

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1938 of 2012**

1. Sanjay Jaiswal S/o Shri Harnarayan Jaiswal Aged About 40 Years R/o Sarvamangla General Stores Power House Road Police station Kotwali Korba Distt. Korba Chhattisgarh
2. Harnarayan Jaiswal S/o Lt. Shri Shankarlal Jaiswal Aged About 70 Years R/o Sarvamangla General Stores Power House Road Police Station Kotwali Korba District : Korba, Chhattisgarh

---- Petitioners**Versus**

1. State Of Chhattisgarh Through Secretary Water Resources/irrigation Department DKS Bhawan Raipur, Chhattisgarh
2. Sub Divisional Officer Hasdeo Baraj Jal Prabandhan Sub Division. Darri / Korba Police station Darri Post Office Darri, Korba District : Korba, Chhattisgarh

---- Respondents

For Petitioners : Shri Sanjay Patel, Advocate

For Respondents/State : Shri Anmol Sharma, PL for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****02/05/2019**

1. By the impugned order dated 26.10.2012 the respondent No.2 has passed an order under Section 248 (1) of the C.G. Land Revenue Code (for short 'the Code, 1959) against which this writ petition has been preferred.
2. Learned counsel for the petitioners submits that the impugned order is unsustainable and bad in law as power of eviction under Section 248 (1) of the Code, 1959 vests with the Tehsildar.

3. Learned State counsel opposes the argument advanced by learned counsel for the petitioners.

Section 248 (1) of the Code, 1959 reads as under:-

“248. Penalty for unauthorisedly taking possession of land.— (1) Any person who unauthorisedly takes or remains in possession of any unoccupied land, abadi, service land or any other which has been set apart for any special purpose under Section 237 or upon any land which is the property of Government [or any authority, body corporate, or institution constituted or established under any State enactment,] may be summarily ejected by order of the Tahsildar and any crop which may be standing on the land and any building or other work which he may have constructed thereon, if not removed by him within such time as the Tahsildar may fix shall be liable to forfeiture. Any property so forfeited shall be disposed of as the Tahsildar may direct and the cost of removal of any crop, building or other work and of all works necessary, to restore the land to its original condition shall be recoverable as an arrear of land revenue from him. Such person shall also be liable at the discretion of the Tahsildar to pay the rent of the land for the period of unauthorised occupation at twice the rate admissible for such land in locality and to a fine which may extend to [.twenty percentum of the market value of such encroached land] /[twenty five thousand rupees] and to a further fine which may extend to [five hundred rupees in non-urban area and two thousand rupees in urban-area]/ [two hundred rupees] or every day on which such unauthorised occupation or possession continues after the date of first ejectment. The Tahsildar may apply the whole or any part of the fine to compensate persons, who may in his opinion have suffered loss or injury from the encroachment:

Provided that the Tahsildar shall not exercise the powers conferred by this sub-section in regard to encroachment made by buildings or works constructed —

(i) in the Mahakoshal region—

(a) in areas other than the merged States before the first day of September , 1917;

(b) in the merged States, before the third day of April, 1950;

(ii) in the Madhya Bharat region, before the fifteenth day of

August ,1950;
(iii) in the Vindhya Pradesh region, before the first day of April, 1955;
(iv) in the Bhopal region, before the eighth day of November, 1933; and
(v) in the Sironj region, before the first day of July, 1958.”

5. Indisputably, power under Section 248 (1) of the Code, 1959 has been conferred with the Tehsildar. In the instant case, the order of eviction passed by the SDO, Irrigation who has no jurisdiction to pass such order in view of the provisions of Section 248 (1) of the Code, 1959, therefore, the impugned order is set aside.

6. Accordingly, the writ petition stands allowed. However, the competent authority is entitled to proceed in accordance with law.

Sd/-

Goutam Bhaduri
Judge

Ashu