

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2846 of 2020**

Santosh @ Dikendra Thakur S/o Late Nand Kishore Thakur Aged About 53 Years R/o Ward No. 5, Rajendra Nagar, Bastar, P. S. Bastar, District Bastar 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 Chhattisgarh
3. Sub Division Officer, Bastar, Jagdalpur Chhattisgarh
4. Tahsildar, Tahsil -Bastar, District : Bastar Chhattisgarh
5. Fatte Singh Parihar S/o Pratap Singh R/o Village Basatr, P.S. Bastar, Tahsil And District Bastar

---Respondents

For Petitioner : Shri Neeraj Choubey, Advocate.

For Respondents/State : Shri Gagan Tiwari, G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

17/11/2020

Heard.

1. Learned counsel for the petitioner would submit that dispossession order was passed by the Tahsildar on 08/01/2019 (Annexure P-2) which was subject of challenge before the SDO and the SDO by order dated 25/04/2019 (Annexure P-3) has dismissed the appeal filed by the petitioner.

Against such order the petitioner has preferred a second appeal before the Commissioner. The Commissioner by order dated 02/07/2020 (Annexure P-4) has stayed the implementation of the dispossession order of the SDO as the order of Tahsildar merged into it. Subsequently the said dispossession order was further stayed by the Commissioner on 27/07/2020 and after continuation of stay the case was fixed for 22/09/2020. Thereafter the case was fixed for 23/11/2020 for further hearing, however because of the fact that court of the Commissioner was not available the case of the petitioner could not be heard. Under these background, the Tahsildar is implementing its initial order to dispossess the petitioner. It is stated since the Commissioner was not available the petitioner cannot be made to suffer as initial stay order order against dispossession was passed in favour of the petitioner.

2. Perusal of the record would show that against the order of the Tahsildar for dispossession dated 08/01/2019 first appeal was preferred by the petitioner before the SDO. The SDO by its order dated 25/04/2019 affirmed the order of the Tahsildar, thereby order of the Tahsildar merged into. Subsequently, against the order of SDO the petitioner preferred second appeal wherein on 02/07/2020 (Annexure P-4) stay order was passed by the Commissioner in his favour which was further extended on 27/07/2020. The case was fixed lastly on 22/09/2020. Thereafter, the application filed by the petitioner would reveal that the case was further fixed from 22/09/2020 to 23/11/2020 and the petitioner preferred an application to extend the stay order as the court of Commissioner was not available it could not be done by appellate order. Perusal of the record therefore would show that since the Commissioner

was not available, stay order could not be extended for want of availability of the authority.

3. Under these facts, when the authority who is to adjudicate the right of the parties are not available, then the parties cannot be made to suffer. Under these circumstances, as the act of court cannot be made to harm the litigant, it is directed that till the second appeal by the Commissioner is decided on merits, the order of the SDO dated 25/04/2019 and the order of the Tahsildar dated 08/01/2019 shall remain stayed.
4. With such observation, the petition stands disposed of.

Certified copy today.

Sd/-

(Goutam Bhaduri)
Judge