

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2134 of 2014**

Chandrabahadur Yadav, S/o. Late Jamwant Yadav, Aged About 72 Years,
R/o. Village Ropakhar, Gram Panchayat Ropakhar, P.S. & Tahsil Mainpat,
Civil & Revenue District Surguja, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through The Secretary, Forest Department, DKS Bhawan, Raipur, District Raipur, Chhattisgarh
2. Collector Surguja, District : Surguja, Chhattisgarh
3. Divisional Forest Officer, South Surguja, Forest Division, Ambikapur, District : Surguja, Chhattisgarh
4. Assistant Commissioner, Tribal Welfare Department, Tribal Welfare, Ambikapur, District : Surguja, Chhattisgarh
5. Sub Divisional Officer (Revenue) Sitapur, District : Surguja, Chhattisgarh
6. District Level Forest Rights Committee Surguja, Through Its President, District Level Forest Rights Committee, Surguja, District : Surguja, Chhattisgarh
7. Nayab Tahsildar, Mainpat, District : Surguja, Chhattisgarh.

---- Respondents**&****WPC No. 54 of 2012**

1. Sita Devi, W/o. Dinesh Kumar, Aged About 34 Years, R/o. Ropakhar, Tahsil Mainpat, Police Station Kamleshwarpur, Surguja, Chhattisgarh.
2. Brijmohan, S/o. Kariman, Aged About 55 Years, R/o. Ropakhar, Tahsil Mainpat, Police Station Kamleshwarpur, Surguja, Chhattisgarh.
3. Lalmati Bai, W/o. Brijmohan, Aged About 50 Years, R/o. Ropakhar, Tahsil Mainpat, Police Station Kamleshwarpur, Surguja, Chhattisgarh.
4. Jitendra Kumar, S/o. Brijmohan Gupta, Aged About 32 Years, R/o. Ropakhar, Tahsil Mainpat, Police Station Kamleshwarpur, Surguja, Chhattisgarh.
5. Ajit, W/o. Bhakti, Aged About 30 Years, R/o. Ropakhar, Tahsil Mainpat, Police Station Kamleshwarpur, Surguja, Chhattisgarh.
6. Madhu, W/o. Jitendra, Aged About 29 Years, R/o. Ropakhar, Tahsil Mainpat, Police Station Kamleshwarpur, Surguja, Chhattisgarh.

---- Petitioners**Versus**

1. State Of Chhattisgarh, Through The Secretary, Forest Department, DKS Bhawan, Raipur, District Raipur, Chhattisgarh
2. Collector Surguja, District : Surguja, Chhattisgarh

3. Divisional Forest Officer, South Surguja, Forest Division, Ambikapur, District : Surguja, Chhattisgarh
4. Assistant Commissioner, Tribal Welfare Department, Tribal Welfare, Ambikapur, District : Surguja, Chhattisgarh
5. Sub Divisional Officer (Revenue) Sitapur, District : Surguja, Chhattisgarh
6. District Level Forest Rights Committee Surguja, Through Its President, District Level Forest Rights Committee, Surguja, District : Surguja, Chhattisgarh
7. Nayab Tahsildar, Mainpat, District : Surguja, Chhattisgarh.

---- Respondents

For Petitioners	:	Mr. Manoj Paranjpe, Advocate
For State/Respondents	:	Mr. Sudeep Verma, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

05.09.2019

Heard.

1. Both the cases are taken together and decided by this common order being common question of law is involved.
2. The case of the petitioners is that the petitioner Chandrabahadur Yadav (in WPC No.2134 of 2014) was granted the forest rights in the year 2007-08 by the competent authority i.e. Collector in Revenue Case No.14895/A-19/1, 2007-2008. It is stated that different six cases were registered by the Collector on different numbers and thereafter the forest rights was granted to the petitioner. Likewise, the petitioners Sita Devi & 5 Others (in WPC No.54 of 2012) were granted forest rights in the year 2007-08 in different Revenue Case No.14895/A-19/1, 2007-2008. Subsequently, certain complaints were made against such grant of forest rights to the Collector and the Collector had directed to conduct an enquiry on the allegation of complaint. The Nayab Tahsildar, Mainpat, thereafter conducted the enquiry without giving any opportunity of hearing to the petitioners and the finding was sent to the Collector, Surguja. Subsequently, the Collector in turn

forwarded the same to the District Level Forest Rights Committee, which is constituted under the Scheduled Tribes And Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (*for short "the Act of 2006"*). The District Level Forest Rights Committee thereafter canceled the forest rights given to the petitioners. It is contended that the said cancellation of forest rights was made without giving any opportunity of hearing to the petitioners. It is further stated that hearing was conducted behind the back and since the rights was created in favour of the petitioners by certain grant, before cancellation, proper opportunity of hearing should have been granted to the petitioners.

3. Learned State counsel would submit that a complaint was made to the Chairman of the Committee i.e. Collector and the Collector has referred the matter to the Nayab Tahsildar, Mainpat, who made full-fledged enquiry, in which the petitioners were allowed to participate and then only, the order was passed by the District Level Committee accepting the recommendation of the Nayab Tahsildar and the Sub Divisional Officer. Therefore, the principles of natural justice have been complied with by the respondents substantially and no interference is called for in exercise of jurisdiction under Article 226/227 of the Constitution of India.
4. I have heard learned counsel appearing for the parties and perused the records.
5. Perused the provisions of sub-section 5 of Section 6 of the Act of 2006, which reads as under :

“(5) The State Government shall constitute a District Level Committee to consider and finally approve the record of forest rights prepared by the Sub-Divisional Level Committee.”

6. Though the said section do not categorically defines that the District Level Committee is vested with the power to cancel any grant, yet by reading the

same with Clause 21 of the C.G. General Clauses Act, 1957 provides a power to make, to include, to add, to amend, vary or rescind orders etc., which reads as under :

“21. Power to make, to include, power to add to, amend, vary or rescind orders, etc. - Where, by any Chhattisgarh Act, a power to issue notification, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanctions and conditions, if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws, so issued.”

7. Therefore, the District Level Committee constituted under the Act of 2006 had the power to revoke the forest rights granted to the forest dwellers/ petitioners. In the instant case, the petitioners contend that no opportunity of hearing was given to the petitioners before such cancellation of forest rights was effected by the District Level Committee. The records would show that the Nayab Tahsildar conducted the enquiry, thereafter, it was sent to the S.D.O. and S.D.O. in turn send it to the Collector. There is nothing on record even with the reply to show that such report was given to the petitioners, though the finding was recorded against them. Subsequently, the same was forwarded to the District Level Committee and the District Level Committee passed a resolution on 21.09.2011 and canceled the forest rights granted to the petitioners. Thereafter, the Collector on the basis of the resolution has canceled the lease by Annexure P-1 dated 14.10.2011.
8. Apparently, it appears that before such enquiry was made, no opportunity of hearing to the petitioners was given and the District Level Committee who was competent to revoke the Forest Act has passed a resolution to cancel the lease. It was necessary to hear the petitioners against whom the orders were passed. Consequently, since the rules of natural justice were not followed and the right of the petitioners have been affected, the resolution in

respect of the petitioners to revoke the forest rights, which were passed on 21.09.2011 is set aside. Consequently, the order dated 14.10.2011 which was passed by the Collector is also set aside. The matters are remanded back to the District Level Forest Rights Committee, who shall issue a fresh notice to the petitioners and after affording proper opportunity of hearing to them and filing of reply, pass the reasoned order after receipt of a copy of this order.

9. Accordingly, both the petitions are allowed to the extent indicated above. No order as to cost.

Sd/-
Goutam Bhaduri
Judge