



**Single Bench**

**IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WRIT PETITION (227) NO. 257 OF 2013**

**IN THE MATTER OF ARTICLE 227 OF  
THE CONSTITUTION OF INDIA ;**

**AND**

**IN THE MATTER OF CHHATTISGARH  
LAND REVENUE CODE, 1959 ;**

**PETITIONER**

: Prahlad Dewangan, son of Shri  
Jhaliram Dewangan, aged about 50<sup>+</sup>  
years, Resident of Village Tilda,  
Tahsil and Village Tilda, Post and  
P.S. Tilda, District Raipur,  
Chhattisgarh

R. No. 257/13  
Presented by Sri Anand Das  
dated 2/4/13

**VERSUS**

**RESPONDENT**

: Suresh Kumar, son of Ratan Lal  
Agrawal, Resident of Village Tilda,  
Tahsil and Village Tilda, Post and P.S.  
Tilda, District Raipur, Chhattisgarh

**WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA  
FOR ISSUANCE OF APPROPRIATE AND SUITABLE WRITS, DIRECTION  
OR DIRECTIONS, ORDER OR ORDERS**



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**HIGH COURT OF CHHATTISGARH : BILASPUR**

**Single Bench: Hon'ble Shri Manindra Mohan Shrivastava, J.**

**WRIT PETITION (227)NO.257 of 2013**

**Petitioner**

Prahlad Dewangan

**Versus**

**Respondents**

Suresh Kumar

**Writ Petition under Article 227 of the Constitution of India**

**Present:-**

Shri Amrito Das, counsel for the petitioner.

Shri Devershi Thakur, counsel for caveator.

**ORAL ORDER**

**(Passed on 31-03-2014)**

Heard.

2. This petition under Article 227 of the Constitution of India has been preferred against order dated 26-03-2013 passed by the Board of Revenue, whereby the petitioner's revision has been dismissed.

3. Facts giving rise to the dispute between the parties and the order passed by the Board of Revenue are that the respondents purchased a land admeasuring 80 decimal (0.80 acre) from the petitioner under registered sale deed dated 15-04-1994. Later on, a dispute arose between the parties with regard to possession and an application for demarcation was made by the respondent, in which, report was submitted on 09-01-1998 stating that the hut, in which, the petitioner was residing, is included in 80 decimal of land, which was purchased by the respondent from the petitioner. Later on, mutation proceedings were also drawn and then respondents moved an application before the Tahsildar for recovery of possession under Section 250 of the Land Revenue Code (In short "the Code").

4. The Tahsildar rejected the application holding that the respondent has firstly not specifically come out with the date, on which, he

dispossessed by the petitioner and the dominant purpose of proceedings was not recovery of land but recovery of structure (hutment) standing on the land, therefore, provisions of Section 250 of the Code were not attracted. On appeal being filed, the Sub Divisional Officer reversed the order passed by the Tahsildar. The petitioner preferred an appeal before the Commissioner, which was also dismissed and thereafter, revision before the Board of Revenue, though unsuccessfully, giving rise to the instant petition.

5. Amongst various submissions, the main argument of learned counsel for the petitioner is that even according to the demarcation report dated 09-01-1998 and petitioner's application, dominant purpose of proceedings under Section 250 of the Code, initiated at the instance of respondent, was recovery of the house (hutment) which was also part and parcel of the property purchased by the respondent under registered sale deed dated 15-04-1994. Relying upon the judgment of the High Court of Madhya Pradesh in the case **Krishna Kumar Das and another (Plaintiffs) v. Balramdas and others, 1971 M.P.L.J. 864**, it is submitted that where dominant purpose of proceedings initiated for recovery is not land but building, the provisions of Section 250 of the Code is not attracted. In addition, it is also submitted that present is not a case where respondent was dispossessed. It is a case whether allegation of respondent was that even after sale; the structure standing on the land has been retained. Further submission is that in any case, land was diverted; no proceedings under Section 250 of the Code could be initiated.

6. Per contra, learned counsel for the respondent submits that despite purchase of the land admeasuring 80 decimal, which included

small hutment, part of 0.80 decimal was illegally retained by the petitioner. Having sold the land, structure standing thereon, the petitioner had no authority to continue, therefore, his possession become illegal from the date, on which, the property was sold to the respondent under registered sale deed passing title in his favour. It is then submitted that in any case, the demarcation had taken place on 09-01-1998 and thereafter, mutation proceedings were also drawn, in which, mutation order was passed on 15-05-1998. The respondent, in fact, moved an application (Annexure P-4) for recovery of possession over the disputed property. He also submits that the judgment relied upon by learned counsel for the petitioner in the case of **Krishna Kumar Das and another** (supra) would not apply, because structure in the present case is not a *Pakka* construction, but only a hutment, therefore, it cannot be said to be a house.

7. After considering the submission of learned counsel for the parties, in the opinion of this Court, this petition deserves to succeed only on the short ground that the material on record indicates that the dominant purpose of the proceedings was recovery of structure and not the land.

8. The demarcation report has been placed on record (Annexure R-5) submitted before the Tahsildar by the Revenue Inspector. In that demarcation report, it has been very categorically stated that the petitioner is in possession of the *Kachha house* standing on 0.04 decimal of land where he has also started construction activities. In the concluding part, the Revenue Inspector has clearly stated that the part of land, which the respondent seeks to recover by way of recovery proceedings, is *Kachha house*. He also stated that in respect of the remaining part of the land is 0.076 decimal, there is no dispute between

the parties. This demarcation report based on spot inspection relied upon the respondent and not disputed by the petitioner leads to an admitted position on record that what was sought to be recovered by way of proceedings under Section 250 of the Code, was in effect and substance, structure/*kachha house* standing on 0.04 decimal of land. The Tahsildar, in its order dated 31-05-1999, after taking into consideration the oral evidence, has recorded a finding that in that *Kachha house*, the petitioner was residing. This finding of fact has not been traversed by the higher Revenue Courts.

9. In the case of **Krishna Kumar Das and another** (supra), it has been held by the High Court of Madhya Pradesh that the purpose is to provide speedy and summary remedy under the Code to a Bhoomiswami dispossessed of his land. When the land is appurtenant to a building and dominant purpose is to get restoration of the possession of the building, remedy under Section 250 of the Code is not available.

10. Applying the dominant test to the facts and circumstances of the case, on facts, which are not disputed and clearly borne out from the demarcation report, what the respondents sought to recover, through proceedings under Section 250 of the Code, was the house, which was standing.

11. Learned counsel for the respondent strenuously urged before this Court that as it was not a permanent structure, but only a hut, the proceedings cannot be said to be with the dominant purpose of recovery of house.

12. In the case of **Krishna Kumar Das and another** (supra), there was a house said to be standing on the land and when proceedings for

recovery were initiated, it was held that in the matter of recovery of house, proceedings under Section 250 of the Code will not apply. The Tahsildar has recorded a finding that in the hut, the petitioner was residing with his family. It is not necessary that the construction may be concrete building. The huts, in which, villagers reside, are no doubt 'house'. The factual finding of the Tahsildar is that the respondent was residing with the family in the huts, it is definitely a 'house'. Therefore, merely because, it is not a concrete construction, it cannot be said that the dominant purpose of proceedings under Section 250 of the Code was recovery of land, on which, *Kachha house* was standing.

13. In view of above consideration, I am of the considered opinion that the finding recorded by the Tahsildar did not warrant any interference directing return of possession by the higher Revenue Courts. The impugned order dated 26-03-2013 passed by the Board of Revenue, cannot be sustained in law and the same is hereby set aside and the order passed by the Tahsildar is restored. It is however, made clear that all that this Court is decided is that the respondent could not have taken recourse to the proceedings under Section 250 of the Code. If claim is that he was entitled to possession of land and recovery of the house, it would be open for the respondent to take recourse to such legal remedy as may be available to him under the law.

14. Accordingly, the petition is allowed.

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Sd/-  
**Manindra Mohan Shrivastava**  
Judge