

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION NO. 439 OF 2001

1. Smt. Harbans Kaur, wife of late Malak Singh, R/o House No. 531, Road No.4, Smriti Nagar, Bhilai, District Durg.
2. Gurjeet Singh, S/o Satnam Singh, R/o Indira Market, near Power House, Railway Station Power House, Bhilai, District Durg (C.G.)
3. Alok Kumar, S/o Jagdish Kumar, R/o Choubey Colony, Raipur (C.G)

... Petitioners

Versus

1. Commissioner, Municipal Corporation, Bhilai, District Durg (C.G.)
2. Collector, District Durg (C.G.)
3. Superintendent of Police, District Durg.
4. Station House Officer, Police Station Chhavni, Bhilai, District Durg.
5. Bhilai Matadoor Union, Bhilai, District Durg, through its President Shri Raj Kumar Jayaswal, S/o Ramdeen Jayaswal, care of Jayaswal Furnitures, 90-C, Industrial Estate, Bhilai, District Durg.
6. State of Chhattisgarh, through Secretary, Urban Administration, Raipur.

... Respondents

For Petitioners	:	Mr. Ashish Shrivastava, Advocate.
For Respondent 1	:	Mr. Manoj Paranjpe, Advocate.
For Respondents 2, 3, 4 & 6	:	Mr. R.K. Mishra, Dy. Advocate General.
For Respondent 5	:	Mr. Ashish Surana, Advocate.

Hon'ble Shri Justice P. Sam Koshy

C A V Order

21/01/2016

1. The present writ petition under Section 226/227 of the Constitution of India has been filed by the Petitioners claiming for the following relief:-

“(i) This Hon'ble Court may kindly be pleased to direct respondents No. 1 to 5 to place on record all files, records, documents relating to the representation made by the petitioners/reports lodged by the petitioners for its kind perusal.

(ii) This Hon'ble Court may kindly be pleased to issue a writ in the nature of mandamus commanding respondents no. 1 to 4 to take appropriate action against respondent No.5 and its members and other responsible persons on the representations and complaints of the petitioners, in accordance with law.

(iii) This Hon'ble Court further be pleased to issue command to the Station House Officer, Police Station Chhavni to register offence on the report lodged by the petitioner against the guilty persons.

(iv) This Hon'ble Court may kindly be pleased to restrain respondent No.5 and its members from using the plots of the petitioners as motor stand and also to restrain them from interfering with petitioners possession over the lease/plots in possession of petitioners by virtue of lease granted to them by the Corporation.

(v) Any other relief/reliefs which the Hon'ble Court may deem fit and proper in the interest of justice."

2. To sum up the relief clause it may broadly be divided into two parts.

First is, to direct the Respondents for registering a criminal case against Respondent No.5 and its members and, second is for issuance of an appropriate order of injunction by an appropriate writ restraining Respondent No.5 and its so called members from using the disputed plot/property which belongs to the Petitioners by way of lease.

3. Facts of the case in nutshell are that Respondent No.1-Municipal Corporation, Bhilai, is said to have executed a lease deed in favour of the Petitioners on 16.2.2000 with the validity of the lease for 30 years. According to the Petitioners, subsequent to the granting of lease they had also sought permission for construction over the said property and that they had also got the permission. As per the Petitioners, the granting of lease deed to them on 16.2.2000 was subjected to challenge by Respondent No.5 before the High Court of Madhya Pradesh in Writ Petition No. 2704 of 2000 which got dismissed on 1.5.2000 *vide* Annexure P-2.

4. According to the Petitioners, Respondent No.5 - Union using their influence among the local politicians managed to get the building permission which stood in the name of the Petitioners cancelled *vide* order dated 19.10.2000. The Petitioners had challenged the decision of the Municipal Corporation cancelling the building permission on 19.10.2000 *vide* Writ Petition No. 68 of 2000. The said writ petition was

finally allowed in favour of the Petitioners on 5.3.2000 whereby the Court below held that the Corporation was lacking in competency and jurisdiction in the course of cancelling the building permission. Though the Writ Petition No. 68 of 2000 was decided in favour of the Petitioners yet the Petitioners could not make any construction over the suit property. That the Petitioners meanwhile had made multiple complaints/reminders/representations to the various civic authorities as well as to the police authorities seeking an appropriate relief against Respondent No.5 and its so called members who were allegedly creating hurdles for the Petitioners to carry out construction works on the said property. When the Petitioners had failed to get any proper assistance from the local authorities as well as from the police authorities in spite of repeated representations and complaints being lodged, the present writ petition has been filed.

5. Shri Manoj Paranjpe, Learned Counsel for Respondent No.1, opposing the writ petition strongly contended that the entire petition itself is totally misconceived and is not maintainable for the fact that the relief which the Petitioners have sought for through the writ petition cannot be granted by this Court exercising its discretionary writ jurisdiction under Article 226 of the Constitution. According to Respondent No.1, all the averments made by the Petitioners in the present writ petition are highly disputed questions of fact and that the contentions of the Petitioners can only be established and substantiated only on leading cogent evidence both oral as well as documentary and the evidence would have to be properly appreciated so as to ascertain the correct legal position and all these would not be permissible to a writ Court while exercising its powers under Article 226 of the Constitution. Counsel for Respondent No.1 also submitted that a perusal of the grievance of the Petitioner would also show that the dispute appears to be more in the nature of a civil dispute

pertaining to a patch of property which it is alleged to have been leased out to the Petitioners but is in possession of Respondent No.5. Lastly, the Counsel for Respondent No.1 contended that the fourth relief sought is a relief of seeking possession over the suit property which according to the Petitioners themselves is in possession of Respondent No.5. Counsel for Respondent No.1 relied upon a decision of this Court passed in Writ Petition (C) No. 1089 of 2015, dated 20.8.2015, wherein it was held that a dispute pertaining to the possession or for that matter a dispute arising out of a contract cannot be resolved invoking the writ jurisdiction of the High Court.

6. In furtherance of the submissions made by the Counsel for Respondent No.1, Shri Ashish Surana, learned Counsel for Respondent No.5, also questioned the maintainability of the writ petition and submitted that there are highly disputed questions of facts involved in the present case. Further, the Petitioners through the present petition are also trying to get a civil dispute adjudicated upon by exercise of writ jurisdiction of this Court under Article 226 of the Constitution. Counsel for Respondent No.5 drawing attention of the Court to the pleadings made by Respondent No.1 in its reply as well as its additional return submits that the Municipal Corporation already had initiated steps for cancelling the lease deed granted earlier in favour of the Petitioners and that the said proceeding further has not been finalised for the reason that there is an order of status quo ordered by this Court on 10.7.2001 and since then the entire proceeding is at a standstill. For this reason also the writ petition deserves to be rejected as the lease deed executed in favour of the Petitioners itself is in the teeth of a proceeding initiated for cancellation of the same. Shri Surana further contended that even otherwise the master plan of the district would also show that the said disputed property has been reflected

as a Matador Stand. Further, the said area had been earmarked for Respondent No.5 for the purpose of parking their vehicles and they had been allotted the land in the course of they being shifted from the earlier location to the present disputed property in the year 1988, that is, much before the lease deed executed in favour of the Petitioners. Shri Surana, in support of his contentions, has relied upon AIR 2003 SC 2696 (Dwarka Prasad Agarwal (D) by L.Rs. & Another v. Ramesh Chandra Agarwala & Others) and AIR 2011 SC 2542 (Syed Maqbool Ali v. State of Uttar Pradesh & Another). The aforesaid two judgements have been relied upon to fortify the contentions of Respondent No.5 on the writ petition not being maintainable.

7. Shri Ramakant Mishra, learned Deputy Advocate General appearing for the State, again submitted that the writ petition is not maintainable on account of the fact that the relief sought for is purely a question of deciding the title as well as possession of the disputed property and for which there is specific efficacious alternative remedy under the civil law and perhaps this cannot be decided exercising the writ jurisdiction of this Court. Counsel for the State further also referred to Annexure R-2 filed along with the reply of the State whereby at the instance of this Court an enquiry was conducted by the office of the Superintendent of Police, Durg, who in its report dated 16.1.2001 has categorically held that upon enquiring into the allegations and complaints filed by the Petitioners they did not find any offence to have been made out and accordingly a report has been submitted which itself is sufficient for rejecting the writ petition. According to the Petitioners, on their complaint no enquiry had made by the police whereas even before the writ petition was filed, the police had already conducted an enquiry and found that no offence is made out. As such the first, second and third relief

of the Petitioners get infructuous. So far as the fourth relief is concerned the same is a disputed question of fact arising out of a contract entered into between Respondent No.1 with that of the Petitioners and that if at all if there is any dispute pertaining to the said lease deed, the same has to be resolved by appropriate suit being preferred by the Petitioner before the competent Civil Court and the dispute raised in the present writ petition needs evidence both oral as well as documentary for its adjudication which is otherwise not permissible in exercise of writ jurisdiction under Article 226 of the Constitution. Lastly, it was submitted that since the entire dispute is purely civil in nature and a property dispute therefore the same deserves to be rejected.

8. Having considered the rival contentions put forth by the parties and on perusal of the writ petition wherein the relief sought for are broadly two, firstly for an appropriate direction against Respondent No.5 and its members and second for the relief of a direction in the nature of restrain against the Respondent No.5 from using disputed property and also from interfering with the peaceful possession of the same by the Petitioners. From perusal of the pleadings and the documents attached to the writ petition as also the reply submitted by the Respondents, it clearly reflects that true it is that Respondent No.1 had on 16.2.2000 executed a lease deed in favour of the Petitioners but soon thereafter the Respondent authorities had themselves initiated steps for cancelling the same and which is pending consideration before the competent authority and there being an order of status quo passed by this Court on 10.7.2001, the proceedings are still pending finalisation.

9. From the pleadings it is also established that presently the suit property was being used by Respondent No.5 and other Matador owners as a Stand and the land in the master plan also is earmarked as Matador

Stand and it was given to Respondent No.5 in the year 1988 itself for use as a Matador Stand.

10. The law so far as the maintainability of a writ petition in disputed questions of facts is no longer *res integra*. The exercise of writ jurisdiction is not to be made in matters where factual position can be found only upon leading evidence. Where there are disputed questions of facts and unequivocal denial by the other side seeking remedy under Article 226 of the Constitution may not be proper. It is established practice that the Court exercising extraordinary writ jurisdiction under Article 226 would refrain from adjudicating upon disputed questions of facts. Where there are serious disputes which cannot be satisfactorily decided without taking evidence it would not be appropriate for the High Court in exercise of its writ jurisdiction to entertain such petitions and adjudicate upon these disputed issues. Where disputed questions of facts are involved the same cannot be adjudicated upon under Article 226 relying upon only the affidavits to be sworn in by the parties. The petition under Article 226 of the Constitution is not a proper remedy for such disputes.

11. The view of the Supreme Court all along right from 1989 is that disputed questions of facts should not be adjudicated upon by way of writ jurisdiction.

12. In 1989 (2) SCC 505 (State of U.P. & Others v. Maharaja Dharmander Prasad Singh & Another), the Supreme Court has held as follows:-

“27. On a consideration of the matter, we think, in the facts and circumstances of this case, the High Court should have abstained from the examination of the legality or correctness of the purported cancellation of the lease which involved resolution of disputes on questions of fact as well. In *Express Newspapers v. Union of India* Venkataramiah, J. in a somewhat analogous situation observed :

The rest of the questions relate truly to the civil rights of the parties flowing from the lease deed. Those questions cannot be effectively disposed of in this petition under Article

32 of the Constitution. The questions arising out of the lease, such as, whether there has been breach of the covenants under the lease, whether the lease can be forfeited, whether relief against forfeiture can be granted etc. are foreign to the scope of Article 32 of the Constitution. They cannot be decided just on affidavits. These are matters which should be tried in a regular civil proceeding...”

13. In 2001 (2) SCC 160 (Life Insurance Corpn. of India & Others v. Asha Goel (Smt.) & Another), the Supreme Court has held that Article 226 of the Constitution confers extraordinary jurisdiction on the High Court to issue high prerogative writs for enforcement of the fundamental rights or for any other purpose. It is wide and expansive. The Constitution does not place any fetters on exercise of the extraordinary jurisdiction. It is left to the discretion of the High Court. The courts must bear in mind the self-imposed restriction consistently followed by High Courts all these years after the constitutional power came into existence in not entertaining writ petitions filed for enforcement of purely contractual rights and obligations which involve disputed questions of facts. Ordinarily, the High Court should not entertain a writ petition filed under Article 226 of the Constitution for mere enforcement of a claim under a contract of insurance.

14. In 2002 (1) SCC 216 (State of Bihar & Others v. Jain Plastics and Chemicals Ltd.), it was held by the Supreme Court that a writ is not the remedy for enforcing contractual obligations. A writ petition under Article 226 is not the proper proceedings for adjudicating such disputes. Under the law, it was open to the respondent to approach the court of competent jurisdiction for appropriate relief. When an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. Seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of

evidence which may be led by the parties in a properly instituted civil suit rather than by a court exercising prerogative of issuing writs.

15. Having gone through the pleadings and the records what is explicit is the fact that the Petitioners have been granted a lease on 16.2.2000 but immediately thereafter the Respondents have initiated steps for cancelling the said lease deed and the proceeding is pending finalisation but for the order of the status quo granted by this Court on 10.7.2001. Likewise, the another admitted position which is reflected from the pleadings of the parties is that the said suit property was being used and possessed by Respondent No.5 and its members along with other goods carriage vehicles owners and which they have been using since 1988 till date. Further, the master plan also shows the property to be a Matador Stand and the Respondents have also converted a major portion of the land as a Tar road. The another major factor which is to be borne in mind is the fact that the said property admittedly as on date is being used for public purpose.

16. Even if the Petitioners might have got a building construction permission in the year 2000, the same has lost its validity and efficacy by efflux of time in spite of specific query being put to the Counsel for the Petitioners whether the said permission has been renewed and is still valid, the Petitioners could not give a satisfactory answer to the same. So far as the criminal action sought for to be initiated by the police authorities, there is a categorical finding on an enquiry by the office of the Superintendent of Police, Durg that no offence is made out.

17. In view of the above given facts and circumstances of the case, particularly, in the light of categorical denial about the factual aspects as contended by the Petitioners, in the opinion of this Court the present writ petition is not maintainable.

18. For the foregoing reasons, the writ petition being totally devoid of merits the same is dismissed.

Sd/-
(P. Sam Koshy)
Judge

/sharad/