

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CONT No. 350 of 2016

Dhananjay Dubey S/o Shri Har Prasad Dubey, Aged About 45 Years R/o Kera Road, Janjgir, P.S. Janjgir, District- Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through- Secretary, Department Of Revenue, D.K.S. Bhawan Mantralaya, Raipur, Chhattisgarh
2. S.Bharti Dasan, Collector Janjgir, District Janjgir-Champa, Chhattisgarh
3. Ajay Uraon, Sub Divisional Officer (Revenue), Distt. Janjgir-Champa, Chhattisgarh

---- Respondent

For Petitioner	:	Shri Sushobhit Singh, Advocate
For Respondent No.2	:	Shri Chandresh Shrivastava, Advocate
For Respondent No.3	:	None appears

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

26/04/2017

Heard.

1. Applications (I.A. No.1 & 2) for taking documents on record, upon due consideration, are allowed. The documents are taken on record.

As the petition is being disposed off by this order, no order is required to be passed in respect of application (I.A. No.3) for impleadment of additional respondent.

2. This contempt petition has been filed by the petitioner alleging willful disobedience of the order dated 10.2.2014 passed in WPC No.1558 of 2013.
3. Learned counsel for the petitioner argues that earlier a petition was filed by the petitioner seeking a direction to the public authority to take action of removal of encroachment of private respondents therein, on the allegation that private respondents in the said case had encroached upon public road. Though a direction was issued by this Court for taking appropriate action, respondents No.2 & 3 did not take appropriate action diligently and except issuance of

various letters from time to time, kept on delaying the matter. In this manner, the order of the Court has not been complied with and this is an act of willful disobedience. Further submission of learned counsel for the petitioner is that the respondents gave ample time to private respondents Kapoor Sahu and Laxmi Sahu to approach Civil Court and obtain an order of injunction. Further submission is that in any case, injunction order only protects their possession over their respective land and that order does not come in the way of taking action for removal of encroachment.

4. In this case, records were directed to be produced. Reply was filed and additional affidavit has also been filed.
5. Vide order dated 10.2.2014, this Court took note of the averments in the return of the State that notices have been issued for removal of encroachment of respondents No.5, 6, 8 & 9 (in WPC No.1558/2013), namely Kapoor Sahu, Laxmi Sahu, Gulab Sahu and Madhav respectively. As far as respondent No.7 is concerned, in view of the allegation that respondent No.7 of the writ petition namely Ranjana Sarthi had encroached beyond the leased land, this Court directed that spot inspection be held and proper action may be taken if respondent No.7 is found to have encroached upon the land.
6. The respondent in the return stated that the encroachment of Gulab Sahu and Ranjana Sarthi has been removed. There is no counter affidavit to the effect that their encroachment have not been removed. Even at the time when this Court had passed an order earlier on 10.2.2014, respondent No.9 in the writ petition namely Madhav was stated to have obtained injunction. This aspect also could not be disputed that at the time when the order was passed, Madhav had an order in his favour from the Civil Court.
7. However, as far as Kapoor Sahu and Laxmi Sahu are concerned from the reply of respondent, it is clear that there were allegation of encroachment. The order of this Court was passed way back on 10.2.2014 and these two petitioners, later on, seem to have filed suit and obtained injunction on 20.1.2017. During this period, certain notices were issued but it appears that it was to only restricted to paper exercise and nothing could be shown as to why, for such a long period, action could not be taken against them for removal of encroachment though statement was made before this Court in the return that notice for removal of encroachment have been issued.
8. Now at this state, no direction can be issued in contempt matter because

Kapoor Sahu and Laxmi Sahu have already approached the Civil Court and obtained injunction. The argument of learned counsel for the petitioner that the injunction in favour of those persons does not come in the way of removal encroachment, cannot be gone into the contempt petition.

9. In the circumstance, however, it appears that for a very long time, concerned officers of the revenue, at the relevant time, did not take any serious action towards removal of encroachment of Kapoor Sahu and Laxmi Sahu though the order was passed by this Court on 10.2.2014. The affidavits have been filed by the authority who remained posted during different period. Therefore, this would be a matter of enquiry on administrative side. In the event, suits are finally dismissed, the State, the appointing authority of Tahsildar, shall hold enquiry into the conduct of the Tahsildar who were posted at Janjgir from 10.2.2014 to 20.1.2017, as to whether they had taken expeditious steps to ensure appropriate action. If necessary it would be open for the State to take disciplinary action against offices who are found to be guilty of deliberate inaction towards removal of encroachments.

Sd/-
(Manindra Mohan Shrivastava)
Judge