

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 52 of 2017**

Mohd. Shaukat Ali S/o Shri Anwar Ali, Aged About 47 Years
Occupation Shoe Shop, R/o Village Kusmi, P.S. & Tehsil
Kusmi, District Balrampur Ramanujganj.....Petitioner No.2.

---- Appellant**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Urban Administration And Development, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, (C.G.)
2. The Collector, Balrampur, District Balrampur Ramanujganj, (C.G.)
3. Nagar Panchayat Kusmi, Through Chief Municipal Officer, Nagar Panchayat Kusmi, District Balrampur Ramanujganj, (C.G.)
4. Mohd. Tahseen, S/o Shri Mohd. Gulam Rasool, Aged About 36 Years Occupation Motorcycle Repair Shop, R/o Village Kusmi, P.S. & Tehsil Kusmi, District Balrampur Ramanujganj, (C.G.)Petitioner No. 1
5. Mohd. Kyamuddin, S/o Shri Nasarat, Aged About 65 Years Occupation Motorcycle Repair Shop, R/o Village Kusmi, P.S. & Tehsil Kusmi, District Balrampur Ramanujganj, (C.G.) Petitioner No.3

---- Respondents**WA No. 53 of 2017**

Mohd. Shabbir Khan, S/o Shri Mohd. Mahboob Khan, Aged About 50 Years, Occupation Betel Shop, R/o Village Kusmi, P.S. & Tehsil Kusmi, District Balrampur-Ramanujganj, (C.G.)

---- Appellant**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Urban Administration and Development, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, (C.G.)

2. The Collector, Balrampur, District Balrampur Ramanujganj, (C.G.)
3. Nagar Panchayat Kusmi, Through Chief Municipal Officer, Nagar Panchayat Kusmi, District Balrampur Ramanujganj, (Chhattisgarh)

---- Respondents

For Petitioners : Mr. Sarfaraj Khan, Advocate
 For State : Mr. Prafull N. Bharat, Additional Advocate General

Hon'ble Shri Pritinker Diwaker, Ag. Chief Justice
Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

28/02/2017

Sanjay K. Agrawal, J

- (1) With the consent of the parties, matter is heard finally.
- (2) Since common question of law & facts are involved in both the writ appeals, they are being disposed of by this common order.
- (3) These writ appeals are directed against the order dated 20.01.2017 passed by the learned Single Judge whereby learned Single Judge has dismissed the writ petitions filed by the petitioners finding no merit in the writ petitions.
- (4) Learned counsel for the petitioners would submit that the learned Single Judge has erred in not entertaining the writ petitions against the impugned auction notice dated 08.01.2014 issued by Nagar Panchayat, Kusmi, District Balrampur-Ramanujganj for auction and subsequent allotment of 9 shops situated at bus-stand premises, Kusmi. He would further submit that the right has been

accrued in favour of the writ petitioners as the resolution has been passed by the Gram Panchayat.

(5) On the other hand, counsel for the State opposes the writ appeals and supports the impugned order.

(6) We have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

(7) Learned Single Judge has clearly reached to the finding that there is no documents executed by any competent authority i.e. the Secretary of the Gram Panchayat in favour of petitioners entitling them to remain in possession and in case of grant of lease of immovable property, mere resolution would not be of any use to the petitioner; and also held that the civil suit is pending consideration before the jurisdictional civil court at Ambikapur and held as under:-

“7. In the case at hand also, the petitioners Mohd. Tahseem Khan and Mohd. Shabbir Khan have raised plea of being previous allottee, however, the resolution of Gram Panchayat refers to Mohd. Tahseem and not to Mohd. Shabbir Khan, in whose favour there is some receipts of payment of amount of rent or otherwise to the Nagar Panchayat. There is no document executed by any competent authority i.e. the Secretary of the Gram Panchayat in favour of petitioners entitling them to remain in occupation. In the case of grant of lease of immovable property by a Gram Panchayat, which is a body corporate, mere resolution would not suffice but there has to be some consequential documentation creating right in

favour of a lessee but no such document is on record, therefore, it is difficult to conclude that the petitioners were allotted any shop by issuing any formal indenture in their favour. Even otherwise, petitioners had already preferred a suit before the jurisdictional civil Court at Ambikapur, which is pending consideration.”

(8) At this stage, it would be appropriate to notice the scope of writ appeal.

(9) In **Baddula Lakshmaiah and others Vs. Sri Anjaneya Swami Temple and other**¹ the Hon’ble Supreme Court has held thus:

“2. Against the orders of the trial Court, first appeal lay before the High Court, both on facts as well as law. It is the internal working of the High Court which splits it into different ‘Benches’ and yet the court remains one. A letters patent appeal, as permitted under the Letters Patent, is normally as intra-court appeal whereunder the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the same jurisdiction as was vested in the Single Bench. Such is not an appeal against an order of a subordinate court. In such appellate jurisdiction the High Court exercises the powers of a Court of Error. So understood, the appellate power under the Letters Patent is quite distinct, in contrast to what is ordinarily understood in procedural language.....”

(10) In **Mani w/o Komalchand Jain vs. Sub-Divisional Forest**

¹ (1996) 3 SCC 52

Officer-cum-Authorised Officer, Mhow and another², a Division Bench of High Court of Madhya Pradesh has held thus:

“5..... Letters Patent Appeal is normally an intra-court appeal whereunder Letters Patent Bench corrects its own orders in exercise of same jurisdiction as vested in Single Judge- It is not an appeal against an order of a subordinate court. In the matter of *Ku. Varsha Shrivastava vs. State of M.P., L.P.A. 16/2000*, (since reported in 2000 (1) MPLJ 615) *Madhur Agrawal vs. State of M.P., L.P.A. 17/2000* and *Saumi Chatterjee vs. State of M.P., L.P.A. 20/2000*, the Division Bench of this court has also taken a view that the attitude of Division Bench while deciding the LPA has to be strict keeping in view the incoming flood of LPAs. The LPA is intra-court appeal. Therefore, the Division Bench should not be scanning out the order passed by the Single Bench from all corners. If the order is good enough to deal with the averments in the matter of Writ Petition and if it is sound on legal grounds, the Division Bench should be slow in disturbing it. It is not to be dealt with as if it is first appeal.”

(11) In **B. Venkatamuni vs. C.J. Ayodhya Ram Singh and others**³, the Hon’ble Supreme Court has held thus:-

“11. In an intra-court appeal, the Division Bench undoubtedly may be entitled to reappraise both questions of fact and law, but the following dicta of this court in *Umabai v. Nilkanth Dhondiba Chavan*, (2005) 6

2 2000 (2) MPLJ 586

3 (2006) 13 SCC 449

SCC 243, could not have been ignored by it, whereupon the learned counsel for the respondents relied: (SCC p. 261, para 52)

“52. It may be, as has been held in *Asha Devi v. Dukhi Sao*, (1974) 2 SCC 492, that the power of the appellate court in intra-court appeal is not exactly the same as contained in Section 100 of the Code of Civil Procedure but it is also well known that entertainment of a letters patent appeal is discretionary and normally the Division Bench would not, unless there exist cogent reasons, differ from a finding of fact arrived at by the learned Single Judge. Even as noticed hereinbefore, a court of first appeal which is the final court of appeal on fact may have to exercise some amount of restraint.”

(12) In view of the principles of law laid down in afore-stated judgments of the Supreme Court, if the facts of the present case are examined, we find that finding of fact recorded by the learned Single Judge that the petitioners have no enforceable legal right in their favour is a finding of fact based on material available on record, thus, we do not find any good ground to entertain these writ appeals.

(13) In view of the foregoing, the appeals deserves to be and is accordingly dismissed. No order as to costs.

Sd/-

(Pritinker Diwaker)
Acting Chief Justice

Sd/-

(Sanjay K. Agrawal)
Judge