

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Judgement Reserved on 05.02.2020****Judgment Delivered on 18/05/2020****WA No. 593 of 2019**

(Arising out of the order dated 24.10.2019 passed by learned Single Judge in WPC No.3163/2018)

1. Bhagwat Sahu S/o Rewaram Sahu, aged about 40 years Sarpanch of Gram Panchayat Dharasiw, Up Tahsil Bhatgaon, Tahsil Bilaigarh, District Balodabazar Bhatapara (CG)
2. Barat Ram Yadav, S/o Ghasiram Yadav, aged about 60 years, R/o Village Dharasiw, Up Tahsil Bhatgaon, Tahsil Bilaigarh, District Balodabazar Bhatapara (CG)
3. Laxmidhar Yadav, S/o Mahettar Yadav, aged about 40 years, R/o Village Dharasiw, Up Tahsil Bhatgaon, Tahsil Bilaigarh, District Balodabazar Bhatapara (CG)
4. Bhojram Patel, S/o Shiv Chand, aged about 40 years, R/o Village Dharasiw, Up Tahsil Bhatgaon, Tahsil Bilaigarh, District Balodabazar Bhatapara (CG)
5. Lochram Patel, S/o Shiv Chand, aged about 45 years, R/o Village Dharasiw, Up Tahsil Bhatgaon, Tahsil Bilaigarh, District Balodabazar Bhatapara (CG)

**---- Appellants****Versus**

1. Noni Bai, D/o Shri Chheduram, aged about 50 years, R/o Village Dharasiw, Up Tahsil Bhatgaon, Tahsil Bilaigarh, District Balodabazar Bhatapara (CG) Petitioner
2. State of Chhattisgarh, Through Collector, Balodabazar, District Balodabazar Bhatapara (CG)
3. Mamta Singh Thakur, Naib Tahsildar, Up Tahsil Bhatgaon, Tahsil Bilaigarh, District Balodabazar Bhatapara (CG)
4. Sub Divisional Officer (R), Bilaigarh, District Balodabazar Bhatapara (CG)
5. Naib Tahsildar, Up Tahsil Bhatgaon, Tahsil Bilaigarh, District Balodabazar Bhatapara (CG)

**---- Respondents****WA No. 594 of 2019**

(Arising out of the order dated 24.10.2019 passed by learned Single Judge in WPC No.3163/2018)

- Mamta Singh Thakur Naib Tahsildar, Up Tahsil Bhatgaon, District Baloda Bazar Bhatapara, Chhattisgarh

**---- Appellant**

### Versus

1. Noni Bai D/o Shri Chheduram, aged about 50 years, R/o Village Dharashiw, Up Tahsil Bhatgaon, Tahsil Bilaigarh, District Baloda Bazar Bhatapara Chhattisgarh.

Petitioner

2. State of Chhattisgarh, Through Collector, District Baloda Bazar Bhatapara Chhattisgarh.

**Respondent No.1**

3. Bhagwat Sahu, Sarpanch of Gram Panchayat Dharashiw, Up Tahsil Bhatgaon, Tahsil Bilaigarh, District Baloda Bazar Bhatapara Chhattisgarh.

**Respondent No.3**

4. Barat Ram Yadav, S/o Ghasiram Yadav, R/o Dharashiw, Up Tahsil Bhatgaon, Tahsil Bilaigarh, District Baloda Bazar Bhatapara Chhattisgarh.

**Respondent No.4**

5. Laxmidhar Yadav, S/o Mahettar Yadav, R/o Dharashiw, Up Tahsil Bhatgaon, Tahsil Bilaigarh, District Baloda Bazar Bhatapara Chhattisgarh.

**Respondent No.5**

6. Bhojram Patel, S/o Shiv Chand, R/o Dharashiw, Up Tahsil Bhatgaon, Tahsil Bilaigarh, District Baloda Bazar Bhatapara Chhattisgarh.

**Respondent No.6**

7. Lochram Patel S/o Shiv Chand R/o Dharashiw, Up Tahsil Bhatgaon, Tahsil Bilaigarh, District Baloda Bazar Bhatapara Chhattisgarh.

