

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 230 of 2020**

1. Rupendra Kumar Jaiswal S/o Salik Ram Jaiswal Aged About 55 Years
 2. Vijay Kumar Jaiswal S/o Salik Ram Jaiswal Aged About 65 Years
- Both are R/o Village Sarwani, Tahsil Kharsia, District Raigarh Chhattisgarh.

---- Petitioners**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Food , Civil Supplies And Consumer Protection, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh.
2. Secretary Department Of Revenue, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh.
3. Commissioner Cum Director Directorate Of Food, Civil Supplies And Consumer Protection, Indravati Bhawan, New Raipur, District Raipur Chhattisgarh.
4. Collector District Raigarh Chhattisgarh.
5. Sub Divisional Officer (Revenue) Kharsia, Block Kharsia, District Raigarh Chhattisgarh.
6. Tahsildar Tahsil Kharia, Block Kharsia, District Raigarh Chhattisgarh.
7. Smt. Savitri Devi W/o Ramlal Agrawal R/o Dabhra Raod Kharsia, Tahsil Kharsia District Raigarh Chhattisgarh.

---- Respondents

For Petitioners	:	Mr. Govind Dewangan, Advocate
For State	:	Mr. P. Acharya, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****27/01/2020**

1. The challenge in the present writ petition is to the action on the part of the respondents in passing the order dated 29.10.2019 passed by the Tehsildar refusing to register the name of the petitioners to sell paddy.
2. The petitioners are agriculturists in possession of properties that situates at village Lodhiya, P.H.No. 12, Tehsil Kharsia, District

Raigarh bearing khasra No. 57, 118/1, 150/3, 170/3, 170/10 and 210 total khasra No. 6, rakba/area 0.121, 0.113, 0.024, 4.297, 0.567 and 0.401 hectares respectively total rakba 5.523 hectare. According to the petitioners, they had approached the Tehsildar for registering their names enabling them to sell of paddy, but the same has been refused by the Tehsildar vide order dated 29.10.2019 (Annexure P/1). The rejection of their application was only on account of certain disputes in respect of title over the said land, over which the petitioners were cultivating.

3. During the course of hearing the counsel for the petitioners has shown certain documents, which would reveal that the Civil Judge Class-2, Kharsia, District Raigarh in Civil Suit No.4-A/2010 vide order dated 24.11.2010 has passed a specific injunction restraining the defendants therein from interfering with the peaceful possession of the petitioners over the said piece of land. The said order of the Civil Judge Class-2 was subjected to challenge in a Miscellaneous Appeal under Order 43 Rule 1 of the Code of Civil Procedure by way of Miscellaneous Civil Appeal No. 11/2012 before the 1st Additional District Judge, Raigarh and the learned Additional District Judge had vide its order dated 11.05.2012 confirmed the order of injunction passed by the Civil Judge Class-2 on 24.11.2010 and has rejected the appeal filed by the defendants. Pursuant to that the petitioners are enjoying the peaceful possession of the said properties and is cultivating the said land and now the petitioners intend to sell the paddy and therefore the requirement for registration of their names arose.

4. The petitioners rely upon the order passed by this Court on 29.11.2019, passed in the case of **“Kanhaiya Lal Patel v. State of Chhattisgarh & Ors.” WPC No. 4334/2019**, whereby this Court under similar circumstances had in paragraphs No. 3 & 4 held as under:

“3. What is clearly reflected from the order of this Court in the Second Appeal dated 14.07.2017 and the order of the Tahsildar dated 26.10.2019 that admittedly as on date the petitioner is in possession of the land. It is not in dispute that petitioner is now the person who is cultivating over the said land. It is also apparently clear that the petitioner has some interim protection from the High Court in Second Appeal No. 441 of 2017. As a consequence of the interim protection by the High Court, the petitioner would continue cultivating over the said land till the second appeal is either finally decided or the High Court vacates the interim order earlier granted on 14.07.2017. As long as the order dated 14.07.2017 stands, the petitioner has a right to continue cultivation over the said disputed land and, therefore, he has a right to sell his paddy to the concerned society. The Tahsildar has wrongly held that the petitioner does not own the said land and, therefore, has refused to register his name. What is to be deemed is that there is an interim protection, so far as the possession of the land by the petitioner is concerned, therefore, till the order dated 14.07.2017 is not modified or the Second Appeal No. 441 of 2017 is not finally decided, let the Respondent No. 6 consider the petitioner's case for grant of temporary registration which would enable him to sell his paddy. The situation cannot be created where the paddy cultivated by the petitioner cannot be sold which otherwise is his only source of income.

4. Given the said facts, let the Respondent No. 6 immediately reconsider the case of the petitioner for grant of temporary registration, subject to the outcome of the Second Appeal No. 441 of 2017 or vacating of the interim order dated 14.07.2017 whichever is earlier.”

5. In the instant case also if we look into the facts of the case, which would reveal that the petitioners have been able to get an injunction in his favour, which has been affirmed by the first Appellate Court also, so far as their possession over the disputed piece of land. By virtue of the injunction order, the petitioners are entitled for cultivating the said lands and on their cultivating the said lands, they also have a right for selling their paddy, as is being sold by the other agriculturist in the area.

6. The State counsel on the other hand opposing the petition submits that under the scheme it requires registration and for registration it requires that the name of the agriculturists should be reflected in the revenue records, otherwise the petitioners may not have a claim for getting themselves registered. It is further contention of the State counsel that under the scheme there is no such provision for grant of temporary registration.
7. Having heard the contentions put forth on either side and on perusal of record, what clearly reflects is that the schemes that are framed by the State Government is only applicable for one year. It is not a permanent scheme, which is in force. The registration which is required is for selling and purchasing of paddy for the present *khareeb season*. In case if the petitioners are not registered, they would not have a right of selling the paddy as is being sold by the other agriculturists. The scheme itself is in operation on annual basis, therefore, taking into consideration the order of injunction in their favour by the Civil Court and which has been affirmed by the first Appellate Court in a Miscellaneous Appeal, the petitioners as of now undisputedly are in possession of the said piece of lands and are also cultivating the said land and therefore they have also a right of selling their paddy.
8. In view of the same and also taking note of the order passed by this Court in the case of “**Kanhaiya Lal Patel**” (supra), it would be in the interest of the petitioners as well as in the larger interest of the public for a direction the respondent No.6 to reconsider the case of the petitioners for grant of temporary registration subject to the outcome

of the civil suit pending before the concerned Court. That based on the temporary registration, the petitioners also would be entitled for selling their paddy in accordance with the scheme framed by the State Government. The said temporary registration would be only as long as the injunction order of the Civil Court is in favour of the petitioners.

9. With the aforesaid observations, the present writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved