

HIGH COURT of CHHATTISGARH, BILASPUR

Judgment reserved on 03.01.2020

Judgment pronounced on 14.02.2020

WA No. 622 of 2019

(Arising out of order dated 16.10.2019 in WPC- 3667 of 2019)

- Sarpanch, Gram Panchayat, Bhilai, Block, Bemetara, Dist.Bemetara (CG)

---- Appellant

Versus

1. State of Chhattisgarh Through Collector, Bemetara, Chhattisgarh
2. Collector, Tah and Dist Bemetara, Chhattisgarh

-----Respondents

For Appellant : Shri Viprasen Agrawal, Advocate
For Respondents/State : Shri Chandresh Shrivastava,
Deputy AG

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
CAV Judgment

Per Parth Prateem Sahu, J.

1. Challenge in this Writ Appeal is to the order dated 16.10.2019 passed by the learned Single Judge wherein learned Single Judge declined to interfere with the two orders dated 13.08.2019 passed by the Collector, District Bemetara and the Sub-Divisional Officer (Revenue), Bemetara, District Bemetara dated 22.06.2019 and dismissed the Writ Petition.
2. Facts of the case, in a nutshell, are that the villagers of Bilai made a complaint to the Collector in 'Jandarshan Program' that the Sarpanch of village Panchayat, Bilai, District Bemetara, contrary to the resolution passed for allotment of 'Abadi Patta' (residential patta) of government land

for the purpose of construction of house, has allotted most of the pattas to different persons than mentioned in the earlier resolution passed by village Panchayat. The complaint was marked by the Collector to the SDO(Revenue) for enquiry. After receiving the complaint, the SDO issued notice to the Sarpanch, Bilai and also conducted enquiry. He found that 'Abadi Pattas' have been allotted to 90 other persons apart from the eligible persons identified and mentioned in the resolution of the village Panchayat. Those 90 persons have not been identified by the village Panchayat and selected to be house-less and on that count, invoking jurisdiction under Section 85 of the Panchayat Raj Adhiniyam, 1993 (for brevity, Adhiniyam 1993) Resolution No.9 dated 17.12.2018 identifying 121 beneficiaries was suspended vide order dated 22.06.2019.

3. The order dated 22.06.2019 passed by the SDO (Revenue) suspending the resolution dated 17.02.2018 was forwarded to the Collector and the Collector approved/confirmed the order of the SDO vide its order dated 13.08.2019 in terms of Section 85(2) of the Adhiniyam 1993.. This order of the Collector was challenged by the appellant by filing a Writ Petition before this Court.

4. The learned Single Judge after considering the submissions made by learned counsel for the petitioner therein and also considering the facts and circumstances of the case, dismissed the Writ Petition observing that the beneficiaries to whom Abadi Patta was allotted by the resolution dated 17.12.2018 and the affected persons, have not approached the authorities or this Court and neither the Gram Panchayat that passed resolution was

aggrieved with the order passed by the SDO or the Collector, dismissed the Writ Petition.

5. Learned counsel for the appellant submits that while passing of order of suspension of resolution of allotment of Government land/Abadi Patta to poor persons, no proper enquiry was conducted by the authority as required under Section 88 of Adhiniyam 1993, no opportunity of hearing has been provided to the appellant by SDO(Revenue) before passing the order dated 17.12.2018. It is also pointed out that the Collector has not issued notice to village Panchayat for hearing before passing order Annexure P1 as envisaged under Section 85 of the Adhiniyam 1993.

6. Shri Chandresh Shrivastava, learned counsel for the State Submits that the order of suspension is passed in accordance with the provision of law. The persons for whom the resolution was passed for allotting Patta are not the petitioners and considering the facts of the case, learned Single Judge rightly dismissed the Writ Petition.

7. We have heard learned counsel for the respective parties.

8. Section 85 of Adhiniyam 1993 envisaged that the prescribed authority by an order in writing and for the reasons to be stated therein suspend the execution of any resolution passed, order issued, license or permission granted or prohibit the performance of any act by Panchayat. The SDO (Revenue) after receiving the complaint, forwarded to him from the office of the Collector had enquired into the issue.

9. During the proceedings of enquiry, show cause notice was issued to the Sarpanch, to which he submitted reply on 21.06.2019 and thereafter, SDO had passed an order of suspension of resolution dated 17.12.2018. The resolution dated 17.12.2018 is with regard to allotment of Abadi Patta of Government land for residential purpose to residents of the village Panchayat, Bilai.

10. Perusal of Annexure P2 order of SDO (Revenue) and order-sheet (Annexure P3) recorded by the SDO would show that Show cause notice was issued to Sarpanch before passing an order of suspension of resolution and the reply was also submitted by him, records were also perused and the villagers have also been heard by the SDO. In view of the aforementioned facts available on record of Writ Petition, the submission made by learned counsel for the appellant that proper opportunity was not provided to him by the SDO is not sustainable.

11. So far as the other ground raised by learned counsel for the appellant that the enquiry has not been conducted in accordance with the provisions of Section 88 of the Adhiniyam 1993 is concerned, the provision of Section 88 itself provides for the enquiry to be conducted by any of its Officers authorised by the State Government and under the proviso to Section 88 of the Adhiniyam 1993, if the Collector causes an enquiry into the activities of the Gram Panchayat, the enquiry is to be conducted by an Officer, not below the rank of Class II.

12. In the case at hand, enquiry has been conducted by the SDO (Revenue) and that too, invoking the provisions of Section 85 of the

Adhiniyam 1993 which envisages that the State Government or the prescribed authority may exercise their jurisdiction for suspending the resolution. SDO is prescribed authority for Gram Panchayat/village Panchayat as notified vide notification dated 13.05.2003 issued under Section 2 of the Adhiniyam 1993.

13. In the instant case, the Collector directed the SDO (Revenue) to conduct enquiry, whereby the requirement of Section 88 of the Adhiniyam 1993 is complied with and the order of suspension of resolution dated 17.12.2018 has been passed by the prescribed authority ie SDO for village Panchayat under the Adhiniyam 1993 after issuing notice to appellant, being so requirement of Section 85 of the Adhiniyam 1993 with respect to the authority prescribed therein for passing an order of suspension of resolution is also fulfilled.

14. One of the grounds which has been raised by the learned counsel for the appellant is that the Collector has no power to confirm the order of prescribed authority after lapse of 10 days. This submission of learned counsel for the appellant is misplaced because Section 85 of the Adhiniyam 1993 casts duty upon the prescribed authority to forward its order to the competent authority forthwith and in no case later than 10 days. It is not the case of appellant that the SDO (Revenue) has not forwarded its order of suspension of resolution within 10 days to the Collector but his argument is that the Collector could not have decided the issue after lapse of 10 days. There is no such limitation or binding period prescribed for passing an order by the Collector under Section 85 of the

Adhiniyam 1993. This submission made by learned counsel for the appellant is also not sustainable.

15. The last submission of the learned counsel for the appellant that the Collector has not complied with the provision of Section 85 of the Adhiniyam 1993 in its entirety while passing the order Annexure P1 appears to have some force. For better understanding of the provision of Section 85 of the Adhiniyam 1993, it is extracted here below :

“85. Power to suspend execution of orders etc. - (1) The State Government or the prescribed authority may by an order in writing and for reasons to be stated therein suspend the execution of any resolution passed, order issued, license or permission granted or prohibit the performance of any act by a Panchayat, if in his opinion,-

(a) such resolution, order, License, permission or act has not been legally passed, issued, granted or authorised;

(b) such resolution, order, License, permission or act is in excess of the powers conferred by this Act or is contrary to any law; or

(c) the execution of such resolution or order, or the continuance in force of such license or permission or the doing of such act is likely,—

(i) to cause loss, waste or misapplication of any money or damage to any property vested in the Panchayat;

(ii) to be prejudicial to the public health, safety or convenience;

(iii) to cause injury or annoyance to the public or any class or body of persons; or

(iv) to lead to a breach of peace.

(2) Whenever an order is made by the prescribed authority under subsection (1), it shall forthwith and in no case later than ten days from the date of order, forward to the State Government or the Officer nominated by the State Government for this purpose, copy of the order with the

statement of reasons for making it, and the State Government or the officer nominated by it may confirm, set aside, revise or modify the order or direct that it shall continue to be in force with or without modification permanently or for such period as may be deemed fit :

Provided that no order of the prescribed authority passed under sub-section (1) shall be confirmed, set aside, revised or modified by the State Government or the officer nominated by it without giving the Panchayat concerned a reasonable opportunity of being heard against the proposed order.”

16. Proviso to sub-Section 2 of Section 85 of the Adhiniyam 1993 clearly mandates that the State Government or the Officer nominated by it to give reasonable opportunity of hearing against the proposal/order placed before him for consideration for confirmation or passing some other appropriate order on it. If any statute envisaged the procedure to be followed by the authority exercising his jurisdiction under it, then he is incumbent to give effect to the provision of the statute in that manner only. He is not permitted to act according to his own choice.

17. Annexure P1 is the order of Collector confirming the order of SDO(Revenue) but from bare reading of it, appears that the Collector has not taken the recourse of the proviso to get sub-Section 2 of Section 85 of the Adhiniyam 1993. It only mentions that order of SDO dated 22.06.2019 is placed before him for confirmation and he confirmed the same.

18. When under the law it is specifically provided that the order of confirmation is to be passed only after providing reasonable opportunity of being heard then, the Collector was bound to issue notice to the Panchayat before passing order dated 13.08.2019. It appears from the

order that no such proceeding was drawn by him. The Collector committed an error in not drawing the proceeding as mandated under Section 85 of the Adhiniyam 1993.

19. The SDO(Revenue) issued notice to the Sarpanch of village Panchayat Bilai, he appeared and submitted reply before the SDO. The Sarpanch being the party, to the proceeding before SDO (Revenue) as he was given notice and heard by the authority, can also maintain the petition, if there is any flaw in the proceedings drawn under Section 85 of the Adhiniyam 1993.

20. In view of the above, we are of the opinion that Annexure P1 order dated 13.08.2019 is not sustainable in law which is liable to be and is hereby set aside.

21. The Collector is directed to pass appropriate order in terms of Section 85(2) of the Adhiniyam 1993 after affording reasonable opportunity of hearing to the village Panchayat within a period of two months from the date of production of copy of the judgment of this Court.

22. In view of the above, the appeal is allowed in part in the terms mentioned above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge