

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2724 of 2020**

- Smt. Reena Rai W/o Sundar Rai Aged About 37 Years R/o Mayapur, Ambikapur, Tahsil Ambikapur, District Surguja Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Revenue Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur District Raipur Chhattisgarh
2. Secretary State Of Chhattisgarh Urban Development Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh
3. Collector Ambikapur, District Surguja Chhattisgarh
4. Nazul Officer Ambikapur, District Surguja Chhattisgarh
5. Commissioner Municipal Corporation, Ambikapur, District Surguja Chhattisgarh
6. Smt. Vandana Singh W/o Shri Anjiv Kumar Singh Aged About 44 Years R/o Near Vishwakarma Temple, Marine Drive Ambikapur District Surguja Chhattisgarh

---- Respondents

For Petitioner	:	Shri Keshav Prasad Gupta, Advocate
For Respondents/State	:	Ms. Sunita Jain, GA
For Respondent No.5	:	Shri Bhupendra Singh, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order****23/11/2020**

1. Heard.
2. Learned counsel for the petitioner submits that initially the respondent No.6 Smt. Vandana Singh filed a writ petition bearing WPC No.1133 of 2020, wherein

this Court on 04.06.2020 considering the rival claim of the parties to a Nazul land directed the District Collector, Sarguja to take a decision on the claim of the petitioner therein i.e. Smt. Vandana Singh and to resolve the dispute in accordance with law. He would further submit that subsequently, the petitioner also approached this Court in WPC No.1454 of 2020 wherein this Court on 10.07.2020 referred to the judgment passed by this Court in the earlier writ petition WPC No.1133 of 2020. Subsequently, it is contended that the demarcation/inspection of the said plot was carried out by the Revenue Inspector as per Annexure P-3 wherein it was stated that the public at large are using the land as a common passage.

3. Learned counsel for the petitioner would submit that respondent No.6 is now disturbing the free access to the land and the enjoyment of the easement. Therefore, the fundamental right of the petitioner is being defeated and the respondent be restrained to do so and further the authorities may be directed to act upon the report submitted by the Revenue Inspector.
4. The primary reading of the pleading and the prayer made would show that the easementary right is claimed over the Nazul land by way of passage. It is further contended that respondent No.6 is creating hindrance in enjoyment in the easementary right. Section 33 of the Indian Easements Act, 1882 (for short 'the Act, 1882') provides that in cases of such nature wherein such right is claimed, suit is required to be instituted. Therefore, if the petitioner claim that she has interest in the dominant heritage, or the occupier of such heritage, may institute a suit for compensation for the disturbance of the easement or of any right accessory thereto. Consequently, the issue which has been projected by the petitioner needs to be adjudicated in a well constituted civil suit inasmuch as

documents are required to be appreciated. The petitioner can claim her right in accordance with the Section 33 of the Act, 1882. Apart from that the issue as has been raised requires appreciation of the facts and evidence is required to be adduced for the right over the property for grant of easementary right. Consequently, there being disputed questions of facts, which needs to be adjudicated, I am not inclined to exercise the jurisdiction under Article 226 of the Constitution of India so as to take over the reigns of a civil suit.

5. Accordingly, the petition is dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu