

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2529 of 2019

Firoz Siddiqui, S/o. Shri K.U. Siddiqui, Aged About 50 Years, R/o. A-403, 4th Floor, Shriram Heritage, Katora Talab, Civil Lines, Raipur, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Department Of Revenue And Disaster Management, Mahanadi Bhawan, Atal Nagar, Naya Raipur Chhattisgarh.
2. Collector, Rajnandgaon, District Rajnandgaon Chhattisgarh.
3. Sub Divisional Officer, Dongergarh, District Rajnandgaon, Chhattisgarh.
4. Tehsildar, Dongergarh, District Rajnandgaon, Chhattisgarh.
5. Patwari, Patwari Halka No.34, Tehsil Dongergarh, District Rajnandgaon, Chhattisgarh.
6. Danu @ Sadhu, Aged About 65 Years, Caste- Gond, R/o. Village Rani Talab, Tehsil Dongergarh, District Rajnandgaon Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Vivek Chopda, Advocate
For State	:	Shri Amrito Das, Addl. A.G.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

19.09.2019

Heard.

1. The present petition is filed on the following reliefs :

“10.1. That this Hon'ble Court may kindly be pleased to call for the records concerning the case of the petitioner, as also the records in respect of land bearing Khasra No.103/1, which has allegedly been shown as Government land.

10.2. This Hon'ble Court may kindly be pleased to quash the entire proceeding in revenue case No.22-A/68/2016-17, being illegal, arbitrary and capricious and against the provisions of law and initiated by the respondent authorities to somehow grab the petitioner's property.

10.3. This Hon'ble Court may kindly be pleased to direct the respondent

No.1 to initiate appropriate departmental enquiry against the persons directly involved in changing the entries made in the revenue records without following due procedure of law.

10.4. Any other relief which this Hon'ble Court may deem fit in the facts and circumstances of the case.”

2. Learned counsel for the petitioner would submit that the petitioner had purchased a land bearing Khasra No.103/2 area 3 acres on 23.07.1998 and he is in possession and thereafter he constructed a farm-house. Subsequently, all of a sudden, a notice was served on 21.03.2017 by Annexure P-6 whereby it was stated that the petitioner has encroached upon the part of the government land, bearing Khasra No.103/1 which is adjacent to his land bearing Khasra No.103/2. The land is situated at village Rani Talab. The counsel refers to the Panchnama to show possession of land and would submit that according to the Panchnama, first part would show that the area comprised in Khasra No.103/1 is admeasuring 0.809 hectare which is nearly about 2 acres. He also referred to Annexure P-12 Kistbandi- Khatauni and submits that Khasra No.103/1 is recorded in name of one Chaitram and 103/2 is recorded in name of Manohari from whom the petitioner had purchased. It is stated that without any rhyme and reason, the State has said that the land bearing Khasra No.103/1 belongs to Government and there is no document to this effect. Referring to the document filed as additional document, it is stated that on 19.05.2017 when the proceeding of Section 248 of the Land Revenue Code had commenced, the original land record of 1998-99 was called for; however, they were never produced before the Tahsildar and in absence of that at the behest of the Revenue Officer, the demarcation has been carried out. He further submits that the statement of the witnesses during 248 proceeding would reveal that during the enquiry, the witnesses have categorically stated that part of Khasra No.103/1 was acquired for construction of road and the area was 0.809 hectare out of it 1 acres 40 dismil having been acquired, the area left

for Khasra 103/1 cannot be to the extent of round 1 acre. Consequently, the averments of the State would be prima facie wrong. He further submits that the officer has prejudice against the petitioner and therefore the petitioner cannot go before the appropriate authority under the Land Revenue Code.

3. Learned State counsel vehemently opposes the argument and submits that the statutory order under Section 248 of Land Revenue Code has been passed on 26.08.2019 itself. It is submitted that the petitioner has statutory remedy of filing the appeal and this issue involved disputed question of fact and the evidence cannot be appreciated, as such, the petitioner has to avail statutory appellate authority, therefore, the instant petition is liable to be dismissed.
4. Perused the documents along with return. The order dated 26.08.2019 has been placed on record which appears to be pursuant to the proceeding, which was commenced against the petitioner under Section 248 of the Land Revenue Code. The order sheet of such proceeding are filed as Annexure P-14. The petitioner has placed on record the statement of the witnesses as also the documents and tried to demonstrate the fact that the land Khasra No.103/1 is not a government land and reliance is placed on government land records. Whereas the respondent State has also placed on revenue document to show it is a government land. Further with respect of area of Khasra No.103/1 both the petitioner and respondent relies on different document which supports them. I do not want to appreciate these facts, as at the same time, the Panchnama which was prepared by the revenue authorities purports that after inspection it found that the petitioner had encroached upon the Government land bearing Khasra No.103/1. Therefore intricate highly disputed question of fact have come to fore and both the petitioner and respondent are relying on overlapping evidence. Considering the amount of attention it generated, this Court will not go to give a finding of

fact in exercise of power under Article 226 of the Constitution.

5. The final order dated 26.08.2019 having been passed by the Tahsildar Dongargarh on 26.08.2019 the alternative remedy is available to the petitioner to file an appeal under Section 44 of the Land Revenue Code. Section 44(a) of the Land Revenue Code purports that if the order is passed by the Revenue Officer subordinate to the Sub Divisional Officer, the appeal will lie to the Sub Divisional Officer. The petitioner though have raised a grievance that the S.D.O. is biased, as he himself was present on the spot while the demarcation was carried out, the said officer has not been made a party here in this case; however, it is for the State to consider this request if so made. The petitioner therefore would be at liberty to prefer an appeal against the order dated 26.08.2019 before the appropriate appellate forum within a period of one week from today. The concerned S.D.O. thereafter may hear the case on its own merits taking into facts of this case. There shall be stay of the order dated 26.08.2019 for a period of two weeks.
6. With such observation, the petition stands disposed of.

ashok

Sd/-
Goutam Bhaduri
Judge