NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2230 of 2016

1. Siyamber Singh S/o. Late Sohan, Aged About 43 Years By Caste Gond, R/o. Village Silfili, Tehsil Surajpur, Revenue & Civil District Surajpur (Chhattisgarh)
2. Shri Karmu, S/o. Sohan, By Caste Gond, R/o. Village Silfili, Tehsil Surajpur, Revenue & Civil District Surajpur (Chhattisgarh)
3. Shri Ratiram S/o. Sohan, By Caste Gond, R/o. Village Silfili, Tehsil Surajpur, Revenue & Civil District Surajpur (Chhattisgarh)
4. Shri Amar Singh S/o. Siyamber By Caste Gond, R/o. Village Silfili, Tehsil Surajpur, Revenue & Civil District Surajpur (Chhattisgarh)

---- Petitioners

Versus

1. State Of Chhattisgarh Through Collector Surajpur, Revenue & Civil District Surajpur (Chhattisgarh)
2. Sub Divisional Officer (Revenue), Surjapur, Revenue & Civil District Surajpur (Chhattisgarh)
3. Tehsildar Surajpur, Revenue & Civil District Surajpur (Chhattisgarh)
4. Naib Tehsildar Pilkha Area Bishrampur, Tehsil Surajpur, Revenue & Civil District Surajpur (Chhattisgarh)
5. Shri Ramchandra Kushwaha, S/o. Raghubir, Caste Koir, R/o. Village Silfili, Tehsil Surajpur, Revenue & Civil District Surajpur (Chhattisgarh)

---- Respondents

For Petitioners	:	Shri Surfaraj Khan, Advocate
For Respondents No.1 to 4	:	Shri D.R. Minj, Dy. Govt. Advocate
For Respondent No.5	:	Shri Manoj Paranjpe and Shri Prasoon Agrawal, Advocates

And

WPC No. 599 Of 2017

Sita Devi Pandey W/o Chandrashekhar Pandey, Aged About 55 Years R/o Boir Dadar, Raigarh, Tahsil And District Raigarh, (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through: Secretary, Revenue Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur (Chhattisgarh)
2. Collector, Raigarh, District Raigarh, (Chhattisgarh)
3. Tahsildar, Raigarh, District Raigarh, (Chhattisgarh)
4. Mahesh Shukla, S/o Surajpal, Aged About 52 Years R/o Village Boir Dadar, Raigarh, Tahsil And District Raigarh, (Chhattisgarh)
5. Santosh Yadav, S/o Vikram Yadav, Aged About 45 Years R/o Village Boir Dadar, Raigarh, Tahsil And District Raigarh, (Chhattisgarh)
6. Lalchand, S/o Vikram Yadav, Aged About 50 Years R/o Village Boir Dadar, Raigarh, Tahsil And District Raigarh, (Chhattisgarh)
7. Goverdhan, S/o Vikram Yadav, Aged About 36 Years R/o Village Boir Dadar, Raigarh, Tahsil And District Raigarh, (Chhattisgarh)
8. Lalaram, S/o Vikram Yadav, Aged About 55 Years R/o Village Boir Dadar, Raigarh, Tahsil And District Raigarh, (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Manoj Paranjpe and Shri Prasoon Agrawal, Advocate
For Respondents No.1 to 3	:	Shri D.R. Minj, Dy. Govt. Advocate
For Respondents No. 4 to 8	:	Shri Chandresh Shrivastava, Advocate

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

Order On Board

16/05/2017

With the consent of learned counsel appearing for the respective parties, the matter is heard finally.

1. A short issue in both the petitions has come-up for consideration on account of impugned orders of interim nature passed by the Tehsildar which are said to be order in the nature of injunction.

2. Relying upon the judgment of High Court of Madhya Pradesh in the case of **Maya Lalchandani (Mrs.) and Ors. Vs. Board of Revenue and Ors., 2009 (3) MPLJ 660**, learned counsel for the respective petitioners submit that an order in the nature of injunction can be passed only by the Civil Court and

Section 32 of the Land Revenue Code does not confer any new power on the Tehsildar to pass an order in the nature of temporary injunction, as Section 32 of the Land Revenue Code only reserves the inherent power of the Revenue Court and nothing more.

3. Learned counsel for the State submits that the Tehsildar, having jurisdiction to draw proceedings under Section 250 of the Land Revenue Code for removal of encroachment, is competent enough to pass order to ensure that property in dispute is preserved and not destroyed or otherwise third party interest is created.

4. In the case of **Maya Lalchandani** (supra), it was held as under:

> "4. After going through the order passed by the learned President, Board of Revenue and taking into consideration the legal provisions, we are of the opinion that the directions issued in paragraph 7 of the order passed by the Board of Revenue cannot be allowed to stand. Section 32 of the Land Revenue Code talks of the inherent powers of the Revenue Authorities while Section 43 talks of applicability of the Code of Civil Procedure. It is to be seen from Section 32 that nothing in the Land Revenue Code shall be deemed to limit or otherwise affect the inherent power of the Revenue Court to make such orders as may be necessary to meet the ends of justice or as may be necessary to prevent the abuse of the process of Court. Section 43 simply provides that unless otherwise expressly provided in the Code, the procedure laid down in the Code of Civil Procedure shall, so far as may be, followed in all proceedings under the Code. Section 43 in no case would authorize a Revenue Authority to grant an injunction. Section 43 simply provides that the procedure laid down in the Code of Civil Procedure so far as may be followed in all proceedings under the Code. It is also to be seen from the provision of the Code of Civil Procedure that an injunction can be granted only by civil Court and by none else. Section 32 of the M.P. Land Revenue Code only talks of the inherent powers of the Revenue Courts where they are required to make such order as may be necessary for the ends of justice or to prevent the abuse of the process of the Court. The powers under Section 32 can be exercised within the Code itself and not beyond the Code. If the

Revenue Authority does not have the power to grant injunction then the Board of Revenue also could not grant injunction."

5. Therefore, inescapable view which has to be drawn is that the orders passed by the Tehsildar, which are in the nature of temporary injunction, are without jurisdiction. The impugned orders in both the petitions are therefore, set aside.

6. It is made clear that this Court had only dealt with the issue of injunction and Tehsildar may now proceed with the proceedings under Section 250 of the Land Revenue Code, if any, in accordance with law.

7. Learned counsel for the private respondents submit that the encroachment proceedings have remained pending for last ten years.

   Learned counsel appearing for the petitioners in WPC No.2230 of 2016 submits that no proceedings under Section 250 of the Land Revenue Code have been initiated. However, learned counsel appearing in WPC No.599 of 2017 submits that the proceedings had already been initiated.

8. Therefore, in case where proceedings under Section 250 of the Land Revenue Code have already been initiated, the proceedings may be concluded expeditiously and as early as possible.

9. Both the petitions are accordingly allowed. No order as to costs.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen