
(2020) 08 CHH CK 0024

In the Chhattisgarh High Court

Case No : Writ Petition No. 227 No. 512 Of 2017

Parasram Sahu And Ors

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 14-08-2020

Acts Referred:

Chhattisgarh Land Revenue Code, 1959 — Section 32, 110, 115, 116, 237
High Court Of Chhattisgarh Rules, 2007 — Rule 43
Code Of Civil Procedure, 1908 — Order 6 Rule 15(1)
Constitution Of India, 1950 — Article 31, 226, 227, 300A

Citation : (2020) 08 CHH CK 0024

Hon'ble Judges : Rajendra Chandra Singh Samant, J

Bench : Single Bench

Advocate : Shobhit Koshta, Devendra Pratap Singh

Final Decision : Disposed Of

Judgement

@JUDGMENT-JUDGMENT

Heard.

1. This petition has been brought praying for exercise of jurisdiction of this Court under Article 227 of the Constitution of India to quash the order dated 19.6.2017 passed by respondent No.2 - Commissioner, Durg, and other reliefs.

2. The claim of the petitioners is that the agricultural lands bearing Khasra Nos. 396, 440 and 554, area 0.202, 9.807 and 1.130 in total 11.139 hectares (27.53 acres), situated in village Potiyakala, District Durg is under the ownership of the petitioners since 1954-55. After the patwari inspection on 15.1.2015, the agricultural land belonging to the petitioners was wrongly marked as Charagah for cattle and accordingly the entry was made showing the Collector of the District as Manager of the said property. When the petitioners came to know about this correction in the revenue records, they moved an application under Section 116 read with Section 32 of the Chhattisgarh Land Revenue Code, 1959

(in short 'C.G.LRC, 1959') before the Tehsildar praying for correction and deletion of name of Collector in the revenue records, but this application was rejected by order dated 13.5.2016. The petitioners then filed an appeal before the Sub-Divisional Officer (Revenue), District, Durg which was dismissed by order dated 30.8.2016. Then, the petitioners preferred second appeal before respondent No.2 - Commissioner, Durg and the same has also been dismissed by the impugned order.

3. It is submitted by learned counsel for the petitioners that according to the record of rights, the petitioners are the descendants of Manihar, Mayaram, Vishnu, Nathuram and Prem, whose names were present in the record of rights in the year 1954-55 with respect to the disputed property. Khasra Pachshala of the year 1977-80 & 81 is filed alongwith the petition mentions the possession of the petitioners over the disputed land, which makes it clear that the disputed property was not the government land and on the other hand, it was the private property belonging to the petitioners. It is further submitted that a circular was issued by the State Government on 30.3.2013 directing the patwari to make inspection of his respective area and make entry of the government lands specially marking as service land, grassland, gothan, grazing ground and other land of public use as government land marking the Collector as Manager. The instruction was specific to mark the government lands only and make entry accordingly in the name of Collector. The patwari who made the inspection, gave report to Tehsildar vide Annexure-P/4, dated as 15.1.2015, which clearly mentions that the disputed property was entered in the name of the petitioners and they are mentioned as bhumiswami and the only remark made was that the land is vacant and being used for grazing of cattle.

The said report did not describe the said land as government land and even then, the entry in the khasra pachshala was amended and the Collector was shown as the Manager of the above-mentioned agricultural lands. However, the name of the petitioners has not been deleted from the revenue records, but this entry is giving an impression that the disputed land is government land.

4. It is submitted that the petitioners moved an application under Section 116 read with Section 32 of the C.G.LRC, 1959 before the Tehsildar/ respondent No.5 which was mechanically rejected without application of mind and similarly, the first appeal filed before respondent No.4/ Sub- Divisional Officer (Revenue) and the second appeal before respondent No.2/ Commissioner have also been mechanically dismissed.

Respondent No.2 has observed in his order that the lands are entered in the name of the petitioners and no proof has been produced that the land is government land. He has held that the entry in the revenue records shows that the land is in public use and any entry in this respect can be challenged under Section 237 of the C.G.LRC, 1959 before the Collector and on this basis, the appeal has been dismissed, which is totally erroneous order. It is also submitted that right to property is a constitutional right under Articles 300-A and 31 of the

Constitution of India, therefore, no person shall be deprived of his property saved by the authority or procedure laid down by law.

5. Reliance has been placed on the judgments of the Supreme Court in the cases of State of Orissa vs. Dr. (Miss) Binapani Dei and Others reported in (1967) 2 SCR 625 and Vidya Devi vs. State of Himachal Pradesh and Others reported in (2020) 2 SCC 569, and prayed for the aforesaid reliefs.

6. Learned State counsel appearing for all the respondents submits that the present petition has been filed by Jashwant Kumar Darsena, who claims to be the power of attorney holder on behalf of the petitioners.

This petition has been filed on 20.7.2017. The copy of power of attorney which is filed alongwith the petition shows that this power of attorney was executed on 28.11.2014 and the note below the title itself mentions that the power of attorney shall be in force up to two years only and after passing of two years, the same shall stand automatically revoked., therefore, the petition which has been filed after the expiry of this power of attorney is not maintainable.

7. The patwari of the respected halka made inspection of the disputed land in pursuance of circular dated 30.3.2013 and gave a report on 15.1.2015, in which he has clearly mentioned that the land as described above is vacant land and being used for grazing of cattle, therefore, the claim of possession made by the petitioners is baseless. As the land in question was a land of public use, the entry was made in the khasra pachshala showing the Collector as the Manager of these lands. The order that has been passed by Tehsildar on the application filed by the petitioners; by Sub-Divisional Officer in first appeal; and by the Commissioner in second appeal; are proper and lawful which need no interference under Article 227 of the Constitution of India. Respondent No.2/ the Commissioner has rightly pointed out in the impugned order that the petitioners have remedies available under Section 237 of the C.G.L.R.C, 1959, therefore, the petition is without any substance which may be dismissed.

8. In reply, it is submitted by counsel for the petitioners that the respondents have not mentioned and not taken any ground on the maintainability of this writ petition in the written reply. The note in the power of attorney by itself does not conclude the effect of the instrument, therefore, the petition is maintainable. The other arguments submitted by the State counsel are also rebutted.

9. Heard counsel for both the parties and perused the documents present on record.

10. First of all, the question of maintainability of the writ petition has taken into consideration. Rule 43 of the High Court of Chhattigarh Rules, 2007 (in short 'C.G. Rules, 2007) provides as under:

'43. An application for writ, order or direction under Article 226/227 of the Constitution shall be moved in the format prescribed, in three sets duly supported by an affidavit by the petitioner or by one of the petitioner or by

some other person, proved to the satisfaction of the Court to be acquainted with the facts of the case, as specified in sub- rule (1) of Rule 15 of Order VI of the Code. It shall also state whether an application on the same cause of action had been previously filed before this Court, and if so, the result thereof.'

11. There is mention of Order VI Rule 15(1) of the Code of Civil Procedure and this provision is as under:

'15. Verification of pleadings-- (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.'

12. In Rule 43 of the C.G. Rules, 2007 as well as in the provision under Order VI Rule 15(1) of the CPC, there is no mention that the other person who may file a writ petition or verify the pleadings should be a holder of power of attorney.

13. The provisions of Civil Procedure Code are not strictly applicable in the writ matters. The extent to which the provision in CPC shall be applicable has to be specifically provided and the same has been provided in Rule 43 of the C.G. Rules, 2007. There is no need to go into the details regarding the effectiveness of the power of attorney. At present, although there is a note or self limiting clause is present in the power of attorney, but the Powers-of-attorney Act, 1882 does not make any mention with respect to revocation or termination of a power of attorney, but as a practice in general, the power of attorney can be revoked by the person giving such attorney, by executing a similar document in that respect. In case of such power of attorney which has self limiting clause, at least a notice would be required from the person giving the power of attorney to the holder of the power of attorney, making the intention clear that the power of attorney has expired or revoked. There is no such material brought to the notice of the Court, regarding any such action taken by the petitioners showing their intention to revoke the power of attorney given to the holder of the power of attorney. I do not find any need to give any other specific conclusion on this argument for the simple reason that the Rule 43 of the C.G. Rules, 2007 simply mentions that the petition can be brought by the petitioner himself or one of the petitioners, if the petitioners are more than one or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case as specified in Order VI of Rule 15 of the CPC. Therefore, the present petition which has been verified by Jashwant Kumar Darsena by swearing in an affidavit that he is aware of the facts of the case and has authorization from the petitioners, appears to be sufficient in compliance with Rule 43 of the Rules, 2007. Hence, on this basis, it is held that the petition is maintainable.

14. Considered the grounds in the main petition. The report dated 15.1.2015 given by the Patwari halka No. 23 is relevant and the relevant portion of that report is reproduced here under:

शग्राम पोटियाकला प.ह.नं.23 रा.नि.मं. दुर्ग-1 तह.व जिला दुर्ग स्थित भूमि की जानकारी -

खसरा नम्बर	रकबा	लगान
396	0.202	11.50
440	9.807	
554	1.130	
.....		
कुल 3	11.139 हे.	11.50
.....		

रुपये की भूमि 1. नारायण पिता मनिहार, 2. जंत्री पिता मनिहार, 3. दिलीप कुमार ना.बा. मयाराम पालक मा व खुद 4. मिलापाबाई बेवा मयाराम, 5. पार्वती जौजे चेतन, 6. अशोक जौजे भोपाल, 7. दीनाबाई जौजे कल्याण, 8. खुमान सिंह पिता नाथूराम, 9. देवचरण पिता नाथूराम, 10. नरसिंह पिता नाथूराम, 11. केकती बेवा नाथूराम, 12. बिष्णु पिता बिहारी, 13. प्रेम पिता जीतराम वो कुल काश्तकार साकिन पोटियाकला भूमिस्वामी के नाम पर उल्लेखित पाये गये।

वर्तमान में मौका चारागाह पशुओं को चराई के उपयोग किए जा रहे, खाली रिक्त भूमि है।

15. It appears that the entry made in khasra pachshala mentioning the Collector, Durg as Manager of the disputed property without deleting the names of the petitioners which is entered as bhumiswami, was made unilateral, without following any procedure.

16. Section 110 of the C.G.LRC, 1959 provides that when the patwari submits a report, on that basis, the Tehsildar is required to publish such report with intention to give opportunity to the persons interested to raise objections, if any, and thereafter, a reasonable opportunity shall also be given for hearing before any entry is made or corrected in the revenue records. It appears, in the present case that no such procedure was followed. Section 116 of the C.G.LRC, 1959, provides that the person aggrieved by an entry in the land records has the remedy to apply before the Tehsildar for correction of such entry and the petitioners have accordingly filed an application before Tehsildar which has resulted in dismissal. The Tehsildar has ordered by order dated 13.5.2016 that the entry was made in compliance with the circular of the State Government No. F 4-9/seven-1/2013 dated 30.3.2013, therefore, the entry cannot be deleted. In the first appeal, the Sub-Divisional Officer has agreed with the observation made by the Tehsildar and dismissed the appeal. The Commissioner has dismissed the second appeal mentioning that the entry has been made on the basis of spot inspection report and the petitioners have remedies under Section 237 of the C.G. LRC, 1959.

17. Section 237 of the Chhattisgarh Land Revenue Code, 1959 is as follows:

'237. Collector to set apart land for exercise of Nistar rights.-- (1) Subject to the rules made under this Code, the Collector may set apart unoccupied land for the

following purposes, namely,--

- (a) for timber or fuel reserve;
- (b) for pasture, grass bir or fodder reserve;
- (c) for burial ground and cremation ground;
- (d) for gaothan;
- (e) for encamping ground;
- (f) for threshing floor;
- (g) for bazar;
- (h) for skinning ground;
- (I) for manure pits;
- (j) for public purposes such as schools, play grounds, parks, road, lanes, drains and the like; and
- (k) for any other purposes which may be prescribed for the exercise of right of Nistar.

(2) Lands set apart specially for any purpose mentioned in sub-section (1), shall not otherwise be diverted without the sanction of the Collector.'

18. On perusal of the aforesaid provision, it is very clearly revealed that the Collector has power to set apart unoccupied land for the purposes which are mentioned in Section 237 of the C.G.LRC, 1959. This provision does not give the Collector any adjudicatory power to decide the correctness of any entry made and pass the order to strike out the same. The power to make corrections of any wrong entry is specifically provided under Sections 115 and 116 of the C.G.LRC, 1959. In *Vidya Devi vs. State of Himachal Pradesh and Others* (supra), the Supreme Court has observed about the same in paragraphs 12.1 to 12.6 is as under:

'12.1. The appellant was forcibly expropriated of her property in 1967, when the right to property was a fundamental right guaranteed by Article 31 in Part III of the Constitution. Article 31 guaranteed the right to private property in *Anakh Singh v. State of H.P.* reported in 2007 SCC Online HP 220, which could not be deprived without due process of law and upon just and fair compensation.

