

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 2103 of 2018**

1. Kanhaiyalal, S/o Bandhu, Aged about 35 years,
2. Amar Singh, S/o Ram Singh, Aged about 33 years,
3. Jai Singh, S/o Pitambar, Aged about 65 years,
4. Manmati, W/o Birulal, D/o Budhram, Aged about 58 years,
5. Chain Singh, S/o Gayadin, Aged about 55 years,
6. Ganesh Singh, S/o Santan Singh, Aged about 50 years,
7. Bhaiyalal, S/o Mahantu, Aged about 53 years,
8. Rambai, W/o Harilal, Aged about 53 years,
9. Babulal, S/o Bhonsu, Aged about 56 years,
10. Dharma Singh, S/o Birbal, Aged about 58 years,

All are R/o Village Dhobar, Tahsil Marwahi, District Bilaspur (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Panchayat and Rural Welfare, Mantralaya, Mahanadi Bhawan, Capitol Complex, Naya Raipur, District Raipur (C.G.)
2. Commissioner, Bilaspur Division, Bilaspur, District Bilaspur (C.G.)
3. Collector, Bilaspur, District Bilaspur (C.G.)
4. Sub-Divisional Officer (Revenue), Pendra Road, District Bilaspur (C.G.)
5. Tahsildar, Marwahi, Tahsil Marwahi, District Bilaspur (C.G.)
6. Janpad Panchayat, Marwahi, District Bilaspur, Through the Chief Municipal Officer, Janpad Panchayat, Marwahi, Tahsil Marwahi, District Bilaspur (C.G.)
7. Dhyan Singh Porte, S/o Vishambar Singh, Sarpanch (at present suspended), Gram Panchayat Dhobar, Janpad Panchayat Marwahi, District Bilaspur (C.G.)

--- Respondents

For Petitioners : Shri Malay Shrivastava, Advocate.
For State : Shri Ashish Surana, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

30/07/2018

1. The petitioner filed a complaint under Section 40 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (henceforth "Adhiniyam, 1993") against the respondent No. 7, who is elected Sarpanch of Gram Panchayat Dhobar, Tahsil Marwahi, District Bilaspur. Accordingly, the proceedings were initiated and ultimately by order dated 17.07.2018, the proceedings have been closed against the respondent No. 7 finding no merit, against which instant writ petition has been filed questioning the same.

2. Learned counsel appearing for the petitioners would submit that in violation of principles of natural justice, proceedings against the respondent No. 7 has been closed, which is liable to be set aside.

3. Learned counsel appearing for the State would submit that order impugned is appealable under Rule 3 of the Chhattisgarh Panchayats (Appeal and Revision) Rules, 1995 (henceforth "Rules, 1995").

4. I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

5. The petitioners were noticed for their appearance before Sub Divisional Officer (Revenue) on 29.06.2018. Despite service of notice, they remained absent on 30.06.2018 as recorded by Sub Divisional Officer (Revenue) and they were proceeded *ex parte* and thereafter final order discharging the respondent No. 7 was passed on 17.07.2018.

6. It is the case of petitioners that they were not served with notice dated 29.06.2018 and proceeded *ex parte*. If the petitioners were not served with a notice and they were proceeded *ex parte* illegally, remedy is to file an application for setting aside *ex parte* order dated 30.06.2018. The question of service of notice is a disputed question of fact, that cannot be enquired in the present writ petition. However, it is open to the petitioners to prefer an application for setting aside *ex parte* order before the Sub Divisional Officer. If such an application is filed, then the Sub Divisional Officer (Revenue) shall examine the fact that whether the petitioners were served with notice in removal proceeding or not by making an enquiry in accordance with law.

7. Accordingly, the writ petition is disposed off with liberty to the petitioner to proceed in accordance with law to challenge the *ex parte* order No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

D/-

