

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 4437 of 2021

- Sanjay Kumar Agrawal S/o Dwarika Prasad Agrawal, Aged About 50 Years, R/o. Ward No.3, Railway Station Road, Naila, District Janjgir - Chama Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through : Secretary, Revenue Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Senior Sanction Engineer (Work), Line South East Central Railway, Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
3. Collector/District Magistrate, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
4. Municipal Council, Janjgir, District Janjgir-Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
5. Sub Divisional Officer, Revenue Janjgir, District Janjgir-Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
6. Tahsidar, Janjgir, District Janjgir-Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

----Respondents

For Petitioner – Mr. Sumit Singh, Advocate.

For State/respondents No.1, 3, 5 and 6 – Ms. Akanksha Jain, Deputy Govt. Advocate.

For Railways/respondent No.2 – Mr. R.K. Gupta, Advocate.

For Respondent No.4. Ms. M. Asha, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

01-11-2021

1. This petition has been brought against the issuance of notice dated 12-10-2021 (Annexure-P/1) by respondent No.2 for vacating the shop in possession of the petitioner.
2. It is submitted by learned counsel for the petitioner that the shop of the petitioner is situated on Khasra No.579 which is an abadi land and the possession on 200 square feet of that land is continuing from 1976. In 1981 a proceeding under Section 248 of the Chhattisgarh Land Revenue Code, 1959 (in short, the Code, 1979') was initiated. The uncle of the petitioner filed a reply dated 07-07-1981, subsequent to which, the proceeding was stayed by order

dated 23-05-1984. It is submitted that neither respondent No.2 nor revenue department have demarcated the land till date. It is submitted that the land on which the petitioner is in possession does not belong to respondent No.2. Reliance has been placed on the judgment of Hon'ble the Supreme Court in the matter of **Madhavrao Scindia (dead) by Lrs. Vs. Ramesh Jatav and others**, (2006) 1 SCC 379. The notice issued is without any authority. Hence, prayer has been made to quash the same.

3. The State counsel representing respondents No.1, 3, 5 and 6 opposes the submission and submits that the petitioner is an encroacher and he has not demonstrated any entitlement to retain and possession over the property in dispute. Therefore, the petition is without any substance.

4. Learned counsel representing respondent No.2 opposes the submission and submits that the petitioner has no right or title to seek protection of his possession over the land which is clearly a railway property. The petitioner has not given any clear description of the land to make distinction that the disputed property is not a railway property. It is further submitted that the notice (Annexure-P/1) has not been issued for vacating the disputed property or demarcation of the same. The words in the notice are very clear, that the petitioner is directed to remove the possession by himself otherwise railway administration will initiate legal proceeding against him for removing the structure over the disputed property. Reliance has been placed on the order of this Court in WPC No.2429/2021 between parties Lal Chandra Vs. Union of India and others decided on 15-09-2021. Therefore, it is prayed that the petition may be dismissed and disposed off.

5. Considered on the submissions.

6. Taking into consideration the submissions of learned counsel for respondent No.2 that the notice (Annexure-P/1) issued to the petitioner is not for the purpose of vacating the suit property without any process, the notice

(Annexure-P/1) is scrutinized.

7. The words are very clear in the notice that in case the petitioner does not remove the unauthorized possession over the railway property, then legal proceeding shall be drawn against him for the purpose of removal of the illegal construction over the railway property. This shows that the notice given is firstly asking the petitioner to remove the construction and secondly, to face consequence of legal proceeding. Hence, there is nothing present to show that dispossession is intended only on the basis of the notice (Annexure-P/1).

8. As it appears that there is rival claim over the property in dispute, the petitioner claims it to be abadi land, whereas, respondent No.2 is claiming that the same as railway property. The petitioner shall have liberty to bring evidence to prove his case in the proceeding which shall be drawn by the respondents as the petitioner is clearly not intending to vacate the disputed property. Therefore, there being the remedy available to the petitioner to prove his case in the proceeding to be initiated by respondent No.2, there appears to be no reason to issue any writ in the present petition. Hence, this petition is disposed off at motion stage. Respondent No.2 is at liberty to initiate proceeding against the petitioner for his eviction from the disputed property and then the petitioner shall have liberty to prove his case that the land in his possession is not a railway property. The petitioner shall also be at liberty to file application for demarcation of the disputed property and if any such application is filed, then the respondents shall be obliged to consider on the same as the demarcation report may be of help in drawing a conclusion regarding the dispute between the parties. With these observations this petition is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge