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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No. 5233 of 2021

Chaitandas S/o Mohan Das Mahant Aged About 42 Years Caste Panika R/o Village Balakpodi Tahsil Dharamjaigarh District Raigarh Chhattisgarh.

---Petitioner(s)

Versus

1. State of Chhattisgarh Through Collector Jashpur
2. Commissioner Sarguja Division, Ambikapur
3. Sub Divisional Officer (Revenue) Pathalgaon District Jashpur Chhattisgarh
4. Tahsildar Pathalgaon District Jashpur Chhattisgarh
5. Divisional Forest Officer Jashpur District Jashpur Chhattisgarh
6. Forest Range Officer, Forest Division Pathalgaon Tahsil Pathalgaon District Jashpur Through Garden Governer / Forest Range Officer (C.G) Non - Applicant Named As Kamla Yadav

---Respondents

For Petitioner	:	Shri Vivek Tripathi, Advocate.
For Respondents/State	:	Shri Rahul Jha, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17.12.2021

1. The present writ petition has been filed against the order of the Divisional Commissioner, Surguja Division dated 07.09.2021. Vide the said order the Commissioner has granted an interim protection in favour of the respondent No.6 in a Second Appeal under Section 44 (2) of the Chhattisgarh Land Revenue Code.

2. The original order is one which has been passed by the Tehsildar, Pathalgaon, District Jashpur in Revenue Case No.41/A-70/2016-17 dated 21.09.2017 whereby an application put forth under Section 250 of the Chhattisgarh Land Revenue Code was allowed by the Tehsildar. The order of the Tehsildar was subjected to challenge under Section 44(1) of Land Revenue Code before the SDO, who in turn, has dismissed the first appeal leading to the filing of second appeal before the Divisional Commissioner on behalf of the State. The Second Appeal was admitted for hearing and vide the impugned order the Commissioner has ordered the parties to

maintain status quo. It is this order of status quo which has been challenged by the petitioner in the present writ petition.

3. Considering the fact that it is only an order of status quo that has been passed by the Commissioner and moreover the appeal under Section 44(2) of the Land Revenue Code is still pending consideration before the Commissioner and which has been ordered to be listed for hearing after the records of the two authorities below are received by the Commissioner, this court, prima facie is of the opinion that the order passed by the Commissioner is one which has been exercised under the discretionary powers conferred upon him and this court in exercise of the power of judicial review under Article 226 of the Constitution of India would not be justified in subjecting the order dated 07.09.2021 to judicial review when the order itself is one which has been passed exercising the discretionary jurisdiction. Moreover, it is only an order of status quo pending the receipt of records, which in other words also means that after the records are received, the Commissioner would be scrutinizing the contents of the appeal and the contentions of either side before taking a final decision in the appeal.

4. The writ petition therefore being totally devoid of merit deserves to be and is hereby rejected.

Sd/-
(P. Sam Koshy)
Judge

inder