

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1912 of 2014

Sarvajeet Singh Aged About 52 Years S/o Shri Balkumar Singh R/o
Gram Kadnai Tah Mainpat, Surguja P.S. Mainpat, Distt. Surguja

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary to the Government of Chhattisgarh, Department of Forest, Mahanadi Bhawan, Naya Raipur, PS Rakhi, Raipur CG
2. The Collector, Surguja, Distt-Surguja CG
3. The District Forest Officer, South Forest Circle, Surguja Distt. Surguja C.G.
4. The Assistant Commissioner Tribal Welfare Surguja, Distt. Surguja C.G.
5. The Tahsildar Mainpat, Tah Mainpat, Surguja Distt. Surguja C.G.

--- Respondents

For petitioner- Shri A.D. Shrivastava, Advocate.
For State- Shri Rahul Jha, G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

15/07/2019

Heard.

1. By this instant petition challenge is made to the notice issued by the Tahsildar Annexure P-1 on 30/08/2014.
2. Learned counsel for the petitioner would submit that the petitioner though was granted a lease (patta) in respect of the land bearing khasra No.455/2 at village Kadnai, Tahsil Mainpat, District Surguja, said lease was granted after due diligence and legal formalities were completed by the District Collector and the authorities as also Commissioner (Tribal). However, the Tahsildar, Mainpat without going into such fact issued a notice with definite finding that lease have been obtained illegally. Thereby eviction notice has been issued. He further submits that finding of the

Tahsildar that lease has been obtained illegally cannot be arrived at without hearing the petitioner and the notice is pre-meditated, therefore that requires to be quashed. He refers to the Annexure P-2 the lease granted to the petitioner and would submit that if at all Tahsildar wants to proceed under Section 248 of the Land Revenue Code, in such case too such pre-meditated order cannot be invoked.

3. Learned State counsel opposes the same and would submit that issuance of notice was in respect of the revenue land, therefore same was well merited.

4. Perused the documents. Perusal of the Annexure P-1 shows that notice was issued to the petitioner to remove the house constructed over the land. Notice further purports that without consent of the villagers lease was prepared and therefore he was directed to vacate the same. Document Annexure P-2 is issued by the Collector, Sarguja which shows that the petitioner was given part of the land on lease bearing khasra no.455/2. The revenue proceeding order sheet and the case law also placed on record. Perusal of the same would show that the petitioner was given part of the land on lease after revenue proceeding were drawn and eventually for part of the land lease was granted.

5. Notice issued by the Tahsildar when are examined as against the lease it shows that Tahsildar has come to a finding in the notice that lease has been obtained illegally. The submission of the counsel that such finding cannot be given in the notice and is pre-meditated, I find force in such submission specially when it is examined in the light of the ratio laid down by the Supreme Court in case of ***M/s. Siemens Ltd. Versus State of Maharashtra & ors {(2006) 12 SCC 33}*** wherein at paragraph 9, 10, 11 & 12 the Supreme Court has held that when a notice is issued with pre-meditation, a writ petition would be maintainable, which are reproduced

hereunder:-

“9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including [State of Uttar Pradesh v. Brahm Datt Sharma and Anr.](#) AIR 1987 SC 943, [Special Director and Another v. Mohd. Ghulam Ghouse and Another](#), (2004) 3 SCC 440 and [Union of India and Another v. Kunisetty Satyanarayana](#), 2006 (12) SCALE 262], but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See [K.I. Shephard and Others v. Union of India and Others](#) (1987) 4 SCC 431 : AIR 1988 SC 686]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause.

10. The said principle has been followed by this Court in [V.C. Banaras Hindu University and Ors. v. Shrikant](#) [2006 (6) SCALE 66], stating:

"The Vice Chancellor appears to have made up his mind to impose the punishment of dismissal on the Respondent herein. A post decisional hearing given by the High Court was illusory in this case.

In [K.I. Shephard & Ors. etc. v. Union of India & Ors.](#) [AIR 1988 SC 686], this Court held :

".....It is common experience that once a decision has been taken, there is tendency to uphold it and a representation may not really yield any fruitful purpose."

11. [See also [Shri Shekhar Ghosh v. Union of India & Anr.](#) 2006 (11) SCALE 363 and [Rajesh Kumar & Ors. v. D.C.I.T. & Ors.](#) 2006 (11) SCALE 409]

12. A bare perusal of the order impugned before the High Court as also the statements made before us in the counter affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show cause notice. The writ petition, in our opinion, was maintainable."

6. Reading of the aforesaid case law and the notice would show that Tahsildar before enquiry was conducted came to a finding that the petitioner has encroached upon land and the lease has been obtained illegally such finding cannot be allowed to be sailed before petitioner is heard. Consequently, notice Annexure P-1 is pre-meditated which cannot be acted upon as the finding has been arrived at without hearing.

Accordingly, Annexure P-1 is quashed. However, it is made clear that in future State shall be allowed to proceed in accordance with law.

7. With such observation, petition stands allowed.

Sd/-

(Goutam Bhaduri)

JUDGE

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