

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 235 of 2020

- Shashi Bhushan Sharma S/o Late Shri R.V. Sharma Aged About 56 Years Presently Working As Executive Engineer, Regional Office, Urban Administration And Development Office Bastar Division , Jagdalpur , Police Station And District Jagdalpur Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Principal Secretary, Department Of Urban Administration And Development, Mantralaya , Mahanadi Bhawan , Atal Nagar Naya Raipur , District Raipur Chhattisgarh.
2. Directorate Urban Administration And Development Department, Raipur, Through Director , Indravati Bhawan, Naya Raipur District Raipur Chhattisgarh.
3. Joint Director Urban Administration And Development Office , Bastar Division , Jagdalpur Chhattisgarh.
4. Municipal Corporation Cirmiri, Through Commissioner, Municipal Corporation, Chirmiri, District Korea Chhattisgarh.

--- Respondents

For the Petitioner : Shri Vivek Kumar Agrawal, Advocate.

For the Respondents/ State : Shri Avinash Singh, Panel Lawyer

For Respondent No. 4 : Shri Sudeep Agrawal, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

28.01.2020

Heard.

1. The challenge in this petition is to the recovery notice dated 16.12.2019 (Annexure P-1). It is submitted that the aforesaid recovery notice has been issued pursuant to the enquiry conducted by the erstwhile State of Madhya Pradesh for certain construction work done in between the period of 1994-1999. It is stated that earlier the petitioner was served with notice of like nature for the same cause of action i.e. Annexure P-2 on 29.09.2017 wherein also the petitioner was asked to deposit Rs. 8,75,488/-. It is stated against such

proposed recovery the petitioner has preferred an appeal under Rule 40 of the Chhattisgarh Municipalities Service (Executive) Rule 1973 (for short 'Rule of 1973'). It is stated that the said appeal is pending, despite the pendency of such appeal again a recovery notice was issued to the petitioner asking to deposit the same amount i.e. Rs. 8,75,488/- (Annexure P-1). It is stated that if the appeal is held in favour of the petitioner then the recovery cannot be made good. It is further contended that the order Annexure P-1 dated 16.12.2019 has been issued without giving any opportunity of hearing to the petitioner, therefore, in any case the petitioner was required to be heard.

2. Perused the documents.
3. Perusal of the record would show that on 29.09.2017 a similar notice had been issued which is subject of appeal under Rule 40 of Rule of 1973. Therefore, if the petitioner has already preferred an appeal before the State government which is pending adjudication then in such case without any finding of the said appeal, a fresh recovery notice for the same amount cannot be issued. The notice Annexure P-1 also suffers with infirmity for the reason that it defeats the principle of *Audi Alteram Partem*. Under the circumstances, Annexure P-1 dated 16.12.2019 which has a civil consequence and was passed without giving hearing to the petitioner is set aside. The appeal which is pending at the end of Respondent No. 1 shall be decided within a reasonable time and the petitioner shall be given all the opportunity of hearing in such appeal before passing any order. It is expected that the appeal shall be concluded as early as before the petitioner retires.
4. With the aforesaid observation, the petition stands disposed of.

Sd/-
(GOUTAM BHADURI)
JUDGE