

HIGH COURT OF CHHATTISGARH, BILASPUR

(Reserved for orders on 30/06/2021)

(Order passed on 07/07/2021)

WP (227) No. 678 of 2014

- 1) Hemlal Sahu S/o Chintamani, aged about 71 years,
- 2) (A) Rajhansh Sahu S/o Late Mukesh Sahu, aged about 16 years
(minor),
(B) Santoshi Sahu W/o Late Mukesh Sahu, aged about 42 years,
(C) Sapana Sahu D/o Late Mukesh Sahu, aged about 24 years,
(D) Pooja Sahu D/o Late Mukesh Sahu, aged about 22 years,
(E) Hansha Sahu D/o Late Mukesh Sahu, aged about 19 years
Petitioner No. 2-A (Rajhansh Sahu) is minor and he is
represented by his mother petitioner No. 2-B (Santoshi Sahu)
All are R/o Village Lailunga, Tah & P.S. Lailunga, District Raigarh
(C.G.)

---- Petitioners

Versus

1. Sonamati W/o Late Sukhram Uranw, R/o Village Lailunga, Tah & P.S. Lailunga, District Raigarh (C.G.).
2. Commissioner (Revenue), Bilaspur Division, Bilaspur (C.G.)
3. Collector, Raigarh, District Raigarh (C.G.)
4. Sub Divisonal Officer (Revenue), Gharghoda, District Raigarh (C.G.)
5. Rajendra Prasad S/o Krishna Chandra, R/o Village Lailunga, Tah. & P.S. Lailunga, District Raigarh (C.G.).
6. Shiba Bai Ohidar W/o Pujar Ram R/o Village Lailunga, Tah & P.S. Lailunga, District Raigarh (C.G.)

---- Respondents

For Petitioners	:	Mr. J.K. Shastri, Advocate
For Respondents 1	:	Mr. Sourabh Dangi, Advocate
For Respondent 2, 3 & 4	:	Mr. Sameer Oraon, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV Order

Heard

1. This petition under Section 227 of the Constitution of India has been

brought seeking indulgence of this Court to quash the impugned order dated 23/08/2014 passed by the Commissioner, Bilaspur, the order of the Collector, Raigarh dated 12/03/2014 and the order of SDO, Gharghoda dated 17/12/2013, and also to dismiss the application filed by respondent No. 1 under Section 170 (B) of the Chhattisgarh Land Revenue Code, 1959 (for short 'the Code').

2. It is submitted by the counsel for the petitioners that the petitioners are in possession of land bearing Khasra No. 520/8, ad-measuring 0.030 hectare. As per revenue record, the title holder of the land is respondent No. 5, who is not a member of schedule tribe. Respondent No. 1 has filed an application under Section 170 (B) of the Code before the SDO (Revenue), Gharghoda (Respondent No.4), in which respondent No. 5 was not the party. This application was disposed of by order dated 17/12/2013 (Annexure-P-6) by allowing the application in favour of respondent No. 1 and directing the dispossession of the petitioner from the disputed property. This order was challenged in the Court of the Collector, Raigarh. This appeal was disposed off by order dated 12/03/2013 (Annexure-P-7), by which the order of SDO, Gharghoda was upheld and the appeal was dismissed. Subsequently, a revision was preferred before the Commissioner, Bilaspur, which was disposed off by order dated 23/08/2014 (Annexure-P-8) and the revision was dismissed.
3. It is submitted by the counsel for the petitioners that present case is not covered under Section 170 (B) of the Code. The another discrepancy present in the case is that there is clear non-joinder of party i.e. respondent No. 5 in all the proceeding which have taken place before the SDO, Collector and Commissioner. It is reflected

from the order of SDO dated 17/12/2013 that no enquiry was made and no demarcation was conducted before passing of the order by the SDO, Gharghoda. It is also submitted that Section 170 (B) of the Code does not empower the SDO to pass an order for demolition of construction, therefore, the whole proceeding of the application under Section 170 (B) of the Code is misconceived, illegal and arbitrary. Prayer has been made to grant relief.

4. Counsel appearing on behalf of respondent No. 1 opposes the submissions of the counsel for the petitioner and submits that respondent No. 1 is a member of schedule tribe belonging to Uraon tribe. It is a clear case of encroachment by the petitioner for which there is no requirement of any demarcation. It is mentioned in the order of the SDO, Gharghoda dated 17/12/2013 that Mukesh Sahu S/o Hemlal Sahu filed an application before the Tahsildar claiming to have purchased the disputed property from respondent No.1, although no sale-deed was produced, but this statement by itself is sufficient to make out, that there had been some transaction of sale between respondent No. 1 and the petitioners. The land in question is situated in the scheduled notified area, therefore, it was burden of proof of the petitioners that the requirement under Section 165 (6) of the Code was complied with before making purchase. It is further submitted that the SDO, Gharghoda has made an inquiry, which is proper and the petitioners have never raised any plea of non-joinder of respondent No. 5 earlier. Therefore, the petitioners have no right or authority to hold possession over the disputed property which is situated in the notified area.

