CGHC010034702025 2026:CGHC:45195

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RAGHVENDRA JAT Digitally signed by RAGHVENDRA JAT

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 530 of 2025

Order Reserved on: 18.8.2026

Order Delivered on: 27.10.2026

- Ashish Awasthi S/o. Late Durga Sahay Awasthi Aged About 29 Years R/o. Village- Masturi, Tehsil- Masturi, Distt- Bilaspur (C.G.).

... Petitioner(s)

versus

1. State Of Chhattisgarh Through The Collector, Distt- Bilaspur (C.G.).
2. Commissioner Bilaspur Division, Distt- Bilaspur (C.G.).
3. Tehsildar Masturi, Distt- Bilaspur (C.G.)

... Respondent(s)

For Petitioner(s)	:	Mr. Ali Asgar, Advocate.
For Respondent(s)/State	:	Mr. Abhishek Gupta, Panel Lawyer.

Hon'ble Mr. Justice Amitendra Kishore Prasad

C A V Order

1. By way of this petition, the petitioner has prayed for following reliefs:-

> *"(A) That the respondent authorities be directed to provide the alternate land to the petitioner and quash the order dated 27/11/24 (ANNEXURE P-1) passed by the Additional Collector.*
> *(B) That any other relief which this court thinks fit in the interest of justice & equity."*

2. Brief facts of the case, is that, the petitioner is the recorded owner of land bearing Khasra No. 66/14, admeasuring 85 dismil, situated at Gram Masturi, Tehsil Masturi, Patwari Halka No. 31, District Bilaspur, which was transferred in his name on 21.01.2021. On the adjoining Government land, a Boys Primary School is situated, and for providing better facilities to the students and staff, a shed, kitchen shed and toilets were constructed, in the process of which an area admeasuring approximately 0.15 acre belonging to the petitioner was encroached upon and utilized for the said facilities. The petitioner approached the competent authority seeking restoration of possession over the encroached portion, and the Tahsildar, vide order dated 29.12.2022, allowed his application and directed restoration of possession. However, considering that implementation of the said order would result in demolition of the facilities being used by the school students, the villagers requested the Petitioner to seek allotment of suitable alternative Government land of equivalent value instead. Accordingly, the petitioner submitted a representation dated 16.01.2023, but the same was not decided, compelling him to approach this Court in

W.P.(C) No. 1087/2023. Vide order dated 13.07.2023, this Court has directed the authorities to decide the representation. Despite subsequent representations and repeated directions of this Court, including orders passed in Contempt Case Nos. 998/2023 and 429/2024, no effective decision was taken for a considerable period. Ultimately, during the pendency of the third contempt proceeding, being Contempt Case No. 1275/2024, the Additional Collector passed the impugned order dated 27.11.2024 rejecting the petitioner's representation on the ground that the encroachment had taken place in the presence of his father, who was allegedly the Sarpanch at the relevant time. The said finding is factually incorrect, as the petitioner's father was not the Sarpanch at the relevant point of time, which is evident from the documents relating to the site inspection, approval and sanction of the construction in the year 2013. It is, therefore, submitted that the impugned order has been passed without properly considering the relevant documents and factual circumstances and appears to have been passed in haste, merely to bring the pending contempt proceedings to an end.

3. Learned counsel for the petitioner submits that the petitioner is the recorded owner of land bearing Khasra No. 66/14, admeasuring 85 dismil, situated at Gram Masturi, Tehsil Masturi, District Bilaspur, which was transferred in his name on 21.01.2021. It is submitted that, for construction of a shed, kitchen shed and toilets for the Boys Primary School situated on Government land, an

area of approximately 0.15 acre belonging to the petitioner was encroached upon. The petitioner approached the competent authority for restoration of possession, and the Tahsildar, vide order dated 29.12.2022, directed restoration of the said land to the petitioner. However, in the larger interest of the students and staff of the school, the petitioner requested the authorities to allot suitable alternative land of equivalent value instead of disturbing the existing school facilities. Though the petitioner submitted representations and this Court issued directions for their consideration, no effective decision was taken, compelling him to initiate successive contempt proceedings. Ultimately, the Additional Collector, vide impugned order dated 27.11.2024, rejected the petitioner's claim on the ground that the encroachment had taken place in the presence of his father, who was allegedly the Sarpanch at the relevant time. Learned counsel submits that the said finding is factually incorrect, as the petitioner's father was not the Sarpanch at the relevant time, which is evident from the documents relating to the site inspection and construction proceedings of the year 2013. It is further submitted that the impugned order has been passed without properly considering the relevant material and appears to have been issued in haste to bring the pending contempt proceedings to an end. The petitioner, being the lawful owner of the land, cannot be deprived of his property except in accordance with law, and even otherwise, in view of Article 300-A of the Constitution of

India, his right to property cannot be defeated without lawful authority. Learned counsel therefore submits that, particularly when the petitioner has agreed to allow the school facilities to continue in the larger interest of the students, the authorities ought to provide suitable alternative land of equivalent value, and the impugned order dated 27.11.2024 is liable to be quashed.

4. On the other hand, learned counsel for the State submits that, in compliance with the directions issued by this Hon'ble Court in W.P. (C) No. 420/2024, the petitioner's case was duly examined by the respondent authorities. It is submitted that the Tahsildar, Masturi, conducted an inquiry and survey of the land in question, pursuant to which it was found that the petitioner's father, Shri Durga Sahay Awasthi, had not raised any objection at the time of construction of the school and its compound wall. It is further submitted that, as per the official records, the petitioner's father was the Sarpanch of Gram Panchayat Masturi during the relevant period from 2005 to 2010 and the school construction was undertaken during his tenure with his knowledge and consent. Learned counsel, therefore, submits that the petitioner cannot subsequently claim allotment of alternative Government land in lieu of the land utilized for construction of the school, and the authorities have rightly rejected his representation after due inquiry. Hence, the impugned order does not warrant any interference by this Court.

5. I have heard learned counsel for the parties and having perused the material available on record.

6. From a perusal of the record, it is quite evident that the land belonging to the petitioner has admittedly been utilized and taken over by the concerned authorities for the purposes of the Government school. It is also an admitted position that, in proceedings under Section 250 of the Chhattisgarh Land Revenue Code, 1959, the concerned Tahsildar, vide order dated 29.12.2022, directed the respondent authorities to restore vacant possession of the portion of land which had been encroached upon and utilized by the Government school. In view of the aforesaid undisputed facts, the contention advanced by the respondent/State that, on account of the alleged consent, acquiescence or waiver on the part of the petitioner's father, the petitioner is not entitled to restoration of possession or allotment of suitable alternative land in lieu of the land utilized by the school, cannot be accepted as a sound proposition of law. No consent, agreement or other legally admissible material has been placed on record to establish that the Petitioner's father had voluntarily consented to the taking over or utilization of his land by the authorities. On the contrary, the petitioner, immediately after obtaining the order dated 29.12.2022, has been continuously pursuing his grievance before the competent authorities as well as this Court. The petitioner's consistent stand has not been to disturb the existing possession of the school or seek demolition of the school facilities, as such a course would cause unnecessary hardship and inconvenience to the school administration and,

more importantly, to the students studying therein. Rather, taking into consideration the larger interest of the students and the functioning of the school, the petitioner has made a bona fide and reasonable request to the authorities to allot suitable alternative land of equivalent value in exchange for the portion of his land which has been utilized by the school. Such a request, in the facts and circumstances of the present case, cannot be construed as a waiver of the Petitioner's lawful right over his property or as a relinquishment of his claim for appropriate redressal in accordance with law.

7. The Hon'ble Supreme Court in the matter of ***Vidya Devi vs. State of Himachal Pradesh and Others, (2020) 2 SCC 569*** has observed as under:-

> *"12.8. The contention of the State that the appellant or her predecessors had "orally" consented to the6 acquisition is completely baseless. We find complete lack of authority and legal sanction in compulsorily divesting the appellant of her property by the State.*
>
> *12.9. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in Tukaram Kana Joshi v. MIDCS wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare*

State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

12.10. This Court in State of Haryana. Mukesh Kumar held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension.

12.11. We are surprised by the plea taken by the State before the High Court, that since it has been in continuous possession of the land for over 42 years, it would tantamount to "adverse" possession. The State being a welfare State, cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens, as has been done in the present case.

12.12. The contention advanced by the State of delay and laches of the appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised7 in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court.

Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental 9 rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.

12.13. In a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice, and not defeat it."

8. Considering the aforesaid facts and circumstances of the case, and having regard to the findings recorded by the concerned Tahsildar regarding the encroachment over the petitioner's land, this Court directs the respondent authorities to provide suitable alternative land equivalent to an area of 0.15 acres to the petitioner, after obtaining his consent, and to pass necessary orders in this regard within a period of 90 days from the date of receipt of a copy of this order.
9. With this observation and direction, the writ petition is **disposed of.**

Sd/-

(Amitendra Kishore Prasad)
Judge

Raghu Jat