

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 3305 of 2021

1. Dhaniram Jaiswal S/o Kejaw Jaiswal Aged About 50 Years,
2. Hukami Chand S/o Ful Singh Kalar Aged About 54 Years,
3. Tulsi Chand S/o Hukami Chand Kara Aged About 35 Years,
4. Raghubir S/o Ful Singh Kalar Aged About 42 Years,
5. Shyam Singh S/o Budhram Kalar Aged About 63 Years,
6. Top Singh S/o Sher Singh Jaiswal Aged About 34 Years,
7. Manohar S/o Keju Ram Jaiswal Aged About 35 Years,
8. Ramsufal S/o Rangdev Kalar Aged About 30 Years,
9. Dilip S/o Panku Kalar Aged About 52 Years,
10. Manohar Jaiswal S/o Panku Jaiswal Aged About 44 Years,
11. Bisahu S/o Manjhi Kalar Aged About 50 Years,
12. Durgesh Jaiswal S/o Bir Singh Jaiswal Aged About 36 Years,
13. Maniram Jaiswal S/o Kejaw Jaiswal Aged About 52 Years,
14. Prakash S/o Punnu Satnami Aged About 37 Years,
15. Vyas S/o Bhaganu Satnami Aged About 40 Years,
16. Munna S/o Bishen Satnami Aged About 45 Years,
17. Vijay S/o Mungeliya Satnami Aged About 38 Years,
18. Pawara Bai W/o Tek Ram Aged About 55 Years,
19. Uday Ram S/o Tularam Yadav Aged About 45 Years,

All R/o Village Kansari, Post Office Ghanaghat, Chowki Khudiya, Tahsil Lormi, District Mungeli Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh Through Secretary, Forest Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh.
2. Divisional Forest Officer Forest Division Mungeli, District Mungeli Chhattisgarh.
3. Sub Divisional Officer Forest Lormi, District Mungeli Chhattisgarh.
4. State Of Chhattisgarh Secretary, Revenue Department Mantralaya, Mantralaya Mahanadi Bhawan Atal Nagar Nawa Raipur, District Raipur Chhattisgarh.
5. Collector Mungeli District Mungeli Chhattisgarh.
6. Tahsildar Lormi, District Mungeli Chhattisgarh.

---- Respondents

For petitioners– Shri Prafull Bharat, Sr. Advocate with Shri Chandrabhushan

Kesharwani, Advocates.
For Respondent/State –Shri Siddharth Dubey, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

16/08/2021

Heard.

1. Instant petition has been filed on the ground that the petitioners are in occupation of certain land bearing khasra No.22/1 admeasuring 88.401 hectares and khasra No.28 admeasuring 221.70 hectares at village Kansari, Tehsil Lormi, District Mungeli.

2. It is contended that the petitioners are in occupation of the said land through their predecessor in title and in the year 1993 a resolution was passed by the gram panchayat and it was resolved to grant lease in respect of the land on which the petitioners are in occupation, therefore it is revenue land and as such the issue needs to be resolved as to whether the land belongs to revenue department or forest department before the ejectment notice dated 26/07/2021 Annexure P-1 collectively are set into motion. He would submit that the State may be directed to carry out the demarcation so that ownership of the land is decided and till then the petitioners should not be ejected pursuant to notice dated 26/07/2021. The reference is also made to certain judgement of the year 2011 wherein few of the petitioners were convicted for occupation of such land. It is further submitted that the petitioners are landless persons and if they are ejected, then they would be deprived of their livelihood, therefore the effect of the notice dated 26/07/2021 Annexure P-1 may be stayed.

3. Learned State counsel opposes the argument.

4. Perusal of the documents would show that the order dated 2/06/2011 (Annexure P-4) is on record passed by the Judicial Magistrate First Class,

Lormi which purports that because of the fact that few of the petitioners encroached upon the land compartment 1523 which is forest land, they were convicted with fine and imprisonment. Thereby identity of the land prima facie appears to be of the forest. Perusal of document would show that certain case were registered against the petitioners under the Indian Forest Act, 1927 and after enquiry it was found that the petitioners are in occupation of the forest land, as such ejectment orders have been passed under Section 80-A of the Indian Forest Act, 1927. Prima facie therefore appears that after long drawn litigation orders have been passed and the petitioners were heard before such orders were passed. Being so when the petitioners have been given opportunity of hearing and thereafter orders of ejectment have been passed pursuant to Section 80-A of the Indian Forest Act, 1927 and as per Section 80-A sub section-3 if the petitioners are aggrieved, they may avail the remedy of filing an appeal.

5. For the sake of brevity Section 80-A of the Indian Forest Act, 1927 which is applicable in the State of Chhattisgarh is re-produced herein below:-

“80A. Penalty for unauthorisedly taking possession of land constituted as reserved or protected forest.—(1) Any person who unauthorisedly takes or remains in possession of any land in areas constituted as reserved or protected forest under section 20 or section 29, as the case may be, without prejudice to any other action that may be taken against him under any other provision of this Act, be summarily ejected by order of a Forest-officer not below the rank of Divisional Forest Officer and any crop which may be standing on such land or any building or other work which he may have constructed thereon, if not removed by him within such time as such Forest-officer may fix shall be liable to forfeiture:

Provided that no order of ejectment under this sub-section shall be passed unless the person proposed to be ejected is given a reasonable opportunity of showing cause why such an order should not be passed.

(2) Any property so forfeited shall be disposed of in such manner as the Forest-officer may direct and the cost of removal of any crop, building or other work and of all works necessary to restore the land to its original condition shall be recoverable from such person in the manner provided in section 82.

(3) Any person aggrieved by an order of the Forest-officer under sub-section (1) may, within such period and in such manner as may be prescribed, appeal against such order to the State Government or to such officer as may be authorised by the State Government in this behalf and the order of the Forest-officer shall, subject to the decision in such appeal be final.

(4) The provisions of this section shall apply to such areas and on such dates as the State Government may, by notification, specify and dates may be specified for different areas.”

6. In view of such discussion as stated above, I do not find any merit in this case as sympathy cannot be given a overriding effect over the mandate of statute.

7. Accordingly, the petition is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE