

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 438 of 2015**

Prahlad Tiwari S/o Late Dwarika Nath Tiwari, Aged About 75 Years R/o
M I G - 6, Padamanabhpur, Durg, Tahsil & District Durg (Chhattisgarh)
Civil & Revenue District Durg (Chhattisgarh)

---- Appellant

Versus

1. Steel Authority Of India Limited Bhilai Steel Plant, Town Services Department, Through Its General Manager, Bhilai Steel Plant, Bhilai, District Durg (Chhattisgarh).
2. The Senior Manager, Town Services Department (Shop Section), Bhilai, District Durg (Chhattisgarh)

-----Respondents

For Appellant:	Shri BP. Sharma and Shri Vivek Chopra, Advocates.
For Respondents:	Dr. Sourabh Kumar Pandey, Advocate.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board**Per Navin Sinha, Chief Justice****29/10/2015**

1. The present appeal arises from order dated 20.8.2015 passed by a Learned Single Judge, dismissing Writ Petition (C) No.1089/2015 holding that the Writ Petition was not maintainable and the appropriate remedy for the Appellant lay in approaching the Civil Court.
2. In the nature of the order that we propose to pass, it is not considered necessary to deal with all facts except to the extent necessary for purposes of the present order. Suffice it to observe that the Respondents leased certain lands to the Appellant and others with a renewal clause, on which they were permitted to raise constructions. Renewal of the lease has now been denied.
3. Learned Counsel for the Appellant submits that the Respondents took the objection before the Learned Single Judge that the relationship between the parties was that of LESSOR and LESSEE, contractual in nature and

required interpretation of various terms of the Lease, the intention of the parties to be gathered from oral evidence and therefore the Appellant ought to take recourse to the alternative remedy of filing a Suit. After the Writ Petition was disposed in view of the objection taken, even before the Appellant could file a Suit, the Respondents have filed a caveat on 3.9.2015 before the District Judge, Durg, under Section 148-A CPC taking an objection that the Civil Court had no jurisdiction in the matter. The Public Premises (Eviction of Unauthorized Occupants), Act 1971 (hereinafter referred to as 'the Act') would apply. Jurisdiction of the Civil Court was barred under Section 15 of the Act. The Respondents have already instituted proceedings before the Estate Officer under the Act on 18.8.2015.

4. Learned Counsel for the Respondents submits that a party is not precluded from taking objections in the law as it may be advised. No Suit has been filed till date.

5. We have heard Learned Counsel for the parties and are satisfied that the appeal, at this stage can be disposed on a single issue.

6. In the Writ Petition filed by the Appellant assailing the refusal to renew the Lease, the Respondents took a specific objection that the writ petition was not maintainable and the appropriate remedy for the Appellant lay in a Civil Suit. The Learned Single Judge disposed the writ petition on basis of the objection. Even before the Appellant could file the suit, the Respondents have filed a caveat before the District Judge, Durg, taking an objection that no such suit would be maintainable and the appropriate law applicable was the Act, and Section 15 of the same bars a civil suit and that they have already invoked the provisions of the Act before the Estate Officer.

7. The Respondents cannot be permitted to approbate and reprobate, seeking to blow hot and cold at their convenience. If the Act was to apply, it remains a question if the jurisdiction under Article 226 would apply or not

though we do not express any final opinion on the aspect at this stage.

8. This principle of approbate and reprobate was considered in (1975) 3 SCC 254 (Remington Rand of India Ltd. v. Thiru R.Jambulingam) observing as follows :-

“6. It is rather extraordinary that even though the Commissioner at the instance of the appellant had rejected the plea of protected workman, the management now seeks to raise a plea of ouster of jurisdiction before the Commissioner on the self-same ground. This, in our opinion, cannot be allowed.”

Similarly, in (1969) 2 SCC 114 (Raja Bajrang Bahadur Singh v. Jai Narain), it was observed as under:

“10...The litigant was bandied about from court to court and he could not get any relief anywhere. The Oudh Chief Court mitigated the evil by applying the doctrine that a party litigant could not reprobate and approbate in respect of the same matter. A party litigant may not be allowed to take inconsistent positions in court to the detriment of his opponent at successive stages of the same proceeding or in a subsequent litigation growing out of the judgment in the former proceeding, see *Bigalow on Estoppel*, 6th Edn. pp. 783, 789, *Mohammed Mohdi Khan v. Musammatt Sharatunnissa* that where a Revenue Court upheld the plea that it had no jurisdiction to entertain a suit, the party putting forward the plea would be precluded from contending that the civil court could not entertain the suit. Likewise in *Saira Bibi v. Chandrapal Singh* it was held that when an appeal was originally instituted properly in the revenue court but on objection being raised by a party was dismissed on the ground that the appeal did not lie to that court, it was not open to the party to raise the objection that the appeal could not be entertained by the civil court. This form of estoppel arises when the litigant takes inconsistent pleas as to jurisdiction on different courts...”

9. There is yet another aspect of the matter which we are constrained to take note of. The Respondents are a “State” within the meaning of Article 12 of the Constitution. It has a duty, even in contractual matters to act fairly, reasonably and responsibly. It cannot behave like a private litigant by playing

a game of chess on a chess board of litigation. The Writ Petition was heard and orders reserved on 1.7.2015 in the backdrop of the submission made on behalf of the Respondents that the Writ Petition was not maintainable and the remedy lay in a suit evident from the consideration of their objections in paragraph-5 of the order under appeal. While the Writ Petition was pending for pronouncement of order on the premise of the arguments made by the parties, the Respondents changed the very substratum of the platform on which the case was decided by filing proceedings before the Estate Officer under the Act. This was an act of the Respondents virtually confronting the Writ Court with their conclusions, pre-empting the orders of the Court on basis of materials never urged before the Learned Single Judge. We deliberately refrain from saying anything more on this aspect except to express our deep anguish in the matter.

10. The Writ Petition is therefore disposed with the observation that objection with regard to the maintainability of the suit, if any, shall be decided in light of the discussions contained in the present order.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE