

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 439 of 2020**

(Arising out of the order dated 27.11.2020 passed by the learned
Single Judge in WPC No.3003/2020)

- Rameshwar Singh Mandavi (S.T.), S/o Late Mayaram Mandavi
aged about 67 years, R/o Lal Bahadur Shashtri Ward No.08,
Lalbagh, Jagdalpur, District Bastar Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh, through the Principal Secretary,
Revenue / Disaster Management Department, Mantralaya,
Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur
Chhattisgarh.
2. Collector, Jagdalpur, District Bastar (CG)
3. Tahsildar, Jagdalpur, District Bastar (CG)
4. Sub Divisional Officer P.W.D. (B&R), Sub Division No.1,
Jagdalpur District Bastar (CG)

---- Respondents

For Appellant	:	Mr. T.K. Jha, Advocate
For Respondents	:	Mr. Ashish Tiwari, Govt. Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board**Per Parth Prateem Sahu, J****03/12/2020**

1. Challenge in this appeal is to the order dated 27.11.2020
passed by the learned Single Judge dismissing writ petition
filed by petitioner/appellant challenging the notice dated
17.11.2020 (Annexure P-1 to writ petition).
2. Mr. T.K. Jha, learned counsel for petitioner/appellant submits
that the learned Single Judge failed to see that respondent
No.3 in the garb of the notice dated 17.11.2020 (Annexure P-1

to writ petition) addressed to Smt. Jabita Mandavi, daughter of appellant, is trying to demolish the construction raised by petitioner/ appellant, which is not the part of government accommodation bearing No.E4, Civil Lines, Lal Bagh, Jagdalpur. He further contended that when the notice is addressed to Smt. Jabita Mandavi, then why it has been served upon petitioner/ appellant. Further, the notice dated 17.11.2020 has been issued by the office of the Sub-Divisional Officer, Public Works Department (B&R), Jagdalpur, who is not having jurisdiction to remove any encroachment from the government lands. It is also contended by learned counsel that the learned Single Judge has not taken into account the documents placed on record as Annexure P-2 i.e. copies of property tax receipts & electricity bills, showing that possession / construction raised by the petitioner is legal.

3. Per contra, Mr. Ashish Tiwari, learned counsel representing the State that notice (Annexure P-1 to writ petition) is only under challenge in the writ petition, which has been issued to Smt. Jabita Mandavi, the then President of Jila Panchayat, Jagdalpur, who is in occupation of government accommodation in question and raised illegal construction thereon. Noticee in notice dated 17.11.2020 has not approached this Court but the notice is put to challenge by petitioner/ appellant who cannot be treated as 'aggrieved party'. He further contended that a show-cause notice under Section 248 (1) of the Chhattisgarh Land Revenue Code, 1959 (for short 'the Code of 1959') was also

issued by the Court of Tahsildar (Nazul), Jagdalpur to the appellant for removing the encroachment made on the government land, which is not under challenge in present proceeding. Appellant has been directed in the said notice to appear before the said Court on 12.11.2020 and to make his submissions, but neither he appeared nor filed reply before the said Court and has directly approached this Court. He submits that there is absolutely no merit in the appeal and the appellant does not deserve any indulgence.

4. We have heard learned counsel for the parties and perused the record.
5. Perusal of notice (Annexure P-1 to writ petition) would show that it was issued on 17.11.2020 by the Sub-Divisional Officer, Public Works Department, Jagdalpur to one Smt. Jabita Mandavi calling upon her to remove illegal construction made by her in the government accommodation allotted to her at one point of time. The Noticee in Annexure P-1 has not filed writ petition challenging notice Annexure P-1, nor the appellant has placed on record any power of attorney executed by said Noticee in his favour authorizing him to file proceeding before this Court challenging the notice issued to her. When the notice under challenge is not addressed to the appellant, he cannot be treated as 'aggrieved person'. More so, when he himself stated that he is not in occupation of the accommodation mentioned therein. Further, there is no authorization by the noticee by executing power of attorney in favour of appellant,

hence writ petition filed by appellant itself was not maintainable, the learned Single Judge was perfectly justified in holding that petitioner/appellant is not an aggrieved party.

6. When this Court pin-pointedly asked from learned counsel for appellant with regard to document Annexure P-7 to writ petition which is notice issued to him under Section 248 (1) of the Code, 1959, he submits that on account of serious illness, the appellant could not appear before the Tahsildar (Nazul), Jagdalpur on the date mentioned therein i.e. on 12.11.2020. We find it difficult to accept the said submission made by learned counsel for the appellant for the reason that notice issued to the appellant has not been put to challenge by him although the same has been annexed along with writ petition as Annexure P-7. Further, this notice has been issued on 06.11.2020, which was received by him, for his appearance on 12.11.2020, but instead of filing reply to this notice, appellant has approached this Court by filing writ petition on 25.11.2020. When the appellant is able to travel from Jagdalpur to Bilaspur (more than 300 km) for filing writ petition on 25.11.2020, then it cannot be accepted that due to illness, the appellant could not appear and file reply before the Tahsildar on the scheduled date. Appellant has not even placed on record any material substantiating his plea of illness, except a letter addressed to the Tahsildar, Nazul, Jagdalpur to the effect that due to ill health, he could not appear on the date of hearing. But, this letter seeking exemption from personal appearance is of

22.6.2016 and was written by the appellant in reference to the notice dated 14.6.2016 issued by the Tahsildar (Nazul), Jagdalpur calling upon the appellant to appear before him on 23.6.2016 at 11.00 a.m. It appears that since then for one reason or other, the case could not be concluded.

7. For the foregoing reasons, we do not find any infirmity in the order impugned dismissing writ petition filed by petitioner/appellant. Appeal being devoid of substance is liable to be dismissed and is hereby dismissed.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge