

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 756 of 2020**

1. Birendra Sahu S/o Late Bharosa Ram Sahu, Aged About 38 Years, R/o Ward No. 13, Village Murmunda, District Durg, Chhattisgarh
2. Anita Dhiwar D/o Chintaram, Aged About 42 Years, R/o Village Murmunda, District Durg, Chhattisgarh
3. Ashok Kumar S/o Late Praja Chelak, Aged About 40 Years, R/o Ward No. 13, Village Murmunda, District Durg, Chhattisgarh
4. Mohan Kosre S/o Heeralal, Aged About 40 Years, R/o Murmunda, Post Office Murmunda, Police Station Nandini Nagar, Tahsil Dhamdha, District Durg, Chhattisgarh
5. Khilawan S/o Heerasingh, Aged About 43 Years R/o Murmunda, Post Office Murmunda, Police Station Nandini Nagar, Tahsil Dhamdha, District Durg, Chhattisgarh
6. Dhananjay S/o Shubhanik Aged About 45 Years R/o Murmunda, Post Office Murmunda, Police Station Nandini Nagar, Tahsil Dhamdha, District Durg, Chhattisgarh
7. Durga W/o Samaroo, Aged About 40 Years R/o Murmunda, Post Office Murmunda, Police Station Nandini Nagar, Tahsil Dhamdha, District Durg, Chhattisgarh
8. Ramavatar S/o Sukhroo Aged About 52 Years R/o Murmunda, Post Office Murmunda, Police Station Nandini Nagar, Tahsil Dhamdha, District Durg, Chhattisgarh
9. Dhannu Gayakwad S/o Nanak Chand Gayakwad Aged About 45 Years R/o Village Murmunda, District Durg, Chhattisgarh
10. Suresh S/o Gajju Aged About 37 Years R/o Murmunda, Post Office Murmunda, Police Station Nandini Nagar, Tahsil Dhamdha, District Durg, Chhattisgarh

11. Savitri W/o Kamal Satnami, Aged About 45 Years R/o Village Murmunda District Durg, Chhattisgarh
12. Tribeni W/o Bhagwani, Aged About 45 Years R/o Murmunda, Post Office Murmunda, Police Station Nandini Nagar, Tahsil Dhamdha, District Durg, Chhattisgarh
13. Janak S/o Nanki, Aged About 40 Years R/o Murmunda, Post Office Murmunda, Police Station Nandini Nagar, Tahsil Dhamdha, District Durg, Chhattisgarh
14. Jambai W/o Budhelal, Aged About 40 Years Village Murmunda, District Durg Chhattisgarh
15. Sukhiya W/o Bhagoli Yadav, Aged About 40 Years, Village Murmunda, District Durg Chhattisgarh
16. Sukhram S/o Birjhu, Aged About 50 Years R/o Murmunda, Post Office Murmunda, Police Station Nandini Nagar, Tahsil Dhamdha, District Durg , Chhattisgarh
17. Ratnu S/o Jeevan, Aged About 50 Years, R/o Murmunda, Post Office Murmunda, Police Station Nandini Nagar, Tahsil Dhamdha, District Durg , Chhattisgarh
18. Ramanand S/o Bhondu, Aged About 40 Years, R/o Murmunda, Post Office Murmunda, Police Station Nandini Nagar, Tahsil Dhamdha, District Durg , Chhattisgarh
19. Rajnish Bansal S/o Dharampal Bansal, Aged About 55 Years R/o Murmunda, Post Office Murmunda, Police Station Nandini Nagar, Tahsil Dhamdha, District Durg, Chhattisgarh
20. Taran Bai W/o Sukhchand, Aged About 60 Years R/o Murmunda, Post Office Murmunda, Police Station Nandini Nagar, Tahsil Dhamdha, District Durg, Chhattisgarh
21. Shyamlal S/o Sukhchand, Aged About 48 Years R/o Murmunda,

Post Office Murmunda, Police Station Nandini Nagar, Tahsil Dhamdha,
District Durg, Chhattisgarh

