

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 449 of 2017

Dr. Smt. Shachi Jouhari W/o Shri Sunil Jouhari, Aged About 52 Years R/o Purani Basti Raipur, P. S. Purani Basti, Civil & Revenue District Raipur (Chhattisgarh) Through Power Of Attorney Holder Abdul Wahid S/o Shri A. Samad, Aged About 53 Years, R/o Piyush Colony Amalidih, P. S. New Rajendra Nagar, Civil & Revenue District Raipur (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Revenue Department, Mantralaya Mahanadi Bhawan, Capital Complex New Raipur, District Raipur, (Chhattisgarh).
2. Additional Collector, Arang Abhanpur, District Raipur (Chhattisgarh).
3. The Sub Divisional Officer (Revenue), Raipur, District Raipur (Chhattisgarh).
4. Tahsildar Abhanpur, District Raipur (Chhattisgarh).
5. Lakhan S/o Shri Banshi, R/o Village Pacheda, Thana & Tahsil Abhanpur, Civil & Revenue District Raipur (Chhattisgarh).
6. Jhumuk S/o Shri Gayaram, R/o Village Pacheda, Thana & Tahsil Abhanpur, Civil & Revenue District Raipur (Chhattisgarh).
7. Kunjlal S/o Shri Deolal, R/o Village Pacheda, Thana & Tahsil Abhanpur, Civil & Revenue District Raipur (Chhattisgarh).
8. Kanhaiya S/o Shri Jaylal, R/o Village Pacheda, Thana & Tahsil Abhanpur, Civil & Revenue District Raipur (Chhattisgarh).

---- Respondents

Shri Sumit Shrivastava, counsel for the petitioner/s.
Shri Satish Gupta, Govt. Advocate for the State / respondents 1 to 4.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

22/03/2017

This petition, under Article 226 of the Constitution of India, is preferred by the petitioner against order dated 09/02/2017 of the Additional Collector by which, the prayer for grant of stay has been rejected.

2. Learned counsel for the petitioner submits that in respect of land purchased by the petitioner under sale deed and she having already been recorded as a Bhumi Swami, the Sub-Divisional Officer passed an adverse order on 09/06/2015 without giving any opportunity of hearing to the petitioner and directed that the land recorded in the name of the petitioner be recorded as pasture land. This order was challenged by the petitioner by filing an appeal and prayer for stay was made but the Collector has not considered the aforesaid strong ground on which the appeal was preferred and the order of the Sub-Divisional Officer was assailed. He submits that the order was void *ab initio*. Therefore, the petitioner ought to be protected, as according to him, she is the title holder in possession.

3. Learned State counsel submits that the appeal is still pending but the application for stay has been rejected by the Collector for valid reason. Therefore, there is no error of jurisdiction.

4. The order of the Collector rejecting the application for grant of stay records no reason whatsoever. The order passed by the Sub-Divisional Officer on 09/06/2015 does not show that the petitioner was given any notice or offered an opportunity of hearing. To my mind, this was sufficient ground for the petitioner to seek interim order and the Collector, ought to have considered the application while exercising quasi judicial powers and performing judicial functions. Therefore, in these circumstances, the petitioner has suffered serious miscarriage of justice as she was not even noticed and no opportunity of hearing was afforded to her

5. Accordingly, this petition is allowed. The impugned order is set aside. *Status quo*, with regard to the land, shall be maintained by all the parties. No construction shall be raised by any of the parties till the appeal is decided by the Collector.

Sd/-
(Manindra Mohan Shrivastava)
Judge