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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No. 181 of 2019

Purushottam Kumar Joshi, S/o Late Mitraddev Joshi, aged 68 years, Caste Brahmin, R/o Village Dargahan (Charama), District North Bastar, Kanker (C.G.).

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary Home Department, Mantralaya, New Raipur, District Raipur (C.G.).
2. Superintendent of Police, District North Bastar, Kanker (C.G.)
3. Station House Officer, Police Station Charama, District North Bastar Kanker (C.G.).
4. Smt. Nirmala Netam, Sarpanch Gram Panchayat, Village Dargahan, Janpad Panchayat Charama, District North Bastar, Kanker (C.G.).

---- Respondents

For Petitioner : Mr. Sunil Tripathi, Advocate.

For State/Respondents No. 1 to 3 : Mr. Rakesh Sahu, Dy. G. A.

Hon'ble Shri Justice Narendra Kumar Vyas

Order On Board

19.08.2021

(1) The petitioner has filed this writ petition under Article 226 of the Constitution of India against inaction on the part of the respondent authorities, whereby they have not taken any action on the written report lodged by the petitioner against the respondent No. 4 with regard to cognizable offence.

(2) The brief facts as projected by the petitioner are that the petitioner is in lawful ownership and possession over the land bearing Khasra No. 631, area 0.120 hectare situated Patwari Halka No. 11 village Dargahan, North Bastar, Kanker. It is

submitted by learned counsel for the petitioner that adjacent to the petitioner's land, on the two sides government land is situated whereas on the third side is of ownership of forest department. The respondent No. 4 and Tahsildar of the area had sent several notices to the petitioner for removing the alleged encroachment made by him on the government land bearing Khasra No. 628 & 629 by way of setting fencing through wire. Subsequently, the petitioner replied the same stating that he did not encroach over any of the land and he is in peaceful possession of his own land bearing Khasra No. 631, area 0.120 hectare situated at village Dargahan, North Bastar, Kanker. The petitioner has also made an application for demarcation of his land before the Tahsildar, in which, it has been found that petitioner is having possession over his land and has not encroached upon any other adjacent land, thereafter, respondent No. 4 – Sarpanch, Gram Panchayat, Village Dargahan again served the notice to the family members dated 21.12.2018 for removing the alleged encroachment.

(3) Respondent No. 4 has pasted notice on the wall of his house and threatened the family members, this act was informed by the petitioner to the concerned police station on 22.12.2018 but on 23.12.2018 (*Sunday*), which was a holiday, the respondent No. 4 alongwith other 50 members entered into the land of the petitioner unauthorizedly and destroyed the fencing barbed wire and the wall and took away the same, which was objected by the

petitioner and consequently the written complaint was also made before respondent No. 3 on 24.12.2018 but till date no action was taken against the respondent No. 4.

(4) The respondent Nos. 1 & 3 have filed their return in which they have stated that on the basis of the complaint made by the petitioner, investigation has been carried out. Respondent No. 3 had received a memo dated 23.12.2018 from the Office of Tahsildar, Charama, District Kanker wherein it was requested to provide police force to maintain law & order situation at the time of proceeding being done for removing the encroachment of the petitioner on 23.12.2018 at 12.00 hours. It has further been stated that on 23.12.2018 the encroachment done by the petitioner over the aforesaid land has been removed as per the direction of Tahsildar, Charma at the presence of the Police of Police Station Charama, District Kanker (C.G.). The statements of villagers namely Ajita Mandavi, Nirmala Netam (respondent No. 4), Ganesh Kunjam, Sonsai Kunjam, Shivram Sonwani and Ramprasad Gota have been recorded, wherein they have specifically stated that the petitioner has illegally encroached upon the Government land, which was earmarked for road, therefore, the eviction proceeding has been initiated and on 23.12.2018 the said encroachment has been removed by the Gram Panchayat in present of Tahsildar, Charama as well as Police of Police Station, Charama. After due enquiry, it is found that the no evidence

regarding commission of any criminal offence by the respondent No. 4 is made out. Since, no criminal offence was committed, the respondent No. 3/ SHO, Charma closed the matter vide closure report under Section 155 of Cr.P.C. on 08.12.2019 as no case for registration of FIR is made out against the petitioner.

(5) The petitioner's grievances has already been considered & decided by the Police as reflected in the return filed on behalf of respondents No. 1 to 7, however, still the petitioner has grievance, he may file a complaint before the learned Judicial Magistrate First Class under Section 156(3) or 200 of Cr. P. C. before the Court of Judicial Magistrate having jurisdiction for the place.

(6) It is made clear that this Court has not expressed any opinion on merits of the case whether the complaint discloses any criminal offence or not.

(7) In view of the above, the instant writ petition is disposed of with the aforesaid liberty granted in favour of the petitioner.

Sd/-

(Narendra Kumar Vyas)
Judge