**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WPC No. 1362 of 2020**

Rambilas Agrawal S/o Late Shri Ramgopal Agrawal Aged About 76 Years R/o Mill Para Durg, District Durg Chhattisgarh, Presently At Flat No. 305, Sky Garden, Avanti Vihar, Raipur, Tehsil And District Raipur Chhattisgarh.

**---- Petitioner**

**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Urban Administration And Development, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh.
2. The Collector Durg, District Durg Chhattisgarh.
3. Naib Tahsildar (Nazul) Durg, District Durg Chhattisgarh.

**---- Respondents**

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| For Petitioner | : | Mr. Ashish Surana, Advocate |
| For State | : | Ms. Sunita Jain, G.A. |

**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**29/06/2020**

1. The challenge in the present writ petition is to the order Annexure P/1 dated 15.06.2020, passed by the respondent No.3-Naib Tehsildar (Nazul), Durg. Vide the said impugned order the respondents have issued a notice to the petitioner offering him Bhumiswami right over the property in possession of the petitioner measuring 1395 sq.mtrs. of land situated at nazul sheet No. 31-B, plot No. 9.

2. According to the petitioner, it was an Abadi Land originally. However, in the year 1979, it was converted into a Nazul Land. He further submits that in the year 2009, the petitioner had moved an application for grant of permanent Nazul Patta, for which the respondents had registered the revenue case and proceeded in accordance with the provisions of the Land Revenue Code and Revenue Book Circular. He further submits that without adopting the usual procedure for determining the

said application, abruptly the impugned order Annexure P/1 has been issued.

3. The contention of the petitioner is that by way of Annexure P/1, it is reflected as if the petitioner is an encroacher upon the said piece of land, which he is otherwise not. According to the petitioner, he has in his possession sufficient documents including receipts of payment of tax to the respondents in respect of use of the said land, which he is in possession since 1949, as such he is not an encroacher. The further contention of the petitioner is that even the amount quantified by the respondents in Annexure P/1 is at 152%, which is applicable only in the event of an encroacher, whether the petitioner is an encroacher or not, has not been adjudicated upon by the authorities, neither has he been given an opportunity to defend his case before the authorities to establish that he is not an encroacher. According to the petitioner, if he is found not an encroacher, then the rate applicable would be 102% and not 152%, which is applicable only in the event of encroachment. He further contended that so far as issuance of permanent Nazul Patta is concerned, the said guidelines of the State Government may in fact not be applied at all. It would be simply in accordance with the provisions of the Chhattisgarh Land Revenue Code. For this also there has been no adjudication or any inquiry done or atleast the petitioner has not been given an opportunity to lead evidence.

4. The State counsel on the other hand opposing the petition submits that from the order sheet, it appears that the notice Annexure P/1 has been issued only with an intention of giving an opportunity to the petitioner to accept the offer that has been made by the State Government of getting the Bhumiswami right over the said property subject to the

petitioner paying the amount of fees as stipulated therein. According to the State counsel, it is a proceeding going on for quite sometime and he is being represented before the authorities by Lawyer and therefore it cannot be said that he was not given an opportunity or the order has been passed behind the back of the petitioner.

5. Having heard the counsel appearing for the parties and perusal of the order sheet of the proceedings would show that there has been no inquiry prima-facie conducted to reach to a conclusion, whether the petitioner is an encroacher or not. The petitioner also does not seem to have been given an opportunity to lead evidence to show that he has sufficient materials of the land having being either allotted to him at any point of time or he is in possession of the said property before 1950. Further, it also appears that the authorities have not considered the aspect that the petitioner has paid certain taxes regularly to the respondents to determine whether he is an encroacher or not.

6. Under the aforesaid circumstances, this Court is of the opinion that ends of justice would serve if the matter is remitted back to the respondent No.3 for proceeding afresh in the matter from the stage the inquiry proceedings stood as on 05.06.2020 and pass an order at the earliest. While determining the case, the authorities are required to firstly hold as to whether they intend to grant permanent patta to the petitioner or not, secondly, whether the petitioner, pending the proceedings for grant of patta can be offered Bhumiswami right over the said property, thirdly, whether the petitioner has been found to be an encroacher over the said property and lastly whether the petitioner fall in the category who has to pay 152% for getting a Bhumiswami right or whether he would fall in the category, who are required to pay

@ 102% or any other rates applicable. All these aspects is not evident from the proceedings drawn by the authorities, therefore, it is expected that the respondent authorities shall pass a fresh order keeping all these facts in mind, till then as an interim measure the impugned notice Annexure P/1 shall not be acted upon.

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

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

Ved