

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
WA No. 91 of 2021

1. The Managing Director, Chhattisgarh State Minor Forest Produce Union, Vandhan Bhawan, Sector 24, Atal Nagar, Raipur, (CG).
2. The Executive Director Cum Registrar, Chhattisgarh State Minor Forest Produce Union, Vandhan Bhawan, Sector 24, Atal Nagar, Raipur, Chhattisgarh.
3. The Deputy Managing Director, District Minor Forest Produce Cooperative Union, Balod, District -Balod, Chhattisgarh.

---- Appellants.

Versus

1. Yogyadutt Sharma S/o Late Rameshwar Prasad Sharma, Aged About 56 Years R/o -Sadar Road Balod, Tahsil and District -Balod, Chhattisgarh.
2. State of Chhattisgarh Through The Secretary, Department of Co-operative Affairs, Mahanadi Mantralaya, Atal Nagar, Raipur, District -Raipur, Chhattisgarh.
3. The Registrar, Co-operative Societies, Chhattisgarh, Indrawati Bhawan, Atal Nagar, Nawa Raipur, District -Raipur, Chhattisgarh.

--- Respondents

For Appellants	:	Dr. N.K. Shukla, Senior Advocate with Shri Arijit Tiwari, Advocate.
For Respondent No.1	:	Shri Shashank Thakur, Advocate.
For Respondent No.2 & 3	:	Shri Chandresh Shrivastava, Dy. GA.

Hon'ble Shri P. R. Ramachandra Menon, CJ

Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J

16/03/2021

1. Challenge in this appeal is to the order dated 21.01.2021 passed in WPC/256/2021, whereby learned Single Judge has passed an interim order of stay of the impugned order (Annexure P-1) till the next date of hearing.
2. Dr. N. K. Shukla, learned Senior Counsel for the appellants submits that in view of observations made by learned Single Judge that WPC/3072/2016 is already pending and that on the same ground, the second writ petition does not lie. It is further contended that by virtue of the interim order passed in earlier writ petition, the society has already completed its term and the elections of the society are due, therefore,

interim order passed by learned Single Judge requires interference. With regard to maintainability of writ appeal, learned Senior Counsel submits that proviso to Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006, (for Short, 'Act of 2006') was considered by the Full Bench in WA No.255/2016 (**Ajay Gupta Versus State of Chhattisgarh & Ors**) and in view of dictum of Full Bench, appeal is maintainable.

3. Shri Chandresh Shrivastava, learned Deputy Advocate General for respondent No.2 & 3/State submits that challenge in this appeal is to the interim order and by virtue of the proviso to Section 2(1) of the Act of 2006, writ appeal is not maintainable. In support of his submission, he also relied upon the judgment passed by the Full Bench of this Court in WA/255/2016.
4. Shri Shashank Thakur, learned counsel for respondent No.1 supports the submission made by learned State Counsel.
5. We have heard learned counsel for the respective parties.
6. Challenge in this appeal is to the interim order passed by learned Single Judge in the writ petition, operative portion of the order is extracted below for ready reference :-

“Perused the primary documents and the earlier order passed by this Court in WPC No. 3072/2016, prima facie it appears that on the same set of allegation, interference was made in the earlier supersession by the judicial order. Considering the same and the principle laid down in the matter of *State of Madhya Pradesh Vs. Sanjay Nagayach* (Supra), it is directed that there shall be stay of the order dated 01.12.2020 (Annexure P/1) till the next date of hearing”

7. Filing of Intra Court appeals is envisaged under Section 2 of the Act of 2006, which reads as under :-

“2. Appeal to Division Bench of the High Court from a judgment or order of one judge of the High Court made in exercise of original jurisdiction. - (1) An appeal shall lie from a judgment or order passed by one judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two judges of the same High Court.

Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.”

8. In view of proviso to Section 2(1) of the Act of 2006, appeal against interim or interlocutory orders are not maintainable. Full Bench of this Court in WA/255/2016 has clarified that which order can be assailed in writ appeal under 2006 Act and held thus :-

"We therefore answer the question referred to us by holding that proviso to Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 bars appeals against those interim orders which are totally interlocutory in nature, do not decide matters of moment and do not have an element of finality attached to them. Conversely, if the order vitally affects rights of the parties having bearing on the final adjudication of the case, then even though the order is interim, it cannot be termed as interlocutory order and an appeal would lie. An appeal would also lie against those orders which cannot be undone at the time of final hearing and which have an element of finality attached to them. The orders, effect of which cannot be undone at the time of final hearing, cannot be termed to be interlocutory orders and in such eventuality, an appeal would lie against such orders”

9. The order under challenge does not come within the exception carved out in case of **Ajay Gupta** (supra).
10. For the foregoing reasons, instant writ appeal is not maintainable and is hereby dismissed.

11. However, at this stage learned Senior Counsel submits that direction may be issued for early hearing of both writ petitions ie (WPC Nos.3072/2016 and 256/2021) analogously. Appellants are at liberty to file suitable application before the concerned Court for early hearing of both writ petitions analogously. We express our hope and desire that if such an application is filed before the Writ Court, the same may be considered in accordance with law.

Sd/-

(P.R. Ramamchandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Jamal/-