

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (227) No. 659 of 2016

Babulal Patel S/o Shri Parkhit Patel, aged about 60 years, Caste- Aghariya, Occupation- Agriculture, R/o Village Barmuda, Police Station- Kotra Raod, Raigarh, Post Station- Kotra Raod, Raigarh, Post Office- Raigarh, Tahsil, Civil & Revenue District- Raigarh, Chhattisgarh

---- Petitioner

Versus

1. Upasu S/o Shri Kirtandas, aged about 60 years, Caste- Panika, Occupation- Labour, R/o Village- Barmuda, Police Station- Kotra Raod, Raigarh, Post Office- Raigarh, Tahsil, Civil & Revenue District- Raigarh, Chhattisgarh
2. The Collector, Raigarh, Civil and Revenue District- Raigarh, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Roop Naik, Advocate
For Respondent no.2/State	:	Shri O. P. Sahu, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

04/11/2016

The present petition has been preferred assailing the order dated 19.10.2016 passed by the 1st Additional District Judge, Raigarh in Misc. Civil Appeal No. 9/2016. The Misc. Civil Appeal was filed against the order dated 08.03.2016 passed by the First Civil Judge, Class-II, Raigarh in Civil Suit No. 117A/2014 rejecting the application under Order 39 Rule 1 & 2 filed along with the suit. By the impugned order dated 19.10.2016 the Court below has allowed the Misc. Civil Appeal preferred by the present respondent and set aside the order dated 08.03.2016 passed by the Civil Judge.

2. The Court below on consideration of the records that were produced before the Court below reached to the conclusion that the present petitioner who is defendant before the Court below could not prima facie establish his

right and title over the suit property. The Court below also found certain discrepancies in the documents which have been relied upon by the petitioner in respect of his contention. In addition, the Court below further took into consideration the fact that whatever construction which has been said to be made by respondent and which has been objected and obstructed by the petitioner was in accordance with the scheme floated by the Govt. and therefore if the said injunction is not granted, it would adversely affect the scheme of the Govt. and there would also be a irreparable loss to the respondent.

3. What is pertinent to take note of the fact at this juncture is that the present petition has been filed under Article 227 of the Constitution of India. It is settled position of law that exercising of powers under Article 227 is purely supervisory in nature and it is exercised in the event, when the Court below blatantly violates the provisions of law or exceeds its jurisdiction while passing the order also in the event of the finding arrived at by the Court below being contrary to facts and also contrary to the settled legal position. However, in the instant case, the impugned order does not reflect any of these deficiencies. In the absence of any such deficiencies which could be pointed out by the petitioner, this Court is of the opinion that it is not a case where the impugned order deserves to be interfered with exercising the supervisory jurisdiction by this Court.

4. So far as the apprehension of the petitioner that if the construction is permitted to be made by the respondent, it would cause irreparable loss to him in the event if the respondent ultimately fails in the suit is concerned, the petitioner need not carry such apprehension simply for the reason that in the event the respondent fails to establish its case before the Court below and on the contrary, the petitioner is able to establish its case, the construction, if any made over the land belonging to the petitioner, the same by an

appropriate order by the Court below can be restored as it stood prior to the filing of the suit.

5. With the aforesaid observation, the present writ petition stands dismissed.

Sd/-

(P. Sam Koshy)
Judge