

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 523 of 2019***{Arising out of Order dated 06.09.2019 passed in Writ Petition (C) No. 3086 of 2019 by the learned Single Judge}*

Dilip Dubey S/o Krishna Dubey Aged About 44 Years R/o Village Ganeshpur,
Tahsil and District Surajpur Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh, through Secretary, Department of Revenue and Disaster Management, Mahanadi Bhavan, Village Rakhi, New Raipur, District Raipur Chhattisgarh.
2. Collector Surajpur, District Surajpur Chhattisgarh.
3. Nayab Tahsildar Pilkha Area, District Surajpur Chhattisgarh.
4. Gaya Prasad S/o Late Ram Avatar Sah Aged About 49 Years R/o Village Ganeshpur, Tahsil And District Surajpur Chhattisgarh.

---- Respondents

For Appellant	:	Shri Harshwardhan Parganiya, Advocate.
For Respondent/State	:	Shri Ghanshyam Patel, Government Advocate.
For Respondent No. 4	:	Shri Parag Kotecha, Advocate.

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

Order on Board**Per Parth Prateem Sahu, J.****05/12/2019**

1. Grievance of the Appellant is that the writ petition, being WP(C) No. 3086 of 2019 filed by the Respondent No. 4 herein was decided vide order dated 06.09.2019 (Annexure A/1) without issuing any notice and without affording an opportunity of hearing to him. In the said order, the Respondent No. 3, Nayab Tahsildar, Pilkha, District Surajpur, as well as the Collector,

Surajpur, have been directed to comply with the initial order dated 23.04.2018 (Annexure P/1 to the writ petition) which is an order evicting the Appellant from the alleged illegal encroachment made over the government land.

2. The facts of the case are that the private Respondent No. 4 filed a complaint before the revenue authorities stating that the Appellant had encroached over the government land which is a 'Chhote Jhaad ka Jungle' and on that basis, proceedings were initiated by Nayab Tahsildar on 14.06.2017. When no further action was taken by the Nayab Tahsildar against the Appellant, then the private Respondent No. 4 filed a revision before the Collector in which the Collector, Surajpur, after hearing the parties passed an order on 31.12.2018 (Annexure P/3 to the writ petition).
3. During the course of argument, the learned counsel for the Appellant submits that the order passed by the Collector dated 31.12.2018 was subjected to challenge by the Appellant before the Commissioner, Surguja Division, Ambikapur, and the Commissioner, after hearing the learned counsel for the Appellant, have passed an order of interim protection in his favour on 02.12.2019 directing to keep the order dated 31.12.2018 passed by the Collector in abeyance, till the records of the Court below are received. Copy of order dated 02.12.2019 is produced before us and the submission of the Appellant was not controverted by the learned counsel for the Respondents.
4. The learned counsel for the Appellant submits that as he has already availed the remedy available to him under the provisions of the Chhattisgarh Land Revenue Code, 1959 and has preferred an appeal before the Commissioner, appropriate orders may be passed protecting his house from demolition as the revenue authorities are proceeding further to comply with the orders passed by the learned Single Judge in the writ petition and shall

demolish the permanent structure of the Appellant constructed over the subject land at any moment. In the morning also, learned counsel for the Appellant had made a mention for hearing of the case on priority stating that the revenue authorities are standing at the Appellant's door step to comply the orders of eviction.

5. Considering the facts and circumstances of this case, and particularly considering the fact that the Appellant has already approached the revenue authorities under the provisions of the Chhattisgarh Land Revenue Code, 1959, challenging the order dated 31.12.2018 passed by the Collector which was made one of the ground in the writ petition by the Respondent No. 4 in which the Appellant could not get an opportunity of making his submissions and further taking into consideration that the structure which is standing on subject land is a residential house, only to meet the ends of justice, we deem it fit and proper to direct the Commissioner to decide the appeal bearing No Ra.A.Pra.Kr. 44/A-68/2019-20 filed by the present appellant within a further period of six weeks from today. Till the appeal filed by the Appellant before the Commissioner is decided on merits, the revenue authorities i.e. the Respondents No. 2 and 3 are directed not to take any further action in pursuance of the order dated 23.04.2008 (Annexure P/1 to the writ petition).
6. With these observations, this appeal stands disposed of.

Certified copy, today.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE