# HIGH COURT OF CHHATTISGARH, BILASPUR

## WPC No. 3483 of 2021

- Chamak S/o Indal Aged About 44 Years R/o Village Sagar Tehsil Chhuriya, District Rajnandgaon Chhattisgarh,

**---- Petitioner**

**Versus**

- Smt. Tarni Tiwari W/o Virendra Tiwari, R/o Gali No. 1, Hariom Nagar, Post And Tehsil Dongargaon, District Rajnandgaon (Chhattisgarh),

**---- Respondent**

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For Petitioner : Mr. Priyank Rathi, Advocate

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**Hon'ble Shri Justice Goutam Bhaduri**

**Order on Board**

**27.08.2021**

Heard

1. Learned counsel for the petitioner submits that, on an application being filed by the respondent, the petitioner has been directed to be dispossessed from the part of land bearing Khasra No. 62/18 admeasuring 0.85 acres situated at village Narethitola. He submits that initially an application was filed under Section 250 of the Land Revenue Code 1959 (hereinafter referred to as 'The Code of 1959') which was dismissed by the Tehsildar vide Annexure P/4 dated 30.06.2016. Subsequently, against such order, the appeal having been filed, it was remanded to the Tehsildar and Tehsildar by its order dated 28.08.2017 (Annexure P/5) has directed the petitioner to be dispossessed from the said land. He further submits that against such order, the petitioner filed an appeal before the SDO and the SDO by its order dated 15.12.2017 (Annexure P/6) dismissed the application. Thereafter, the same having been challenged before the Commissioner and the Commissioner also affirmed

the order of the Tehsildar and dismissed the appeal by its order dated 24.09.2019 (Annexure P/7). It is stated that against the order of Commissioner, the Revision was filed before the Revenue Board and the Revenue Board by its order dated 06.05.2021 (Annexure P/1) dismissed the appeal.

2. It is submitted that as per Section 250(1-a)(b) of the Code of 1959, it was necessary for the respondent to prove that she has been dispossessed from the land within two years before the application for restoration to the land was filed. It is stated that in this case, the said application was silent and nothing was there on record to prove that she was dispossessed prior to two years of filing of the application, consequently, the basic ingredient to invoke Section 250 of the Code 1959 was missing. He further submits that all the Revenue courts have failed to take into account those aspects, therefore, the eventual order of the Revenue Board Annexure P/1 dated 06.05.2021 cannot be sustained.

3. Perusal of the orders which are placed on record shows that the finding is recorded by the Revenue Authorities that the subject land was purchased by the respondent on 28.02.2013 and she was placed in the possession. Thereafter, the respondent moved to village Narethitola along with her husband who is a Shiksha Karmi. In the year 2014, the dispute occurred at the behest of the petitioner, as such, the demarcation application was filed before the Tehsildar by the respondent and the demarcation of the land was carried out on 22.02.2014. There, it was found that the petitioner has unauthorizedly encroached upon the land of the respondent. During the adjudication, the Court also found that the land purchased by the petitioner is relating to Khasra No.62/19 admeasuring 1.00 Acres which is situated at a different place and the land bearing Khasra No. 62/18 admeasuring 0.85 acres was found to be in the ownership of the respondent. Consequently,

the order under Section 250 of the Code of 1959 was passed. This finding of fact was affirmed by the different Courts i.e. the Court of SDO, the Commissioner and eventually by the Revenue Board. The finding of fact that the petitioner has encroached upon the land of the respondent in the year 2014 which came to fore when the demarcation was carried out, it was found that the petitioner has encroached upon the land. Thereafter, an application was filed under Section 250 of the Code of 1959 in the year 2014 by the respondent for restoration of the possession. Therefore, the said application cannot be said to have been filed beyond the period as contemplated under Section 250(1-a)(b) of the Code of 1959. The finding of fact which is recorded by the different Revenue Courts, therefore, cannot be held to be faulty warranting interference by this Court in exercise of power under Article 226 of the Constitution of India.

4. Accordingly, the writ petition sans merit and is hereby dismissed.

**Sd/-**
**(Goutam Bhaduri)**
Judge

Vishakha