

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 805 of 2018

Dinanath Singh, S/o. Shri G. P. Singh, Aged About 63 Years, R/o Qtr. No. N.B./3, Ompur Colony, Rajgamar, Sub Area Rajgamar, Distt. Korba, Chhattisgarh.

---- **Petitioner**

Versus

1. South Eastern Coalfields Limited, Through Senior Manager Personnel, Rajgamar, SECL, Korba, Distt. Korba, Chhattisgarh.
2. State Of Chhattisgarh, Through The District Magistrate Bilaspur, Distt. Bilaspur, Chhattisgarh.

---- **Respondents**

For Petitioner	:	Mr. Yogesh Chandra, Advocate
For Respondent No.1	:	Mr. V.R.Tiwari, Advocate
For Respondent No.2	:	Mr. S.R.J.Jaiswal, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

23.04.2018

Heard

1. The instant petition is against the issuance of summons on a complaint filed under Section 452 of the Companies Act, 2013.
2. Learned counsel for the petitioner submits that the issuance of notice is bad in law. It is stated even if the petitioner is in hold of the alleged Quarter of Company then the remedy of the respondent is available under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. It is contended that the complaint so filed lacks of bonafide and deserves to be quashed. It is further submitted that the complaint is filed at Bilaspur whereas property in question is situated at Korba and submits that the gratuity of the petitioner has not been paid as such the malafide exists.

3. Learned counsel for the respondent No.1 opposes the same and submits that the jurisdiction under Section 452 of the Companies Act is not barred if the ingredients of section are satisfied. It is stated that the eviction proceeding may be contemplated under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, which is a separate remedy. It is further submitted that after issuance of notice the complainant has rushed before this Court whereas he may raise all the grounds before the Court below about tenability of the complaint.
4. Perusal of the order dated 27.01.2018 shows that on a complaint filed by Company under Section 452 of the Companies Act 2013, notices have been issued to the petitioner.
5. Section 452 of the Companies Act, 2013 reads as under :

452. Punishment for wrongful withholding of property – (1) If any officer or employee of a company -

(a) wrongfully obtains possession of any property, including cash of the company; or

(b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act,

he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakhs rupees.

(2) The Court trying an offence under sub-section (1) may also order such officer or employee to deliver up or refund, within a

time to be fixed by it, any such property of cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to two years.

6. Considering the fact that the respondent is a company incorporated under the Companies Act, at this stage, to exercise the power conferred under Section 482 of Cr.P.C. this cannot be observed that the notices so issued on a complaint filed by the respondent lacks of bonafide and is without jurisdiction. The petitioner is at liberty to raise all the grounds before the competent Court where from the notices are issued.
7. Accordingly, the petition has no merit and is dismissed.

Sd/-
(Goutam Bhaduri)
Judge