

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 301 of 2020**

{Arising out of Order dated 05.03.2020 passed in Writ Petition (C) No. 823 of 2020 by the learned Single Judge}

1. Atmaram Yadu S/o Ramji Yadu, aged About 32 Years R/o Village Hathidob, Post Gadadih, Tahsil Saja, District Bemetara Chhattisgarh
2. Bhukhan S/o Raghbar, aged About 60 Years R/o Village Hathidob, Post Gadadih, Tahsil Saja, District Bemetara Chhattisgarh

---- Appellants

Versus

1. State of Chhattisgarh, through the Secretary, Department of Revenue and Disaster Management, Mantralaya, Mahanadi Bhawan Naya Raipur District Raipur Chhattisgarh.
2. Collector Bemetara District Bemetara Chhattisgarh
3. Sub Divisional Officer (Revenue) Saja District Bemetara Chhattisgarh
4. Tahsildar, Saja, District Bemetara Chhattisgarh
5. Renu Yadu W/o Saroj Yadu Ex-Sarpanch, Village Hathidob, R/o Village Hathidob, Tahsil Saja, District Bemetara Chhattisgarh
6. Prafull Rajak Tahsildar, Saja District Bemetara Chhattisgarh
7. Station House Officer, Police Station Parpodi, District Bemetara Chhattisgarh

---- Respondents

For Appellant	:	Shri Varun Sharma, Advocate.
For State/Respondents No. 1 to 4 and 7	:	Shri Chandresh Shrivastava, Deputy Advocate General

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board**Per P.R. Ramachandra Menon, Chief Justice****03.07.2020**

1. Interference declined by the learned Single Judge with regard to the grievance projected by the writ petitioners, is subjected to further scrutiny in appeal.

2. Heard Shri Varun Sharma, the learned counsel for the Appellants as well as Shri Chandresh Shrivastava, the learned Deputy Advocate General representing the State.

3. The writ petition was filed with the following prayers:

“(i) To kindly direct the respondents State Government and respondent revenue authorities to restore the possession of the petitioners by rebuilding the hut of the petitioner.

(ii) To kindly direct the respondent Tahsildar Saja to compensate the petitioners for the loss of their dwelling house and occupation.

(iii) To kindly pass suitable strictures against the respondent Tahsildar, Saja and direct the State Government to initiate departmental action against the Tahsildar for conduct unbecoming of Public Servant.

(iv) To kindly make any other order that may be deemed fit and just in the facts and circumstances of the case including awarding of the costs to the petitioner.”

4. The learned counsel for the Appellants submits that the Appellants had preferred a complaint against the 5th Respondent as to the encroachment made by her, to the District Collector, on 22.07.2019 which was directed to be enquired into. After enquiry by the 6th Respondent (the Tahsildar), who is impleaded in the personal capacity, submitted a report to the Collector on 21.08.2019 that the encroachment had already been removed. According to the Appellants, the 5th Respondent preferred a false complaint thereafter, alleging that the Appellants had encroached on the Government property and were making huts which were to be removed. After registering a case by the Tahsildar in this regard, the proceedings were pursued further and the alleged case of encroachment was vividly sorted out and ordered removal within four days as per the proceedings dated 08.11.2019. It is the case of the Appellants that a statutory appeal has been preferred before the Sub Divisional Officer (Revenue), which however is still pending. The learned

counsel submits that the huts belonging to the Appellant have already been caused to be removed and they have been dispossessed, which is against the rule of law and hence sought to be interdicted by filing the writ petition.

5. When the writ petition was taken up for consideration, the learned Single Judge observed that the relief sought for in the writ petition was not liable to be entertained because of the possible factual disputes involved. It was also observed that the Petitioners had chosen to approach this Court by filing the writ petition only in the month of December, 2019; whereas the cause of action had arisen in the month of November, 2019. The observations made by the learned Single Judge in paragraph 3 are relevant and hence it is reproduced below:

"3. Perusal of the pleadings would reveal that entire action on the part of the respondent No.4 was of the period November, 2019 and writ petition now is being filed in the month of February, 2020. Since the entire demolition work has already been undergone by the respondent No.4 and from the pleadings it appears that petitioners had made their houses/huts on the Aabadi land, there was no allotment of land to the petitioners, thus this Court is of the opinion that the relief sought for by the petitioner at this juncture are one which are disputed question of fact and which would require recording of evidence for reaching to an appropriate conclusion. Such exercise cannot be done while entertaining the writ petition under Article 226."

6. The learned counsel asserts that the appeal preferred against the order passed by the Tahsildar is still pending before the Sub Divisional Officer (Revenue). The learned counsel representing the State submits that, if the appeal is pending, the same will be caused to be considered on merits and a reasoned order will be passed with reference to the actual facts and figures and the relevant provisions of law.

7. In the above circumstances, we do not find it as a fit case to interfere. The appeal stands dismissed without prejudice to the rights and liberties of the Appellant to pursue the appeal which is stated as pending

before the Sub Divisional Officer (Revenue). It is also made clear that no opinion is being expressed with regard to the nature of the land or the houses/huts stated as constructed. It is for the competent authority to consider all the relevant facts in accordance with law, untrammelled by the observations if any, in the judgment.

Sd/-

(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE