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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No. 5263 of 2021

Smt. Champa Devi Chandra W/o Late Puranlal Chandra, Aged About 45 Years, Sarpanch, R/o Gram Panchayat Jetha, Janpad Panchayat Sakti, District Janjgir Champa, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Panchayat And Gramin Vikas Vibhag, Mahanadi Bhawan, Mantralaya, Capital Complex, Atal Nagar, New Raipur, District Raipur, Chhattisgarh.
2. Commissioner, Bilaspur Division Bilaspur, Chhattisgarh.
3. Collector, Janjgir Champa, District Janjgir Champa, Chhattisgarh.
4. Sub Divisional Officer (Revenue) Sakti, District Janjgir Champa Chhattisgarh.
5. Tehsildar Sakti, District Janjgir Champa, Chhattisgarh.
6. Ganesh Ram Chandra S/o Bhola Ram Chandra, Aged About 49 Years, R/o Village Jetha, Tehsil Sakti, District Janjgir Champa Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Manoj Paranjpe, Advocate
For State	:	Mr. Ashish Tiwari, Govt. Advocate
For Respondent no.6	:	Mr. Prateek Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

17.12.2021

1. Aggrieved by the order Annexure P-1 dated 30.11.2021 passed by the Additional Commissioner, Bilaspur Division, in Panchayat Case No. 1A-89/2021/22, the present writ petition has been filed. Vide the impugned order, the Additional Commissioner, exercising the powers

under Section 91 of Chhattisgarh Panchayat Raj Adhiniyam, 1993 read with Rule 3 of the Chhattisgarh Panchayat (Appeal and Revision) Rules, 1995 allowed the appeal preferred by the respondent no.6 and thereby the petitioner was declared disqualified to the post of Sarpanch of Gram Panchayat Jetha, Tahsil Sakti, District Janjgir-Champa. The Additional Commissioner in the process has set aside the order of the Collector under Section 36(3) of the Panchayat Raj Adhiniyam, 1993 dated 06.09.2021.

2. The brief facts of the case are that the petitioner in the instant case was declared the elected Sarpanch of Gram Panchayat Jetha, Tahsil Sakti, District Janjgir-Champa in the election that was convened in 2019-20. Subsequently, respondent no.6 is said to have made a complaint against the petitioner before the Tahsildar under Section 248 of the Land Revenue Code alleging the illegal encroachment of government land by the husband of petitioner. The Tahsildar initially passed an order on 12.02.2021 allowing the complaint filed by respondent no.6. The order of Tahsildar dated 12.02.2021 was subjected to challenge by petitioner before the Sub Divisional Officer (Revenue). The SDO (Revenue) vide order dated 25.08.2021 Annexure P-3 found that the order of Tahsildar was not in accordance with law inasmuch as it was passed without recording of evidence of the petitioner who was the respondent before the Tahsildar and that the spot inspection which was conducted also was without taking into confidence the petitioner. The SDO for the given reasons directed the Tehsildar to get a fresh inquiry conducted after giving a fair and reasonable opportunity of hearing to the petitioner herein. This order dated 25.08.2021 was not challenged by either side before any higher authorities. Thus, the same has attained finality.

3. The fresh inquiry, spot inspection and the subsequent developments have not transpired thereafter. Meanwhile, there was a proceeding under Section 36 (3) of the Panchayat Raj Adhiniyam drawn by the District Collector at the behest of the respondent no.6 on the ground of there being an illegal encroachment made by the petitioner and her husband. The district Collector vide its order dated 06.09.2021 Annexure P-6 rejected the proceeding on the ground that the question of illegal encroachment has not been established as it is still pending consideration before the Tehsildar. The order of the district Collector was subsequently again put to challenge before the Additional Commissioner, Bilaspur Division who in turn has now passed the impugned order Annexure P-1 dated 30.11.2021. The Divisional Commissioner after summoning the records of the authorities below reached to the conclusion that there is an admitted encroachment made by the husband of petitioner and that there is a clear case made out under section 248 of the Land Revenue Code so far as the illegal encroachment on the part of the petitioner is concerned. The finding of the Divisional Commissioner was based upon the evidences which are said to have been adduced before the Tehsildar at the first instance before the passing of the order dated 12.02.2021 under Section 248 proceedings.

4. The solitary contention of the learned counsel for petitioner is that once when the fresh inquiry is pending consideration in the light of the order of the SDO(Revenue), it stands established that the aspect of illegal encroachment so far as the proceeding under Section 248 is concerned is still inconclusive. That without there being a conclusive finding in a proceeding under section 248, the conclusion reached by the Divisional Commissioner in passing of the impugned order is per se bad as there is yet a finding to come so far as the alleged illegal encroachment if any is made by the petitioner or her husband is concerned.

5. Learned counsel appearing for the respondents on the other hand submits that a plain reading of the impugned order Annexure P-1 would show that the same has been passed after due consideration of the pleadings that has come up before the Tehsildar including the evidence and the cross-examination and also on the basis of the admitted facts which were reflected through the records available in the proceedings before the Tehsildar, the SDO and again before the Commissioner.

6. Be that as it may, admittedly by virtue of the order of the SDO (Revenue) dated 25.08.2021 the matter stood remitted to the Tehsildar for giving a fresh inquiry report after conducting a fresh spot inspection in presence of the disputing parties and also after giving an opportunity to the petitioner to adduce evidence and cross-examine in this regard. However, the proceeding under section 248 of the Land Revenue Code is still pending undecided and inconclusive and yet to be finalized at the level of the Tehsildar and the SDO. In the absence of any clear finding in a proceeding under Section 248, the findings recorded by the Commissioner at this juncture declaring the petitioner to be disqualified on the ground of an alleged illegal encroachment made by the petitioner would not be sustainable at the first instance. The proper course that was available for the Additional Commissioner was to have looked into, that the order of the SDO dated 25.08.2021 has not been finalized neither has the order of the Tehsildar dated 12.02.2021 been held to be proper and legal in the appeal.

7. Given the said facts, this Court is of the opinion that the finding given by the Additional Commissioner in the course of passing of the impugned order Annexure P-1 in the teeth of the order of the SDO dated 25.08.2021 would not be sustainable and the same deserves to be and is accordingly set aside with consequences to follow.

8. However, it is made clear that since the SDO vide order dated 25.08.2021 has already directed the Tahsildar to submit a fresh inquiry report after conducting a fresh spot inspection and also after giving a proper opportunity of evidence to the petitioner, the respondents 4 & 5 are hereby directed to immediately conclude the aforesaid proceedings and thereafter proceed in accordance with law in terms of the findings arrived at in the course of fresh inquiry. Let an appropriate decision be taken after giving a fair and reasonable opportunity to all the disputed parties within an outer limit of 4 months. The petitioner as also the respondent no.6 are expected to render all cooperation for conclusion of the proceedings at the earliest.

9. With the aforesaid observation and direction, the writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Khatai