

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 129 of 2021**

- Dilip Jaiswal S/o Late Dukhram Jaiswal, Aged About 45 Years Occupation Agriculturist Cum Business R/o Beltara, Police Station Ratanpur, Tahsil And District Bilaspur (Chhattisgarh) Mob.No.- 9009052206

---- Appellant**Versus**

1. State Of Chhattisgarh Through Secretary, Panchayat And Rural Development Department, Mahanadi Bhawan, New Mantralaya, Atal Nagar, Raipur, Tahsil And District Raipur Chhattisgarh
2. Collector, Bilaspur, District Bilaspur Chhattisgarh
3. Chief Executive Officer, Janpad Panchayat Bilha Tahsil Bilha, District Bilaspur Chhattisgarh
4. Sub Divisional Officer Rural Engineering Service Bilaspur, Tahsil And District Bilaspur Chhattisgarh
5. Gram Panchayat Beltara Through Sarpanch Beltara, Tahsil And District Bilaspur Chhattisgarh

---- Respondents

For Appellant	:	Shri Ratnesh Kumar Agrawal, Advocate
For State	:	Shri Vikram Sharma, Dy.G.A.
For Respondents 3 and 5	:	Shri Awadh Tripathi, Advocate

D.B.:- Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order On Board****19/07/2021**

This writ appeal has been filed by the appellant aggrieved by order dated 13/01/2021 passed by the learned Single Judge dismissing the writ petition as not maintainable in view of existence of alternative remedy.

2. Learned counsel for the appellant would argue that the petition filed by the

petitioner was essentially against an illegal and *malafide* activity of the office bearer of the Gram Panchayat who decided to erect and construct a public sanitary complex on the Government land which is situated opposite the land of the appellant. It has been argued that the construction of sanitary complex in front of the land of the appellant is only to harass him because of the political rivalry and the enmity nurtured by the office bearers of the Gram Panchayat against whom, the appellant had contested elections. The action of the respondents in erecting public sanitary complex in front of the land of the appellant will create lot of nuisance and other complications and this would severely affect his easementary rights.

3. Learned State counsel has disclosed before this Court that the appellant, before filing writ petition, had already approached the Civil Court declaring easementary rights in respect of the same construction and same cause of action concerning the same subject matter of land in which, application for temporary injunction was filed which has been rejected and appeal is pending.

4. While filing writ petition, the petitioner surreptitiously kept close to his chest, aforesaid fact with an intention to withhold it from the Court that he had filed writ petition after having failed to obtain temporary injunction from the Civil Court concerning the same land and same cause of action. This fact was not brought to the knowledge of the Writ Court.

Copy of plaint has been placed on record which clearly shows that the petitioner had filed suit for declaration and permanent injunction claiming easementary rights and on that basis, construction of public sanitary complex has been challenged. Moreover, we also find that his application for temporary injunction was rejected and appeal also filed against rejection of such application which is said to be pending. We would not comment upon the civil case which is pending before the Civil Court.

5. The petitioner has not come with clean hands. He suppressed that he already

approached the Civil Court. This fact was not known to the learned Single Judge. Even otherwise, it is clear that the petitioner sought to enforce easementary rights by taking recourse to remedy under Article 226 of the Constitution of India and the Writ Court has already held that the petitioner has alternative remedy.

6. The petitioner had abused the process of law having approached this Court without disclosing that he had already filed suit and prayer for temporary injunction was rejected and appeal pending. Though learned counsel for the appellant sought to convince this Court that the relief sought in the writ petition and the grounds raised therein are different before this Court and the Civil Court, this argument cannot be accepted once we go through the contents of the writ petition, the cause of action and relief sought herein as also in the Civil Suit. Therefore, this writ appeal has no merit. Moreover, we find that the petitioner has not come with clean hands and is guilty of *suppression*. Therefore, the appellant needs to be imposed with cost. Therefore, this appeal is dismissed with a cost of Rs.20,000/- payable by the appellant to respondent No.5 within a period of one month from the date of receipt of copy of this order.

If cost is not paid, appropriate action would be taken against the appellant.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge