

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No. 527 of 2021

Bhagwati Das Agrawal, son of Late Rishikesh Agrawal, aged about : 62 years, R/o. : Ambedkar Chowk, Baloda Bazar, Tahsil : Baloda Bazar, District : Baloda Bazar – Bhatapara (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Home Affairs Department, Mantralaya, Atal Nagar, Nava Raipur, District : Raipur (C.G.)
2. The Collector, Baloda Bazar – Bhatapara, District : Baloda Bazar – Bhatapara (C.G.)
3. Superintendent of Police, Baloda Bazar – Bhatapara, District : Baloda Bazar – Bhatapara (C.G.)
4. Police Station : City Kotwali, Baloda Bazar, District : Baloda Bazar – Bhatapara (C.G.)
5. Santosh Singh Chawla, son of Kuldeep Singh Chawla, aged about : 42 years, R/o. : Ambedkar Chowk, Baloda Bazar, Taluka : Baloda Bazar, Village : Baloda Bazar, (City), District : Baloda Bazar – Bhatapara (C.G.)
6. Kuldeep Chawla, son of Hari Singh Chawla, aged about : 64 years, R/o.: Ambedkar Chowk, Baloda Bazar, Taluka : Baloda Bazar, Village : Baloda Bazar, (City), District : Baloda Bazar – Bhatapara (C.G.)

---- Respondents

For Petitioner : Mr. Pushpendra Kumar Patel, Advocate
For State/Respondents Nos. 1 to 4 : Mr. Devendra Pratap Singh, Dy. A. G.
For Respondents No. 5 & 6 : Mr. Umesh Verma, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

Order On Board

19.08.2021

(1) By way of filing the instant writ petition under Article 226 of the Constitution of India, the petitioner is seeking direction to respondent No. 3 for deciding the complaint made by the petitioner on 26.07.2021, in which the petitioner seeking strict action against respondents No. 5 & 6.

(2) The brief facts as projected by the petitioner is that petitioner is registered owner of land bearing Khasra No. 843/13, 846/2, 847/2, 843 & 845, total area 0.072 hectare situated at Baloda Bazar. The respondents No. 5 & 6, without any authority of law, with the assistance of 7-8 labourers started construction work in the aforesaid land. The illegal action was reported by the petitioner to Respondent No. 4 – City Kotwali, Baloda Bazar on 24.07.2021. The respondent No. 4 did not take any action but on the same day proceeded the matter under Section 155 of the Cr.P.C. The petitioner filed a complaint before the Superintendent of Police, Baloda Bazar- Bhatapara, respondent No. 3 herein, on 26.07.2021 against in-action on the part of respondent No. 4, the respondent No. 3 also did not take any action till date against the accused persons.

(3) On above factual matrix the petitioner has prayed for following relief:

“10.1 That, this Hon'ble Court, may kindly call for the entire record in relates to the case of the petitioner.

10.2 That, this Hon'ble Court, may kindly be pleased to issue a writ/ or writs / order / or orders / to direct the respondent No.3, to decide the complaint dated 26.07.2021 (Annexure P-1) within a stipulate period of time, in the ends of justice.

10.3 That, any other relief, this Hon'ble Court, deem fit and proper may also kindly be granted to the petitioner, in the interest of justice.

(4) From perusal of reliefs sought, it is quite clear that the petitioner wants that on the basis of various complaints made by him, FIR should be registered against respondents No. 5 & 6.

(5) The Hon'ble Supreme Court in case of **Sakiri Vasu Vs. State of Uttar Pradesh & others**¹, has examined the issue holding that the petitioner has remedy of filing of complaint before the concerned Judicial Magistrate First Class under Section 200 of the Cr.P.C. The Supreme Court has again considered and decided the issue in **Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage**² and **M. Subramaniam & another Vs. S. Janaki &**

¹ (2008) 2 SCC 409

² (2016) 6 SCC 277

another³.

(6) Considering the facts and materials on record and in light of the law laid down by Hon'ble the Supreme Court in the above referred judgments, the present writ petition filed under Article 226 of the Constitution of India, is disposed of with liberty to the petitioner to file complaint under Section 200 or 156(3) of the Cr.P.C. before the court of Judicial Magistrate First Class having jurisdiction over the place of offence and in-turn Magistrate will follow the procedure prescribed under the provisions of the Cr.P.C.

(7) 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.

(8) 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**

Amita