

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No. 2162 of 2021

- Ganpat Ram S/o - Late Dhirsay Aged About 52 Years R/o - Gram-Patna, Tahsil Baikunthpur, District Koriya Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary Department Of Revenue And Disaster Management, Mahanadi Bhawan New Raipur District Raipur Chhattisgarh
2. Collector Koriya, District Koriya Chhattisgarh
3. Chief Executive Officer Zila Panchayat Koriya, District Koriya Chhattisgarh
4. Tahsildar Baikunthpur, District Koriya Chhattisgarh
5. Sarpanch Gram Panchayat Patna, Tahsil Baikunthpur District Koriya Chhattisgarh
6. Secretary Gram Panchayat Patna, Tahsil Baikunthpur District Koriya Chhattisgarh

---- Respondents

For Petitioner : Shri F.S. Khare, Advocate

For Respondents No. 1,2 and 4: Ms. Akanksha Jain, Dy. Govt. Advocate

Hon'ble Shri Justice Narendra Kumar Vyas

Order On Board

07.05.2021

1. Heard learned counsel for the petitioner at length.
2. By filing this writ petition, the petitioner has challenged the order dated 26.12.2020 passed by the Tahsildar, Tahsil – Baikunthpur District- Korea by which penalty of Rs. 1000/- has been imposed upon him being encroacher of the Government Land bearing

Khasra Number 599/2 Rakba 0.2 Hectare out of which he has constructed house in land ad-measuring 0.040 Hectare and kitchen garden in 0.160 Hectare and direction has been issued to the Patwari to remove the illegal encroachment made over the land by the petitioner.

3. The brief facts as reflected from the records are that the learned Tahsildar Baikunthpur, District Korea has issued notice dated 12.06.2020 to the petitioner under Section 248 of the Chhattisgarh Land Revenue Code, 1959 (for short, "the Code 1959") alleging that the petitioner is encroacher. The petitioner has submitted his reply on 19.06.2020 contending that his parents have been residing for the last 80 years on the said land. The Government has reserved Khasra No. 599/1 for the construction of "Gothan", still the Government is using Khasra No. 599/2 for construction of "Gothan". The Petitioner has no other residential house, therefore, prayed for issuance of lease in his favour and withdrawal of notice.
4. The learned Tahsildar by the impugned order dated 26.12.2020 has rejected the objection raised by the petitioner and imposed penalty of Rs. 1000/- as petitioner was held to be encroacher of the Government land and also directed the Patwari to remove illegal encroachment made by the petitioner on the said land. This order is challenged by the petitioner by filing writ petition under Article 226 of the Constitution of India.
5. The proceedings under Section 248 of the Code 1959 is exclusively within the jurisdiction of the Revenue Authorities. As such it is appealable order under Section 44 of the Code, 1959. The relevant portion of Section 44 of the Land Revenue Code 1959 is reproduced below :-

“44. Appeal and appellate authorities. - (1) Save where it has been otherwise provided, an appeal shall lie from every original order under this Code or the rules made thereunder-

(a) if such order is passed by any Revenue Officer subordinate to the Sub-Divisional Officer, whether or not the officer passing the order is invested with the powers of the Collector-to the Sub-Divisional Officer;

6. This Court has confronted learned counsel for the petitioner with the provisions of the Chhattisgarh Land Revenue Code 1959, more precisely Section 44 of the Chhattisgarh Land Revenue Code, 1959 which provides remedy of filing an appeal before the Sub Divisional Officer against the order passed by the Revenue Officer. Section 248 Sub-Section W(i) of the Land Revenue Code also provides that proceedings initiated under Section 248 of the Land Revenue Code is well within the jurisdiction of the Revenue Authority. Thus, it is an appealable order and since the petitioner has alternate statutory efficacious remedy available to him under Section 44 of the Land Revenue Code 1959 by filing appeal before the Sub-Divisional Officer, therefore writ petition, is not maintainable. The same is not disputed by counsel for the petitioner and he would submit that he may be given liberty to file an appeal before the appellate Authority.
7. It is further contended by counsel for the petitioner that the order was passed on 26.12.2020 and as per Section 44 of the Code 1959 limitation is 45 days from communication of the copy of the order. The limitation of 45 days expired on 10.02.2021. Therefore, in the eventuality of filing appeal by petitioner the delay in filing appeal may be condoned due to ongoing pandemic COVID-19.
8. The Hon'ble Supreme Court has considered the difficulties faced by the litigants in **Suo Motu Writ Petition (Civil) No. 3 of 2020 In Re :**

cognizance for extension of limitation due to pandemic of COVID-19 and has passed the following order on 08.03.2021:-

“2. We have considered the suggestions of the learned Attorney General for India regarding the future course of action. We deem it appropriate to issue the following directions: -

"1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

9. Again the Hon'ble Supreme Court has examined the difficulties faced by the litigants for ventilating their grievances before legal forums on account of ongoing pandemic COVID-19 and passed the following **order on 27.04.2021 in Misc. Application No. 665/2021 in SMW(C) No. 3/2020:-**

“ We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigant-public in all the states. We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further

orders.

It is further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the periods prescribed under Section 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the Court or tribunal can condone delay) and termination of proceedings. “

10. In view of the orders passed by the Hon'ble Supreme Court in the aforesaid cases (supra), the delay in filing of appeal will not come in way in deciding the appeal on merits by the learned Appellate Authorities.
11. Considering the facts and circumstances of the case, it is directed that the petitioner shall file an appeal before the appellate Authority within 3 weeks from the date of receipt of copy of the order and on such an appeal being filed by the petitioner, the appellate authority shall consider and decide the case including the prayer of interim relief on early date convenient to the appellate authority as well as to the petitioner.
12. This is made clear that this Court has not expressed anything on merits of the case. The appellate authority will decide the case on its own merits without being influenced by any of the observations made by this Court.
13. With the aforesaid direction, the writ petition is finally disposed off.

Sd/-

(Narendra Kumar Vyas)
JUDGE