

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 182 of 2020**

Radheshyam Singh Rajput S/o Shri Mohan Singh, Aged About 53 Years, R/o Village Parpoda, Teh. Berla, Police Station Berla, District Bemetara, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Panchyat And Social Welfare Department, Mantralaya, New Raipur, Chhattisgarh
2. Commissioner Of Durg Division, District Durg, Chhattisgarh
3. Collector/ District Magistrate, District Bemetara, Chhattisgarh
4. Sub Divisional Magistrate (Revenue) Berla, District Bemetara Chhattisgarh
5. Chief Executive Officer, Janpad Panchayat, Berla, District Bemetara Chhattisgarh
6. Kamalnarayan Rajput S/o Shri Taran Singh Rajput, Aged About 60 Years, R/o Village Parpoda, Post Office Mohbatta, Police Station Devkar, Tehsil Berla, District Bemetara, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Ajay Mishra, Advocate
For State/R-1 to 4	:	Mr. Ashutosh Mishra, P.L.
For Respondent no.6	:	Ms. Sharmila Singhai, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****16.01.2020**

1. The challenge in the present writ petition is to the order passed by the

Commissioner, Durg Division dated 12.12.2018 so also the order dated 13.08.2019 passed by the Sub Divisional Officer, Berla, district Bemetara. Vide the impugned order Annexure P-6 dated 12.12.2019 the learned Commissioner has affirmed the order passed by the Collector on 26.08.2019 in an appeal proceeding pending before the Collector i.e. Appeal No. 27/B/121/2018-19.

2. The facts which led to the filing of the present writ petition are that the petitioner was a Sarpanch of Gram Panchayat Parproda, Tahsil & Block Berla, district Bemetara. The Sub Divisional Officer vide order dated 13.08.2019, exercising the powers under Section 40 of the Panchayat Raj Adhiniyam removed the Sarpanch from the post and also ordered for recovery against the petitioner.
3. Against the said order of removal, the petitioner preferred an appeal before the learned Collector along with an application for interim relief. The Collector vide order dated 26.08.2019 Annexure P-2 admitted the appeal, however, refused to grant interim protection to the petitioner. Against the refusal to grant interim protection the petitioner preferred a revision before the Commissioner, Durg Division vide Revision Case No. 270B-121/2018-19. The Commissioner initially granted an interim protection in favour of the petitioner vide order dated 29.08.2019 and ordered for listing the revision on merits.
4. Meanwhile, the respondent no.6 filed a writ petition before this Court i.e. WPC No. 3662/2019 challenging the action of granting interim relief by the Commissioner. This Court did not entertain the writ petition and disposed of it directing the Commissioner to decide the revision itself at the earliest preferably within 45 days.

5. Pursuant to the order passed by this Court on 16.10.2019 in the aforesaid writ petition, the Commissioner has now passed an order dated 12.12.2019 Annexure P-6 rejecting the interim application of the petitioner seeking stay of the order of the Collector and has disposed of the revision directing the Collector to decide the appeal on merits. It is this order which is under challenge in the present writ petition.
6. The contention of the petitioner is that once when the Commissioner at the first instance had granted interim relief in his favour vide order dated 29.08.2019, the Commissioner should have ordered for maintaining the same status till the Collector would have decided the appeal on merits. According to the petitioner, even otherwise since the appeal has been admitted by the Collector, the petitioner is entitled for interim protection or else the very purpose of filing the appeal would get frustrated. Thus, prayed for an appropriate direction to that extent.
7. Perusal of the order passed by the Commissioner dated 12.12.2019 Annexure P-6 it would clearly reveal that the learned Commissioner has passed a reasoned order giving reasons not to interfere with the order passed by the Collector dated 26.08.2019. The learned Commissioner has also in his order held that the power so exercised by the Collector in rejecting the interim application of the petitioner being a discretionary power, there is hardly any scope left for interference. Moreover, the learned Commissioner has also considered the order passed by the Collector on its merit and found that there is no illegality, arbitrariness or contravention of any rule provision as it stands.
8. Given the aforesaid finding by the learned Commissioner, this Court does not find any illegality per se in the order passed by the

Commissioner on 12.12.2019.

9. Accordingly, the writ petition being devoid of merits stands dismissed.

However, it is ordered that the Collector who is seized of the appeal may decide the same objectively at the earliest. The rejection of this writ petition would not preclude the petitioner from availing appropriate further relief that he wants to seek in the appeal pending before the appellate authority.

**Sd/-
P. Sam Koshy
Judge**