

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**WA No. 17 of 2021**

{Arising out of Order dated 23/11/2020 passed in Writ Petition(C) No. 2724 of 2020 by the learned Single Judge}

- Smt. Reena Rai wife of Sundar Rai, aged about 37 years, R/o Mayapur, Ambikapur, Tahsil Ambikapur, District Surguja C.G.

-----Appellant/Petitioner

VERSUS

1. State of Chhattisgarh through the Secretary, Revenue Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District Raipur C.G.
2. Secretary, State of Chhattisgarh, Urban Development Department, Mantralaya, Mahanadi Bhawa, Atal nagar, Nawa Raipur District Raipur C.G.
3. Collector, Ambikapur, District Surguja C.G.
4. Nazul Officer, Ambikapur, District Surguja C.G.
5. Commissioner, Municipal Corporation, Ambikapur, District Surguja, C.G.
6. Smt. Vandana Singh wife of Shri Anjiv Kumar Singh, aged about 44 years, R/o Near Vishwakarma Temple, Marine Drive Ambikapur District Surguja C.G.

-----Respondents

For Appellant	: Mr. Keshav Prasad Gupta, Advocate
For Respondent -State	: Mr. Ashish Tiwari, Govt. Advocate
For Respondent 5	: Mr. Pankaj Agrawal, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****Per Parth Prateem Sahu, J.****28/01/2021**

1. Challenge in this appeal is to the order dated 23.11.2020 passed in WPC No. 2724/ 2020 by learned Single Judge, whereby the writ petition filed by appellant was dismissed.
2. Facts relevant for disposal of this appeal are that the petitioner is one of the residents of Khasra No. 2027/2 situated at Mayapur, Ward 19, Tahsil Ambikapur, District Surguja, C.G. Respondent 6 has encroached

government land/ nazul land, part of which being used as public road by residents of Mayapur at khasra no. 2027/2 and causing hindrance. Respondent 6 has also moved an application for grant of lease of the encroached portion of government land which came to be dismissed against which Respondent 6 filed a writ petition bearing no. as WPC 1133/2020 which was disposed of with a direction to the Collector to take a decision on the claim of Respondent 6/ petitioner therein *vide* its order dated 04.06.2020. Respondent 6 has cleverly obtained the order without impleading the appellant or other residents of khasra no. 2027/2 as party respondent in writ petition. After getting knowledge of order dated 04.06.2020, appellant approached this Court by filing WPC No. 1454/2020 in which learned Single Judge permitted the petitioner to approach Respondent 3 or any other authority before whom the application for grant of lease of Respondent 6 is pending by way of filing objection and further directed the authority to consider the objection and thereafter to take decision in accordance with law. Petitioner has approached to the authority concerned/ Collector but till date no order has been passed. Respondent 5/ Municipal Corporation had sanctioned for construction of C.C. road from the main road to khasra no. 2027/2, work order was also issued, but looking to the encroachment and the dispute, construction of road could not be started. This made the appellant to file another writ petition WPC No. 2724/ 2020 with the following reliefs.

“10.1 That, this Hon'ble Court may kindly be pleased to direct the respondent state authority to act upon the report submitted by the Revenue Inspector (Annexure P-3).

10.2 That, this Hon'ble Court may kindly be pleased to ensure the petitioner for smooth passage through his house, which was obstruct by the respondent No. 6.

10.3 That, the Hon'ble Court may kindly be pleased to grant any other relief, as it may deem-fit and appropriate.”

3. Learned Single Judge, upon considering the pleadings and submissions made by the learned counsel for the appellant, has dismissed the writ petition by impugned order.
4. Mr. Keshav Prasad Gupta, learned counsel for the appellant submits that the appellant has placed on record all the relevant documents prepared by competent authority. Upon spot inspection, revenue authority found encroachment of Respondent 6 over 828 sqft. of land find but even then till date no action has been taken against her. Even the Municipal Corporation has not evicted Respondent 6 from the encroached portion of land nor started the construction of C.C. road which is already sanctioned and work order has been issued. It is contended that when the Revenue Inspector has already submitted report based on spot inspection that the 6th Respondent is in encroachment of government land and earlier also the proceedings of encroachment has been initiated against her, no action has been taken against Respondent 6. He submits that a direction may be issued to the authorities to initiate proceedings based on the report submitted by the Revenue Inspector to Nazul Officer. He further pointed out that the learned Single Judge has not taken into consideration that the proceedings has already been initiated and pending before competent authority and observed to approach other forum.
5. Mr. Ashish Tiwari, learned Government Advocate appearing for the State submits that it is third round of litigation with regard to the subject land. Initially, respondent 6 filed writ petition against non-grant of lease of said land in which the learned Single Judge had issued a direction for taking a decision on claim of the respondent 6 after hearing all the parties concerned and to resolve the issue in accordance with law, within a period of three months. Proceedings, in view of direction issued by learned

Single Judge in WPC 1133/2020, is already pending consideration. Respondent 3 has already directed for the spot inspection and submission of report to the Nazul Officer. Spot inspection report was put to challenge by Respondent 6, hence, the proceedings could not be concluded. He further pointed out that the petition filed by the appellant was pre-mature, as per the direction issued by learned Single Judge, proceeding pending before Respondent 3/ Collector could not be finalized by this time. Appellant has filed her objection before Collector, hence, she could have made an application before Respondent 3 for early disposal of proceedings, if for any reason, the appellant is aggrieved in any manner.

6. Upon considering the submissions made by learned counsel for respective parties, as also, perusal of documents enclosed in the record, it appears to be the dispute with regard to encroached portion of land by Respondent 6 which is a nazul land and the proceedings for grant of lease is pending consideration before Respondent 3/ Collector. As per the direction issued by learned Single Judge in writ petition filed by appellant herself, she had approached to Respondent 3 and raised her objection in a proceeding filed by respondent 6 but the proceedings could not be finalized till now. Appellant again filed a writ petition seeking a direction to the authorities for compliance of spot inspection report wherein it has been shown that Respondent 6 has encroached some portion of nazul land. Appellant once accepted the order passed by learned Single Judge in her own writ petition WPC 1454/2020 and approached Respondent 3 and filed objection in the proceedings pending before it on an application filed by Respondent 6 then she should have waited for decision of Respondent 3. Respondent 3 is yet to apply his mind on the application filed by Respondent 6 and the objection raised by the appellant and to pass appropriate order. In view of the above facts, submission made by Mr. Ashish Tiwari, learned Government Advocate appears to be correct that

the writ petition filed by appellant itself is pre-mature.

7. As it is not in dispute that the proceedings with the subject land and issue is already pending consideration before the Collector, we find it appropriate to direct Respondent 3 to consider the application and the objection of the appellant and decide the same in accordance with law expeditiously preferably within a period of four months from the date of receipt of copy of this Order.
8. In view of the above, writ appeal stands disposed of.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge