

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1491 of 2015

1. Ramanuj Sharma, S/o, Late Gajanand Sharma, Aged About 78 Years, R/o.Village Sikola, Durg, Tahsil & District Durg (Chhattisgarh)
2. Sandeep Sharma, S/o. Late Ramesh Kumar Sharma, Aged About 42 Years,
3. Sanjay Sharma, S/o. Late Ramesh Kumar Sharma, Aged About 40 Years.
4. Kamlesh Kumar Sharma, S/o. Late Gajanand Sharma, Aged About 65 Years,
5. Bhupendra Kumar Sharma, S/o. Late Gajanand Sharma, Aged About 60 Years,
No.2 to 5 are R/o. Balco, Korba, District Korba (Chhattisgarh)
6. Naresh Kumar Sharma, S/o. Late Gajanand Sharma, Aged About 62 Years, R/o.Sikola (wrongly mentioned as 'Sikosa' in the order impugned), Durg, Tahsil & District Durg (Chhattisgarh)
7. Smt. Dayawati Kumari Sharma, Wd/o. Late Gajanand Sharma, Aged About 100 Years,
8. Smt. Kaushalya Sharma, Wd/o. Late Ramnihal Sharma, Aged About 63 Years,
9. Sitendra Kumar Sharma, S/o. Late Ramnihal Sharma, Aged About 36 Years,
- 10.Smt. Chetna, D/o. Late Ramnihal Sharma, Aged About 38 Years,
- 11.Smt. Minita, D/o. Late Ramnihal Sharma, Aged About 34 Years,
- 12.Smt. Shweta, D/o. Late Ramnihal Sharma, Aged About 32 Years,
No.7 to 12 are R/o. Sikola, Durg, Tahsil & District Durg (Chhattisgarh)
Through their General Power Of Attorney Shri Ramanuj Sharma, S/o. Late Gajanand Sharma, R/o. Village Sikola, Durg, Tahsil & District Durg (Chhattisgarh).

---- Petitioners

Versus

1. The Municipal Corporation, Bhilai, Through its Commissioner, Bhilai, District Durg (Chhattisgarh)
2. State Of Chhattisgarh, Through the Collector, District Durg (Chhattisgarh)

---- Respondents

For Petitioners	:	Mr. B.P.Sharma with Mr. Sameer Oraon, Advocates.
For Respondent No.1	:	Mr. Manoj Paranjpe, Advocate
For Respondent No.2	:	Mr. Anupam Dubey, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

26/11/2015

1. The petition is against the order dated 31.07.2015 passed in Civil Appeal No.17/2015 by the Second Additional District Judge, Durg, wherein the order dated 16.06.2015 passed by the Court of Second Civil Judge Class-II, Durg, in Civil Suit No.14/2015 whereby the application under Order 39 Rule 1 & 2 read with Section 151 of C.P.C. was dismissed. The order pertains to dismissal of the injunction petition.
2. The suit was filed by the petitioners against the respondents claiming permanent prohibitory injunction with a prayer to restrain respondents to raise super-structure over the suit land.
3. Learned counsel for the petitioners would submit that the subject suit land is recorded in name of the petitioners who are the plaintiffs. Further, it is contended that by order of the Additional Collector dated 29.10.2011 it was directed that the land in question i.e. subject land was to be recorded in name of the plaintiffs who are appellants and legal heirs of Gajanand Sharma, the original land holder. It is further submitted that despite the fact that this order has not been subjected to any challenge and despite the fact that the land has been recorded in name of the appellants/petitioners as owner thereof, without acquiring the same, the State authorities are raising super-structure over the land thereby the right of the petitioners are infringed and ownership rights are diluted. He further submits that the State in any case is within its right to acquire the land, however, without any acquisition of land, if the super-structure is raised, the same cannot be legal & justified. It is further contended that in civil suit when an application was filed under Order 39 Rule 1 & 2 before the Court below, the same was dismissed without considering the order of the Additional Collector and further the same was affirmed by the Additional District Judge in Misc. Appeal. He therefore submits that the

respondents be restrained to raise any super-structure over the subject land till the civil suit is decided on merits.

4. Learned counsel for the Respondent No.1 and learned State counsel vehemently opposes the argument and would submit that as per the revenue records, the land was initially recorded in name of Gajanand Sharma and on 10.06.1988, the possession of the said land was taken over being the excess in ceiling and thereafter the land was recorded in name of the State. It is further submitted that the State was in possession of the said land right from 10.06.1988 and subsequently the Bus Stand was being constructed over the land and the possession of the said land was with the respondents. He submits that the predecessor entitle of the petitioner Gajanand has also submitted before the revenue authorities and he may be allowed to sell the excess land and consequently it will lead to show that he agreed with the fact that rest of the disputed land is not in his possession, as such, permission to sell rest of the land was sought for. It is further submit that the plaintiffs are claiming a writ of certiorari to quash the order of both the Courts below i.e. finding of fact arrived at by the learned Civil Judge as also Additional District Judge, therefore, the same cannot be allowed in a writ petition under Article 226 & 227 of the Constitution. It is further submitted that since there is concurrent finding of fact, therefore, it cannot be disturbed and gone into by way of writ petition and accordingly the petition be dismissed.
5. Perusal of the order would show that both the Courts below have recorded the finding that on 10.06.1988 the suit land under the ceiling and the possession was obtained by the State Government and till date the State Government is in the possession; consequently, the name was recorded. Further, it also records the fact that on 17.08.1987 the predecessor of the petitioner Gajanand Sharma obtained permission that he may allowed to sell out the rest of the subject land. Further, it also records that the notification was also made on 25.04.1988 that in the revenue case No.229/A-90/S (1) of

the year 1977-78, the possession of the land was taken up by the State. Therefore, prima facie it appears the finding of fact is recorded that the petitioners are not in possession of the land and the civil suit is still pending before the Court below and such fact are to be ascertained after adducing evidence. Recently, as held by their Lordship in case of **Radhey Shyam & Another v. Chhabi Nath & Others** reported in **2015 AIR SCW 1849**, the jurisdiction under Article 227 is distinct under Article 226 and it is held that the judicial orders of Civil Courts are not amenable to a writ of certiorari under Article 226 and further it has been held in case of **Shalini Shyam Shetty & Another v. Rajendra Shankar Patil, (2010) 8 SCC 329**, the nomenclature of the petition shall not decide the nature of the petition as to whether it is under Article 226 or 227. Therefore, reading this petition would show that the entire petition is to challenge the order and finding arrived at by both the Courts below. Therefore, necessarily it will be within the scope of 227.

6. Consequently, applying the law laid down in case of **N.R.Dongre & Others v. Whirlpool Corporation & Another** reported in **(1996) 5 SCC 714**, the finding of fact which are arrived at by the Court below about possession of State over the land and authenticity of same is still subject of adjudication before the trial Court during evidence, I am not inclined to interfere with the order passed by both the Courts below to disturb such finding in exercise of power under Article 227 of the Constitution of India.
7. Accordingly, the writ petition, having no merit, is dismissed at the motion stage itself.

Sd/-
(Goutam Bhaduri)
JUDGE