

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
WA No. 458 of 2019

(Arising out of order dated 29.08.2019 passed by learned Single Judge
in WPC- 283 of 2015)

Ambika Prasad Dewangan S/o Late Dwariak Nath Dewangan Aged
About 56 Years R/o Baigapara, Near Shitla Mandir, Durg, District Durg
Chhattisgarh.

---- Appellant

Versus

1. State of Chhattisgarh Through The Secretary, School Education Department, Mahanadi Bhavan, 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, District : Durg, Chhattisgarh.
4. Collector Durg, District Durg Chhattisgarh.
5. District Education Officer Durg, District Durg Chhattisgarh.
6. Block Education Officer Durg, District Durg Chhattisgarh.
7. Director Directorate Public Instructions, Chhattisgarh, Pension Bada, Raipur Chhattisgarh.

-----Respondents

For Appellant	:	Shri H.B. Agrawal, Sr. Advocate with Ms. Richa Dwivedi, Advocate.
For State	:	Shri Gagan Tiwari, Dy. Government Advocate.

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

Per PR Ramachandra Menon, CJ

14.10.2019

1. Dismissal of the writ petition filed by the appellant, declining to grant the relief with regard to the compensation/damage/rent payable in respect of

unauthorized use of property and building belonging to the appellant for running a school by the respondent-Government, is put to challenge in this appeal.

2. We have heard Shri H.B. Agrawal, learned Senior counsel appearing for the appellant as well as Shri Gagan Tiwari, learned Dy. Government Advocate who is appearing on behalf of the respondents-State.
3. The appellant was having ownership and possession over the land bearing Khasra No.841, area 0.07 hectare, situated at Model Town, PH No.21 village Junwani, District Durg and a building situated therein, which was taken by the respondents for running a school. Later, the respondents were required to pay compensation for the land or to vacate from the land, which was not acceded to and this made the petitioner to approach this Court by filling WPC No.2662/2008 seeking for compensation for the land or to vacate the building in question. The said case was disposed off as per the judgment dated 20.04.2011, the operative portion of which, as contained in Paragraph Nos.5 to 8, is to the effect that the contention of the respondent-Government that the property and school building were given by way of 'gift' to the respondent-Government was not substantiated by producing the relevant deeds or documents. In the said circumstance, the building/property was ordered to be vacated or else, steps were directed to be taken by the Land Acquisition Officer for acquisition of property and to award compensation to the writ petitioner within the time as specified therein. It is pointed out that the verdict passed by this Court was not given effect to completely, but for making some entries in the records as to surrender and the possession came to be handed over to the appellant only much

later. It was in the said circumstance that the appellant sought to approach this Court by filling WPC No.283/2015 and prayed for a direction to the respondent -Government to pay suitable rent, compensation or damages in respect of the unauthorized use of the petitioner's land within a specific period, since part of the verdict passed by the Court earlier was still to be complied with. The prayer was resisted from the part of the respondents and after taking note of the facts and figures, the learned Single Judge observed that the writ petition was mainly for claiming damages for the illegal use of land, which belongs to the writ petitioner. It was also observed in paragraph No.4 that, it was not in dispute that the land and building, which were being used by the respondent-Government, was vacated by the respondent-Government on 30.09.2011. It was further observed that despite vacating the premises on 30.9.2011, no civil suit was filed by the writ petitioner, but for filing the writ petition claiming damages, in the year '2015'. This made the learned Single Judge to hold that, by the time the writ petitioner had approached this Court, the time to get claim compensation had already expired, by virtue of the law of limitation and this led to dismissal of the writ petition, which is under challenge in this appeal.

4. The learned Senior Counsel appearing for the appellant submits that the proceeding dated 30.9.2011 as to the vacating of the premises was only on paper and that the physical possession was not handed over on that date. The appellant has referred to various proceedings of subsequent dates, as part of the communications among the Departmental Authorities, in Paragraph No.2 of the memorandum of appeal, with

specific reference to the documents dated 24.10.2011, 23.11.2011, 26.11.2011, 28.12.2011, 16.01.2012 and of such other dates. According to the appellant, a civil suit also came to be filed against him as Civil Suit No.11-A/13 before the learned 7th Additional District Judge, Durg, which was dismissed only on 03.08.2019 (wrongly typed as '30.08.2019' in Para-2 of appeal as stated by the learned Senior Counsel) and hence, no legal possession was handed over to the appellant. This being the position, the findings and reasoning given by the learned Single Judge to non-suit the appellant/petitioner in getting the compensation require interference; submits the learned Senior counsel.

5. Shri Gagan Tiwari, Dy. Government Advocate representing the State submits that the appellant has tried to mix-up the issues and that the vacant possession was effected without much delay, after passing the verdict by this Court on 20.04.2011 in WPC No.2662/2008. After handing over possession, according to the State, the appellant had entered into an agreement for sale of the property in question with a stranger, who was put in possession. Later, the said stranger filed a civil suit against the appellant for a declaration, prohibitory injunction and also for specific performance of the agreement for sale and it was this suit which came to be dismissed in the year 2019. It is stated that the State or the Departmental Authorities had absolutely no involvement with regard to the filing of the said suit and that the vacant possession having been effected years ago, the writ petition filed in the year 2015, after crossing the period of limitation, was rightly dismissed by the learned Single Judge and hence, there is no merit in the appeal.

6. After hearing both the sides, this Court is of the view that, insofar as the claim put forth by the petitioner was only for damages/compensation in respect of unauthorized use of the land; it is a matter where evidence may have to be let in. This is equally applicable in respect of the plea of limitation as well, by producing relevant materials and to substantiate the relief sought for, which cannot be made in a proceeding under Article 226 of the Constitution of India. In the said circumstance, we uphold the verdict passed by the learned Single Judge in declining interference to entertain the relief sought for in the writ petitioner under Article 226. However, we make it clear that the observations made by the learned Single judge with reference to the question of limitation is interdicted and left open. The appellant is set at liberty to pursue the claim, if it is maintainable, both on the question of facts and law, including the law of limitation, by resorting to appropriate steps in accordance with law.
7. The appeal is disposed off with the aforesaid liberty.

Sd/-

(PR Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge