

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 4570 of 2021**

1. Radha Krishna Swa Sahayata Samuh Through- The President- Smt. Mamta Bai Yadav W/o Basna Yadav Aged 38 Years, R/o Village- Beltukri, Tahsil - Nawagarh, District- Bemetara (C.G.), Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through- The Secretary, Panchayat And Rural Development Department, Mantralaya New Raipur, District- Raipur (C.G.), Chhattisgarh
2. The Secretary Department Of Home Affairs, Mahanadi Bhawan, Mantralay, New Raipur, District- Raipur (C.G.), Lakshadweep
3. The Collector Bemetara, District- Bemetara (C.G.), Chhattisgarh
4. Assistant Director Fisheries Department, District- Bemetara (C.G.), Chhattisgarh
5. Sarpanch Gram Panchayat Beltukri, Block Nawagarh, District- Bemetara (C.G.), Chhattisgarh

----Respondents

For Petitioner	: Ms. Sharmila Singhai, Sr. Advocate along with Mr. Kanwaljeet Singh Saini, Advocate
For State	: Mr. Ashish Tiwari, G.A.
For Respondent No. 5	: Mr. Awadh Tripathi, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****15.12.2021**

1. The present writ petition has been filed aggrieved by the two orders (Annexure P/1) and (Annexure P/2). Both the orders have been passed by the respondent No.3-Collector.
2. Vide the impugned orders, the Collector-respondent No. 3 has stayed a lease deed which is said to have been executed between

the petitioner and the respondent No. 5 on 04.07.2020. The whole dispute revolves around the action on the part of the respondent No. 3 in issuance of the order Annexure P/1.

3. The brief facts of the case are that, in village Beltukri Tahsil Nawagarh District Bemetara, there is a pond known as Khambha Pond. The petitioner's society had claimed for grant of lease over the said pond for fisheries. It is said that the Gram Panchayat had granted necessary approval, sanction and consent for the pond to be given on lease and accordingly the lease was ordered to be given to the petitioner by the Gram Panchayat vide order dated 03.07.2020. The said order has after due recommendation been given by the District Collector. Based upon which a lease is said to have been executed on 04.07.2020 between the petitioner-Society and the respondent No. 5. According to the counsel for the petitioner, subsequently the petitioner was doing the fisheries work by putting necessary fish seeds in the said pond. Abruptly the Collector vide Annexure P/1 dated 19.05.2021 has stayed the effect and operation of the lease until further order. Meanwhile, the petitioner is also said to have moved an application for vacating stay on 14.06.2021. However, before consideration of the said order itself, the respondent-authorities on an instruction received from State Government dated 06.08.2021, the Collector has passed the second impugned order Annexure P/2 on 07.08.2021 further staying the effect and operation of the lease deed. The said orders Annexure P/1 and Annexure P/2 are subjected to challenge in the present writ petition. This High Court had initially on admission

stage itself allowed a writ petition i.e. WP(C) No. 4570 of 2021 and setting aside the two impugned orders, had remanded the matter vide order dated 16.11.2021. The said order of this Court was subjected to challenge in a Writ Appeal i.e. W.A. No. 424 of 2021 and the Division Bench on 09.12.2021 has allowed the Writ Appeal only on the ground that the said writ petition was allowed at the motion stage without an opportunity of hearing to the other side.

4. The Division Bench relied upon a recent judgment of the Hon'ble Supreme Court in the case of ***Johra and others v. State of Haryana and others***, reported in ***(2019) 2 SCC 324***. It was the categorical observation made by the Division Bench that in the light of the aforementioned judgment of the Hon'ble Supreme Court, no order could have been passed prejudicial to the interest of a party or without hearing such party. The categorical contention of the petitioner in the instant case is that the impugned order Annexure P/1 was passed without even issuing notice to the petitioner and have stayed the further effect and operation of the lease deed with intimation to the concerning parties to be henceforth given.
5. Further from the perusal of the impugned order Annexure P/2 dated 07.08.2021 again it appears that the same has also been passed without giving an opportunity of hearing to the petitioner neither has the District Collector Respondent No. 3 considered the application for vacating stay filed by the petitioner on 14.06.2021 before staying the effect and operation of the lease deed.

