

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 3955 of 2019**

Smt. Laxmi Bai Manikpuri W/o Shri Chhotu Manikpuri Aged About 45 Years Occupation Ex-Sarpanch Gram Panchayat Mohtara, R/o Village And Post Mohtara, Janpad Panchayat Bilaigarh, District Balodabazar-Bhatapara, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary Panchayat And Rural Development Department Mahanadi Bhawan Capital Complex, Atal Nagar New Raipur, District Raipur, Chhattisgarh.
2. Collector Balodabazar, District Balodabazar, Chhattisgarh.
3. Sub Divisional Officer (Revenue) Bilaigarh, District Balodabazar-Bhatapara, Chhattisgarh.
4. Chief Executive Officer Janpad Panchayat Bilaigarh, District Balodabazar-Bhatapara, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Sunil Sahu, Advocate
For State	:	Mr. Ayaz Naved, G.A.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****07/11/2019**

1. The challenge in the present writ petition is to the order passed by the Sub-Divisional Officer (Revenue) Kasdol dated 30.09.2019, whereby the recovery order to the tune of Rs.40,000/- has been passed against the petitioner.
2. Counsel for the petitioner submits that the impugned order has been passed without conducting a proper verification or inquiry by the respondents. According to the petitioner, to the show cause notice, the petitioner had given a specific reply vide Annexure P/4 dated 13.10.2016, wherein specific details of the amount spent by the petitioner in respect of the amount received by him was given, however the respondents did not further verify the contents of those

reply and have in a mechanical manner passed the impugned order holding the petitioner liable for recovery.

3. If we read the provisions of Section 92, which gives the power upon the authorities to recover articles and money. Sub-section 4 of Section 92 specifically envisages that no action under Sub-sections 1, 2 & 3 shall be taken unless a reasonable opportunity has been given to the person concerned to show cause why such action should not be taken against him.
4. The term reasonable opportunity does not mean that mechanical issuance of a show cause notice and calling for a reply and thereafter passing an order straight way. Reasonable opportunity means the moment the petitioner submits his reply or defense to a show cause notice, the concerned authorities have to apply their mind on the reply so submitted or to the defense so taken by the delinquent. In the instant case, the person has given specific details in respect of the money that he had received. On such details being given the respondents authorities ought to have taken a reasonable care to verify and counter check these statements and averment and then thereafter should have passed an order. Such action is not reflected on the order passed by the Sub-Divisional Officer (Revenue) while passing the order dated 30.09.2019 which is under challenge in the present writ petition.
5. Keeping in view the judgments of the Madhya Pradesh High Court in the case of “**Sewak Sour v. State of Madhya Pradesh**” reported in **MPLJ 2016 (2) 271** and also in the case of “**Roshan Nargave v. State of Madhya Pradesh**” reported in **MPLJ 2017(3) 73**, the order

of Sub-Divisional Officer (Revenue) is not sustainable and the same therefore stands set-aside/quashed and the matter stands remitted back to the Sub-Divisional Officer to conduct a verification/inquiry in respect of the reply that the petitioner has given in his reply to the show cause notice and thereafter after giving a further opportunity of defense to the petitioner pass a fresh order in accordance with law.

6. With the aforesaid observations, the present writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved