged About 60 Years
5. Dev Kumar, S/o Ramcharan, Aged About 42 Years
6. Latelu, S/o Khorbahara, Aged About 55 Years
7. Puni Bai widow of Panchu, Aged About 60 Years, Caste Satnami
8. Suraj Bai W/o Dadu Ram, Caste Yadav, Aged About 55 Years
9. Raj Kumar, S/o Muni Lal, Aged About 40 Years
10. Meena Bai, W/o Raj Kumar, Aged About 40 Years

All R/o Village Rishda, Tahsil Balodabazar, District Balodabazar-Bhatapara (Chhattisgarh)

---- **Petitioners**

Vs

1. State Of Chhattisgarh Through : The Secretary, Revenue Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (Chhattisgarh)
2. Collector, District Balodabazar Bhatapara (Chhattisgarh)
3. Nayab Tehsildar, Balodabazar, District Balodabazar Bhatapara (Chhattisgarh)
4. Manager (Land Acquisition), Shree Cement Limited, House No.31/248, Civil Line, Near C. M. House, Raipur, District Raipur (Chhattisgarh)

---- **Respondents**

For Petitioners	Shri Anukul Biswas, Advocate
For Respondent-State	Shri Shashank Thakur, GA
For Respondent-Shree Cement	Shri Kishore Bhaduri, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

20/01/2017

1. Petitioners were granted lease/patta under Section 239 of the Chhattisgarh Land Revenue Code, 1959 (henceforth 'the Code, 1959') for planting fruit bearing trees and other trees in unoccupied land. The grievances raised by the petitioners are that without cancelling the lease granted to them, the area has been included in the lease granted to

respondent No.4 for mining of limestone.

2. It is argued that the petitioners have been ousted from the land without providing any opportunity of hearing and the respondents have unlawfully occupied the land to commence mining operation and in the course of the said operation, they have destroyed the trees planted by the petitioners.
3. Per contra, Shri Shashank Thakur, learned Government Advocate and Shri Kishore Bhaduri, learned counsel for the respondent Shree Cement would submit that the petitioners had no right to the land but their right is only over the corpus of the trees, if any, or the compensation to be determined under Section 247 (4) of the Code, 1959, therefore, the petitions deserve to be dismissed.
4. I have heard learned counsel for the parties at length and perused the record.
5. Indisputably, the subject '*Adhikar Patta*' was granted to the petitioners under Section 239 of the Code, 1959, which provides thus:

“239. [Rights in fruit bearing trees and other trees planted in unoccupied land.— (1) Where, before coming into force of this Code any fruit bearing tree was planted by any person in the unoccupied land of any village, and is so recorded, then notwithstanding that

such land vests in the State Government, such person, and his successor-in-interest shall from generation to generation be entitled to possession and usufruct of such trees without payment of any royalty or other charge whatsoever therefor.

[(2) The State Government or any Revenue Officer not below the rank of Tahsildar as may be authorised by the State Government in this behalf, may permit any person or persons to plant and grow fruit bearing or other species of trees as may be specified in this behalf on unoccupied land of a village that may be earmarked for the purpose and grant tree planting permit and tree pattas to such person or persons in accordance with the provisions of this section and the rules made thereunder.

(3) The tree planting permit and the tree patta granted under this section shall be, in such form and subject to such terms and conditions as may be prescribed.

(4) The right conferred under this section shall be transferable but permit or patta holder or his successor-in-interest shall have no right to the land on which such tree stands except the right to grow trees on such land and enjoy the usufructuary rights on such trees including the right in corpus of the tree subject to the terms and conditions of the permit and patta.

Provided that no transfer by sale or by lease shall be made except with the previous permission in writing of the officer authorised by the State Government under sub-section (2).

(5) If any of the terms and conditions of tree planting permit or tree patta are breached, the permit or patta shall be liable to be cancelled after affording a reasonable opportunity of being heard to the holder thereof .

(6) The State Government may make rules for carrying out the purposes of this section.]”

6. Plain reading of the provisions quoted above would reveal
that right conferred on the person holding the patta under

Section 239 of the Code, 1959 is not a right over the land, but such a right is over the trees standing on the land or grown over the land with corresponding right to enjoy the usufructuary right on such trees including the right in corpus of the trees subject to the terms and conditions of the permit and patta.

7. It is also to be seen that the respondent Shree Cement has been granted mining lease on 11.01.2011 over an area admeasuring 531.126 Hectares, which includes the subject area for mining of limestone for captive use. It is also to be seen that whenever such right is granted to any person to carry out mining activity and in course of such activity, rights of any person are infringed by the disturbance of the surface of such land by the lessee, Section 247 (4) provides for compensation to be paid by the Government or its assignee to such affected persons, which shall be calculated by the SDO (Revenue).
8. The petitioners' lease/patta being governed under Section 239 of the Code, 1959 and they having no right over the land, but had only the right over the trees or to grow the trees or to enjoy the usufructuary or right over the corpus of the trees, their claim for compensation may be raised before the concerned SDO (Revenue).

9. Petitioners have also argued that their lease was cancelled without giving any opportunity of hearing, however, the lease not being over the land but only over the trees for which they are entitled to compensation under Section 239 (4) of the Code, 1959 and since mining lease has already been granted to the respondent Shree Cement under approval from the Government of India as required under Section 5 of the Mines and Minerals (Development and Regulation) Act, 1957, ends of justice would be served if the petitions are disposed of with a direction that in the event, the petitioners move application before the concerned SDO (Revenue) for grant of compensation, the said SDO (Revenue) shall decide the issue concerning compensation payable to the petitioners by the assignee, who has created disturbance over the land allotted to the petitioners. The amount so assessed by the SDO (Revenue), if any, shall be paid to the petitioners within a period of 2 months from the date of decision by the SDO (Revenue).
10. Accordingly, all the writ petitions are disposed of.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA