

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 997 of 2017**

1. G. Niyajuddin, S/o. Moinuddin, Aged About 61 Years.
2. Mohammad Bilal, S/o. G. Niyajuddin, Aged About 35 Years.

Both are R/o. 315 EAC Colony, Near Purnima School, Police Station- Civil Lines, Raipur, District Raipur, Chhattisgarh.

---- Petitioners**Versus**

1. State Of Chhattisgarh, Through the Secretary, Home, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh.
2. Ayesha Siddiqui, D/o. Mohammad Idrish, Aged About 44 Years.
3. Smt. Nishat Fatima, W/o. Mohammad Idrish, Aged About 69 Years.

Both are R/o. EAC Colony, Police Station Civil Lines, Raipur, District Raipur, Chhattisgarh.

4. Smt. Parveen Fatima, D/o. Late G. Niyajuddin, Aged About 66 Years, R/o. Flat No. 202, Exotica Greta, Infront Of T.V. Tower, Shankar Nagar, Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. S.C.Verma, Advocate
For Respondent No.1	:	Mr. S.R.J.Jaiswal, Panel Lawyer
For Respondent No.2 to 4	:	Mr. Kshitij Sharma, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****12.02.2018**

1. The present petition is filed claiming the following reliefs :

It is, therefore, prayed that this Hon'ble Court may be kind enough in calling the entire record related with the Ishtgasha No.1/16 & 2/16 on the Police Station Gol Bazar, Raipur and also record of the Criminal Revision No.91/17 of the Court of First Additional Sessions Judge, Raipur (C.G.) for just and proper decision of the case.

That, this Hon'ble Court may be kind enough to quash the proceeding pending before the Sub Divisional Officer by way of filing Ishtgasha No.1/16

& 2/16 by the Police Station Gol Bazar, Raipur. This Hon'ble Court may further be pleased to pass such an order as it deem fit may also be granted in favour of the petitioners, in the interest of justice.

2. Learned counsel for the petitioners submits that the case emanates on a report made by the parties wherein the proceeding under Section 145 of Cr.P.C. was drawn. It is contended that in such case, the Executive Magistrate passed a preliminary order on 09.08.2016 wherein an Ishtgasha was directed to be filed by the S.D.M. Raipur. Thereafter, on 22.08.2016 the preliminary order was passed. The said order is not under challenge before this Court. It is stated that the background of this case would reveal that the petitioner was served with a notice for demolition of the superstructure by the Municipal Corporation. Against such notice, a writ petition was preferred by the petitioner which was numbered as WP(C) No.1851/2016 wherein on 22.07.2016 interim order was passed to maintain the status quo. Therefore, it would reflect that the petitioners are in possession of the property as the respondents had though in possession of the property they would have preferred the petition before this Court. Therefore, it is submitted that the Ishtgasha itself, which is drawn is misconceived and liable to be set aside.
3. Learned counsel for the respondents vehemently opposes the same and would submit that the revisional Court's order is under challenge wherein it has been observed that it is an inter-locutory order in nature and the main order is not under challenge. He further submits that the proceedings before the S.D.M. is still pending, which is to be decided as to ascertain the possession of the parties who are adversely claiming possession to each other. It is stated that therefore the said fact cannot be decided by this Court and the petition filed under Section 482 of Cr.P.C. is misconceived and liable to be dismissed.

4. Heard learned counsel appearing for the parties and perused the record.
5. The record would show that the revisional Court has passed an order dated 29.04.2017 wherein the order dated 19.10.2016 passed by S.D.M. was a subject of challenge. The proceedings of S.D.M. records that the Ishtgasha No.1/2016 & 2/2016 has been filed considering the fact that there are chances of breach of peace may occur in between the parties as both of them claiming the possession of the property and Smt. Nishat Fatima & Smt. Parveen Fatima are directed to be arrayed as party alongwith Ayesha Siddiqui. The records would show that the order dated 19.10.2016 is not substantially is under challenge, which was passed by the S.D.M. Raigarh. The revisional Court only laid down that the said order dated 19.10.2016 being in preliminary nature, the same cannot be adjudicated in the revision being inter-locutory in nature. Therefore, the documents filed with the reply would suggest that one panchnama in execution of the decree of R.C.A. was prepared wherein the possession of more than one party has been shown. The fact that who is in possession has to be ascertained before the Court below i.e. S.D.M. after evaluating the evidence on record. Taking of cognizance i.e. filing of Ishtgasha cannot be annulled only on the ground that the writ petition was preferred by the petitioners against a notice served for demolition and it would have an effect of presumed exclusive possession. Since the petition is pending before the S.D.M., therefore, S.D.M. is directed to decide the same by taking evidence of the parties within a further period of six months from the date of receipt of a copy of this order. The parties shall be at liberty to lead their evidence.
6. With the aforesaid observations, the petition stands disposed of.

**Sd/-
Goutam Bhaduri
Judge**