6. Learned Counsel for the respondent No. 5 on the other hand opposing the petition submits that though the pleadings reflect that the lease deed has been executed on 04.07.2020 but the lease deed has infact been newly registered only on 08.04.2021 and as such when the impugned order Annexure P/1 was passed on 19.05.2021, there was in-fact no lease deed executed and therefore the interest of the petitioner has not been prejudicially affected.
7. Learned counsel for the respondent No. 5 in addition submits there is further development to the extent that apart from the order of the State Government dated 06.08.2021, there is yet another order dated 14.12.2021 whereby the Government itself has ordered for taking necessary steps for cancellation of the lease and also for taking appropriate action against the erring officials, who have got the lease deed executed.
8. Be that as it may, the factual position as it stands admitted, is that there was a lease deed executed between the parties and the lease deed had already come into force. If the lease would not have been executed, there would have been no occasion for the Collector to have stayed the effect and operation of the lease deed on 19.05.2021.
9. Now the issue is whether the lease deed could have been stayed in contravention to the condition to the lease deed and also whether the lease could have been stayed or cancelled without a fair, proper and reasonable opportunity of hearing to the lessee. Admittedly, at the time of passing of the two orders Annexure P/1 and Annexure

P/2, the petitioner was not given an opportunity of hearing. Both these orders have been passed in-respect of the complaint made by the Sarpanch of that village Beltukri and the Annexure P/2 has been passed at the instance of an order of the State Government dated 06.08.2021. The order-sheets do not reflect the petitioner having been heard or granted an opportunity of hearing, at-least issuance of notice also was not made by the District Collector before passing of two the impugned orders.

- 10.** If we take into consideration the analogy led by the Division Bench of this Court in the subject matter writ petition itself i.e. Writ Appeal No. 424 of 2021 wherein in paragraph-8 it has been reflected as under :-

“8. In the case of Johra and others v. State of Haryana and others, reported in (2019) 2 SCC 324, the Hon'ble Supreme Court had laid down that no order can be passed prejudicial to the interest of a party without hearing such party and in the said case, the order having been passed without hearing such a party, the order passed was set aside.”

- 11.** The same analogy squarely applies so far as the action on the part of the Collector at the time of passing of the two orders dated 19.05.2021 and 07.08.2021 are concerned. As has been held earlier in the preceding paragraph, prima facie, this Court is of the opinion that two orders have been passed without hearing the other side and the two orders have been passed keeping aside the agreement and the lease deed. Rightly or wrongly, the lease deed has in-fact been also executed between the parties. Now in the event if the lease deed was not proper, the recourse available with the respondent-authorities was to cancel the lease deed in accordance

with the terms and conditions stipulated in the lease deed between the parties. The respondent No. 5 having made a complaint to the Collector, it was expected of the Collector to have registered a case and then issued notice to the concerned affected parties and thereafter should have passed an order. Staying of an order of the executed lease deed would definitely be an act prejudicial to the interest of a party and which is also detrimental for the reason that in between the lessee must have already invested some amount of money in the pond over which the lease deed was executed. Thus, this Court is of the opinion that the two orders Annexure P/1 and Annexure P/2, *prima facie* seem to be in violation of the principle of nature justice.

12. Given the fact that the two orders would not be sustainable in the eye of law and therefore the same deserve to be and are accordingly set aside and the matter stands remitted back to the learned district Collector respondent No. 3 who in-turn shall proceed with the matter after giving a fair and a reasonable opportunity to all the parties interested in the dispute and take an appropriate decision in accordance with the law at the earliest.

13. Needless to mention that the parties would be at liberty to move appropriate applications also before the Competent Authority.

Sd/-

**P. Sam Koshy
Judge**