**Respondent No.7**

8. Sub Divisional Officer (R), Bilaigarh, District Baloda Bazar Bhatapara Chhattisgarh.

**Respondent No.8**

9. Nayab Tahsildar Up Tahsil Bhatgaon, District Baloda Bazar Bhatapara, Chhattisgarh.

**Respondent No.9**

**---- Respondents**

#### **WA No.593/2019**

|                            |   |                                       |
|----------------------------|---|---------------------------------------|
| For Appellants             | : | Mr. CJK Rao, Advocate                 |
| For Respondent No.1        | : | None.                                 |
| For Respondent No.2, 4 & 5 | : | Mr. Vikram Sharma, Dy. Govt. Advocate |
| For Respondent No.3        | : | Mr. P.K. Bhaduri, Advocate.           |

#### **WA No.594/2019**

|                            |   |                                       |
|----------------------------|---|---------------------------------------|
| For Appellants             | : | Mr. P.K. Bhaduri, Advocate            |
| For Respondent No.1        | : | None                                  |
| For Respondent No.2, 8 & 9 | : | Mr. Vikram Sharma, Dy. Govt. Advocate |
| For Respondent No.3 to 7   | : | Mr. CJK Rao, Advocate                 |

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

**CAV ORDER**

**Parth Prateem Sahu, J**

1. Since the above two appeals arise out of the common order dated 24.10.2019 passed by the learned Single Judge in WPC No.3163/2018, the same are being decided by this common judgment.
2. Finding recorded by learned Single Judge that the residential house of petitioner/respondent No.1 cannot be demolished in the manner and procedure adopted by the Naib Tahsildar and granting compensation to petitioner for alleged demolition of her house, is put to challenge in Writ Appeal No.593/2019. Whereas, appellant in Writ Appeal has challenged the observation made by the learned Single Judge in the impugned order to the effect that it will be open for the Government to recover the amount of Rs.5,00,000/-, awarded as compensation to petitioner, from her after constituting a departmental enquiry against her.
3. Facts of the case, in nutshell, are that vide registered sale deed dated 24.3.1979, one Chheduram, son of Ramdayal, had purchased the land measuring 2,400 sq. ft., out of the total land measuring 1.92 hectare, of Khasra No.17, situate at village Dharasiv, Janpad Panchayat Bilaigarh, District Balodabazar Bhatapara, from its erstwhile owners Smt. Prabha Devi & Kumari Indra (henceforth 'the said land'). In the said sale deed,

it has been mentioned in the description of land that house, courtyard & kitchen garden are constructed over the said land. On 18.5.1990, Sukhwara Bai, wife of said Chheduram, had executed a Will in favour of her daughter Nonibai i.e. petitioner/respondent No.1, in respect of her land, house & kitchen garden constructed thereon (disputed land). The villagers of village Dharasiv wrote letter dated 11.12.2017 to the Sub Divisional Magistrate, Bilaigarh mentioning therein that about 13-14 years back said Chheduram had gifted the aforementioned land to the Radha Krishna Temple and the villagers wanted to construct 'Dharamshala & Bhogshala (Dining Hall)' over the said land. However, since one Lakeshwar Patel (husband of petitioner Nonibai), who is in possession of said land, is not vacating the same, the villagers are finding it difficult to raise construction over the said land. Respondent No.3 passed order dated 10.2.2018 and called upon said Lakeshwar Patel to remove the encroachment over the land in question within three days, failing which the same shall be removed by the government at his expenses. When said Lakeshwar Patel did not comply with the order dated 10.2.2018, the Naib Tahsildar, Bhatgaon issued the dispossession warrant as per order dated 12.2.2018 and pursuant to which, he was dispossessed on 15.2.2018 by demolishing his superstructure over land in dispute.

4. After demolition of residential house & superstructure, the Gram Panchayat Dharasiv started raising permanent

construction. Aggrieved against the said construction, petitioner/respondent No.1 filed an application before the Sub-Divisional Officer, Bilaigarh seeking stay on the construction activities going on upon the land in question. The Sub-Divisional Officer vide order dated 23.4.2018 stayed further construction activities till disposal of said matter. Thereafter, the petitioner filed a writ petition before the High Court seeking compensation of Rs.6,00,000/- for illegally demolishing her house.

5. Respondent No.1, 8 & 9 have filed their joint reply to the petition, whereas respondent No.2 and respondent Nos.3 to 7 have filed their separate reply to the writ petition.
6. Learned Single Judge after hearing both the sides, allowed the writ petition by the impugned order and directed the State Government to pay an amount of Rs.5,00,000/- as compensation to petitioner / respondent No.1 and further granted liberty to the State Government to recover the said amount from the respondent No.2 (appellant in WA No.594/19) after constituting a departmental enquiry against her for the illegality committed by her.
7. Appellants in WA No.593/19 have filed appeal on the ground that proper opportunity of hearing by issuing show cause notice has been provided to the petitioner before demolishing house in question and as such, there is no illegality in the proceedings commenced by the Gram Panchayat and the revenue

authorities; the land in question belonged to the Gram Panchayat as the same was gifted/donated by the father of petitioner/ respondent No.1, who was legal owner of the land in question and had executed the Gift Deed in favour of Radha Krishna Temple in presence of a Notary Public; petitioner/respondent No.1 has not produced any document establishing her ownership or the fact of transfer of ownership of said land in the name of Sukwara Bai, mother of petitioner; and that the issue involved in the present case is purely of a civil nature, which can only be decided by a competent civil Court after recording evidence.

8. Appellant in WA No.594/19, who is respondent No.2 in writ petition, filed the appeal on the ground that learned Single Judge erred in holding that appellant had acted with malice by taking note of the fact that the proceeding drawn on declared holidays i.e. Sunday & 2<sup>nd</sup> Saturday. He submits that any act only on the ground that it has been done on holiday cannot become invalid and the same is protected under Section 8 of the CG General Clauses Act. Appellant acted as per orders of her superiors and passed the order of demolition after following the procedure established in this regard i.e. by issuing notice to the petitioner and her husband. Two parallel proceedings cannot be initiated as against the demolition the petitioner has already filed proceeding before the Sub-Divisional Officer (Revenue), which is not permissible, and this fact has not been considered by learned Single Judge while deciding writ petition.

As per report submitted by the Revenue Inspector to the SDO (R), the land in question was transferred by said Chheduram in favour of the Gram Panchayat in the year 2003 through a notarized document, which contains signature of Sukhwara Bai, Nonibai & Lakeshwar Patel as well. Will of the year 1990 is a suspicious document. No document or proceeding of any court has been placed on record showing transfer of land in dispute in favour of said Sukhwara Bai or relinquishment of right over it by Chheduram and unless & until the property is validly transferred in the name of Sukhwara Bai, she could not have executed any Will. No right & title of the petitioner has been created on the said land, therefore, the impugned order granting compensation for alleged illegal demolition of the house constructed over the land in question is liable to be interdicted.

9. Mr. Rao, learned counsel representing appellants in WA No.593/19, submits that the land in dispute and the permanent structure standing thereon, which is said to be illegally demolished, was owned by Chheduram as he had purchased the said property, as pleaded by petitioner herself. Said property was gifted to Radha Krishna Temple by Chheduram vide notarized document dated 2.11.2003 and being so, the petitioner was in unauthorized possession of the land in question. The Gram Panchayat had resolved to dispossess petitioner from the land in question and accordingly an application in this regard was filed before the Sub-Divisional

Officer (R), Bilaigarh. Demolition of the house was by virtue of the order passed by the Naib Tahsildar after initiating proceedings and issuance of notice to said Lakeshwar Patel. Appellants have not acted illegally but the proceedings have been drawn by the competent authority after issuance of notice to the husband of petitioner, who was in unauthorized possession of house constructed over the land in question. He submits that learned Single Judge has not taken note of the fact that the property has been transferred to Radha Krishna Temple and there was no admissible piece of evidence showing transfer of property in the name of petitioner.

10. Mr. Bhaduri, learned counsel appearing on behalf of appellant in WA No.594/19 submits that appellant acted on the directions issued by her superior officers. Respondent No.2 after receiving direction from the SDO (R), issued notice of hearing to the husband of petitioner, who refused to accept notice and thereafter the order of demolition / removal of construction standing over the land in question was passed by appellant. There is no illegality of any nature whatsoever on the part of appellant as she has acted on the instructions received by her from the superior officers. Learned counsel further pointed out that merely because the order sheets were recorded on declared holidays, it cannot be presumed that the appellant has acted with any malice or that she has passed the order by not following due procedure of law. Hence, the direction issued by the learned Single Judge for holding departmental enquiry

against her is not warranted in the given facts of case. The execution of Will in the year 1990 by Sukhwara Bai is a suspicious document as on that day Sukhwara Bai was not having any right over the land in dispute.

11. We have heard learned counsel for the parties and also perused the record.

12. Ownership of Chheduram is not disputed by both the parties to writ appeals. Possession of Nonibai & Lakeshwar over the land in question and house constructed thereon, which was demolished on 15.2.2018 as per pleadings made by appellants in appeals and replies filed to writ petition, has also not been disputed. Dispute raised is only with respect to entitlement of Sukhwara Bai to execute Will in favour of petitioner in the year 1990.

