

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
WA No. 46 of 2020

(Arising out of order dated 06.12.2019 passed by learned Single Judge in
WPC- 4453 of 2019)

1. Anand Tiwari S/o Late P.K. Tiwari Aged About 37 Years.
 2. Smt. Poonam Tiwari W/o - Anand Tiwari Aged About 26 Years.
- Both are R/o Street No. 1, Kashyap Colony, Kabala Road, Bilaspur,
Police Station City Kotwali, Tahsil and District Bilaspur Chhattisgarh.

---- Appellant

Versus

1. State of Chhattisgarh Through Secretary, Law Department, New Mantralaya, Mahanadi Bhawan, Raipur, Police Station Kewli, Tahsil, Civil and Revenue District Raipur Chhattisgarh.
2. Smt. Sushila Tiwari W/o - Late P.K. Tiwari Aged About 61 Years R/o Street No. 1, Kashyap Colony, Kabala Road, Bilaspur, Police Station City Kotwali, Tahsil and District Bilaspur Chhattisgarh.
3. Sub Divisional Officer (Revenue) Tahsil Compound Nehru Chowk Bilaspur, Tahsil and District- Bilaspur Chhattisgarh.

-----Respondents

For Appellants	: Shri R.K. Agrawal, Advocate.
For State	: Shri Chandresh Shrivastava, Dy. Advocate General.

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

Per PR Ramachandra Menon, CJ
16.01.2020

1. Appeal is against the verdict passed by the learned Single Judge whereby interference was declined and the writ petition came to be dismissed.
2. Heard the learned counsel for the appellants as well as the learned counsel representing the State.
3. The crux of the grievance projected by the appellants is that the second respondent (mother) herein had preferred an application before the third respondent for recovery of possession of the house of the petitioners in terms of the Maintenance & Welfare of Parents and Senior Citizen Act, 2007 (for short, 'the Act of 2007'), as borne by Annexure P/2. It is stated that a

preliminary question was raised by the appellants as to the maintainability of the application in terms of the relevant statute, as borne by Annexure P/3. It is also stated that as insisted by the third respondent, the petitioners also filed their reply as to the merits of the case, as borne by Annexure P/4. Various contentions were raised with regard to the relevant aspects but the issue with regard to the maintainability, raised as a preliminary question, was not considered or adjudicated by the authority and is proceeding with the merits of the case, which made the appellants to feel aggrieved and hence the writ petition with the following prayers :-

“10.1. That, this Hon'ble Court may kindly be pleased to call for the entire records of the case, from the respondent authorities.

10.2. That, this Hon'ble Court may kindly be pleased to quash the order dated 09.09.2019 and thereafter passed the all subsequent order passed by respondent No.3 (Annexure P/1) and further be pleased to dismissed the application.

10.3. That, any other relief/order which may deem fit and just in the facts and circumstances of the case including award of the costs of the petition may be given.”

4. The learned Single Judge observed that the question of maintainability of the proceeding can also be a ground to be substantiated before the Competent Authority. It has also been observed in Paragraph No.3 of the judgment under challenge, that going with the pleadings and proceedings, it appears the matter requires evidence to be adduced, so that the issue is properly considered and resolved. It is in the said circumstance, that interference has been declined and the writ petition came to be dismissed.
5. After hearing the learned counsel for the appellants at length, we do not find any tenable ground to cause interference, particularly with regard to the

discretionary jurisdiction exercised by this Court in terms of Article 226 of the Constitution of India. The legal question raised by the petitioners can very well be substantiated before the third respondent in the due course as the matter is still pending. There need not be any 'piece meal' adjudication. In the said circumstance, we do not find it necessary to interdict the proceedings at this stage.

6. Accordingly, the appeal stands dismissed. We make it clear that we have not expressed any opinion with regard to the merit involved, both on the questions of law and facts.

Sd/-

(PR Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge