

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1353 of 2016

Surendra Singh S/o Shri Masru Singh, Aged About 52 Years Caste Rajput, R/o Manora, Tahsil Manora, District Jashpur, (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Revenue, Secretariat, Mahanadi Bhawan, Police Station Rakhi, New Raipur, District Raipur, (Chhattisgarh)
2. Collector, Office Of The Collectorate, Jashpur, District Jashpur, (Chhattisgarh)
3. Sub Divisional Officer (R), Jashpur, District Jashpur, (Chhattisgarh)
4. Tahsildar, Manora, District Jashpur, (Chhattisgarh)
5. Samiullah Ansari, R/o Village And Tahsil Manora, District Jashpur (Chhattisgarh)
6. Smt. Sushma Singh, W/o Shri Suredra Singh, Aged About 46 Years Caste Rajput, R/o Manora, Tah Manora, Distt. Jashpur (Chhattisgarh)
7. Sabbir Ali, R/o Village Asta, Tahsil Manora, District Jashpur, (Chhattisgarh)
8. Amiullah, R/o Village Asta, Tahsil Manora, District Jashpur, (Chhattisgarh)
9. Babulala, R/o Village Asta, Tahsil Manora, District Jashpur, (Chhattisgarh)
10. Satyendra Singh, R/o Village Asta, Tahsil Manora, District Jashpur, (Chhattisgarh)
11. Raviullah, R/o Village Asta, Tahsil Manora, District Jashpur, (Chhattisgarh)

---- Respondents

For Petitioner	: Shri Sudeep Verma, Advocate
For State	: Shri Sangharsh Pandey, Dy. Govt. Advocate
For Respondents No. 5 and 7 to 11	: Shri A.K. Prasad, Advocate

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

Order On Board

06/04/2017

With the consent of learned counsel appearing for the parties, the matter is heard finally.

1. By way of reply filed by the respondents, an objection to the maintainability of the petition has been raised on the ground of existence of alternative remedy of

filing revision.

2. Learned counsel for the respondents-State submits that the matter arises out of an order passed in appeal by the Commissioner in proceedings under the Land Revenue Code, 1959. He submits that against an order passed in appeal, there exists an alternative remedy of filing revision before the Board of Revenue, but the petitioner has bypassed the remedy and filed this petition.
3. Per contra, learned counsel for the petitioner submits that in view of patent illegality in the impugned order, the petitioner has filed this petition. He submits that existence of an alternative remedy is not an absolute bar and in appropriate cases, notwithstanding existence of alternative remedy, petitions may be entertained.
4. It is not in dispute that the matter arises out of proceedings relating to cancellation of lease of the petitioner. The cancellation has been ordered on the allegation that the petitioner has obtained lease by practicing fraud. The impugned order shows that the Commissioner, the appellate authority, has examined the material on record and has recorded its own finding of facts.

Learned counsel for the petitioner could not satisfy the Court that the order passed by the Commissioner is either without jurisdiction or passed without affording any opportunity of hearing to the petitioner. Moreover, there is no allegation of malafide.

5. It needs no authority for the settled legal position that though alternative remedy is not a bar to exercise writ jurisdiction by this Court, ordinarily where there exists an alternative and efficacious remedy, writ Court may not invoke its jurisdiction. There are certain exceptional cases where the writ Court, notwithstanding existence of alternative remedy, may be inclined to interfere with the order under challenge, on the ground of total absence of jurisdiction and authority under the Law, complete violation of principles of natural justice or a case of malafide exercise of power.

After going through the contents of the petition, grounds urged in the petition as also submissions of learned counsel for the petitioner, I do not find that any of the aforesaid three grounds exist. True it is that even in cases other than aforesaid three mentioned circumstances, nothing would deter the writ Court to invoke its extraordinary jurisdiction. On facts, taking into consideration the nature of disputes, allegation, I am not inclined to interfere because the

petitioner has an alternative and efficacious statutory remedy of filing revision before the Board of Revenue which is a constituted quasi-judicial body at the apex level to deal with the disputes arising out of proceedings under the Land Revenue Code.

