

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.(C) No. 3344 of 2021

Smt. Anita Gabel, W/o. Basant Gabel, Aged About 46 Years, R/o. Deori,
Tehsil Sakti, District Janjgir Champa, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Department Of Panchayat, Mantralaya, Mahanadi Bhawan, Atal Nagar, New Raipur, District Raipur, Chhattisgarh
2. Sub Divisional Officer (Revenue), Tehsil Sakti, District Janjgir Champa, Chhattisgarh
3. Tehsildar, Tehsil Sakti, District Janjgir Champa, Chhattisgarh
4. Krishna Kumar Gabel, S/o. Labhoram Gabel, Aged About 39 Years, R/o. Village Deori, Tehsil Sakti, District Janjgir Champa, Chhattisgarh

---- Respondents

For Petitioner : Ms. Juhi Jaiswal, Advocate

For State : Mr. Ashish Tiwari, Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

17.08.2021

Heard

1. Challenge in this petition is to the order dated 23.02.2021 wherein a proceeding has been drawn under Section 40 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (*for short "the Adhiniyam, 1993"*) to remove the petitioner from the post of Sarpanch on the ground that she has encroached upon the government land.
2. Learned counsel for the petitioner would submit that on the earlier occasion when such complaint was made, an enquiry was conducted by the Naib Tahsildar and by an order dated 09.12.2020, it was categorically recorded that the petitioner has not encroached upon Khasra No.76 which is a government land at village Pali. Likewise, over Khasra No.53 a part of land admeasuring 0.340 hectare, Basant Kumar, S/o. Mewalal

and Rajendra Kumar, S/o. Mewalal have showed their crop. It is stated that therefore the proceeding on which the enquiry has been commenced is completely illegal and against the finding of the Nayab Tahsildar; therefore, the proceeding before the S.D.O. may be stayed.

3. Perusal of the order dated 23.02.2021 would show that an application was filed that the present petitioner who is Sarpanch with connivance of her husband Basant has encroached upon Khasra No.53 admeasuring 2.409 hectare at village Pali and therefore she is not entitled to hold the post of Sarpanch. The order dated 23.02.2021 whereby the S.D.O. prima facie has recorded that the husband and wife both since enjoying the fruits of the crop and are joint, therefore, the benefit has accrued to the wife cannot be denied. This primary observation if rebutted before this Court is required to be enquired. The enquiry is sought to be arrested is at nascent stage. If the fact finding comes to fore that the petitioner has really managed to encroach upon the government land in connivance with the husband then the benefit whether accrued to both the petitioner and her husband is required to be adjudicated. It cannot be technically said that the petitioner is a Sarpanch, she has not encroached upon any government land. In such case, it would encourage the other people of like nature to encroach upon government land through their family members. Whether the benefit is jointly been accrued or not is to be arrived at which requires the evidence before the S.D.O. Therefore, it is expected that the S.D.O. would conduct an enquiry in fair and impartial manner so as to really find out as to whether the petitioner is beneficiary with her family members or husband has exclusively encroached upon any government land and the entity is distinct and separate. In respect of the other allegation, the enquiry is already going on. Therefore, it is not a stage where the High Court would interfere in exercise of power under Article 226 of the Constitution to nip the enquiry in bud and arrest

all the facts to surface. The petitioner is at liberty to defend herself before the S.D.O. wherein the proceeding under Section 40 of the Adhinyam, 1993 is pending. Therefore, I am not inclined to entertain this petition and accordingly it is dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Aks