

NAFR

**HIGH COURT OF CHHATTISGARH BILASPUR****Judgment reserved on 28/08/2019****Judgment delivered on 05/09/2019****Writ Appeal No. 300 of 2019**

*(Arising out of order dated 16/05/2019 passed in Writ Petition (C)  
No.1728 of 2019 by the learned Single Judge)*

Banwari Lal Morya S/o Late Akshwar Morya aged about 72  
Years, resident of Police Station Chowk Dillirajhara, Tahsil  
Doundi, District Balod (C.G.).

**---- Appellant****Versus**

1. Rajkumar Raghu son of Late T. P. Raghu resident of Police Station Chowk Dillirajhara, Tahsil Doundi, District Balod (C.G.).
2. State of Chhattisgarh Through Secretary Revenue Department, Mahanadi Bhawan, New Raipur, District Raipur (C.G.).
3. Chhattisgarh Revenue Board Bilaspur, Through its Presiding Officer, Bilaspur, District Bilaspur Chhattisgarh.
4. The Commissioner Durg, Division Durg, District Durg Chhattisgarh.
5. The Sub Divisional Officer R Doundilohara District Durg Chhattisgarh.
6. The Tahsildar Dillirajhara District Durg Chhattisgarh.
7. Ramvachan Morya son of Banwarilal Morya, aged about 37 Years, resident of Police Station Chowk Dillirajhara, Tahsil Doundi, District Balod (C.G.).
8. Achal Morya, son of Banwari Lal Morya, aged about 35 Years, resident of Police Station Chowk Dillirajhara, Tahsil Doundi, District Balod (C.G.).
9. Rajesh Morya, son of Banwari Lal Morya, aged about 33

Years, resident of Police Station Chowk Dillirajhara, Tahsil Doundi, District Balod (C.G.).

10. Gouri Bai Thakur, wife of Krishna, aged about 45 Years, resident of Police Station Chowk Dillirajhara, Tahsil Doundi, District Balod (C.G.).

**---- Respondents**

---

|                         |                                                        |
|-------------------------|--------------------------------------------------------|
| For Appellant           | : Mr. Jitendra Gupta, Advocate                         |
| For Respondent No.1     | : Mr. Bharat Rajput and Mr. Aman Kesharwani, Advocates |
| For State/Respondent    | : Mr. Siddharth Dubey, Dy. G.A.                        |
| For Respondents 7 to 10 | : Mr. Prabhat Kumar Saxena, Advocate                   |

---

**Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**  
**Hon'ble Shri Parth Prateem Sahu, Judge**

**C A V JUDGMENT**

**Per Parth Prateem Sahu, Judge**

**05/09/2019**

1. Challenge in this writ appeal is to the order dated 16/05/2019 passed by the learned Single Judge in Writ Petition (C) No.1728 of 2019 whereby the writ petition filed by the appellant was disposed of and a direction was given in favour of respondent No.1 that he is free to construct the toilet over the land comprised in his possession of Khasra No.1504/2 at Doundi District Balod, Chhattisgarh.

2. The relevant facts for disposal of this appeal are that respondent No.1 made a complaint to the Additional Tahsildar, Dallirajhara, District Balod mentioning therein that at village Dallirajhara, Patwari Halka No.10, behind the house of

applicant/respondent No.1, there is open land possessed by him for last 30-40 years. The said open land has been left by him for his own use (*Nistar*) and on that land, neighbour of applicant/respondent No.1 stored stones over land possessed by him and thereby trying to encroach over his land. He also made a complaint that he is being restricted from the appellant/non-applicant from raising construction. The applicant/respondent No.1 made a prayer that the appellant/non-applicant should be restrained from taking possession of land possessed by him illegally. The Additional Tahsildar vide its order dated 07/07/2014 passed an order that no document has been produced by the appellant/non-applicant in support of his plea that he has purchased the land. It was also held that the land in dispute is a Nazul Government land and the disputed land was in possession of applicant/respondent No.1. At the same time, the Additional Tahsildar directed the appellant/non-applicant not to create any obstruction on the possession of applicant/respondent No.1. It was also recorded that the appellant/non-applicant has encroached over the Government land, therefore, proceedings for removing encroachment to be initiated and concluded.

**3.** The order dated 07/07/2014 passed by the Additional Tahsildar was made to challenge by the appellant before the Sub-Divisional Officer, who dismissed the appeal. Against which, second appeal was preferred before the Commissioner,

Durg Division Durg, which also came to be dismissed vide order dated 28/07/2016. The Authorities have recorded that the property in dispute is a Government land; there is no right with the alleged seller from whom it is claimed by the appellant to have purchased the property vide unregistered receipt. The Commissioner has also taken into consideration that as per the report, the applicant/respondent No.1 has been shown to be a *Patta* holder of part of Khasra No.1504/2 and while upholding the orders of Additional Tahsildar and Sub-Divisional Officer, dismissed the second appeal.

4. Dissatisfied by dismissal of appeal by both the Authorities, the appellant preferred a revision before the Board of Revenue and the Board of Revenue by its detailed order dated 13/11/2017, dismissed the revision and affirmed the findings and orders recorded by all the three Authorities i.e. Additional Tahsildar, Sub-Divisional Officer and Commissioner. The Board of Revenue has also taken into consideration that there is concurrent finding of fact.