6. Learned counsel for the petitioner, at the last, submits that even this court is not inclined to interfere with the matter, as there was an interim order in favour of the petitioner, the petitioner may be protected by interim order till consideration of his application of stay before the Board of Revenue.
7. In similar circumstances, a Division Bench of this Court in the case of **Punjab National Bank and Anr. Vs. Holistic Foundation Bhilai & Ors.**¹ held that where the Court does not entertain the petition, the interim protection may not be extended. It was held as under:

“7. In A.I.R. (39) 1952 Supreme Court 12 (The State of Orissa vs. Madan Gopal Rungta), it was observed as follows:-

“5.....The result therefore is that while the Judges declined to investigate and pronounce on the rights of the parties and expressly kept the determination thereof in abeyance in the suit proposed to be filed by the present respondents, they gave directions for interim relief till such suit was filed. It must be noted that with the passing of the order of 2-8-1951 containing directions in the nature of interim relief the petitions were completely disposed of and have not been kept pending for disposal.....”

“6.....But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under Article 226 of the Constitution. In our opinion, the language of Article 226 does not permit such an action.....”

8. Yet again in (2005) 11 Supreme Court Cases 509 (G.E.

1. Writ Appeal No. 119 of 2016 decided on 15.3.2016

Power Controls India vs. S. Lakshmipathy), it was observed in paragraph-7 as follows:-

“7. The reasoning of the High Court is contradictory to say the least. If the High Court had held that it was unable to grant relief in respect of orders of transfer under Article 226 of the Constitution, it certainly was not in a position to adjudicate upon or grant relief in respect of orders of termination of service or abandonment of the service as the case may be. This is settled law and has been clearly laid down in State of Orissa v. Madan Gopal Rungta. In this case, the Court declined to decide on the rights of the parties under Article 226 of the Constitution relating to removal of assets from mining areas. The High Court, however, granted interim relief by injuncting the State of Orissa from disturbing the possession of the writ petitioners over the mining areas for a period of one week after the institution of the suit which, according to the High Court, was the more appropriate remedy.”

9. The issue again fell for consideration in (2011) 14 Supreme Court Cases 140 (Bharat Coking Coal Limited vs. Indian Newspaper Society And Others) observing as follows:-

“7. We are of the view that since the writ petition itself was not maintainable, no interim order for deposit or payments, etc. could have been made and while dismissing the writ petition as not maintainable, the High Court ought to have restored the parties to their original position.”

10. Madan Gopal Rungta was relied upon in (2014) 4 Supreme Court Cases 453 (Hema Mishra vs. State of Uttar Pradesh And Others) observing as follows:-

“22. I am also faced with the situation that on dismissal of the writ by the High Court under Article 226 of the Constitution of India, while examining the challenge for quashing the FIR or a charge sheet,

whether the High Court could grant further relief against arrest for a specific period or till the completion of the trial. This Court in *State of Orissa v. Madan Gopal Rungta* reported in AIR 1952 SC 12, while dealing with the scope of Article 226 of the Constitution, held as follows :-

“6.....Article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions had been given here only to circumvent the provisions of Section 80 of the Civil Procedure Code, and.... that is not within the scope of Article 226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. If the Court was of the opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of mandamus or any other directions of a like nature; and pending such determination it might have made a suitable interim order for maintaining the status quo ante. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under Article 226 of the Constitution.....the language of Article

226 does not permit such an action.”

The language of Article 226 does not permit such an action and once the Court finds no merits in the challenge, writ petition will have to be dismissed and the question of granting further relief after dismissal of the writ, does not arise. Consequently, once a writ is dismissed, all the interim reliefs granted would also go.”

11. Resultantly, the appeal has to be allowed and that part of the order granting interim protection for 45 days to the Respondents even after declining to entertain the Writ Petition on merits is held to be unsustainable and is set aside.”

8. In view of the above, I find myself unable to extend the interim order till filing of the revision or consideration of stay application before the Board of Revenue.
9. Therefore, with liberty to approach the Board of Revenue, the petition is dismissed.
10. It needs to go only by way of clarification that this Court has not commented upon merits of the case.
11. As prayed by learned counsel for the petitioner, certified copy of the impugned orders be returned to the petitioner after retaining photocopies of the same.
12. Certified copy of this order by tomorrow.

Sd/-
(Manindra Mohan Shrivastava)
Judge