

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2475 of 2019**

- Tapeswar Pathak S/o Kapil Dev Pathak Aged About 56 Years Caste Bramhan, R/o Tankitoli- Jurugum, Tahsil And District Jashpur Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh Through The Secretary Revenue Department Mantralaya, Atal Nagar, Raipur District Raipur Chhattisgarh
2. The Commissioner Surguja Division Surguja District Surguja Chhattisgarh
3. The Collector Jashpur, District Jashpur Chhattisgarh
4. The Tahsildar Jashpur, District Jashpur Chhattisgarh
5. Dr. Harishankar Rai S/o Late Shri Bhagwandeem Rai Aged About 82 Years Caste Kalar, R/o Khajanchitoli, Jashpur, Tahsil And District Jashpur Chhattisgarh

---- Respondents

For Petitioner : Shri P.K. Patel, Advocate

For Respondents/State : Ms. Smita Ghai, PL

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****19/07/2019**

1. Heard.
2. The present petition is against the order dated 13.05.2019 passed in a revision by the Commissioner, Sarguja Division, Sarguja.
3. The short resume of the facts are that initially an application was filed by the respondent No.5 Dr. Harishankar Rai under Section 250 of the Chhattisgarh

Land Revenue Code, 1959 (for short 'the Code, 1959') for ejectment of the petitioner from the subject suit land. It is contended that during such pendency of the proceedings before the Tehsildar on 17.09.2018 in the presence of parties a date was given on 08.10.2018 and after the date was given, however, again on 17.09.2018 at the instance of respondent further order-sheet was recorded and it was directed that the petitioner shall not carryout any further construction over the subject property and the right to file reply was closed. The said order was subject of appeal before the Collector and the Collector too by its order dated 08.04.2019 affirmed the said order. Thereafter, the Commissioner in a revision affirmed the said order on 13.05.2019.

4. Learned counsel for the petitioner would submit that having once the date has been given on 17.09.2018 for 08.10.2018, the subsequent closure of right to file reply would amount to arbitrary act and without the jurisdiction it was passed behind the petitioner. Learned counsel therefore prays that a chance to file reply may be given.
5. Perused the documents. Perusal of the initial order of the Tehsildar dated 17.09.2018, the first part of it would show that prayer to file reply was sought for by the petitioner, which was given and last chance was afforded and date was given on 08.10.2018. Subsequently, on the same day i.e. on 17.09.2018 the case was again taken up wherein on an application filed by the respondent, an order was passed against the petitioner restraining him to raise any construction and the right to file reply was also closed. Second part of the order dated 17.09.2018 do not show that the petitioner was present at that time, therefore, once the petitioner was given the last chance to file reply on

08.10.2018, the right of closure of filing reply in the absence of the petitioner should not have been passed on the same day by a subsequent order-sheet.

Under the circumstances, in order to advance the cause of justice, it is directed that the petitioner shall be allowed to file his reply before the Tehsildar in the initial revenue case which is pending adjudication before the Tehsildar, Jashpur.

It is made clear that in respect of the temporary restraint order of construction, the same shall be continued till the final adjudication of the application under Section 250 of the Code, 1959. The petitioner shall be obliged to file his written statement/reply within a further period of 30 days from today and in case of failure to file reply, no further opportunity shall be given.

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

Sd/-

Goutam Bhaduri
Judge

Ashu