

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 354 of 2020

Ravishankar Yadav S/o Devdatt Yadav Aged About 53 Years R/o Village Aodarsakri, Post Gabdi Tahsil Gunderdehi, District Balod Chhattisgarh.

---- Petitioner

Versus

1. R.K. Sonkar Aged About 50 Years O/o Tahsil Gunderdehi, District - Balod Chhattisgarh, Presently Residence Tahsil Dondilohara, District Balod Chhattisgarh.
2. State Of Chhattisgarh Through The Collector, Balod, District Balod Chhattisgarh.
3. Tahsildar Tahsil Office, Gunderdehi, District Balod Chhattisgarh.
4. Jeevan Patel S/o Dhanau Ram Patel Aged About 50 Years Nayab Tahsildar, Gunderdehi, District Balod Chhattisgarh.
5. Panna Lal Sahu Aged About 50 Years (Driver) Office Of Tahsil Gunderdehi, District Balod Chhattisgarh.
6. Santosh Kumar Aged About 52 Years Sr. Branch Manager, Bank Of Baroda Supela Bhilai, District Durg Chhattisgarh.
7. Pawan Kumar S/o Lakhan Lal Kosta Aged About 42 Years Occupation Shopkeeper, R/o Village Mohadipat Tahsil Gunderdehi, District Balod Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Rajkumar Pali, Advocate.
For Respondent No.1	:	Shri R.S. Baghel, Advocate.
For the Respondent/ State	:	Shri Ajay Kumrani, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

02.09.2021

Heard.

1. This petition under Article 227 of the Constitution of India has been brought being aggrieved by the order dated 16.1.2020 passed by the Court of Civil Judge, Class-I, Gunderdehi, District Balod, Chhattisgarh.
2. The petitioner has filed a civil suit against the respondents praying for relief of damages and compensation. Respondent No.1 – R.K. Sonkar is working as Tehsildar in Tahsil Gunderdehi, District Balod, who has

been arrayed as a defendant in his personal capacity. Respondent No.1 moved an application under Order 1 Rule X of the CPC praying for deleting his name from the plaint as a party, which has been allowed by the impugned order and a direction was given to the petitioner/ plaintiff to delete the name of respondent No.1/ defendant No.1.

3. It is submitted by counsel for the petitioner that the Revenue Case No.08/A-6/2015-2016 was pending before the Court of respondent No.1. It is alleged that respondent No.1 has misused his post and power and passed an *ex-parte* order against the petitioner which has caused damage to the petitioner, therefore, the civil suit has been filed claiming compensation from respondent No.1 in his personal capacity. The impugned order passed is erroneous and against the provisions of law, which is not sustainable. The case-laws cited by respondent No.1 before the Court below are not applicable, therefore, the impugned order is not sustainable.
4. Learned counsel for respondent No.1 opposes the petition and the submissions made in this respect. It is submitted that no error has been committed by the Court below in passing the impugned order, therefore, the order is sustainable. Respondent No.1 has performed his duty in capacity of Tehsildar and the Tehsildar exercises judicial powers, therefore, respondent No.1 has protection for the duties performed by him under the Judicial Officers Protection Act, 1850 and also under the Judges (Protection) Act, 1985.
5. Relying on the judgment of Madhya Pradesh in the case of **Balram and Another vs. Aswani Kumar Yadav and Another**, reported in **2001(2) M.P.H.T. 330**, it is submitted that under Section 3(1) of the Judges (Protection) Act, 1985, no court shall entertain or continue any civil or criminal proceeding against a person exercising judicial powers under

the Madhya Pradesh Land Revenue Code and this is also a similar case, therefore, the petition is without any substance which may be dismissed.

6. Heard counsel for both the parties and perused the documents present on record.
7. On perusal of the copy of the claim filed alongwith the petition, it has been pleaded that respondent No.1 in an arbitrary manner without following the procedure as provided under the law has passed the *ex-parte* order against the petitioner for which the petitioner is aggrieved and he is praying for compensation against respondent No.1.
8. It is undisputed that respondent No.1 has performed the duties of a Revenue Court in passing the mutation order in the revenue case mentioned herein-above and the order may be right or wrong which is subject to challenge by the party as per the remedy available in the statute. Section 31 of the Chhattisgarh Land Revenue Code, 1959 very clearly provides that the Board or the Revenue Officer while exercising power under this Code or any other enactment for the time being in force to enquire into or to decide any question arising for determination between the State Government and any person or between parties to any proceedings, shall be a Revenue Court.
9. Section 1 of the Judicial Officers Protection Act, 1850 provides as follows:

'1. Non-liability to suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders.—No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that he at the time, in good faith,

believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same.'

10. Similarly Sections 2 & 3 of the Judges Protection Act, 1985 provides as follows:

'2. **Definition.**—In this Act, “Judge” means not only every person who is officially designated as a Judge, but also every person—

(a) who is empowered by law to give in any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or

(b) who is one of a body of persons which body of persons is empowered by law to give such a judgment as is referred to in clause (a).

3. **Additional protection to Judges.**—

(1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

(2) Nothing in sub-section (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil,

criminal, or departmental proceedings or otherwise)
against any person who is or was a Judge.'

11. The illegality, the arbitrariness or the error in finding of an authority acting as a Court is subject to challenge and in appeal or in revision as may be the remedy provided in the enactment. Further, looking to the protection available to the officer acting in judicial capacity in performance of his official duty, the status of such a public officer functioning as a Court, has been discussed in the case of **Balram and Another vs. Aswani Kumar Yadav and Another** (supra). As there is a clear protection given to the officer acting judicially, the civil suit against respondent No.1 on the basis of the act done by him in an official capacity, cannot be entertained. Therefore, I do not find any error in the impugned order, hence, this petition is dismissed and disposed of at motion stage.

Sd/-

(Rajendra Chandra Singh Samant)
Judge