

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 3830 of 2021

- Kutub Khan S/o Shri Abdul Majid Aged About 49 Years R/o Village Chandrameda, Sub Tehsil Bhatgaon, Tehsil Bhaiyathan, District Surajpur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Revenue, Mahanadi Bhawan, Nava Raipur, Atal Nagar, Raipur, District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
2. The Collector, Surajpur, District Surajpur, Chhattisgarh
3. Naib Tehsildar, Bhaiyathan, District Surajpur, Chhattisgarh

---- Respondents

For Petitioner : Shri Ashish Surana, Advocate

For Respondent/ State : Shri Sudeep Agrawal, Dy. A.G.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

21.09.2021

Heard

1. Shri Ashish Surana, the learned counsel for the Petitioner would submit that the proceeding under Section 248 of the Land Revenue Code, 1959 was commenced to dispossess the Petitioner from the land admeasuring 0.16 hectares of Khasra No. 31, 33 & 33/737 at Village Chandrameda, Tahsil Bhaiyathan. He would submit that the said land was earlier recorded as Khasra Nos. 21/1 & 21/12 and subsequently numbered as Khasra No. 31, 33 & 33/737. According to the State, it was a custodial land of the State wherein different persons are in possession, on which, a separate proceeding was commenced, which was pending before the Commissioner, Surguja vide Annexure P/5. He would submit that in the meanwhile, the Naib Tahsildar subsequently drawn a parallel proceeding and the order-sheet of Naib

Tahsildar would show that on 03.10.2020 the case was fixed for reply and statement of the applicant. Thereafter, the case was taken up on 17.12.2020 and it was fixed for further study and inspection of the record. On 19.01.2021, the subsequent date fixed, it was fixed for orders and no hearing was given to the Petitioner as was initially recorded and lastly on 02.02.2021, the orders have been passed by the Naib Tahsildar. He would submit that the simultaneous and parallel proceeding cannot be drawn by the Naib Tahsildar inasmuch as for the same land, if the proceeding is pending before the Commissioner wherein the custodial land were recorded to be corrected, which is under challenge. The Naib Tahsildar in a shortcut manner, without giving any opportunity to the Petitioner, passed the order of like nature.

2. I have heard the learned counsel for the Petitioner as well as the learned counsel representing the State and perused the documents annexed with the petition.
3. As appears the primarily proceeding by the Naib Tahsildar suffers with breach of natural justice. The order-sheet shows the case was fixed on 03.10.2020 for reply of the Petitioner and of recording of his statement. The proceeding before the Naib Tahsildar commenced for ejectment from the part of the land admeasuring 0.16 hectares out of Khasra No. 31, 33 & 33/737 at Village Chandrameda, Tahsil Bhaiyathan. Subsequently, the case was taken up on 17.12.2020 and the reply and statement of the Petitioner could not be filed. Despite the fact on earlier occasion, it was fixed for such course and was recorded in the order-sheet and the case was further posted to 19.01.2021 for further study and inspection by Naib Tahsildar. On 19.01.2021, it was closed for orders. On 02.02.2021, the order of ejectment was passed and fine was imposed on Petitioner.
4. According to the State, for the same proceeding for the same land, which was directed to be recorded as custodial land, the proceeding is pending before the Commissioner, Surguja; meaning thereby that, for the same land, parallel proceeding was drawn by Naib Tahsildar for adjudication. In the meanwhile, the Naib Tahsildar issued a proceeding under Section 248 of the Land

Revenue Code, 1959 and the instant order (AnnexureP/1) is passed. The order-sheet would show that neither the Petitioner was given any opportunity of hearing nor the reply was filed or statement of the Petitioner was recorded as earlier recorded in order-sheet. Had there been a hearing, Petitioner could have appraised the Court of Naib Tahsildar about the simultaneous proceeding, which was pending in the Court of Commissioner. The order-sheet of Naib Tahsildar would show despite the case was fixed for reply and recording statement of the Petitioner, the same was not done. Consequently, the opportunity of hearing was not given to the Petitioner and virtually without giving any opportunity to substantiate his cause, the orders have been passed.

5. In the result, the order dated 02.02.2021 is quashed. The Petitioner shall be at liberty to file entire detailed documents before the concerned Naib Tahsildar stating that for the same cause and for the same land, the proceeding is pending before the Commissioner. If after the reply and evidence this fact is established, the proceeding before the Naib Tahsildar cannot be drawn as a parallel proceeding and cannot be continued.
6. With the aforesaid observation, the petition stands disposed off.

Sd/-
(Goutam Bhaduri)
Judge

Jyoti