

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 514 of 2019**

*{Arising out of order dated 26.09.2019 passed by the learned Single Judge in Writ
Petition (C) No. 2298 of 2019}*

1. State of Chhattisgarh, Through: The Principal Secretary Government of Chhattisgarh, Department of Housing & Environment, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District Raipur (C.G.)
2. The Directorate, Town and Country Planning, Chhattisgarh, Through (Principal Secretary, Housing and Environment Department, State of Chhattisgarh), Indravati Bhawan, Block No. 4, Third Floor, Atal Nagar, Nava Raipur, District Raipur – 492002, Chhattisgarh.
3. Director, Directorate, Town and Country Planning, Atal Nagar, District Raipur, Chhattisgarh.

---- Appellants**Versus**

1. Rakesh Kumar Taori, S/o Late Mangi Lalji Taori, aged about 57 years, R/o House No. 30-31, Opposite, Karbala Talab, Choubey Colony, Raipur – 492002, Chhattisgarh.
2. Usha Devi Taori, D/o Shri Harikrishna Jaju, aged about 59 years, R/o House No. 30-31, Opposite, Karbala Talab, Choubey Colony, Raipur – 492001, Chhattisgarh.
3. Hindustan Petroleum Corporation Limited (Through: Senior Regional Manager) Raipur Retail Regional Office, 2nd Floor, Madina Manzil, Medical College Road, Raipur – 492001, Chhattisgarh.

---- Respondents

For Appellants/State	:	Shri V.R. Tiwari, Additional Advocate General.
For Respondents No. 1&2	:	Shri Kishore Bhaduri and Shri Pankaj Singh, Advocates.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board**Per P. R. Ramachandra Menon, Chief Justice****11.11.2019**

1. The challenge is against the interim order dated 26.09.2019 (Annexure A/1) passed by the learned Single Judge, whereby Annexure P/1 order challenged in

the writ petition passed by the Appellant No. 2, Directorate, Town and Country Planning, Chhattisgarh, came to be stayed during pendency of the writ petition.

2. The gist of the factual position as disclosed by the proceedings and as put forth by the learned Additional Advocate General is that the writ petitioners were the owners of the property concerned and were desirous of setting up a Petrol Pump in the property, as to be permitted by the 3rd Respondent-Petroleum Company. As a matter of fact, no such construction could ever have been effected there as the property was frozen by the authorities in terms of the relevant provisions of law and the same was identified and left as a place for effecting recreational activities. It was very much known to the writ Petitioners and this fact was virtually suppressed in the application filed before the competent authority in connection with the permission sought for, which came to be considered and allowed by the said authority: This was sought to be challenged by moving the higher authorities; ultimately reaching the matter before the Government. It is stated that, on the basis of materials produced and the observation made by the Government to the effect that no pond was situated anywhere near the premises, the matter was required to be reconsidered and accordingly, it was remanded. On remand, the authority concerned took a 'u-turn' and arrived at a finding in favour of the Revenue, which was put to challenge by the writ Petitioners in the writ petition with the following prayers:

"i. This Hon'ble Court may kindly be pleased to quash the impugned order dated 18.06.2019 passed by the Respondent No.1;

ii. This Hon'ble Court may kindly be pleased to direct the Respondent No. 1 to refrain from its intrusive and disruptive conduct and allow the Petitioners to conduct their business in a free and fair environment;

iii. This Hon'ble Court may also, be pleased to pass any other order in favour of Petitioners as it may deem fit and proper under the facts and circumstances of the case with cost."

3. An interim order was sought for to stay the order sought to be challenged in the writ Court. The Appellants herein filed their return, but the writ Petitioners wanted to have time to file rejoinder. It was in the said circumstance, that the matter was considered by the learned Single Judge for the purpose of of granting an interim order and after hearing both the sides, a detailed order was passed; virtually resulting in staying the impugned order; which made the Respondent-State/Authority to feel aggrieved who are before this Court by filing the appeal.
4. The learned Additional Advocate General submits that, though the order under challenge is an interim order, appeal is very much maintainable in terms of Section 2(l) of Chhattisgarh High Court (Appeal to Division Bench) Act, 2006. More so, in view of the position explained by a Full Bench of this Court as per judgment dated 25.01.2017 in Writ Appeal No. 255 of 2016 and connected cases, it has been held that, if an interim order is having the effect of finality in deciding and declaring the rights and liberties of the parties concerned, it could be subjected to challenge. It is in the said circumstances that challenge has been raised by the State, contending that, if on the strength of the interim order, the Writ Petitioners effect the construction in the property, it would be detrimental to the rights and liberties of the State and the Revenue and hence requires to be interdicted.
5. The learned counsel also submits that there is an element of suppression, which vitiates the entire proceeding. This of course could be considered by the learned Single Judge in the pending writ petition. It is open for the both the sides to substantiate the facts and figures in the light of the relevant documents.

With regard to the alleged prejudice that might be caused to the State, if at all any constructions is effected in the light of the interim order of stay granted by the learned Single Judge, Shri Kishore Bhaduri, the learned counsel for Respondents No. 1 and 2/writ Petitioners submits that the Petitioners are firm on their submissions as pleaded in the writ petition, and if for any reason, the Petitioners lose the case ultimately leading to a declaration in favour of the State/Revenue as contended by them, the Petitioners will never press for any relief on the ground of equity, with reference to the construction effected or investment made for setting up the Petrol Pump in the property.

6. In the above circumstances, this Court is of the view that no interference is warranted with regard to the order in question. It is open for the parties to raise all the contentions, legal as well as factual, before the learned Single Judge in the writ petition which is pending consideration and they will be bound by the verdict to be passed by the learned Single Judge after hearing both the sides.
7. The writ appeal stands disposed off.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge