

**(2019) 10 CHH CK 0212**

**Chhattisgarh High Court**

**Case No:** Writ Petition (C) No. 3163 Of 2018

Noni Bai

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

**Date of Decision:** Oct. 24, 2019

**Acts Referred:**

- Chhattisgarh Land Revenue Code, 1959 - Section 248

**Hon'ble Judges:** Prashant Kumar Mishra, J

**Bench:** Single Bench

**Advocate:** Santosh Sahu, Sudeep Verma, P.K. Bhaduri, Amiyakant Tiwari

**Final Decision:** Allowed

**Judgement**

Prashant Kumar Mishra, J

1. Petitioner is aggrieved by illegal demolition of her house situated at village Dharasiw, Up Tahsil Bhatgaon, Tahsil Bilaigarh, District Baloda Bazar-

Bhatapara for which she seeks compensation of Rs.6,00,000/- from the respondents with further prayer to direct the respondent No.1 to initiate action

against the respondents No.2 to 9.

2. According to the petitioner, the subject land was purchased by her father Chheduram from Prabha Devi, Indira and Prabhuvan Pratap Singh for

valuable consideration of Rs.4500/- by registered sale deed dated 24-3-1978. Petitioner's name was mutated in the revenue record on the basis of

registered WILL executed by her mother Sukwara Bai on 18-5-1990. Petitioner was, thus, in lawful possession of the house constructed by her father

over the subject land. However, the respondents No.3 to 9 in conspiracy with the respondent No.2 demolished the house despite production of

document relating to title.

3. On the application of the husband of the petitioner under the provisions of the Right to Information Act, 2005 (for short 'the RTI Act') he was

informed that a show cause notice was issued to him on 28-1-2018 for encroachment over the subject land treating the same to be Government land.

It is also highlighted that the said notice was, in fact, issued on 28-2-2018 (Annexure - P/4) fixing the date of hearing as 8-2-2018. It is mentioned in

the show cause notice that husband of the petitioner has occupied 2400 sq.ft. of Government land bearing khasra No.16 even though the said land has

been donated.

4. In response to petitioner's application under the RTI Act the Gram Panchayat informed the petitioner vide Annexure - P/5 dated 8-1-2018 that the

Gram Panchayat has never passed any resolution for demolition of her house.

5. Notice Annexure - P/6 dated 23-4-2018 issued by the Sub Divisional Officer (Revenue), Bilaigarh, indicates that after demolition of the house and

dispossessing the petitioner, the Sarpanch of the concerned Gram Panchayat has raised foundation of stones with intention to raise structure. The

photograph filed by the petitioner shows availability of JCB Machine over the subject land.

6. In the return filed by the respondents No.1, 8 & 9 it is stated that the demolition of petitioner's house was carried out on 15-2-2018 for the reason

that the petitioner was found to possess and reside in the land/house which was given in gift by her father for the purpose and use of Radhakrishna

Mandir, but the same was illegally occupied by the petitioner.

7. According to the State, some villagers, Panchas and the Sarpanch moved an application before the Sub Divisional Magistrate, Bilaigarh, on 11-12-

2017 stating that Chheduram has donated the property to Radhakrishna Mandir about 13-14 years back but because of the continued occupation of the

petitioner the bhogshala & dharamshala of Radhakrishna Mandir is not constructed, therefore, the illegal possession deserves to be removed. State has

filed certified copy of resolution of Gram Panchayat dated 12-12-2017 (Annexure - R/3).

8. The Gram Panchayat thereafter issued notice to the petitioner's husband vide Annexure - R/4 pursuant to which proceedings under Section 248 of

the Chhattisgarh Land Revenue Code, 1959 (henceforth 'the Code, 1959') was initiated on 28-1-2018 vide order sheet Annexure - R/5. The

proceeding thereafter was fixed on 10-2-2018 recording that WPC No.3163 of 2018 husband of the petitioner refused to accept notice, therefore, he is

proceeded ex parte. The final order was passed on 10-2-2018 and demolition was carried on 15-2-2018.

9. From the pleadings and documents it would appear that the land and house belonged to petitioner's father Chheduram. While the petitioner claims

ownership through a registered WILL executed by her mother, the Gram Panchayat asserts that Chheduram had donated the land to Radhakrishna

Mandir. The subject land is part of abadi land of village, therefore, it is not, as such, Government land because adadi land in a village is the area

reserved for village abadi, under the provisions of the Code, 1959.

10. Section 246 of the Code, 1959 further provides that every person who at the coming into force of the Code lawfully holds any land as a house site

in the abadi or who may hereafter lawfully acquire such land shall be a bhumiswami in respect of such land.

11. There being no dispute by the opposite party that petitioner's father was possessed of the land, thus, he was a bhumiswami of such abadi site

possessed by him as per Section 246 of the Code, 1959, therefore, any donation by him to Radhakrishna Mandir can only happen under a WPC

No.3163 of 2018 registered instrument, which is not available in the present case.

12. Copy of the notice issued by the Naib Tahsildar in the name of Lakeshwar Patel was, in fact, issued on 28-2-2018 (Annexure - P/4) whereas

according to the respondents such notice was issued on 28-1-2018 vide order sheet (Annexure - R/5). The order sheet Annexure - R/5 does not

inspire confidence as it carries over writing and interpolation at several places. The Revenue Case mentioned as 26/A-68 Year 2017-18 carries over

writing. Thereafter, both the dates of 28-1-2018 & 8-2-2018 mentioned in the first order sheet contains over writing. The computer printing of the

dates mentioned the month as March, 2018 which has been over written on the top to write 28-1-2018 and at the bottom to mention 8-2-2018.

Calender of January, 2018 shows 28-1-2018 as a Sunday, similarly 10-2-2018 being Second Saturday is also the State Government's Gazetted holiday.

Thus, the office of Naib Tahsildar, Up Tahsil Bhatgaon appears to have functioned on two holidays i.e. firstly on Sunday and thereafter on Second

Saturday, which is impossible. The order sheets therefore, appear to be manufactured and concocted to make out a case for an illegal and arbitrary action.

13. A residential house belonging to a citizen cannot be demolished in the manner the Naib Tahsildar of Up Tahsil Bhatgaon has done and thereafter tried to defend it by manufacturing and concocting the documents. The State's document would itself demonstrate vide Annexure - R/7 that the house was constructed on 1600 sq.ft. Area out of total area 2400 sq.ft., therefore, by reasonable calculation the house would not cost any less than Rs.5.00 lacs.

14. In the result, the writ petition is allowed directing the respondent State to pay a sum of Rs.5,00,000/- (Rupees five lacs Only) to the petitioner for illegally demolishing her house. However, it will be open for the Government to recover the above amount of Rs.5.00 lacs from the respondent No.2 but that can only be done after constituting a departmental enquiry against the respondent No.2 for the illegality committed by the said officer, as indicated above in this order.