

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.499 of 2021

- Sudhir Thakur S/o Shri Ashok Thakur Aged About 36 Years R/o Dhan Laxmi Nager, Bhanpuri, District Raipur, Chhattisgarh

---- Petitioner

Versus

- Chhattisgarh Grih Nirman Mandal Division No. 01, Through Assistant Engineer, Sirpur Parisar, Kabir Nagar, Ring Road No. 02, Raipur, District Raipur, Chhattisgarh

---- Respondent

For Petitioner	– Mr. Ravindra Sharma with Mr. Rakesh Kumar Manikpuri, Advocate.
For Respondent	– Mr. Sanjay Patel, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

27-09-2021

Heard.

1. This petition has been brought being aggrieved by the order dated 06.09.2021, passed in Miscellaneous Civil Appeal No.75/2021, by upholding the order of the trial Court granting temporary injunction to the respondent and dismissing the appeal.
2. Respondent has filed a Civil Suit praying for reliefs of declaration of title and permanent injunction with respect to suit property that is Khasra No.658/2, 658/3, 658/4 measuring 0.231 hectare, 0.316 and 0.121 hectare respectively, which is situated in Village- Sondongari, District- Raipur, C.G. It is pleaded that the original Khasra No.658 measuring

0.7290 hectare was declared Government land and vested with State under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 in Revenue Case No.1515-A/90-C(1) year 78-79 and the possession of the same was handed over to the respondent/plaintiff. After vesting of this suit property with a State, the original owner of the suit property Phoolsingh raised the dispute and after his death, the dispute was continued by the petitioner/defendant before the competent authority, by which the Revenue Case No.1515-A/90-C(1) year 78-79 was reopened and order was passed on 26.02.2018 for deleting the name of the respondent/plaintiff from the Government records and recording the name of the successor of Phoolsingh. The respondent then preferred a W.P.(C.) No.1574/2021, which has been finally decided on 18.03.2021, by which the order of the competent authority dated 26.02.2018 has been set aside. It is pleaded that the petitioner/respondent and others are interfering in the possession of the respondent/plaintiff and an attempt was made to raise the construction on the same, hence, on this basis, the suit was filed praying for reliefs as mentioned hereinabove.

3. The applicant under Order 39 Rule 1 & 2 of C.P.C. was separately filed praying for grant of temporary injunction on the same ground as pleaded in the plaint. This application was contested by the petitioner/defendant by denying the pleadings regarding the title and possession of the respondent over the suit property and stating that the petitioner was not a party in the W.P.(C.) No.1574/2021. Title and possession has been claimed by the petitioner/defendant. This application was decided by trial Court vide order dated 03.08.2021, by which the application was allowed and temporary injunction was granted in favour of the respondent. The Miscellaneous Appeal preferred against this order has also been dismissed by the impugned order.

4. It is submitted by learned counsel for the petitioner that the petitioner is rightfully entitled for the title and possession over the suit land by the order of the competent authority dated 26.02.2018 as the petitioner was not a party in W.P.(C.) No.1574/2021.
5. Reliance has been placed on the judgment of Supreme Court in the case of competent authority Competent Authority, Calcutta & Anr. Vs. David Mantosh & Ors. reported in (2020) 12 SCC 542, in which it is clearly held that jurisdiction of the Civil Court to try the Civil Suits with respect to the land which are subject to Ceiling proceedings under the Act are held to be impliedly barred. Therefore, the suit filed by the respondent is also liable to be set aside. As the matter is concerning the ceiling proceedings, therefore, in the alternative it is prayed that the case may be remanded back to the trial Court to consider on the application under Order 7 Rule 11 of C.P.C. which is pending.
6. Learned counsel for the respondent opposes the petition and submits that by the notification dated 17.05.1985, the suit land was vested with the State Government. The competent authority had no jurisdiction to reopen the case and he had no authority to pass order for divesting of the suit property, as there is no provision under the law and under the Urban Land (Ceiling & Regulation) Act, 1976.
7. Reliance has been placed on the judgment of this Court in W.P.(C.) No.576/2008 decided on 21.11.2012, in which it has been held that once a land is vested with the State Government, the same cannot be divested. Therefore, the present petition is without any substance, which may be dismissed.
8. Learned counsel for the petitioner submits in rebuttal that the respondent has not sought any relief against Ghanshyam, as a sale

deed has been executed for a portion of the same property by Ghanshyam. It is also submitted that the case law on which the respondent has relied is not applicable in this case.

9. Considered on the submissions. After perusal of the impugned order and the order of the trial Court, I am of this view that the Courts below have not made any error in holding that the prima facie case is in favour of the respondent party and that any interference shall cause irreparable loss to the respondent. Therefore, I am of this view that there is no error present in the impugned order, which needs no interference, hence, this petition is disposed off. The alternative prayer as made by the learned counsel for the petitioner is allowed and the learned trial Court is directed to consider and decide on the application filed by the petitioner under Order 7 Rule 11 of C.P.C. preferably within a period of one month.

10. Accordingly, this petition is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Monika