12.2. The right to property ceased to be a fundamental right by the Constitution (Forty Fourth Amendment) Act, 1978, however, it continued to be a human right in *Tukaram Kana Joshi v. MIDC*, reported in (2013) 1 SCC 353 in a welfare State, and a Constitutional right under Article 300A of the Constitution. Article 300A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation,

though not expressly included in Article 300A, can be inferred in that Article in *K.T. Plantation (P) Ltd. v. State of Karnataka* reported in (2011) 9 SCC 1.

12.3. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300 A of the Constitution. Reliance is placed on the judgment in *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai* reported in (2005) 7 SCC 627, wherein this Court held that:

" 6. ... Having regard to the provisions contained in Article 300A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid."

(emphasis supplied) 12.4. In *N. Padmamma v. S. Ramakrishna Reddy* reported in (2008) 15 SCC 517, this Court held that:

"21. If the right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. Article 300A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of the provisions of Article 300A of the Constitution of India, must be strictly construed."

(emphasis supplied) 12.5. In *Delhi Airtech Services Pvt. Ltd. & Ors. v. State of U.P. & Ors.* reported in (2011) 9 SCC 354, this Court recognized the right to property as a basic human right in the following words:

"30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property. "Property must be secured, else liberty cannot subsist" was the opinion of John Adams. Indeed the view that property itself is the seed-bed which must be conserved if other constitutional values are to flourish, is the consensus among political thinkers and jurists."

(emphasis supplied) 12.6. In *Jilubhai Nanbhai Khachar v. State of Gujarat*, reported in 1995 Supp (1) SCC 596 this Court held as follows :

"48. ...In other words, Article 300A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300A. In other words, if there is no law, there is no deprivation."

(emphasis supplied) The Constitution protects every citizen against the exercise of arbitrary authority of the State.

19. In the present case, there appears to be no denial and no dispute that the petitioners are the owners of the disputed property. It appears that the report of

the patwari dated 15.1.2015 has been grossly misinterpreted by the Revenue Officers in making zealous compliance to the circular dated 30.3.2013. The circular dated 30.3.2013, specifically mentioned with respect to the government lands identified as service land, grassland, gothan, joint charagah etc. and that the Collector should be entered as Manager in the enteries. The circular does not speak of any unused private land.

20. The report of patwari dated 15.1.2015 mentions that the disputed land is recorded in the name of the petitioners, with a note that at present the land is being used as grazing land which is vacant land. A vacant land would not by itself mean that such land is not in possession of any person. Further, as the report says that the land is being used for grazing cattle and that by itself would not mean that the land was used by the public. Specific words to be used, that the land was not in possession of the petitioners are missing in that report. Secondly, the entry in the Khasra Pachshala mentioning the Collector, Durg as Manager of these lands has been made without following any procedure as prescribed under the C.G.LRC, 1959.

921. The order dated 13.5.2016 of Tehsildar does not give any reason as to why the entry was made the only mention that circular dated 30.3.2013, is the reason, is not sufficient. The Sub-Divisional Officer has not taken care to examine the facts and circumstances of this case and passed the order dated 13.5.2016 without application of mind and similarly the order dated 19.6.2017 passed by respondent No.2 also appears to be an order without application of mind. It is very-much clear that respondent No.5 as well as respondents No. 2 and 4 had authority to consider and decide the dispute raised by the petitioners under Section 116 read with Section 32 of the C.G.LRC, 1959, but they simply refused to exercise the jurisdiction because of which, the petitioners have suffered harassment for such a long time. It is not a case that the petitioners have been dispossessed from the disputed property or that their bhumiswami right has been taken away. The only reason for which the petitioners have been litigating before the Tehsildar, Sub-Divisional Officer, Commissioner and then they are present before this Court is that an entry has been erroneously made showing the Collector, Durg as Manager of the disputed property which is a private property of the petitioners. As per the revenue records and also as per the report given by the Patwari dated 15.1.2015, the entry made was certainly incorrect and also cannot be said to be in-compliance with the circular of the State Government dated 30.3.2013.

22. On the basis of the discussions made here-in-above and conclusion drawn, the present petition deserves to be allowed. The impugned order as well as the order of the First Appellate Court and the Tehsildar are hereby quashed and set aside. The respondents are directed to correct all the entries made in Khasra Pachshala mentioning respondent No.3/ Collector, Durg as Manager of the disputed land by deleting it and restore the status of the petitioners as the persons in possession of the disputed land. This direction be complied with within

a period of two months from the date of passing this order.

23. Accordingly, the petition stands disposed off.