

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 710 of 2016

Prabhuram S/o Gulliram Satnami, Aged About 52 Years R/o
Village Ranchirai, Tahsil And Thana Gunderdehil, Civil And
Revenue District Balod (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through : The Collector, District Office
Balod, Civil And Revenue District Balod (Chhattisgarh)
2. Sarpanch Village Panchayat, Ranchirai, P. O. Ranchirai, Tahsil
& Thana Gunderdehi, Civil And Revenue District Balod
(Chhattisgarh)

---- Respondents

For Petitioner	:	Mr. Punit Ruparel, Advocate
For State	:	Mr. B. Gop Kumar, Dy. A.G.

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

21/11/2016

Heard.

The petitioner has filed this petition under Article 227 of the Constitution of India assailing correctness and validity of order dated 05.11.2016 passed by the First Additional District Judge, Balod whereby the order passed by the trial Court rejecting application for grant of temporary injunction under Order 39 Rule 1 & 2 CPC has been affirmed.

2. Learned counsel for the petitioner submits that both the Courts below failed to exercise jurisdiction in not granting temporary injunction to the petitioner even though a very strong prima facie case, balance of convenience and irreparable injury was prima facie made out in favour of the petitioner on the basis of pleadings, affidavits and documents

placed on record. He submits that even according to the records of 'निस्तार पत्रक' land comprised in Khasra No.220 of Village Gunderdehi is reserved for Nistari purpose and therefore, the respondent -Panchayat could not have diverted the purposes of the land for construction of Aanganwadi centre.

3. It is next contended that a prima facie case of existence of right of easement is made out and if the respondents are allowed to construct Aanganwadi centre, the petitioner will be deprived access from his dwelling house to the main road.

4. Learned Lower Appellate Court, taking into consideration the material on record has found an opinion that total land comprised in Khasra No.220 is much more than the land on which right of easement is sought to be enforced. The Appellate Court has clearly recorded that even if the Aanganwadi centre is allowed to be constructed about, 35 ft. an open land comprised in Khasra No.220 is still available. On the basis of the material on record, it has been found that the construction of Aanganwadi centre is only on a part of land comprised in Khasra No.220 and not on the entire land. Therefore, in these circumstances, the findings which have been recorded can neither be said to be perverse nor contrary to material on record.

5. It is too well settled and needs no authority for the settled proposition of law that the jurisdiction of this Court under Article 227 of the Constitution of India is exercised only to keep the Subordinate Courts and Tribunals within the bounds of their jurisdiction and not to correct a mere error of fact or even mere error of law unless it is vitiated on account of gross and apparent error of any jurisdiction nature. In appropriate cases where this Court is satisfied that if relief is not granted, it may lead to serious miscarriage of justice, the supervisory jurisdiction could be invoked.

6. It is clearly settled in view of the decision of the High Court of Madhya Pradesh in the case of **Munendra Kumar Dwivedi and others v. Ramji Tiwari and others, 1992 JLJ 293** that ordinarily in

matters arising out of injunction, the supervisory jurisdiction of the High Court would not be invoked because no lis has been decided.

7. Applying the aforesaid well settled principal to the facts and the documents on record, particularly taking into consideration the specific observations made by the Appellate Court that construction of Aanganwadi centre on the apart of land comprised in Khasra No.220 would still leave a substantial portion of the land which could be used as access by the petitioner from his dwelling house to the main road, no case warranting interference is made out.

8. With the aforesaid observations, the petition is dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge