

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 283 of 2015

Ambika Prasad Dewangan S/o Late Dwarika Nath Dewangan Aged
About 51 Years R/o Baigapara, Near Shitla Mandir, Durg, District
Durg, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh
2. Director, Rajeev Gandhi Shiksha Mission, Pension Bada, Raipur, Chhattisgarh
3. District Project Officer, Rajeev Gandhi Shiksha Mission, Sarva Shiksha Abhiyan Karyalaya, Behind Collector Office, Durg, C.G.
4. Collector, Durg, District Durg, C.G
5. District Education Officer, Durg, District Durg, C.G.
6. Block Education Officer, Durg, District Durg, Chhattisgarh
7. Director, Directorate, Public Instructions, Chhattisgarh, Pension Bada, Raipur, C.G.

--- Respondents

For petitioner- Shri H.B. Agrawal, Sr. Advocate with Ms. Shefali Arora,
Advocate.

For State -Shri Rahul Jha, G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

29/08/2019

Heard.

1. Instant petition is filed for the following reliefs:-
 - (a) That, the Hon'ble Court may kindly be pleased to allow the petition by directing the respondents to pay suitable rent, compensation or damages in respect of unauthorized use of the petitioner's land within some stipulated period since vacation part of order of this Hon'ble Court has been complied with.
 - (b) Cost of the petition be awarded and
 - (c) Any other relief or direction which the Hon'ble Court may deems fit, be also awarded."
2. It is contended that the respondent had occupied the land of the

petitioner illegally and were not paying any rent and were running the school over the premises which lead to filing of a writ petition on the earlier occasion bearing number WPC No.2662/2008 which was decided on 20th April, 2011. It is submitted that though the premises was vacated subsequent to order of High Court but the respondent have not paid any compensation to the petitioner for illegal use of the land.

3. Perused the earlier order passed in WPC No.2662/2008. The relevant part of the order reads as under:--

“5. On 18/10/10, this Court granted time to the respondent to produce alleged gift deed in view of the statement made that the land in dispute, which is under possession of the Government school, was gifted by the father of the petitioner, failing which it may be presumed that there is no gift deed in existence in favour of the school or the State. However, respondents have failed to produce any document to show that the land in dispute was gifted. The stand has been taken on the basis of certain communications which contained that the father of the petitioner had gifted the land. However, there is no material on record to substantiate such submission. The proceedings before the Tahsildar also show that on 3/7/06, the Tahsildar recorded that the Education Department has failed to produce any document to show that the land in dispute was gifted. The Tahsildar finally came to the conclusion that the land belongs to the petitioner and there is no acquisition made or compensation made and referred the matter to the Land Acquisition Officer. The Land Acquisition Officer, vide his memo dated 11/5/07 required the District Education Officer to submit proposal regarding acquisition of land, so that the compensation may be paid to the petitioner. It however, appears from the perusal of memo dated 13/7/07 and 6/8/07 filed collectively as Annexure R/2 and memo dated 13/10/07 and 23/4/10 filed

collectively as Annexure R/3 that certain proceedings have been drawn for return of the land to the petitioner by shifting the school to some other Government land.

6. In view of the aforesaid documents, it appears that the authorities of the respondent themselves have taken steps for shifting of the school to some other Government land, even though initially the Land Acquisition Officer, vide his memo dated 11/5/07 (Annexure P/1) proposed payment of compensation.

7. In that view of the matter, the respondent authority shall take appropriate decision either with regard to returning the land of the petitioner or make payment of compensation to him in accordance with law. The Land Acquisition Officer shall take appropriate decision with regard to the entitlement of the petitioner for compensation, in case, the land of the petitioner is not returned, as proposed in various communications referred to above. If the petitioner is neither paid compensation nor the land is vacated, it would be open for the petitioner to take recourse to such remedy as may be available to him under the law. The respondent No.2 and 3 shall take decision with regard to shifting of the school within a reasonable time. In case, the school is not shifted within a period of six months from the date of receipt of copy of this order, the Land Acquisition Officer shall take steps as directed by this Court.

8. With the aforesaid directions, the petition is finally disposed off."

4. The record would show that thereafter a notice was served to the respondent on 11/08/2014 claiming damages. Primarily this petition is for claiming damages for illegal use of the land which belong to the petitioner. It is not in dispute that the land and building which was being used by the respondent was vacated by the respondent on 30/09/2011. Therefore even for filing of a suit for damages, the damages could have been

claimed prior to three years from the date of vacating the premises. Beyond that law of limitation would arrest the claim. For the arrears of rent, if three years time period is prescribed as when the arrears have become due. The perusal of the record would show that after vacating the premises on 30/09/2011 no civil suit was filed and instead the instant petition was filed in the year 2015. Even if valuable right of the petitioner have accrued but in order to get the remedy from the court, such right is to be exerted within the period of limitation. This court in exercise of power under Article 226 of the Constitution of India cannot shelve the provisions of Indian Limitation Act which in alternate gives right to either of the parties. If petition was filed in the year 2015 after vacating the premises on 30/09/2011 the right to claim damages and the arrears were barred by time on that date. Consequently, though certain right would have accrued in favour of the petitioner but it is eclipsed by the law of limitation. Consequently, no relief can be granted to the petitioner by this court in exercise of power under Article 226 of the Constitution of India.

5. Accordingly, the petition is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE