

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2713 of 2020

1. Gulam Dewangan S/o Budaru Dewangan Aged About 60 Years R/o Village And Post Jaibel, Block And Tahsil: Bakawand, Thana Karpawand, District : Bastar(Jagdalpur), Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through its Secretary, Department Of Revenue, Mantralaya, Mahanadi Bhawan, Atal Nagar Nawa Raipur , District : Raipur, Chhattisgarh
2. Commissioner, Bastar Division, Jagdalpur, District Bastar Chhattisgarh
3. Collector, District Bastar Chhattisgarh
4. Tahsildar, Bakawand, District : Bastar(Jagdalpur), Chhattisgarh
5. Gram Panchayat Jaibel-2, Through Its Sarpanch, Gram Panchayat Jaibel-2, Tahsil Bakawand, District : Bastar(Jagdalpur), Chhattisgarh

----- Respondents

For Petitioner	:	Mr. Vinod Deshmukh, Advocate
For State	:	Mr. Vivek Ranjan Tiwari, Addl. A.G.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06.11.2020

1. The grievance of the petitioner in the present writ petition is the alleged inaction on the part of the respondent no. 5 in starting certain construction activities over the agricultural land which is in possession of the petitioner for more than last five decades.
2. The counsel for the petitioner submits that the petitioner is residing on the said land for more than 50 years and his family members are in possession of the land situated at Khasra No. 217, Rakba 1.02 hectare,

situated at Village:Jaibel-2, Tahsil: Bakawand, District: Bastar. The grievance of the petitioner is that recently the panchayat got bifurcated and the new panchayat office bearers with malafide intentions have started certain construction activities over the property belonging to the petitioner. It was the contention of the petitioner that immediately when the panchayat authorities started interfering with the peaceful possession, the petitioner moved an application before Tahsildar for grant of appropriate Bhoomi Swami Right under the provision of ***M.P. Krishi Prayojan Ke Liye Upayog Ki ja Rahi Dakhal Rahit Bhoomi Par Bhoomiswami Adhikaron Ka Pradan Kiya Jana (Vishesh Upabandh) Adhiniyam, 1984***. The Tahsildar at the first instance has rejected the application vide his order dated 21.07.2020.

3. Against the said order of the Tahsildar, the petitioner has preferred a revision petition before the Court of the Commissioner, Bastar Division. The Commissioner at the first instance admitted the revision petition and has granted interim protection vide order dated 04.08.2020 (Annexure P-6). Thereafter the Office of the Commissioner- Bastar Division is lying vacant and on account of non availability of a presiding officer, at the said place. Because of the nonavailability of a presiding officer , the revision petition could not be taken up for hearing again nor the interim protection granted by the Commissioner be extended further. The respondent no. 5 in spite of fully knowing the fact that the Commissioner has already granted an interim protection to the petitioner has again started construction activities and are trying to take advantage of the position of non-availability of the presiding officer/Commissioner.
4. Given the said factual matrix of the case, this Court is of the opinion that on account of office lying vacant for some reason, should not be used by

the authorities to frustrate the claim of the applicant.

5. In the instant case, from the pleading at least it reflects that there was a revision preferred by the petitioner and there is also an interim protection granted in his favour on 04.08.2020. Thereafter on account of non-availability of the presiding officer, the matter is lying unattended. That being the situation, in all fairness the respondents including the respondent no. 5 are supposed to abide by the order passed by the Commissioner on 04.08.2020 unless the same is vacated or the revision is decided against the petitioner. On account of non-availability of the presiding officer, the respondent no. 5 is again trying to take advantage of the situation and tried to frustrate the revision petition itself.
6. Only on this limited factual matrix, this Court would like to dispose off the writ petition at this stage, directing the respondent authorities including the respondent no. 5 from not carrying out any further construction activities on Khasra No. 217, measuring 1.02 hectare, Village: Jaibel-2, Tahsil: Bakawand, Bastar Division claimed to be in their possession of the petitioner for the last 50 years. The said interim protection would only be to the extent till the presiding officer is appointed or assumes his duties.
7. It is also made clear that this Court has not expressed any opinion on the merits of the case; so far as the entitlement of the petitioner is concerned in the revision petition.
8. With the aforesaid direction, the present writ petition stands disposed off.

Sd/-
(P. Sam Koshy)
Judge