

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on : 04/01/2022Judgment Delivered on : 29/04/2022**CRMP No. 2573 of 2019**

Citizen Of The Village-Churegaon Gram Panchayat Singarpuri,
Tahsil- Farasgaon, District- Kondagaon, Chhattisgarh.
Through-

1. Birendra Kumar Gain, S/o Late Shri Hemant Kumar Gain, aged about 67 Years, R/o Churegaon Camp, P.S. and Tehsil-Farasgaon, District- Kondagaon, Chhattisgarh.
2. Bablu Mandal S/o Shri Subhash Mandal, aged about 28 Years, R/o Churegaon Camp, P.S. and Tahsil- Farasgaon, District- Kondagaon, Chhattisgarh.
3. Tapas Sarkar S/o Shri Sukumar Sarkar, aged about 28 Years, R/o Churegaon Camp, P.S. and Tahsil- Farasgaon, District- Kondagaon, Chhattisgarh.
4. Sudarshan Sethiya S/o Late Shri Jairam Sethiya, aged about 55 Years, R/o Churegaon Camp, P.S. and Tahsil- Farasgaon, District- Kondagaon, Chhattisgarh.
5. Ramsay Markam S/o Shri Mahruram, aged about 45 Years R/o Churegaon Camp, P.S. and Tahsil- Farasgaon, District- Kondagaon, Chhattisgarh.

---- Petitioners**• Versus**

1. State of Chhattisgarh Through District Magistrate-cum-Collector, Kondagaon, District- Kondagaon, Chhattisgarh.
2. Krishna Dewangan S/o Shri Jugdhar Dewangan, ged about 39 Years, R/o Jamkotpara- Kondagaon, Tahsil and District- Kondagaon, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Shashi Bhushan Tiwari, Advocate.
For State/R-1	:	Mr. Ayaz Naved, G.A.
For Respondent No.2.	:	Mr. Suresh Kumar Verma, Advocate.



Hon'ble Smt Justice Rajani Dubey

CAV ORDER

1. This petition under Section 482 of the Code of Criminal Procedure has been filed by the Petitioners against the order dated 19.09.2019 passed by the learned Session Judge, Kondagaon, District Kondagaon (C.G.) in Criminal Revision No.03/2019, whereby the order dated 14.12.2018 passed by the learned Sub Divisional Officer (R), Kondagaon in Misc. Criminal Case No.69/2017 has been set-aside.

2. Brief facts of the case are that in the month of December 2017, respondent No.2 had started the work of construction of poultry farm over a piece of agricultural land bearing Khasra No.45/1, area 1.756 hectare at village Churegaon Camp, which was purchased by him on 14.09.2016. The said construction work of poultry farm was opposed before the Gram Panchayat by the several villagers whose agricultural land situated near the land of respondent No.2. and consequently, on 15.12.2017, an application **(Annexure A/2)** under Section 133 (b) of Cr.P.C. was filed by the Petitioners herein before the learned Sub Divisional Magistrate, Kondagaon apprehending therein that there is every possibility of public nuisance/garbage. After filing of the complaint dated 15.12.2017, an enquiry was ordered in the matter, pursuant to which, an inspection report dated 14/15.03.2018 was filed by the Tahsildar, wherein it was mentioned that (i) the disputed land is situated about 0.800 meter from Churegaon Camp, (ii) The distance of disputed land from the village population is 0.500 meter, (iii) two residential houses are situated near the disputed land and (iv) the distance of the road to the disputed land is 1.200 km, unpaved road till village Churegaon, no road till the disputed land. Further case is that on 11.09.2017, an application was moved before the Sarpanch, Village Panchayat Singarpuri, for cancellation of 'No Objection Certificate' which was granted to the respondent No.2 alleging therein that the said No Objection Certificate is against the provision of law. Thereafter, on 05.10.2017, in a general body meeting of Gram Panchayat, Singarpuri, a decision/resolution to cancel the said 'No Objection Certificate' dated 23.12.2016 was



taken. During the said period, the learned Sub Divisional Magistrate, Kondagaon, reached to the final conclusion and, vide order dated 14.12.2018, allowed the complaint of the petitioners herein staying the work of construction of poultry farm of respondent No.2 and further directed him not to carry the said construction work without valid/due permission. In the said order, the finding has also been recorded by the S.D.M. that the disputed land was not diverted. Against the said order of S.D.M, the respondent No.2 herein preferred a revision before the learned Sessions Judge, Kondagaon, and also filed an application before respondent No.1 for diversion of land for commercial use, which was rejected on 29.08.2019. The learned Sessions Judge, after hearing all the aggrieved parties and considering the material on record, set aside the order dated 14.12.2018 of the learned S.D.M and passed the impugned order. Hence, this petition.

3. Submission of learned counsel for the petitioners is that the order passed by the learned Sessions Judge is arbitrary, illegal and is against the principles laid down in the matter. The learned Sessions Judge, while passing the impugned order, has utterly failed to appreciate and mandate of provision of Section 133 of Cr.P.C. Learned counsel further submits that the finding given in the impugned order and the conditions imposed are contrary to law applicable and based upon a new document which is filed in the revisional proceeding. The impugned order passed by the learned Sessions Judge is beyond jurisdiction as the conditions so imposed in the order can only be imposed in a petition filed under Article 226/2007 of the Constitution of India. Learned counsel also submits that the impugned order has various ambiguities that ever after refusal of diversion of land for commercial purpose, the learned Sessions Judge allowed the respondent No.2 to carry out business wrongly interpreting the guidelines/scheme floated by the Government. Learned counsel also submits that the respondent No.2 is not agriculturist, he is involved in the business of number of poultry farm in the different area of the same district and because of his such act, hundred of acres land got badly affected. The core issue of the matter is that after installation of poultry farm wherein thousands of chickens birds would be stored and there may be always apprehension that it succumb to various flu, cutting of



chickens for commercial would invite rodents, snake and various insect/maggots, which would damage crops sow nearby the poultry farm. It has been also argued that the learned Sessions Judge giving significance to the village panchayat, ignored the inspection report of Tahsildar.

Learned counsel also submits that hundreds of acre land surrounding to the disputed land would become barren because of foul smell and pollution from the waste out of the poultry farm and in such condition, no former would be ready to carry agricultural work and their livelihood may affect. It is next submitted that installation of poultry farm would cause public nuisance on account of improper maintenance of it. It is not a case that the respondent No.2 has been allotted the disputed land to run the business of poultry farm, nor it is a case that he has been allotted the said business by the Government under any of the policy which heeds his statutory right as mentioned under Article 19(1)(g) of the Constitution of India. It is the respondent No.2 who himself has invested in said business at his own risk and cost, therefore, considering all the aforesaid aspects of the matter, the impugned order deserves to be set aside.

4. Learned State counsel for respondent No.1 submits that the instant petition is not maintainable under Section 482 Cr.P.C. and the same being devoid of merits is liable to be dismissed.

5. Learned counsel for respondent No.2 submits that the business of poultry farm falls within the ambit of agriculture work, therefore, no diversion of land is required. He further submits that on 05.01.2017, Gram Panchayat Singarpuri, Block Farsgaon, District Kondagaon, has given its permission to construct a poultry farm in village Churegaon. He also submits that after permission and NOC by the Gram Panchayat, he applied for loan for poultry farm and he constructed the poultry farm on his own land which is 1 km away from the village, therefore, question of public nuisance does not arise. That apart, he has also executed an affidavit before the Court in this regard. The learned Sessions Judge, while passing the impugned order, has imposed as many as four conditions, and he shall abide by the conditions so imposed by it. Therefore, the petitions deserves to be dismissed.



6. I have heard learned counsel for the parties and perused the material on record.

7. On 05.07.2011, learned State counsel was directed to file return consisting the fact whether the opening of a poultry farm falls within the ambit of agricultural work so the agricultural land can be used for opening a poultry farm or not. Pursuant to the order of this Court, the learned State counsel file Environmental Guidelines for Poultry Farms (**Annexure D-1**) and respondent No.2 filed letter dated 16.08.2017 of Chhattisgarh Environment Protection Board regarding clarification in the matter of Revised Categorization of the Industrial Sector namely "Poultry, Hatchery and Piggery" and dealing new category of industry for classification and review of existing category.

8. Despite the order of this Court on 05.07.2011, learned counsel for the State did not file any reply to the said query, however, they have filed a copy of Environmental Guidelines for Poultry Farm issued by the Central Pollution Control Board (Ministry of Environment, Forest and Climate Change, Govt. of India. According to which, clause 7 of the said guidelines deals with Siting Criteria. For ready reference, clause 7 is reproduced herein below:

7. Siting Criteria

New Poultry Farms (Set up after issuance of Guidelines) should preferably be established.

- 500 m from residential zone in order to avoid nuisance caused due to odour & flies.
- 100 m from major water course like River, Lakes, canals and drinking water source like well, summer storage tanks, in order to avoid contamination due to leakages/spillages, if any.
- 100 m from national Highway (NH) and 50 m from State Highway (SH) in order to avoid nuisance caused due to odour & flies.
- 10-15 m from rural roads/internal roads/village pagdandis.
- The Poultry sheds should not be located within 10 m from farm boundary for cross ventilation and odour dispersion.

9. From the aforesaid clause 7 of the Environmental Guidelines for Poultry Farms, it is clear that the poultry farms should be established 10-15 meter away from the rural roads/internal roads/



village pagdandis, but, in the present case, according to the report dated 15.03.2018 of Nayab Tahsildar, the disputed poultry farm is 0.800 meter away from village Churegaon Camp, 0.500 meter from village population and the distance of the road to the disputed land is 1.200 km, there is unpaved road till village Churegaon and no road till the disputed land. The disputed poultry farm is being constructed in the agricultural field for which No Objection Certificate was issued to the respondent No.2 by Gram Panchayat, Singarpuri, but after objection by the villagers, the Gram Panchayat, Singarpuri, in its general body meeting dated 05.10.2017, resolved to cancel the said No Objection Certificate without assigning any valid reason. The learned Court below, after considering the report of Nayab Tahsildar, rules and guidelines with regard to establishment of poultry farm, has passed the impugned order imposing several conditions on respondent No.2 keeping in mind the safety and health of the villagers. This Court does not find any illegality or infirmity in the order of the learned Court below.

10. Accordingly, the petition is disposed of with following direction.

- (i) That, the respondent No.2 shall abide by the conditions imposed upon him by the learned Sessions Judge, Kondagon, in its order dated 19.02.2019.
- (ii) That, the respondent No.2 shall also follow the conditions/guidelines as mentioned in Clause 7 with regard to Environmental Guidelines for Poultry Farms issued by Central Pollution Control Board, Ministry of Environment, Forest and Climate Change, Govt. of India.

Sd/-

(Rajani Dubey)
Judge