

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 413 of 2015

Ghanshyam Chandrawanshi, S/o Late Shri Raghuwar Dayal Chandrawanshi, Aged About 53 Years, R/o Village- Khudmudi, Police Station- Beral, District- Bemetara (C.G.)

--- Petitioner

Versus

1. The Sub Divisional Officer Saja, District- Bemetara (C.G.)
2. The Chief Executive Officer, Janpad Panchayat Beral, District- Bemetara (C.G.)
3. Gram Panchayat Khudmudi, Block- Beral, District- Bemetara (C.G.) Through- the Secretary, Gram Panchayat Khudmudi, Block- Beral, District- Bemetara (C.G.)

--- Respondents

For Petitioner	:	Mr. Rishi Rahul Soni, Advocate.
For State	:	Mr. B.P. Banjare, Dy. G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

17/11/2020

1. This writ petition has been brought praying for invoking power under Article 227 of the Constitution of India for seeking indulgence of this Court for quashing order dated 22.09.2014 passed by respondent No. 1 in Revenue Case No. 6A- 89 Year 2010-11.
2. It is submitted by learned counsel for the petitioner that Chief Executive Officer, Janpad Panchayat, Berla has initiated the proceeding against the petitioner by memo dated 12.07.2010 alleging serious financial irregularities and requesting the Sub-

Divisional Officer (Revenue), Saja to initiate the proceeding against the petitioner under the provision of Section 92 of the Chhattisgarh Panchayati Raj Adhiniyam, 1993 (for short "the Adhiniyam, 1993"). On the basis of which, respondent No. 1 has initiated the proceeding and then, passed the impugned order for recovery of amount of Rs. 7,87,022/- from the petitioner.

3. It is further submitted that the impugned order is illegal being not in accordance with law. No enquiry was held with regard to the financial irregularities alleged to have been committed by the petitioner. The petitioner had made deposit of receipt regarding payment made by him of Rs. 44,432/- in the Panchayat, which was not considered, therefore, the impugned order has not been passed after following the procedure of natural justice. Hence, the impugned order is liable to be set aside.
4. Learned counsel for the State/ respondent submits that the proceeding for recovery against the petitioner has been drawn legally, in accordance with Section 92 of the Adhiniyam, 1993. The memo dated 12.07.2010 issued by respondent No. 2 i.e. Chief Executive Officer, Janpad Panchayat, Berla, very clearly mentioned about the financial irregularities committed by the petitioner giving all the details of the amount withdrawn and not utilised in the projects, for which, the amounts were sanctioned. As regards the receipt of deposit made by the petitioner with the Panchayat, it is submitted that no receipt was submitted before respondent No. 1, when opportunity was given to the petitioner to present and explain, therefore, the petitioner is liable to make

payment of amount of recovery order against him. The present petition is without any substance, which may be dismissed.

5. Considered on the submissions and perused the documents that are present on record.
6. Memo dated 12.07.2010 is clear including all the details of the lapses of financial irregularities alleged against this petitioner. Copy of the order-sheets of the proceedings before respondent No. 1, has been filed along with the petition. The matter was initiated on 28.07.2010 and the notice to show cause was issued against the petitioner. The order-sheets show that the petitioner was present himself before respondent No. 1 and he was also represented by a counsel and he also submitted reply. Respondent No. 1 after considering on the submissions made by the counsel for the petitioner, has passed the impugned order.
7. Section 92 of the Adhiniyam, 1993 is as follows :-

92. Power to recover records, articles and money. - (1) Where the prescribed authority is of

the opinion that any person has unauthorisedly in his custody any record or article or money belonging to the Panchayat, he may, by a written order, require that the record or article or money be delivered or paid forthwith to the Panchayat, in the presence of such officer as may be appointed by the prescribed authority in this behalf.

(2) If any person fails or refuses to deliver the record or article or pay the money as directed under sub-section (1), the prescribed authority may cause him to be apprehended and may send him with a warrant in such form as may be prescribed,

to be confined in a Civil Jail for a period not longer than thirty days.

(3) The prescribed authority may,-

(a) for recovering any such money direct that such money be recovered as an arrear of land revenue; and

(b) for recovering any such record or articles issue a search warrant and exercise all such powers with respect thereto as may lawfully be exercised by a Magistrate under the provisions of Chapter VII of the Code of Criminal Procedure, 1973 (No. 2 of 1974).

(4) No action under sub-section (1) or (2) or (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.

(5) A person against whom an action is taken under this section shall be disqualified to be member of any Panchayat for a period of six years commencing from the initiation of such action.

8. Sub-section 4 of Section 92 of the Adhiniyam, 1993 provides that the person against whom the proceeding is initiated, shall be given reasonable opportunity to explain before taking any action against him. It appears from the record of the proceeding before respondent No. 1, that the petitioner was given such opportunity and that opportunity was also availed by him, in which, he had filed the reply to the notice and also made submissions before respondent No. 1 through his counsel, which has been taken into consideration before passing of the impugned order. Therefore, I am of this view that respondent No. 1 has not failed

to exercise the jurisdiction vested with it and passed the impugned order in accordance with law and the procedure of natural justice was followed. Section 92 of the Adhinyam, 1993 does not provide for making any enquiry, therefore, the present petition is without any substance, which is liable to be dismissed.

9. In view of the above, the instant petition is dismissed at motion stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge