

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 928 of 2021**

1. Smt. Krishna Singh W/o Late Kanhaiya Singh Thakur Aged About 67 Years R/o Ward No. 3, Bilaspur Road, Pratapganj, Sarangarh, Tah. Sarangarh, Distt. Raigarh (Chhattisgarh)
2. Amar Singh S/o Late Gulab Singh Thakur Aged About 58 Years R/o Ward No. 3, Bilaspur Road, Pratapganj, Sarangarh, Tah. Sarangarh, Distt. Raigarh (Chhattisgarh)

---- Petitioners**Versus**

1. State Of Chhattisgarh Through Collector, Raigarh, Distt. Raigarh (Chhattisgarh)
2. The Sub Divisional Officer (Nazul) Sarangarh, Distt. Raigarh (Chhattisgarh)
3. The Chief Municipal Officer, Municipal Council, Sarangarh, Distt. Raigarh (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Manoj K Umar Sinha, Advocate
For Respondent/ State	:	Shri P. Acharya, P.L.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****09.02.2021**

Heard.

1. The challenge in this petition is to the notice dated 30.01.2021, wherein the petitioner has been served with a notice to remove the encroachment within a specified date otherwise the same would be demolished.
2. After perusal of Annexure P-1, when the query was made, learned counsel for the petitioner would submit that initially a Civil suit was preferred by the petitioner before the Civil Judge Class I, Sarangarh which was dismissed wherein injunction was also sought for. It is submitted that the Civil suit was dismissed on technical ground and against dismissal of civil suit an appeal

has been preferred before the Additional Civil Judge and in such appeal an Application under Order 39 Rule 1 & 2 of CPC has already been preferred wherein notices have been ordered to be issued and in the meanwhile the notice Annexure P-1 has been received, therefore, till the application under Order 39 Rule 1 & 2 of CPC is decided on merits no demolition may ordered to be carried out.

3. After perusal of tenor of Annexure P-1, which shows that the issue has already been culminated in the decree of the Civil suit, the suit filed by the petitioner has been dismissed. In the Civil suit the issue was framed whether the house was constructed over the disputed land and in that permanent injunction was prayed for. However, the finding is in negative in Judgment & decree. Since the Civil suit has already been decided on merits on same issue and appeal is preferred, this Court in exercise of power under the Article 226 of the Constitution would amount to drawing simultaneous proceeding against the finding of fact in decree. Furthermore when appeal is pending and application under Order 39 Rule 1 & 2 of CPC has already been preferred, the petitioner has to pursue his remedy for injunction application in accordance with the relevant provisions of Order 39 of CPC and there cannot be parallel proceeding and fresh finding. Otherwise, it would amount to exercising the appellate jurisdiction by way of Article 226 of Constitution of India.

4. Accordingly, the petition stands dismissed.

Sd/-
(Goutam Bhaduri)
Judge