

CF 8007

IN THE HIGH COURT OF CHHATTISGARH  
AT BILASPUR

WRIT PETITION (C) NO. 4465 OF 2011

**PETITIONERS:**

1. Vijay Kujur,  
S/o Parsu Kujur, aged about 40 years,  
R/o Village Gangapur Khurd, Gram Panchayat  
Vishunpur, Tehsil Ambikapur, District Sarguja,  
Chhattisgarh.
2. Lalsu Kujur  
S/o Late Gunja, Aged about 60 years,  
R/o Village Gangapur Khurd, Gram Panchayat  
Vishunpur, Tehsil Ambikapur, District Sarguja,  
Chhattisgarh.
3. Munnelal Kerketta  
S/o Lahur Saay, Aged about 26 years,  
R/o Village Gangapur Khurd, Gram Panchayat  
Vishunpur, Tehsil Ambikapur, District Sarguja,  
Chhattisgarh.
4. Sohra  
S/o Bhukhal, Aged about 60 years,  
R/o Village Gangapur Khurd, Gram Panchayat  
Vishunpur, Tehsil Ambikapur, District Sarguja,  
Chhattisgarh.
5. Krishna  
S/o Kendu, Aged about 38 years,  
R/o Village Gangapur Khurd, Gram Panchayat  
Vishunpur, Tehsil Ambikapur, District Sarguja,  
Chhattisgarh.
6. Lalit Tirkey  
S/o Gopal, Aged about 35 years,

P.R. No. 4643/2011  
Presented by: S. K. S. / B. S. W. S.  
dated: 03/08/2011



R/o Village Gangapur Khurd, Gram Panchayat  
Vishunpur, Tehsil Ambikapur, District Sarguja,  
Chhattisgarh.

7. Amar Saay Ekka  
S/o Devsaay Ekka, Aged about 47 years,  
R/o Village Gangapur Khurd, Gram Panchayat  
Vishunpur, Tehsil Ambikapur, District Sarguja,  
Chhattisgarh.

P.P. No. ....  
Presented by Smt. ....  
dated .....

8. Butul Khalkho  
S/o Dilbodh, Aged about 36 years,  
R/o Village Gangapur Khurd, Gram Panchayat  
Vishunpur, Tehsil Ambikapur, District Sarguja,  
Chhattisgarh.

**VERSUS**

**RESPONDENTS:**

1. State of Chhattisgarh  
Through the Secretary, Department of  
Tribal welfare, Mantralaya, D.K.S.  
Bhausa, Raipur. *DR*
2. Collector, Ambikapur,  
District Sarguja, Chhattisgarh.
3. Sub-Divisional Officer (Revenue)  
Tehsil Ambikapur, District Sarguja, C.G.
4. Tehsildar, Tehsil – Ambikapur, District Sarguja,  
C.G.



**WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF  
INDIA FOR ISSUANCE OF SUITABLE WRITS AND DIRECTIONS:-**

**1. PARTICULARS OF THE PETITIONER:**

As stated above in the cause title.

2/2/24

**HIGH COURT OF CHHATTISGARH: BILASPUR**

**(S.B : Hon'ble Shri Manindra Mohan Shrivastava, J.)**

**WRIT PETITION (C) NO.4465 of 2011**

**PETITIONERS**

Vijay Kujur and others

**Versus**

**RESPONDENTS**

State of Chhattisgarh and others

**Writ Petition under Article 226 of the Constitution of India**

**FOR PRONOUNCEMENT OF ORDER ON 31<sup>st</sup> OCTOBER, 2014**

Sd/-  
Manindra Mohan Shrivastava  
Judge

(232)

**HIGH COURT OF CHHATTISGARH: BILASPUR**

**WRIT PETITION (C) NO.4465 of 2011**

**PETITIONERS**

Vijay Kujur and others  
**Versus**

**RESPONDENTS**

State of Chhattisgarh and others

**Writ Petition under Article 226 of the Constitution of India**  
**(Single Bench: Hon'ble Shri Manindra Mohan Shrivastava, J.)**

**Present:-**

Ms. Sudha Bharadwaj, counsel for the petitioners.  
Shri Sidharth Rathod, Dy.G.A. for the State.

**ORDER**

**(Pronounced on this 31<sup>st</sup> day of October, 2014)**

By this petition under Article 226 of the Constitution of India, the petitioner has assailed the correctness, legality and validity of demolition proceedings carried out by the respondents whereby house of petitioners No.1, 3,5,6,7 & 8 have been demolished. The petitioners have prayed for a direction to restrain the respondents from carrying out construction work on the disputed land. The petitioners have also prayed for a direction to the respondents to make arrangement for shelter and necessity of the petitioners and also to pay compensation due to action of demolition of their house.

2. The petitioners case, in brief, as adumbrated in the writ petition, is that the petitioners/their ancestors had been occupying forest lands and carrying out agricultural activity and residing on forest land and they being the forest dwellers, were entitled to settlement of land in their favour under the State Government's scheme of settlement of land in favour of the forest dwellers in District Surguja under the scheme known as "Singhdeo Yojna".

Though proceedings for settlement were drawn but no settlement had taken place. However, the petitioners and their ancestors continued to occupy the respective lands since many decades and without any prior approval and permission and in violation of Panchayat Extension to Scheduled Areas Act, 1996 (hereinafter referred to as "PESA Act") as also without drawing proper proceedings and without affording opportunity of hearing to the petitioners, demolished the houses of the petitioners No.1,3,5, 7 & 8, giving rise to the instant petition.

3. Learned counsel for the petitioners submits that the petitioners and their ancestors were occupying forest land since many decades and they were carrying out agricultural activity and also constructed their dwelling houses and earning their livelihood. Learned counsel for the petitioners argued that the petitioners are the tribals residing in tribal forest areas of Surguja District. Learned counsel for the petitioners further contended that the State Government having floated and evolved and implemented Singhdeo Yojna meant for the purposes of settlement of tribals as forest dwellers over forest lands, ought to have acted in just and fair manner as welfare government to protect the interest of the tribals and provide them proper shelter to earn their livelihood and dwelling house under the scheme. Further contention of learned counsel for the petitioners is that without settlement and grant of lease of forest land in favour of petitioners and their ancestors, such action of demolition of their dwelling houses and

dispossession without drawing proper acquisition proceedings under the Land Revenue Code is high-handed and illegal. Referring to various documents relating to initiation of proceedings of settlement wayback in the year 1968-69, it has been contended that once the settlement proceedings started, the same should be brought to its logical conclusion but that was not done for no good reason. Learned counsel for the petitioners argued that the subject lands were situated within the scheduled area, the provisions of PESA Act are applicable and the respondent authority could neither demolish the houses nor could allow the lands to be used for the purpose of construction or any other activity except with the prior approval of the Gram Sabha. According to learned counsel for the petitioners, once the Gram Sabha passes a resolution that the lands be settled in favour of the forest dwellers and no other activity be carried out, it was not permissible under the law for the respondents to make allotment of subject land to the Tribal Department for the purpose of construction of Hostel of Scheduled Caste & Tribes. It has been argued, though feebly, that the petitioners could have been granted some protection under the provisions of the Scheduled Tribes and Other Traditional Forest Dweller (Recognition of Forest Rights) Act, 2006 (In short "the Act of 2006"), even that possibility was not explored by any of the respondent authorities, but they acted in high-handed manner without making any attempt to explore the possibility of providing some kind of respite in the form of settlement of land in favour of the petitioners who are tribals.

4. On the other hand, learned State counsel submitted that though in implementation of Singhdev Yojna, proceedings of settlement were initiated in the year 1968-69, when objections were invited, the Villagers objected to such settlement and it was found that the lands were recorded as *Gochar* (Grazing land) land in the Nistar Patrak. In these circumstances, when these lands were notified as forest land, these lands could not be settled in favour of the occupants. The occupants surrendered the possession and land was lying vacant but in the course of time, some of the petitioners started encroaching upon those lands and raising construction. It is submitted that the only an area of 1 Hectare in Khasra No.299/4 was settled in favour of one Gunja S/o Sukhra Uraon but no other land much less the lands claimed by the petitioners were ever settled either in favour of Gunja or any other person including ancestor of the petitioners much less the petitioners themselves. The subject lands were declared as Najul lands by issuing notification in exercise of power under the Revenue Book Circular. Later on, these Najul Lands were transferred to Tribal Department for construction of Tribal Hostel.

5. Though learned counsel for the petitioners made strenuous attempt to convince this Court that the petitioners are entitled to allotment of forest land as forest dwellers under the provisions of the Act of 2006, apparently on the date, the Act of 2006 came into existence, the lands were recorded as non-forest lands and then Najul lands. Land comprised in entire Gangapur Khurd village were

notified as Najul land. This fact has clearly borne out from the Annexure R-1, notification issued by the respondent-Collector in exercise of power conferred under the Revenue Book Circular. In fact, this factual position has been clearly admitted by the petitioners in their pleadings in para 8.5 of the petition. Therefore, the petitioners cannot claim protection under the provisions of the Act of 2006.

6. It is not in dispute that the State Government had come out with a scheme of "Singhdev Yojna" in the year 1968-69 with the object of settling tribes occupying forest lands in the Surguja District. As is clear from the return of the State Government, a Revenue Case No.13/अ-3/1968-69 was also registered. Extracts of these revenue proceedings have been placed on record by the petitioners themselves collectively as Annexure P-1. It has been specifically pleaded and which is also established from the proceedings (Annexure P-1) that though a proposal was made for settlement of the land in favour of the then occupants, in view of the objection raised that the land have been recorded as *Gochar* (Grazing) land in the Nistar Patrak, it was held that the lands were not notified as forest lands, therefore, these lands could not be settled in favour of the then occupants. This is clearly borne out from the order passed by the Deputy Collector, Surguja at Ambikapur in the order sheet along with the list of objections filed by the petitioners as Annexure P-1. The petitioners also did not dispute this factual position and it has been pleaded in para 8.5 of



the petition that for administrative reasons, process of recognition of land rights under the Singhdev Yojna could not be completed and the villagers were not allotted Patta for the lands occupied by them.

7. The respondents have come out with a specific case that only one Hectare comprised in Khasra No.299/4 was settled in favour of one of the occupant Gunja S/o Sukhra Uraon. In para 13 of the return, this fact has been clearly stated. The respondents have come out with a categoric plea that except land comprised in Khasra No.299/4, no other land was settled in favour of any other occupant including Gunja. The petitioners have not come out with any document to show that under the proceedings of settlement in implementation of Singhdev Yojna, the land comprised in Khasra No.299/2, 299/3, 293/3, 50/5 was ever allotted either to the petitioners or to anyone of the ancestors or even to Gunja. The averments made in Para 8.10 to 8.17 goes to show that the petitioners have been tracing source of their title over respective lands occupied by them through other persons without there being document on record to show that either the petitioners or the persons through whom they claimed their title, were granted lease under any of the proceedings of settlement in implementation of "Singhdev Yojna".

The petitioners have also not come out with any material to show that any other proceedings of grant of patta, lease of land by the revenue authorities or Najul Authorities were ever drawn/granting any lease, license or any other kind of right over

the subject land. As is clear from the return of the State Government and the proceedings Annexure P-1 that at the time of initiation of settlement proceedings in the year 1968-69, the lands were recorded as Grazing land, these lands were not settled in favour of the occupants. Thus, the said lands were not part of the forest land. By virtue of notification (Annexure R-1) dated 30-12-1972, the lands comprised in Village Gangapur Khurd were declared as Nazul lands. After classification of the lands as Najul land, it cannot be treated as forest land. There is no material on record to show that lease of these Nazul lands were ever granted in favour of the petitioners or their ancestors or so-called persons entitled. The petitioners have placed on record certain applications made to the various authorities, despite all said and done, no right over the lands was conferred on any of the petitioners/their ancestors except in favour of Gunja and that too in respect of land admeasuring 1 Hectare comprised in Khasra No.299/4 of Village Gangapur Khurd. Out of eight petitioners, petitioner No.2-Lalsu Kujur is the son of Late Gunja. However, the land which is said to be in possession of Lalsu Kujur, is not the land comprised in Khasra No.299/4 but as the pleading of the petitioners would show that the petitioner No.2-Lalsu Kujur claims interest over the land comprised in Khasra No.298/2 and some of the petitioners claimed their title through Lalsu Kujur not being land comprised in Khasra No.299/4 but land comprised in Khasra No.298/2.

8. The examination of aforesaid facts of the case leads to conclusion that neither the petitioners were having any right nor

any kind of lease over the lands in respect of which, they claiming relief. It is quite obvious that the petitioners are encroachers.

9. Submission of learned counsel for the petitioners that the provisions of PESA Act prohibit the respondents from drawing any action of demolition and create obligation to settle the land in favour of petitioners under the resolution dated 24-01-2011 (Annexure P-4) and resolution dated 22-05-2011 (Annexure P-15) cannot be accepted. Present is a case where the Najul lands were found having encroached upon and as the petitioners encroached without having any authority of lease by the competent authority, they have been dispossessed. It is not a case, covered under the clause-(e), (i) or (m) of Section 4 of the PESA Act. Clause (e) of the PESA Act provides for approval where the Panchayat takes up for implementation plants and programmes and projects for social and economic development in the scheduled area. Clause (i) requires consultation with the gram sabha before making acquisition of land in the scheduled areas for development projects before re-settling or rehabilitating persons affected by such projects in the scheduled areas but the present is not a case of acquisition of land. Lands are classified as Najul Land and action has been taken against the petitioners as encroachers of Najul lands. None of the provisions contained in the clause (m) are applicable to the facts and circumstances of the present case. Therefore, the submission that the respondent authorities could not have removed the petitioners from the Najul lands and were obliged under the law to settle the

lands in their favour, in view of the resolutions passed by the Gram Sabha, deserves to be rejected.

10. The petitioners have also assailed the correctness and validity of action of demolition on the ground that appropriate proceedings of demolition as provided under Section 248 of the Land Revenue Code were not drawn and without affording opportunity of hearing, the petitioners have been dispossessed from their respective lands. It has been submitted that the date of issuance of notification and actual dispossession is one and the same.

11. Taking into consideration the summary nature of proceedings provided under Section 248 of the Land Revenue Code and further taking into consideration that the petitioners have failed to produce any material to show that the lands were ever allotted to the petitioners by way of lease or license in any proceedings or any law for the time being in force, I am not inclined to grant relief to the petitioners in this case.

12. Having examined the merits of the case of the petitioners, this Court takes notice of the fact that the petitioners are tribals and were occupying certain lands situated in Village Gangapur Khurd, in view of the discussion as above, without any authority of law, so the petitioners have been dispossessed also. However, taking into consideration that the petitioners claim to be landless, after having been dispossessed being encroachers, the respondent No.2-Collector-Surguja at Ambikapur is directed to explore the



possibility of providing small plots for dwelling purpose to the petitioners under any of the welfare/benevolent scheme of the State Government in force in the State of Chhattisgarh applicable to tribals. The respondents have stated that the entire land comprised in Village Gangapur Khurd have been declared as Najul Land. Therefore, the respondent shall consider the case of the petitioners for allotment of Najul plots on appropriate terms and conditions of lease. These proceedings shall be drawn as special drive only to find out and explore the possibility of providing small plots to the petitioners, taking into consideration the peculiar circumstances of the present case, after due verification of the petitioners being resident and inhabitant of the area. If each of the petitioners approach the Collector by moving an application for allotment of Najul plots or revenue land in the Village Gangapur Khurd or nearby area, the said applications shall be considered sympathetically by the respondent authority keeping in mind that the petitioners are tribals and all attempts shall be made to explore the possibility of providing lands to the petitioners for dwelling house.

13. With the aforesaid direction, the petition is finally disposed off.

Sd/-  
Manindra Mohan Shrivastava  
Judge