

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 1718 of 2020**

Prakash Yadav, S/o Shri Tiju Ram Yadav, Aged About 55 Years R/o
Bhandari Para Kanker, District North Bastar Kanker Chhattisgarh

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Revenue, Secretariat, Mahanadi Bhawan, Atal Nagar, Raipur Chhattisgarh
2. The Collector, District North Bastar Kanker Chhattisgarh
3. The Tahsildar, Kanker, District North Bastar Kanker Chhattisgarh
4. Municipal Council, Kanker, Through Its Chief Municipal Officer, Kanker, District North Bastar Kanker Chhattisgarh

---- **Respondents**

For Petitioner	:	Mr. Sandeep Shrivastava, Advocate
For State	:	Mr. Anand Verma, Dy. GA
For Res. No.4	:	Mr. U.N.S. Deo Advocate

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

27/08/2020

1. The challenge in the present writ petition is to the notice Annexure P-3 dated 17.06.2020 passed by the respondent No.4 calling upon the petitioner to vacate the alleged encroachment that has been made on the land situated at Bhandaripara Ward, in Maradev Talab.
2. Counsel for the petitioner submits that property belongs to the petitioner by way of a patta which has been issued to him in his favour under the Rajiv Gandhi Ashray Yojna issued in his favour wayback in the year 2003. Since then, the petitioner is in possession

of the said land. He further submits that in between the petitioner since he had gone out of the State for earning his livelihood, the said property was entrusted to one Shri Ajay Gupta as a care taker and since then the Ajay Gupta is taking care of the property. According to the petitioner since he has got patta in his favour issued for a plot area of 286 square feet, he cannot under any circumstance declared as an encroacher and the impugned notice therefore is bad in law.

3. Counsel for the respondent No.4 representing the authority who had issued the notice submits that the impugned notice has been issued to one Ajay Gupta whereas the present petition has been filed by Mr. Prakash Yadav. Therefore the petition itself is not maintainable at the first instance. It is clearly contended by Mr. Dev that the alleged encroachment made by the petitioner is upon the pond situated in the Bhandaripara Ward known as Maradev Talab at Kanker and therefore in the light of the judgment of the Supreme Court in the case of **Jagpal Singh & Others Vs. State of Punjab & Others, (2011) 11 SCC 396** and other judgments of similar nature the notices have been issued with an intention to restore the condition of the pond to its natural condition as it stood prior to encroachment being made. Counsel for the respondent No.4 also submits that as of now it is only a notice which has been issued to the petitioner he has all rights to approach the authorities and convince them by submitting documentary proof to show that he has not encroached over the said land but has a rightful claim over the said property.
4. Having heard the contentions put forth on either side and on perusal of records, admittedly there is a patta in favour of the petitioner for a

plot area of 286 Sq. Ft. Plot issued under the 'Rajiv Gandhi Ashray Yojna'. The patta was issued in favour of the petitioner with certain conditions.

5. Subsequently, it appears that property was being taken care of by one Shri Ajay Gupta though petitioner claims that Ajay Gupta is only the care taker of the petitioner, which is subject matter of verification by the authorities.
6. Rightly or wrongly since there is a patta duly issued to the petitioner and petitioner occupying only the limited area which has been allotted to him by way of patta, it needs to be considered and decided whether still the petitioner can be held to be an encroacher or not, unless the patta duly issued is canceled or the renewal of the same is rejected.
7. Given the fact, this Court is of the opinion that writ petition itself can be disposed of directing the petitioner to approach respondent No.4 by submitting reply to the notice Annexure P-3 within a period of 10 days from today supported with all documentary proof available with him including the fact as to whether he could under the Rajiv Gandhi Ashray Yojna hand over the property to Shri Ajay Gupta for its maintenance etc. and respondent No.4 shall duly scrutinize the same and then pass an appropriate order and if required necessary assistance for enquiry can be taken from the Revenue Authorities, and thereafter take appropriate decision in accordance with law at the earliest.
8. Till respondent No.4 takes a decision on the said application to be filed by the petitioner within a period of 10 days from the date of

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receipt of this order, no coercive steps shall be taken by the respondent No.4 pursuant to Annexure P-3.

9. The writ petition accordingly stands disposed of.

Sd/-
(P. Sam Koshy)
Judge

Rohit