It is further submitted that in the matter of parting away with any

interest in land belonging to a member of aboriginal tribe, the permission under Section 165 (6) of the Code is mandatory regarding which, Reliance has been placed on the judgment of Chhattisgarh Court in the matter of ***K.S. Sujeeth v. State of Chhattisgarh, 2017 SCC Online Chh. 401***, the judgment of Madhya Pradesh High Court in the matter of ***Ramesh v. Revenue Department (WA No. 431/2015)*** and the judgment of Supreme Court in the matter of ***Bhaiji v. Sub Divisional Officer, (2003) 1 SCC 692***.

It is further submitted that scope of Article 227 of the Constitution of India is very narrow and it can be invoked only when an order of lower Court is violative of principle of natural justice or where a patent or flagrant error in procedure of law has occurred. Reliance has been place on the judgments of Supreme Court in the matters of ***State v. Navjot Sandhu @ Afshan Guru and Others, (2003) 6 SCC 641***, ***Trimbak Gangadhar Telang and another v. Ramchandra Ganesh Bhide and others, (1977) 2 SCC 437*** and ***Mohd. Yunus v. Mohd. Mustaqim and others, (1983) 4 SCC 566***. It is submitted that the present petition is without any substance which may be dismissed.

5. In reply, it is submitted by the counsel for the petitioners that the order of the SDO, Gharghoda dated 17/12/2013 mentioned about the receipts of rent produced by the petitioner's side, which shows the entitlement to maintain the possession of the land in question. Therefore, the petition is sustainable and the petitioners are entitled to get reliefs.
6. State counsel appearing on behalf of respondent Nos. 2, 3 & 4 adopts the argument advanced by counsel for respondent No. 1 and submits that no error has been committed by the SDO, Gharghoda, the

Collector, Raigarh and the Commissioner (Revenue), Bilaspur Division in passing the orders. Therefore, all these orders are sustainable and the petitioners are not entitled to get any relief.

7. Respondent Nos. 5 & 6 are not represented.
8. I have heard counsel for the parties and perused all the documents present in the record.
9. The issue raised that the land in question i.e. Khasra No. 520/8 does not belong to respondent No.1 is to be answered. The petitioner has filed a document (Annexure-P-1), copy of revenue record which shows that respondent No. 5 is a recorded owner of the land in the year 2013-14. Copy of Khasra panchshala (Annexure-P-2) shows the possession of respondent No.5 over the said land from the year 2010-11 to 2013-14. Respondent No. 1 has though filed the reply to the petition, not a singular document has been filed to show that respondent No. 1 was ever recorded owner of the property in dispute. However, it has been observed by the SDO, Gharghoda in order dated 17/12/2013 that respondent No. 1 is a recorded owner of the disputed property and she is a member of aboriginal tribe.
10. On perusal of the whole order of the SDO, Gharghoda and the orders of Collector, Raigarh and the Commissioner, Bilaspur, it appears that the petitioners are no where mentioned as recorded owner of the disputed property. The claim of the petitioners regarding the possession of the disputed property is not based on title. It is the case of the petitioners themselves that the recorded owner of the disputed property is respondent No.5. It may be so, that there is some dispute regarding identify of the disputed property and entitlement of the parties, but such a dispute cannot be resolved in the proceeding under

Section 170 (B) of the Code or under the jurisdiction of this Court under Article 227 of the Constitution of India.

11. It was held in the matter of **Trimbak Gangadhar Telang (Supra)** by the Supreme Court as under:-

“It is a well settled rule of practice of this Court not to interfere with the exercise of discretionary power under Articles 226 and 227 of the Constitution merely because two views are possible on the facts of a case. It is also well established that it is only when an order of a Tribunal is violative of the fundamental basic principles of justice and fair play or where a patent or flagrant error in procedure or law has crept in or where the order passed results in manifest injustice, that a Court can justifiably intervene under Article 227 of the Constitution. ”

12. In the matter of **Mohd. Yunus (Supra)**, it has been held in paragraph 7 by the Supreme Court as under:-

“The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited “to seeing that an inferior Court or tribunal functions within the limits of its authority”, and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an appellate Court or tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior Court or tribunal purports to be based or to correct errors of law in the decision. ”

13. Further in the matter of **State v. Navjot Sandhu alias Afshan Guru and others (Supra)**, it has been held in paragraph 28 by the Supreme

Court as under:-

“Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate Courts and tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised “as the cloak of an appeal in disguise ”

14. There may be some discrepancies present in the proceeding taken under Section 170(b) of the Code, but the issue that have been raised before this Court, should have been raised earlier. Therefore, on the strength of the grounds which have been raised for the first time before this Court, the orders of Courts below cannot be interfered, otherwise, looking to the said view of the Apex Court on the point of jurisdiction, the authority of the High Court to interfere in any order of subordinate Court in exercise the power under Article 227 of the Constitution is

very limited. Thus, I am of the view there is no scope for interference in the impugned order and the other orders regarding which the petitioners have grievance.

15. Consequently, the petition is devoid of merits which is dismissed. The interim order granted to the petitioners by order dated 16/09/2014 is now hereby discharged.

Sd/-
(Rajendra Chandra Singh Samant
Judge