5. Aggrieved by the order passed by the Board of Revenue, the appellant preferred writ petition before the High Court, which came up for hearing before the learned Single Judge and the learned Single Judge vide impugned order dated 16/05/2019, disposed of the writ petition and directed that respondent No.1 is free to construct the toilet over the land comprised in his possession.

6. Learned counsel appearing for the appellant submits that learned writ Court disposed of the writ petition without issuing notices to the respondents and calling written submissions/reply from them. He further submits that it is a writ petition filed by appellant challenging the order of Board of Revenue, but while disposing of writ petition filed by him, learned writ Court had granted relief in favour of respondent No.1 without there being any petition or any interim application filed by him, which is illegal exercise of jurisdiction. He lastly submits that the land has been shown to be a Nazul land, therefore, the Additional Tahsildar could not have passed any order as passed by him vide its order dated 07/07/2014 restraining the appellant from interfering with the possession of respondent No.1.

7. Learned counsel appearing for respondent No.1 submits that respondent No.1 is a poor person and he is not having a facility of toilet in his small accommodation. He further submits that the scheme floated by Government under '*Swachha Bharat Abhiyaan*', the Government is granted fund to construct the toilet and in the list of persons for whom toilets are constructed, the name of respondent No.1 also finds place in it, but due to pendency of litigation, it could not be constructed. On the basis of aforementioned arguments, he supported the order passed by learned writ Court.

8. Learned counsel appearing for the State submits that the proceedings before the Additional Tahsildar started on the

dispute raised by respondent No.1 by filing an application mentioning therein that the appellant is trying to encroach his land and raising construction by laying foundation on the land belonged to him, therefore, the Additional Tahsildar under the powers enumerated in Section 250 of the Chhattisgarh Land Revenue Code, 1959 registered the case and passed the order on 07/07/2014. He further submits that as the Additional Tahsildar found the property in dispute projected before him to be a Nazul land, therefore, he correctly passed the order dated 07/07/2014. He lastly submits that as Additional Tahsildar has recorded a finding that since last 30-40 years, respondent No.1 is in possession of the said land, therefore, he rightly restrained the appellant from interfering with the possession of respondent No.1 over the disputed land and at the same time directed to initiate encroachment proceedings.

**9.** The finding of possession recorded in favour of non-applicant is based on the spot inspection conducted by the Assistant Revenue Inspector of Municipal Council, Dallirajhara. He prepared *Panchanama* in presence of appellant and other persons, who are residents of the same vicinity, which is Annexure A-3. In view of above, he submitted that the Additional Tahsildar has not committed any error in passing the order dated 07/07/2014.

**10.** We have heard learned counsel appearing for the parties and perused the record carefully.

**11.** We have categorically put question to the learned counsel appearing for the appellant as to what is the proof of purchase of land. On which, he answered that there is no registered sale deed whereas one receipt has been prepared in this regard, which was placed on record before the Revenue Authorities.

**12.** In the light of above submission, if we consider the order passed by the Board of Revenue wherein a categorical finding is recorded that the document produced in support of plea of purchase is not admissible as the property in dispute is a Nazul Government land and further that property mentioned in the said receipt is a different property than the property in dispute, therefore, no right is accrued in favour of the appellant.

**13.** In view of aforementioned categorical finding recorded by Board of Revenue, it is not in dispute fact that the property in dispute is a Nazul Government Land, as there was a concurrent finding of fact by four Authorities i.e. Additional Tahsildar, Sub-Divisional Officer, Commissioner and Board of Revenue in this regard. In the aforementioned facts, the learned Single Judge rightly not granted any order in favour of appellant.

**14.** So far as the other argument raised by learned counsel for appellant that the learned writ Court could not have granted any relief in favour of respondent No.1 directing him to continue with the construction of toilet over the land comprised in his possession is concerned, it is not in dispute that all the four

Authorities have found respondent No.1 also to have encroached the Government Nazul land. The said finding was not challenged by respondent No.1 before any superior Authority in appeal. In the petition challenged by one of other party to the proceeding, fighting for his own right, it cannot be directed that the encroacher is free to raise construction over the encroached land. When it is a finding that the land so possessed by respondent No.1 is a Government land and he accepts the order by not challenging the same, it will not be proper for Courts to protect such person by approving the illegal act.

**15.** In view of above, the said part of impugned order directing respondent No.1 to be free to construct toilet over the land comprised in his possession of Khasra No.1504/2 at Doundi District Balod, Chhattisgarh is set-aside. However, looking to the submissions made by learned counsel for respondent No.1 that he being a poor person and having a small living accommodation on a land allotted to him on *Patta* and not having toilet as well as under the policy and scheme "*Swachha Bharat Abhiyaan*" and scheme of the State Government "*Nirmal Gram Yojna*" for construction of a toilet from the Government fund for every house', there will be a liberty in favour of respondent No.1 to move appropriate application before the appropriate Authority or Forum for allotment of any portion of land attached to his house for construction of toilet.

**16.** In view of above, appeal is allowed in part and disposed off in terms as indicated above.

Sd/-

**(P. R. Ramachandra Menon)**  
**Chief Justice**

Sd/-

**(Parth Prateem Sahu)**  
**Judge**

Yogesh