

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 177 of 2013**

1. Moujiram S/o Ramlal Aged About 50 Years
2. Mungelal S/o Shivcharan, aged about 58 years
3. Tukaram S/o Ghondul, aged about 45 years
4. Santosh S/o Tiharu Dhruw, aged about 45 years
5. Prakash S/o Mangal Das Satnami, aged about 45 years
6. Dhaniram S/o Ramnath Dhruw, aged about 45 years
7. Premdas S/o Rupsingh Satnami, aged about 45 years
8. Manoj S/o Ramnadh Dhruw, aged about 40 years
9. Panchuram S/o Rupsingh Satnami, aged about 45 years

All are R/o Village Bharuwadih, Ph No. 13, Revenue Circle Baloda Bazar, P.S. and Tahsil Baloda Bazar, District Baloda Bazar-Bharapara (C.G.)

---- Petitioner

Versus

1. The State of Chhattisgarh Through The Secretary, Revenue/ Industry And Industrial Development, Mahanadi Bhawan Mantralaya New Rajdhani, Raipur, PS New Rajdhani, Tahsil Arang, Distt Raipur, Chhattisgarh
2. The Secretary Rehabilitation Department, Mahanadi Bhawan, Mantralaya, New Rajdhani, Raipur, P.S. New Rajdhani, Tahsil Arang, Distt Raipur, Chhattisgarh
3. The Collector Baloda Bazar, P.S. & Tahsil Baloda Bazar, Distt Baloda Bazar-Bhatapara, Chhattisgarh
4. The Tahsildar Baloda Bazar, P.S. & Tahsil Baloda Bazar, District : Balodabazar-Bhathapara, Chhattisgarh

---- Respondents

For Petitioners : Shri Rajat Agrawal, Advocate

For Respondents/State : Shri Rahul Jha, GA

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

13/08/2019

1. Heard.

2. The present petition is filed for the following reliefs:-

“10.1 That, this Hon'ble Court may be kind enough to issue a writ in the nature of mandamus, certiorari or any likewise writ commanding the respondent/State, to give proper Compensation and apply rehabilitation scheme, for the welfare of the petitioners, at the occasion of acquisition of their land, granted to them of lease by the State Government.

10.2 That, the records related with the case of the petitioners, may kindly be called for just and proper decision of the case.

10.3 That, the respondents may kindly direct to act according to the provisions of the article 21 of the constitution of India, accordingly either the compensation or rehabilitation of the petitioners be done, or the land and possession of the land given to the petitioners may not be disturbed.

10.4 That, this Hon'ble court may be kind enough to issue a writ in the nature of certiorari, mandamus or any other likewise writ commanding the respondents, to give complete effect to the rehabilitation policy of the government, as the same is having the effect of the statute and it cannot be read over the same.

10.5 That, this Hon'ble Court may be kind enough to award the cost of the petition.

10.6 Any other relief, which the Hon'ble Court deems fit and proper looking to the facts and circumstances of the case, may also be granted.”

3. It is contended on behalf of the petitioners that the petitioners were granted lease of land bearing Khasra No.81/1 situated at village Bharuwadih, P.H. No.13, Tahsil Baloda Bazar, District Baloda Bazar-Bhatapara (C.G.) for plantation by the State under the scheme named & styled as Indira Hareli Saheli Yojna. It is stated that the lease condition purports that the lease could only be canceled after due opportunity of hearing is given to the petitioners, but

in this case, lease was canceled without giving any opportunity of hearing to the petitioners since the said land was acquired by the State and was further given to private company for carrying out mining activities for the cement plant. It is further contended that the petitioners' right, therefore, cannot be defeated which has been given to them under the C.G. Land Revenue Code, 1959 (for short 'the Code, 1959').

4. Learned counsel for the petitioners would refer to the rehabilitation policy of the State filed as Annexure P-4 which was existing at that time and would submit that the petitioners being the land less persons, lease of land were given to them for plantation of fruit bearing trees and the same having been taken without any authority of law, the petitioners may be adequately compensated.
5. Per contra, learned State counsel opposes the arguments advanced by learned counsel for the petitioners and would submit that the documents filed by the petitioners would show that though the land was given to them for plantation but they did not plant any tree. He would further submit that the land for which the right to plantation was given, belongs to the State, consequently, no compensation shall be payable to the petitioners as the land belongs to the State.
6. I have heard learned counsel for the parties and perused the documents.
7. Perusal of the documents would show that the petitioners (i) Moujiram (ii) Mungelal (iii) Santosh (iv) Prakash (v) Dhaniram (vi) Premdas (vii) Manoj and (viii) Panchuram were granted lease of land for plantation under Section 239 of the Code, 1959. The documents pertaining to any such lease of petitioner No.3 Tukaram is not on record. Section 239 of the Code, 1959 governs the grant of

fruit bearing trees planted in un-occupied land of any village, and it is to be recorded. The sanction purports that notwithstanding of grant of lease of tree the land vests in the State Government. The sanction purports that the person, and his successor in interest shall from generation to generation be entitled to possession and usufruct of such trees without payment of any royalty or other charge whatsoever. sub-section (4) of Section 239 of the Code, 1959 purports that the right conferred under this section shall be transferable but permit or patta holder or his successor-in-interest shall have no right to the land on which such tree stands except the right to grow trees on such land and usufructuary rights on such trees including the right in corpus of the tree. sub-section (4) of Section 239 of the Code, 1959 is reproduced hereunder:-

“239. [Rights in fruit bearing trees and other trees planted in unoccupied land]. -

- (4) The right conferred under this section shall be transferable but permit or patta holder or his successor-in-interest shall have no right to the land on which such tree stands except the right to grow trees on such land and enjoy the usufructuary rights on such trees including the right in corpus of the tree subject to the terms and conditions of the permit and patta:

Provided that no transfer by sale or by lease shall be made except with the previous permission in writing of the officer authorised by the State Government under sub-section (2).”

8. The object of Section 239 of the Code, 1959 under which the land was granted, therefore, would show that it creates right in the tree in corpus and usufructuary of the tree and not to the land. The documents filed by the petitioners Annexure P-8 is the report of the R.I. which was in pursuance to the requisition made by the Tehsildar. Perusal of such Annexure P-8 which was given after inspection of the plot, the R.I. has stated that the part and parcel of the land was given to

the petitioners (barring one) under the Indira Hareli Saheli Yojna. The report further purports that no tree stands on such land. Since the lease was granted under Section 239 of the Code, 1959 right would be only to the tree and in corpus and usufructuary in such tree and such right cannot be exercised in respect of the land. Therefore, if the land has been acquired/taken over being the land of the State, the petitioners cannot claim any right of compensation in respect of the land.

9. As has been stated that the petitioners being the landless persons were granted such lease of the land for growing tree under Section 239 of the Code, 1959, in the facts of this case, the petitioners shall be at liberty to make further application to the State for grant of lease under any scheme which may give benefit to them for their livelihood and if such application is filed, the State shall decide the same as per the existing policy which is existing today so it can support their livelihood.

10. With the aforesaid observation, the writ petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge