

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 355 of 2015

Reserved on : 06.08.2021

Delivered on : 25.10.2021

1. Bharat Verma, S/o Chandu Verma, Aged About 55 Years.
2. Gopal Verma, S/o Chandu Verma, Aged About 50 Years.
3. Baldau Verma, S/o Chandu Verma Aged About 52 Years.
4. Deleted (Ramesh) as per Hon'ble Court's Order dated 08.08.2021.

All by occupation- Agriculture, R/o Ramhepur, Police Station- Bodla, Tahsil- Kawardha, Civil & Revenue District- Kabirdham (C.G.)

---- Petitioners

Versus

1. Kejha, S/o Konda, Aged About 46 Years, Caste- Gond.
2. Konda, S/o Chhotu Dhurve, Aged About 60 Years, Caste- Gond.
Both by occupation- Agriculture, R/o Ramhepur, Police Station- Bodla, Tahsil- Kawardha, Civil & Revenue District- Kabirdham (C.G.)
3. State of Chhattisgarh, through District Magistrate, Kawardha, District- Kabirdham (C.G.)

---- Respondents

For Petitioners	:	Mr. S.K. Bajpai, Advocate.
For respondent No. 1 & 2	:	Mr. Amit Sahu, Advocate.
For State/ respondent No. 3	:	Mr. Sudeep Verma, Dy. G.A.

Hon'ble Shri Justice Narendra Kumar Vyas

C.A.V. ORDER

1. The petitioners have filed the instant petition challenging the order dated 11/02/2015 passed in Criminal Revision No. 32/2014 by the learned Fast Track Court Additional Sessions Judge, Kabirdham, District- Kabirdham dismissing the revision petition arising out of order dated 03/07/2014 passed in Criminal Case No. 107/2014 by the Sub Divisional Magistrate, Kawardha, whereby the learned Sub Divisional Magistrate has held that

Kejha and another respondent No. 1 & 2 are in actual possession of land situated at Village Ramhepur, bearing Khasra No. 439/1 area 0.45 hectare. The Sub Divisional Magistrate has restrained the petitioners from interfering in the possession of the said land.

2. The facts, as revealed from the records of Sub Divisional Magistrate, Kabirdham (Kawardha), are that the disputed land is ancestral property of the petitioners and they are duly recorded owners of the disputed land. The house of the petitioners is also situated adjacent to the disputed land which is used by them for storage of paira-bhusa, lakdi (wood) and other agricultural articles. Respondent Nos. 1 & 2 with intent to dispossess the petitioners from the land and also to obtain wrongful possession of the land, have started excavation the plinth for construction of the house and for that purpose, they have dumped the bricks on the land owned by the petitioners. The petitioners objected the same. The police Station, Bodla, District- Kawardha lodged Istgasha No. 01/2009 dated 19.05.2009 with regard to the land consequent upon proceedings under Section 145 of the Cr.P.C. has been initiated by the Sub Divisional Magistrate (henceforth 'the SDM'). The SDM, on the basis of Istgasha submitted by the police, passed a preliminary order on 21/05/2009 by issuing a show cause notice to the petitioners and the respondents to submit replies with regard to their claim of actual possession over the land and fixed the case on 11/06/2009.
3. The petitioners submitted their reply contending that respondents, Kejha and Kondha were neither in possession nor owners of the land. The land is an ancestral property of the petitioners and they are in possession of the said property since long. It is also contended that even two months prior to the date of dispute created by the respondents, they were in possession of the land. The respondents with mala-fide intention to grab the land has deliberately raised dispute. It is also contended that a criminal complaint has also been submitted before the Judicial

Magistrate, Kawardha which is pending. Since, the respondents are not in possession of the land, therefore, it may be declared that the petitioners are in actual possession of the land.

4. Respondent Nos. 1 & 2, Kejha and Kondha have filed their reply contending that they are in possession of the disputed land and there is no chance of breach of peace. They are in peaceful possession of the disputed land for the last 56 years, as such, prayed for rejection of the application of the petitioners.
5. The petitioners to substantiate their claim before SDM has examined Bharat, Gopal and Sarju. They have stated that the petitioners are in possession of the disputed land. Respondent Nos. 1 & 2 were never in possession of the disputed land. Even before the date of dispute, the petitioners were in possession of the land. The witnesses have been cross-examined by learned counsel for the respondents and there was no material evidence extracted from their statement to discard the evidence recorded in examination-in-chief. Even in the cross-examination, the witnesses have stated that the petitioners are in possession of the land and the disputed land is recorded on their names and tax of the land is also being paid by them. It has been denied that the disputed land has been sold by Kabivilas to respondent Nos. 1 & 2.
6. Respondent Nos. 1 & 2 have examined witnesses namely Konda, Dukhiram, Daulatram, Gokul and Devsharan. These witnesses have stated that Sunhar, Jarhau and Chotu have purchased the land prior to 55 years and the sale has been finalized in presence of Daulatram and Dukhiram. The sale consideration of Rs. 40/- was paid to Kabivilas and he has handed over the possession of the said land. Since then the family members of Sunhar, Jarahu and Chotu are living in the said land and thereafter, son of Chotu i.e. Konda and his son Khejha are in possession of the land. Respondent No. 2, Konda was cross-examined by the counsel for the petitioners and in the cross-examination he has admitted that “यह सही है कि

विवादित भूमि अनावेदक क्रमांक २ के नाम पर हक़ नाम में दर्ज़ है अनावेदक क्रमांक 2 भारत, गोमनी नाम पर पटवारी अभिलेख में दर्ज़ है"

This witness has further admitted in his cross examination that "यह सही है कि कवर्धा न्यायालय में चल रहे मामला में एवं यहाँ चल रहे मामले में न यह कही लिख कर दिए है और न ही वयान दिए है की विवादित जमीन को कविलास गोरिया से खरीदे है. यह सही है कि किसी भी जमीन को खरीदने के लिए रजिस्ट्री वयनामा व लिखा पड़ी होती है. यह सही है कि 145 के मामले में कोई विवादित जमीन की खरीदी बाबत बैनामा पेश नहीं किया हु. यह भी सही है कि विवादित जमीन हमारे नाम पर दर्ज़ है इस बाबत कोई पटवारी रिकॉर्ड इस मामले में पेश नहीं किये है. यह भी सही है कि कविलास गोरिया से विवादित जमीन खरीदने से आज तक हम लोग अपना नाम दर्ज़ करने के लिए हम लोग किसी भी न्यायालय में मामला मुकदमा नहीं चला है. "

7. The other witness namely Dukhiram has also admitted in his cross-examination that "यह सही है कि विवादित जमीन आज भी अनावेदक क्रमांक २, गोपाल, भारत, बलदाऊ का ही नाम पटवारी अभिलेख में दर्ज़ है. विवादित जमीन का लगान अनावेदक क्रमांक २ पटाते है. में नहीं जानता कि कविलास गोरिया की मौत हो गया है. "
8. During trial before the SDM, the Patwari was also examined who has stated that he had gone for demarcation and the same was prepared by the Revenue Inspector in front of villagers and respondents on 25/05/2009. In cross-examination, this witness has admitted that he cannot explain who is owner and who is in possession of the disputed land. This can be explained by the Revenue Inspector only. It has also been admitted that the demarcation was done in absence of the petitioners and no notice was given to the petitioners by him. He further clarifies that if notice was sent by the Revenue Inspector then he is not aware about the notice.
9. After closure of the evidence, the petitioners and the respondents have also submitted their written submissions reiterating the stand taken by them in their respective claims.
10. The learned SDM vide impugned order dated 03/07/2014 has recorded the finding that respondent Nos. 1 & 2 are in actual

possession of the land, despite the fact that the petitioners names have already been recorded in the revenue record and they are paying taxes of the land. The respondents have been declared to be in actual possession of the land and the petitioners were directed not to interfere in possession of respondent Nos. 1 & 2.

11. The petitioners have challenged this order before the learned Additional Sessions Judge, Kabirdham who by impugned order dated 11/02/2015 has dismissed the revision after recording the finding that as per Section 145 of the Cr.P.C., the SDM has to examine the fact that who is in actual possession of the land prior to two months and as per Exhibit –A/3, Panchnama, that Kejha and Konda are in possession of the land since last 50 years, therefore, there is no irregularity or illegality in the order passed by the SDM which warrant interference in exercise of revisionary power and accordingly, dismissed the revision filed by the petitioners.
12. I have heard learned counsel for the parties and perused the records of SDM, Kabirdham with utmost satisfaction.
13. Learned counsel for the petitioners submits that the learned SDM has not conducted any enquiry with regard to find out who was in actual possession of the disputed land prior to two months the date on which the report of the police officer was received and/or on the date of passing of preliminary order under Section 145 (1) of the Cr.P.C. as such, the order dated 03.07.2014 passed by the SDM is liable to be quashed. The petitioners have challenged the same by filing Revision Petition No. 32/2014 before the Fast Track Additional Sessions Judge, Kabirdham, which has rejected the same without assigning any reason in a mechanical manner. Thus, the orders are liable to be quashed by this Court. He would rely upon the judgment passed by Coordinate Bench of this Court in ***Shradha Mallewar Vs. State of Chhattisgarh***¹ as well as judgment passed by Hon'ble

¹ AIRONLINE 2021 CHH 164

the Supreme Court in ***State of Andhra Pradesh and Others v. Star Bone Mill and Fertiliser***².

14. He would further submit if at any time a man with title of the property was in possession of the said property, the law allows the presumption that such possession was in continuation of the title vested in him and referred to paragraph 21 of the judgment in ***Star Bone Mill (Supra)***, he would submit that it can be presumed that since the names of the petitioners were recorded in the revenue record then possession is, *prima facie*, evidence of ownership, as such, it is quite clear that the petitioners are in continuous possession of the disputed land, therefore, initiation of proceeding under Section 145 of the Cr.P.C is *void ab initio* as there is no dispute with regard to the possession of the property. The dispute created by the respondents and not called for any interference and the learned SDM should have dismissed the application filed by the respondents and should have held that the petitioners are in possession of the land.
15. Learned counsel for the respondents would submit that respondent Nos. 1 & 2 are in possession of the disputed land since long, therefore, no interference is called for in the order passed by the SDM as affirmed by the Revisional Court.
16. From bare perusal of Panchnama prepared on 10/07/2009, it is clear that Panchnama is silent with regard to the fact that who is in possession of the land. From the evidence on record, it is clearly established that before recording of Panchnama, no notice has been issued to the petitioner, therefore, recording of Panchnama without notice to the respondent is illegal as it is very necessary for issuance of notice to all the parties before recording of Panchnama. Thus, Panchnama itself suffers from illegality and is not a reliable document at all. It is vague and bereft of details. Its authenticity and contents have been disputed by the petitioners. The Revenue Inspector has submitted a report on 22/07/2009 wherein it has been observed

² (2013) SCC 319

that in Khasra No. 439/2/3 area 0.08 hectare Kejha, Konda and Chottu are residing, whereas, the dispute between the parties is of Khasra No. 439/1. The records of the SDM would show that respondent Nos. 1 & 2 have not filed any documents that they are owner of the land, whereas the witnesses examined by the respondents have clearly admitted in the cross-examination that father of the petitioners has purchased the land at the cost of Rs. 40/- prior to 55 years, they are paying tax also and the evidence adduced by the petitioners have neither been rebutted by the respondents nor any independent witnesses examined before trial to establish their stands. Despite the clinching evidence with regard to the possession of the petitioners over the disputed land, the SDM had committed illegality in holding that respondents Nos. 1 & 2 are in possession of the land and thereafter the Revisional Court has further committed illegality in dismissing the revision without assigning any reasons, whereas assigning of reasons is very much essential and Hon'ble Supreme Court has deprecated the authorities passing orders without assigning any reason in judgment passed by Hon'ble the Supreme Court in **Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota Vs. M/s Shukla & Brothers**³, has held as under:-

“14. The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the Court should meet with this requirement with higher degree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. The distinction between passing of an

³ (2010) 4 SCC 785

order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders.

15. In the case of Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr. [AIR 1976 SC 1785], the Supreme Court held as under:-

"6.If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. ..."

16. In the case of Mc Dermott International Inc. v. Burn Standard Co. Ltd. and Ors. (2006) SLT 345, the Supreme Court clarified the rationality behind providing of reasons and stated the principle as follows:-

"56. . . Reason is a ground or motive for a belief or a course of action, a statement in justification or explanation of belief or action. It is in this sense that the award must state reasons for the amount awarded. The rationale of the requirement of reasons is that reasons assure that the arbitrator has not acted capriciously. Reasons reveal the grounds on which the Arbitrator reached the conclusion which adversely affects the interests of a party. The contractual stipulation of reasons means, as held in Poyser and Mills' Arbitration in Re, 'proper adequate reasons'. Such reasons shall not only be intelligible but shall be a reason

connected with the case which the Court can see is proper. Contradictory reasons are equal to lack of reasons. . . ."

17. In *Gurdial Singh Fijji v. State of Punjab* [(1979) 2 SCC 368], while dealing with the matter of selection of candidates who could be under review, if not found suitable otherwise, the Court explained the reasons being a link between the materials on which certain conclusions are based and the actual conclusions and held, that where providing reasons for proposed supersession were essential, then it could not be held to be a valid reason that the concerned officer's record was not such as to justify his selection was not contemplated and thus was not legal. In this context, the Court held -

"18... "Reasons" are the links between the materials on which certain conclusions are based and the actual conclusions. The Court accordingly held that the mandatory provisions of Regulation 5(5) were not complied with by the Selection Committee. That an officer was "not found suitable" is the conclusion and not a reason in support of the decision to supersede him. True, that it is not expected that the Selection Committee should give anything approaching the judgment of a Court, but it must at least state, as briefly as it may, why it came to the conclusion that the officer concerned was found to be not suitable for inclusion in the Select List."

This principle has been extended to administrative actions on the premise that it applies with greater rigor to the judgments of the Courts.

18. In *State of Maharashtra v. Vithal Rao Pritirao Chawan* [(1981) 4 SCC 129], while remanding the matter to the High Court for examination of certain issues raised, this Court observed:

"2..... It would be for the benefit of this Court that a speaking judgment is given".

19. In the cases where the Courts have not recorded reasons in the judgment, legality, propriety and correctness of the orders by the Court of competent jurisdiction are challenged in absence of proper discussion. The requirement of recording reasons is applicable with greater rigor to the judicial proceedings. The orders of the Court must reflect what weighed with the Court in granting or declining the relief claimed by the applicant. In this regard we may refer to certain

judgments of this Court.”

17. Therefore, the order passed by the SDM as well as the order passed by Revisional Court in Criminal Revision No. 32/2014 are quashed and it is held that prior to the date of Ishtgasha No. 01/2009 dated 19.05.2009, the petitioners were in possession of the disputed land bearing Khasra No. 439/1 situated at Village- Ramhepur, Tahsil- Kawardha, District- Kabirdham (C.G.).
18. With the above observations and directions, the instant Cr.M.P is allowed.

Sd/-
(Narendra Kumar Vyas)
Judge

Rahul