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HIGH COURT OF CHHATTISGARH, BILASPUROrder reserved on 18-06-2019Order delivered on 24-10-2019WPC No. 3163 of 2018

1. Noni Bai D/o Shri Chheduram, Aged About 50 Years R/o Village Dharasiw, Up Tahsil Bhatgaon, Tahsil Bilaigarh, District Baloda Bazar Bhatapara Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Collector, Baloda Bazar, District Baloda Bazar Bhatapara Chhattisgarh
2. Mamta Singh Thakur, Naib Tahsildar, Up Tahsil Bhatgaon, District Baloda Bazar Bhatapara Chhattisgarh.
3. Bhagwat Sahu, Sarpanch Of Gram Panchayat Dharasiw, Up Tahsil Bhatgaon, Tahsil Bilaigarh, District Baloda Bazar Bhatapara Chhattisgarh.
4. Barat Ram Yadav, S/o Ghasiram Yadav, R/o Dharasiw, Up Tahsil Bhatgaon, Tahsil Bilaigarh, District Baloda Bazar Bhatapara Chhattisgarh.
5. Laxmidhar Yadav, S/o Mahettar Yadav, R/o Dharasiw, Up Tahsil Bhatgaon, Tahsil Bilaigarh, District Baloda Bazar Bhatapara Chhattisgarh
6. Bhojram Patel, S/o Shiv Chand, R/o Dharasiw, Up Tahsil Bhatgaon, Tahsil Bilaigarh, District Baloda Bazar Bhatapara Chhattisgarh.
7. Lochram Patel, S/o Shiv Chand, R/o Dharasiw, Up Tahsil Bhatgaon, Tahsil Bilaigarh, District Baloda Bazar Bhatapara Chhattisgarh
8. Sub Divisional Officer (R) Bilaigarh, District Baloda Bazaar - Bhatapara Chhattisgarh.
9. Nayab Tahsildar Up Tahsil Bhatgaon, District Baloda Bazar - Bhatapara Chhattisgarh.

---- Respondents

For Petitioner	Shri Santosh Sahu, Advocate
For Respondent/State	Shri Sudeep Verma, Dy. Govt. Adv.
For Respondent No.2	Shri P.K. Bhaduri, Advocate
For Respondents No.3 to 7	Shri Amiyakant Tiwari, Advocate

Hon'ble Shri Prashant Kumar Mishra, J

C A V Order

1. Petitioner is aggrieved by illegal demolition of her house situated at village Dharasiw, Up Tahsil Bhatgaon, Tahsil Bilaigarh, District Baloda Bazar-Bhatapara for which she seeks compensation of Rs.6,00,000/- from the respondents with further prayer to direct the respondent No.1 to initiate action against the respondents No.2 to 9.
2. According to the petitioner, the subject land was purchased by her father Chheduram from Prabha Devi, Indira and Prabhuwan Pratap Singh for valuable consideration of Rs.4500/- by registered sale deed dated 24-3-1978. Petitioner's name was mutated in the revenue record on the basis of registered WILL executed by her mother Sukwara Bai on 18-5-1990. Petitioner was, thus, in lawful possession of the house constructed by her father over the subject land. However, the respondents No.3 to 9 in conspiracy with the respondent No.2 demolished the house despite production of document relating to title.

3. On the application of the husband of the petitioner under the provisions of the Right to Information Act, 2005 (for short 'the RTI Act') he was informed that a show cause notice was issued to him on 28-1-2018 for encroachment over the subject land treating the same to be Government land. It is also highlighted that the said notice was, in fact, issued on **28-2-2018** (Annexure – P/4) fixing the date of hearing as **8-2-2018**. It is mentioned in the show cause notice that husband of the petitioner has occupied 2400 sq.ft. of Government land bearing khasra No.16 even though the said land has been donated.
4. In response to petitioner's application under the RTI Act the Gram Panchayat informed the petitioner vide Annexure – P/5 dated 8-1-2018 that the Gram Panchayat has never passed any resolution for demolition of her house.
5. Notice Annexure – P/6 dated 23-4-2018 issued by the Sub Divisional Officer (Revenue), Bilaigarh, indicates that after demolition of the house and dispossessing the petitioner, the Sarpanch of the concerned Gram Panchayat has raised foundation of stones with intention to raise structure. The photograph filed by the petitioner shows availability of JCB Machine over the subject land.