13. Perusal of the documents annexed as Annexure R-1 along with reply filed by respondent Nos.3 to 7 would show that Gram Panchayat has issued a notice to Lakeshwar Patel calling upon him to remove his possession from the land in question as the same has been gifted to Radha Krishna Temple, Dharasiv. It also demonstrates that in the light of notarized consent letter dated 22.11.2003 executed by Chheduram, a resolution was passed unanimously by the Gram Panchayat, Dharasiv in its meeting dated 12.12.2017 for removal of illegal occupation & possession of said Lakeshwar Patel over the land in question. The Sarpanch and other members have also written a letter to

the Sub-Divisional Magistrate, Bilaigarh on 11.12.2017 for removal of encroachment over the land in question. It has been mentioned in the said letter that about 13-14 years back, Chhdeduram had gifted/ donated the disputed land to Radha Krishna Temple and the villagers wanted to construct Bhogshala & Dharamshala over it. However, said Lakeshwar Patel has been illegally possessing the said land and not vacating the same despite repeated requests by the villagers. Notarized document dated 22.11.2003 has also been filed as Annexure R-2 and Clause-4 of said document states that Chheduram had gifted the land of Bada to the villagers for Radha Krishna Temple and if the land mentioned in the notarized deed is not used by the villagers for the purpose for which it is gifted, then Chheduram will continue to be the owner of the same.

14. From the contents of the documents discussed in the above paragraph, the position that emerges is that the land in question belonged to Chheduram. Lakeshwar Patel, husband of Nonibai, and Noni Bai were in possession of the land in question by constructing a residential house thereon. On the basis of notarized document dated 22.11.2003, styled as 'इकरारनामा सहमति-राजीनामा', the villagers including Sarpanch of Gram Panchayat submitted an application/letter before the Sub Divisional Magistrate, Bilaigarh claiming possession of the land in question, which is subject matter of dispute. When it is not disputed by any of the parties that Chheduram was the

exclusive owner of the land in question and structure constructed thereon, though it is an abadi land reserved for residential purpose, and Chheduram had purchased the said land from its erstwhile registered owners vide registered sale deed, in that circumstance it is clear that there was no dispute regarding encroachment of government land between the government and the petitioner or her husband. Even perusal of proceeding as contained in Annexure R-5, which is said to be drawn by respondent No.2 (appellant in WA No.594/19), reveals that application was moved by Sarpanch of Gram Panchayat (appellant No.1 in WA No.593/19) stating that land of Bada was gifted to Radha Krishna Temple on which Lakeshwar Patel is in possession with a house and application has been filed treating possession of Lakeshwar as encroachment.

15. From the above facts, it is clear that the property in question was of the ownership property of Chheduram and therefore there was no direct dispute between the State Government and the petitioner or her husband, but there appears to be dispute of ownership between two private persons i.e. petitioner, who is in possession of property and claiming title through a Will deed executed by Sukhwara Bai, wife of Chheduram, in her favour, and the villagers, who are claiming right on the strength of a notarized document alleging it to be a gift deed.
16. Respondent No.2/Appellant in her capacity as a 'Revenue Officer' has drawn revenue proceeding and passed the order of

removal of encroachment under Section 248 of the Code of 1959. The question which arises for consideration of this Court is whether respondent No.2/ appellant could have exercised her jurisdiction in the light of the facts emerging from the pleadings of the respective parties i.e. petitioner as well as respondents?

17. Section 111 of the CG Land Revenue Code, 1959 (for short 'the Code of 1959') provides that civil Courts shall have jurisdiction to decide any dispute to which the State Government is not a party relating to any right. Claim of the villagers is claim of title, which is apparent from their pleadings and the documents relied upon by them in their reply to writ petition. Proceeding under Section 248 of Code, 1959 could not have been drawn in an application filed by a private person who holds any land in *abadi* area. Section 246 of the Code, 1959 reads thus;-

“246. Subject to the provision of section 244 every person who at the coming into force of this Code lawfully holds any land as a house site in the *abadi* or who may hereafter lawfully acquire such land shall be a Bhumiswami in respect of such land;

Provided that the allotment of house site under Gramin Avas Yojna to a landless person on or after the commencement of the Chhattisgarh Land Revenue Code (Amendment) Act, 1973 shall be subject to the following conditions :-

- (i) that the allottee shall build a house on such land within a period of five years from the date of allotment;

(ii) that the allottee shall not transfer the land allotted to him or his interest therein during a period of ten years from the date of allotment;

(iii) that in case of breach of any of the above conditions the land shall vest in the State Government with effect from the date of breach.”

It is not in dispute that the property in question is situated in *abadi* area and that said Chheduram was the owner of the same.

18. It is settled law that the revenue authorities do not have jurisdiction to decide dispute of title between parties, whereas from perusal of the order sheets recorded by the Naib Tahsildar (respondent No.2), it is clear that the proceeding started on the application of the Sarpanch of Gram Panchayat Dharasiv claiming title over the land in question on the basis of a gift deed. Respondent No.2 could not have acted upon such application and ought to have relegated the parties to approach the civil Court of competent jurisdiction.

19. Admittedly, the house constructed over the land in question was demolished within a period of seven days from the date of issuance of notice i.e.10.2.2018, as per Annexure P-5. The order sheet has been recorded for issuance of notice to the husband of petitioner for deposit of fine amount and for removal of permanent construction. As per order sheet dated 12.2.2018, it was recorded that as non-applicant refused to

accept the notice, therefore, it was affixed on wall and thereafter on 15.2.2018 it was recorded that the warrant of dispossession has been complied with.

20. Now coming to the arguments advanced by learned counsel for appellant in WA No.594/19 i.e. respondent No.2-Naib Tahsildar, who has ordered for demolition of house, that there was no malice on the part of respondent No.2 in passing order of dispossession and therefore the direction issued by learned Single Judge for holding departmental enquiry is not sustainable. This argument is to be considered in the light of documents placed on record by the parties. While issuing direction to hold departmental enquiry against the appellant, the learned Single Judge has taken note of the fact that there is overwriting in the dates mentioned in the order sheets and that the dates on which first and second order sheets were recorded were holidays being Sunday & Second Saturday. The finding recorded by learned Single Judge reads as under;-

“12. Copy of the notice issued by the Naib Tahsildar in the name of Lakeshwar Patel was, in fact, issued on 28-2-2018 (Annexure – P/4) whereas according to the respondents such notice was issued on 28-1-2018 vide order sheet (Annexure – R/5). The order sheet Annexure – R/5 does not inspire confidence as it carries over writing and interpolation at several places. The Revenue Case mentioned as 26/A-68 Year 2017-18 carries over writing. Thereafter, both the dates of 28-1-2018 & 8-2-2018 mentioned in the first order sheet contains over writing. The computer printing of the dates mentioned the month as March, 2018 which has been over written on the top to write 28-1-2018 and at the bottom to mention 8-2-2018. Calender of January, 2018 shows 28-1-2018 as a Sunday, similarly 10-2-2018 being Second Saturday is also the State Government's Gazetted holiday. Thus, the office of

Naib Tahsildar, Up Tahsil Bhatgaon appears to have functioned on two holidays i.e. firstly on Sunday and thereafter on Second Saturday, which is impossible. The order sheets therefore, appear to be manufactured and concocted to make out a case for an illegal and arbitrary action.”

21. Learned Single Judge has not directed for recovery of amount of compensation payable to petitioner from respondent No.2, rather left it open for the State Government to recover the same from respondent No.2, if they chose so, but only after holding a departmental enquiry against respondent No.2.
22. So far as the submission of Mr. Bhaduri relating to Section 8 of the Chhattisgarh General Clauses Act, is concerned, it is no doubt that it protects the administrative act or judicial act, which is done on holidays, but the language used in Section 8 of the CG General Clauses Act by itself is clear that for that reason only, the order, administrative or judicial, passed will not invalidate it. Section 8 of the CG General Clauses Act reads as under:-

**“8.Act done on public holiday not invalid.** - Any act done by any authority, whether judicial or executive on a day which is a public holiday shall not be invalid by reason only of its having been done on that day.”

23. Normally, the government offices are closed on declared holidays, but even then the authority can exercise its jurisdiction for special reason to be recorded to meet the extraordinary circumstances. Before us, learned counsel has neither argued nor placed any material showing special reason

or extraordinary circumstance under which appellant Revenue Officer had drawn proceedings on declared holidays.

24. Learned counsel representing appellants in both the appeals have not raised any other ground, except the grounds discussed in preceding paragraphs.

25. In view of above we do not find any infirmity in the order impugned or any tenable ground calling interference with the impugned order.

26. The appeals fail and are accordingly dismissed.

Sd/-

(P.R. Ramachandra Menon)  
Chief Justice

Sd/-

(Parth Prateem Sahu)  
Judge

roshan/-