22. Anand Ram S/o Panchoo, Aged About 55 Years R/o Murmunda,
Post Office Murmunda, Police Station Nandini Nagar, Tahsil Dhamdha,
District Durg, Chhattisgarh
23. Subbakrishna S/o Panchuram, Aged About 54 Years R/o
Murmunda, Post Office Murmunda, Police Station Nandini Nagar, Tahsil
Dhamdha, District Durg, Chhattisgarh
24. Dulari W/o Samaroo, Aged About 40 Years R/o Murmunda, Post
Office Murmunda, Police Station Nandini Nagar, Tahsil Dhamdha,
District Durg, Chhattisgarh
25. Beniram S/o Ramdhyan, Aged About 52 Years, Village
Murmunda, District Durg, Chhattisgarh
26. Sushil S/o Sitaram, Aged About 37 Years, R/o Murmunda, Post
Office Murmunda, Police Station Nandini Nagar, Tahsil Dhamdha,
District Durg, Chhattisgarh
27. Lalit S/o Kuber, Aged About 26 Years, R/o Murmunda, Post Office
Murmunda, Police Station Nandini Nagar, Tahsil Dhamdha, District
Durg, Chhattisgarh
28. Sadhelal S/o Budhram, Aged About 32 Years, Village
Murmunda, District Durg, Chhattisgarh
29. Dhannu Sahu S/o Ramgula, Aged About 42 Years, Village
Murmunda, District Durg, Chhattisgarh
30. Dular S/o Chablu, Aged About 48 Years, R/o Murmunda, Post
Office Murmunda, Police Station Nandini Nagar, Tahsil Dhamdha,
District Durg, Chhattisgarh
31. Budhram S/o Bahyaram, Aged About 65 Years, R/o Murmunda,
Post Office Murmunda, Police Station Nandini Nagar, Tahsil Dhamdha,

District Durg, Chhattisgarh

32. Sahebudas S/o Rajulal, Aged About 60 Years, R/o Murmunda, Post Office Murmunda, Police Station Nandini Nagar, Tahsil Dhamdha, District Durg, Chhattisgarh
33. Lakhan Joshi S/o Kaliram, Aged About 60 Years, Village Murmunda, District Durg Chhattisgarh
34. Bhukhan Joshi S/o Ramdhyan, Aged About 42 Years, Village Murmunda, District Durg, Chhattisgarh
35. Anju Namdev W/o Suresh Namdev, Aged About 50 Years, Village Murmunda, District Durg, Chhattisgarh

---- **Petitioners**

Versus

1. State Of Chhattisgarh Through Collector, District Durg, Chhattisgarh
2. Sub Divisional Officer Dhamdha, Tahsil Dhamdha, District Durg, Chhattisgarh
3. Tahsildar Dhamdha, Tahsil Dhamdha, District Durg, Chhattisgarh
4. Naib Tahsildar Ahiwara, Tahsil Ahiwara, District Durg, Chhattisgarh
5. Gram Panchayat Murmunda, Post Office Murmunda, Tahsil Dhamdha, District Durg, Chhattisgarh
6. Narayan Prasad Gayakwad S/o Nanakchand Gayakwad, Aged About 43 Years, R/o Murmunda, Police Station Nandini Nagar, Tahsil Dhamdha, District Durg, Chhattisgarh

---- **Respondents**

For Petitioner	:	Mr. C. Jayant K. Rao, Advocate
For State	:	Mr. Anshuman Shrivastava, P.L.

Hon'ble Shri Justice P. Sam Koshy
Order On Board

28.02.2020

1. The challenge in the present writ petition by the petitioners is to the notices collectively marked as Annexure P-1 which have been issued on 18.02.2020 by the respondent no.4 for removal of the encroachment.
2. The grievance of the petitioners is that the petitioners in the instant case have not been noticed by the respondent authorities nor have the respondents initiated any proceedings under the provisions of the Chhattisgarh Land Revenue Code before issuing the notice of eviction. According to the petitioners, if they were encroachers, even then the respondent authorities ought to have first resorted to the provisions of law required before initiating eviction proceedings. Counsel for the petitioners referred to the order passed by this Court in WPC No. 141/2017 decided on 19.01.2017 and the order passed by the Division Bench of this Court in WA No. 139 of 2017 decided on 12.04.2017.
3. On the previous date of hearing, this Court had directed the State counsel to seek instruction and produce the records in respect of one of the cases to ascertain whether any proceeding has been drawn by the authorities concerned before issuance of Annexure P-1 dated 18.02.2020 subsequent to the disposal of WPC No. 141/2017 on 19.01.2017.
4. Today, when the matter is taken up, State counsel produced before this Court a copy of the proceedings drawn in each of the cases. State counsel has also produced before this Court the entire record of the

proceeding drawn by the respondent no.4 under the provisions of the Chhattisgarh Land Revenue Code. Proceeding further reveals that in the said proceeding an order has been passed as early as on 17.04.2017 (the dates may differ in the case of other similarly placed persons) where the petitioners have been held to be encroachers and fine was also imposed upon them. The petitioners herein were duly noticed in the said proceeding as would be evident from perusal of the order sheets which bear the signature of the petitioners. Moreover, the fine amount imposed vide order dated 17.04.2017 was also deposited by the respective petitioners.

5. Given the said facts what is reflected is that the order passed by the respondent no.4 directing the petitioners to evict the premises treating them to be encroacher has not been challenged further by any of the petitioners before the SDO under the provisions of the Land Revenue Code neither have any of the petitioners approached the writ court or any other court promptly against the said order passed by the Naib Tahsildar. It is only now after about three years when the respondents again issued a notice on 18.02.2020 that the present writ petition has been filed.
6. State counsel, at this juncture, submits that the original petitioner in WPC No. 141/2017 Narayan Prasad Gayakward had meanwhile filed another writ petition before this Court i.e. WPC No. 388/2020 where this Court had on 29.01.2020 asked the State counsel to seek instruction in this regard and the respondents seems to have initiated proceedings which now is under challenge before this Court.
7. Considering the aforesaid factual matrix of the case, it would be

relevant at this juncture to take note of the directions given by this Court on 19.01.2017 while disposing of WPC No. 141/2017 which is reproduced hereinunder:

“5. Considering the entire facts situation of the case, the writ petition is disposed of with direction to the Collector, Durg to depute the concerned SDO (Revenue) to conduct investigation and submit report regarding encroachment of Government land at village Murmunda, Tehsil Dhamtari, District Durg. Thereafter, based on the said report, the appropriate authority shall initiate steps for removal of encroachment, if any, and inform the concerned Collector about the steps taken. The Collector shall see to it that the orders passed by this Court is duly complied with.”

8. The petitioners herein who were aggrieved by the said directions of the Hon'ble Single Judge had preferred a writ appeal i.e. WA No. 139/2017. The writ appeal came up for hearing on 12.04.2017 and while disposing of the writ appeal the Hon'ble Division Bench affirming the order of the Hon'ble Single Judge on 12.04.2017 held as under:

“5. ...The direction in the impugned judgment is to conduct investigation regarding encroachments on Government lands. That direction cannot be faulted because it is the bounden duty of the Revenue Authorities to ensure that the Government lands are not encroached upon. Obviously, the report adverse to the interest of any occupier of encroached land would come only if there is really an encroachment by any such person. Further, no action will follow against any person who is an encroacher except in accordance with law. This being the position in law, the direction contained in the impugned judgment only means that the encroachments, if any, will have to be identified by the jurisdictional SDO who may be directed by the Collector, Durg and legal proceeding can then be initiated by the Governmental Authorities in accordance with law and the relevant statutory provisions to dispossess the trespassers and remove encroachments. Obviously, if any person found to be in occupation, is entitled to an opportunity to show cause and to be heard, in terms of applicable laws. Those provisions will have to be complied with by the statutory authorities. The Impugned judgment can be worked out on the basis of the clarification issued here in above.”

9. A plain reading of the observations made by the Hon'ble Single Judge as well as by the Hon'ble Division Bench in the writ appeal would clearly reflect that the State authorities had been granted liberty to proceed in accordance with law and to take appropriate steps. The respondent authorities now have produced the proceedings drawn under the Land Revenue Code which shows that each of the petitioners were given notices and they had entered appearance before the Naib Tehsildar and participated in the proceedings and only then the proceeding initiated by the Naib Tehsildar was finalized. Surprisingly, though the order was passed in the year 2017 in respect of each of the petitioners asking them to evict the premises and also imposing fine upon them, none of the petitioners have preferred any appeal against the order of the Naib Tehsildar. For reasons best known the petitioners slept over their right for all these period. It is now, for the first time after about 3 years that the petitioners have again approached this Court for appropriate orders to be passed showing sympathy to the petitioners.
10. A perusal of the order of the Division Bench while disposing of the writ appeal would clearly reflect that the Division Bench in paragraph-5 had specifically observed that the statutory remedies available to each of the petitioners on individual basis will stand left open to be exercised by each of the petitioners. In spite of this specific observation made by the Division Bench none of the petitioners thought it fit for challenging the order passed by the Naib Tehsildar before the competent Court of law under the Land Revenue Code.
11. Given the said fact that the petitioners have not availed the statutory

remedy available to them at the appropriate time and approaching this Court by way of the present writ petition after a period of about 3 years is not at all justifiable in any manner. Entertaining a writ petition at this juncture would amount to showing undue sympathy to the petitioners who were otherwise indolent on their right to appeal for all these period. Moreover, even in this petition the order of 2017 is not under challenge.

12. The writ petition for the aforesaid reasons would not be maintainable and the same deserves to be and is accordingly rejected.
13. However, rejection of the writ petition would not preclude the petitioners to avail other remedies open to them under the statutory law, if it so permits.

**Sd/-
P. Sam Koshy
Judge**