

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 333 of 2019**

{Arising out of order dated 01.08.2018 passed in Writ Petition (C) No. 1867 of 2014 and order dated 03.05.2019 passed in Review Petition No. 97 of 2018 by the learned Single Judge}

- Samarjit Singh Baghel, son of Late Shri Ramsohagil Singhji Baghel, aged about 72 years, resident of village Rahatadah, P.S. and Tahsil Dhamdha, District (Revenue and Civil) Durg, Chhattisgarh, at present residing at Plot No. 22, Shanti Nagar, P.O. Mangla, Bilaspur (Chhattisgarh)

---- Appellant**Versus**

1. The State of Chhattisgarh, through the Secretary, Department of Revenue, Mantralaya, Mahanadi Bhawan, Naya Raipur, Tahsil Raipur, District Raipur (Chhattisgarh)
2. Collector, District Durg (C.G.)
3. Tahsildar, Tahsil Dhamdha, District Durg (C.G.)
4. Savita Rajput Sarpanch, Village Panchayat Rahtadah, Village Rahatadah, P.S. and Tahsil Dhamdha, District (Revenue and Civil) Durg, Chhattisgarh.

---- Respondents

For Appellant	:	Shri U.N.S. Deo, Advocate.
For Respondents No.1 to 3:	:	Shri Gagan Tiwari, Deputy Government Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Justice Parth Prateem Sahu, Judge****Judgment on Board****Per Parth Prateem Sahu, Judge****26.07.2019**

1. The Petitioner has challenged the order dated 01.08.2018 passed by the learned writ Court whereby the writ petition filed by the Appellant/Petitioner was disposed of granting liberty to the Petitioner to file reply to the show cause notice and thereafter to adjudicate the matter before that forum.

2. Brief facts, in nutshell, are that the Tahsildar has issued a notice on 11.09.2014 / 12.09.2014 under Section 248(2) of Chhattisgarh Land Revenue Code, 1959 (for short, 'Act of 1959') by mentioning therein that the Appellant/Petitioner by encroaching the Government land is raising a permanent construction. The said show cause notice was challenged by the Appellant/Petitioner before the writ Court in WPC No. 1867 of 2014.
3. The Respondents No. 1 to 3 in writ petition submitted reply to writ Petitioner and pleaded that on the basis of complaint of village Panchayat Rahatadah with regard to raising permanent construction over encroached land and on that basis notice was issued. It is also pleaded that the Patwari also submitted report mentioning that Petitioner encroached government land measuring 1642.5 sq.ft. and started construction on it.
4. On the basis of the aforementioned reply, the learned Single Judge after considering that the village Panchayat, which is the authority to make the complaint and also considering the fact that the challenge in the writ petition is only to the show cause notice issued by the Tahsildar, dismissed the writ petition relegating the Appellant/Petitioner to appear before the Tahsildar and submit his response by extending the time of appearance in notice.
5. Learned counsel appearing for the Appellant submitted that the Tahsildar, without passing an order under Section 248 of the Act of 1959 has come to the conclusion that Petitioner has encroached over the land and passed the order of stay on construction in notice itself. He further submits that alongwith the copy of the notice, the complaint made by the village Panchayat has not been issued to him.
6. Per contra, the learned counsel appearing for the State submits that it is merely a show cause notice on the basis of the complaint made by village Panchayat and the Tahsildar was well within his jurisdiction to issue show cause notice and

the appropriate proceedings are still to be concluded by the Tahsildar under Section 248 of the Act of 1959 where the Petitioner would have an opportunity to defend his case.

7. We have heard the learned counsel for the parties and perused the records.
8. Perusal of Annexure A/5 is under challenge before writ Court would show that it is a show cause notice on the complaint made by village Panchayat against the petitioner with regard to his encroachment over government land by raising permanent construction and he was stopped from raising construction.
9. The provisions of Section 248 of the Act of 1959 authorizes the Tahsildar to initiate proceeding of eviction from the government land or land kept for special purpose. The issuance of notice to Petitioner under Section 248 of the Act of 1959 is within the jurisdiction of Tahsildar and even the competency or authority of the Tahsildar is not challenged by the Appellant. His only grievance is that the Tahsildar without concluding the proceedings under Section 248 of the Act of 1959 holding the Appellant to be encroacher has directed to stop construction which is illegal.
10. There was complaint made by village Panchayat against Appellant for his encroaching and raising permanent construction over government land and the Tahsildar who is a competent authority to entertain the complaint of encroachment and to pass an order of eviction after removal of construction building etc. is also having the jurisdiction to pass appropriate interim orders in that regard. Asking for stopping construction on the encroached government land is an interim arrangement and the same cannot be said to be an illegal direction. Even otherwise after conclusion of proceedings under Section 248 of the Act of 1959 it is held that construction is on encroached land then the entire construction to be removed which may cause more loss to the Appellant. In the facts of the case, Tahsildar has rightly passed restraint order.

11. The learned writ Court in the facts and circumstances of the case and provisions of law applicable to it has correctly passed the impugned order. We do not find any infirmity or illegality in the order's passed by the learned writ Court.
12. However, it is directed that if the Tahsildar has not yet decided the case he shall decide the same within a period of four weeks from the date of presentation of the copy of this order in accordance with law.
13. In view of the above circumstances the writ appeal is disposed off.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge