

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1793 of 2020**

Harmeet Singh Chawla @ Raju S/o Late Gyan Singh, Aged About 58 Years, R/o Ward No. 13, Stationpara, Mahasamund, District Mahasamund, Chhattisgarh

---- Petitioner

Versus

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

---- Respondents

For Petitioner	:	Mr. B. P. Sharma, Advocate
For State	:	Mr. Vivek Ranjan Tiwari, Addl. A.G.
For Respondent no.3	:	Mr. Sudeep Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****13.08.2020**

1. The challenge in the present writ petition is to the order Annexure P-5 dated 07.08.2020 issued by the respondent no.3 whereby the respondents have directed the petitioner to remove the illegal construction constructed over Khasra No. 71/16 by the petitioner.
2. The contention of the counsel for the petitioner is that the property is not an 'Abadi land' as claimed by the respondents, rather it is a 'Bhumiswami land'.

3. Perusal of the writ petition would show that except the petitioner paying some tax to the local bodies, there is no proper documents produced by the petitioner to establish that he is the title holder of that property nor is there any document produced by the petitioner to show as to how he has come in possession over the said property. The petitioner himself in his petition has pleaded that the property at one point of time stood in the name of one Ramdayal and the said Ramdayal or his legal heirs must be the title holder of the said property. The actual title holder of the said property has not questioned the action on the part of the respondents.
4. Now, whether the property is an 'Abadi land' or a 'Bhumiswami land' is a disputed question of fact and which would require recording of evidence as also adducing of evidence by either side to determine the same. The High Court in exercise of its writ jurisdiction would not be in a position to decide the title rights of the disputing parties. The remedy available and open to the petitioner would have been approaching the concerned Civil Court by filing a Civil suit in this regard.
5. Another aspect which needs consideration is the fact that the petitioner himself in a series of correspondences (which are part of the pleadings) to the respondents have accepted in writing that the property is a Abadi land. If that be so there is a self contradiction in the stand of the petitioner as to the nature of the property.
6. The contention of the learned counsel for the petitioner that the Courts are closed and therefore he has rushed to the High Court is not acceptable for the reason that all the district Courts have been instructed to entertain the urgent matters and which they are

entertaining. This Court does not find any good reason why the Civil Court should not hear the matter as an urgent case if the petitioner moves an application for interim injunction along with the suit.

7. Moreover, this Court is also reluctant to entertain the writ petition for the reason that perusal of the impugned order Annexure P-5 would show that the petitioner earlier was noticed on 30.06.2020 and also on 10.07.202 but has now rushed to the High Court at this stage when Annexure P-5.
8. Counsel for the respondent no.3 has also categorically stated that the house of the petitioner and the iron staircase which have been illegally constructed by the petitioner on the pathway as of now would not be demolished or removed. It is only the temporary sheds illegally constructed by the petitioner which would be removed. Learned counsel appearing for the respondent no.3 submits that he has received instruction from the Municipal Commissioner to say that the Municipal Council as of now intends to demolish only the illegal Tin shed which has been constructed by the petitioner over the said property and which is causing hindrance to a majority of villagers who are residing behind the property and this land is the right of way to those villagers. He further submits that the said property is a 'Abadi' land.
9. The counsel for the Respondent No.3 has also made a submission that in the month of June itself the Respondents had visited the site and a Panchnama was prepared in the presence of the petitioner and other villagers and in which the petitioner had accepted to remove the temporary structure as and when asked by the Respondents. This

preparation of the Panchnama has not been disclosed by the Petitioner anywhere in the Petition thereby making material suppression of facts.

10. Given the said additional submission by the counsel for the respondent no.3, this Court does not find any strong case made out by the petitioner to interfere with the impugned notice. The writ petition accordingly stands dismissed.

11. It is made clear that the reluctance of this Court in entertaining the writ petition would not come in the way of the respondents in deciding the application for settlement of that property moved by the petitioner on its own merits.

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