6. In the return filed by the respondents No.1, 8 & 9 it is stated that the demolition of petitioner's house was carried out on 15-2-2018 for the reason that the petitioner was found to possess and reside in the land/house which was given in gift by her father for the purpose and use of Radhakrishna Mandir, but the same was illegally occupied by the petitioner.
7. According to the State, some villagers, Panchas and the Sarpanch moved an application before the Sub Divisional Magistrate, Bilaigarh, on 11-12-2017 stating that Chheduram has donated the property to Radhakrishna Mandir about 13-14 years back but because of the continued occupation of the petitioner the *bhogshala & dharamshala* of Radhakrishna Mandir is not constructed, therefore, the illegal possession deserves to be removed. State has filed certified copy of resolution of Gram Panchayat dated 12-12-2017 (Annexure – R/3).
8. The Gram Panchayat thereafter issued notice to the petitioner's husband vide Annexure – R/4 pursuant to which proceedings under Section 248 of the Chhattisgarh Land Revenue Code, 1959 (henceforth 'the Code, 1959') was initiated on 28-1-2018 vide order sheet Annexure – R/5. The proceeding thereafter was fixed on 10-2-2018 recording that

husband of the petitioner refused to accept notice, therefore, he is proceeded *ex parte*. The final order was passed on 10-2-2018 and demolition was carried on 15-2-2018.

9. From the pleadings and documents it would appear that the land and house belonged to petitioner's father Chheduram. While the petitioner claims ownership through a registered WILL executed by her mother, the Gram Panchayat asserts that Chheduram had donated the land to Radhakrishna Mandir. The subject land is part of abadi land of village, therefore, it is not, as such, Government land because adadi land in a village is the area reserved for village abadi, under the provisions of the Code, 1959.
10. Section 246 of the Code, 1959 further provides that every person who at the coming into force of the Code lawfully holds any land as a house site in the abadi or who may hereafter lawfully acquire such land shall be a ***bhumiswami*** in respect of such land.
11. There being no dispute by the opposite party that petitioner's father was possessed of the land, thus, he was a bhumiswami of such abadi site possessed by him as per Section 246 of the Code, 1959, therefore, any donation by him to Radhakrishna Mandir can only happen under a

registered instrument, which is not available in the present case.

12. Copy of the notice issued by the Naib Tahsildar in the name of Lakeshwar Patel was, in fact, issued on 28-2-2018 (Annexure – P/4) whereas according to the respondents such notice was issued on 28-1-2018 vide order sheet (Annexure – R/5). The order sheet Annexure – R/5 does not inspire confidence as it carries over writing and interpolation at several places. The Revenue Case mentioned as 26/A-68 Year 2017-18 carries over writing. Thereafter, both the dates of **28-1-2018 & 8-2-2018** mentioned in the first order sheet contains over writing. The computer printing of the dates mentioned the month as **March, 2018** which has been over written *on the top to write 28-1-2018* and *at the bottom to mention 8-2-2018*. *Calender of January, 2018 shows 28-1-2018 as a Sunday, similarly 10-2-2018 being Second Saturday is also the State Government's Gazetted holiday*. Thus, the office of Naib Tahsildar, Up Tahsil Bhatgaon appears to have functioned on two holidays i.e. firstly on Sunday and thereafter on Second Saturday, which is impossible. The order sheets therefore, appear to be manufactured and concocted to make out a case for an illegal and arbitrary action.

13. A residential house belonging to a citizen cannot be demolished in the manner the Naib Tahsildar of Up Tahsil Bhatgaon has done and thereafter tried to defend it by manufacturing and concocting the documents. The State's document would itself demonstrate vide Annexure – R/7 that the house was constructed on 1600 sq.ft. Area out of total area 2400 sq.ft., therefore, by reasonable calculation the house would not cost any less than Rs.5.00 lacs.
14. In the result, the writ petition is allowed directing the respondent State to pay a sum of Rs.5,00,000/- (Rupees five lacs Only) to the petitioner for illegally demolishing her house. However, it will be open for the Government to recover the above amount of Rs.5.00 lacs from the respondent No.2 but that can only be done after constituting a departmental enquiry against the respondent No.2 for the illegality committed by the said officer, as indicated above in this order.

Sd/-

(Prashant Kumar Mishra)
Judge

Gowri

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 3163 of 2018

Noni Bai

Versus

State Of Chhattisgarh & Others

HEAD NOTE

Demolition of house situated on petitioner's own land by drawing proceedings on public holidays i.e. Sunday & 2nd Saturday being illegal; State is directed to pay cost of Rs.5.00 lacs to the writ petitioner.