CGHC010400712026 2026:CGHC:44366

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

AVINASH SHARMA

Digitally signed by AVINASH SHARMA
Date: 2026.10.16 17:16:45 +0530

WPC No. 5256 of 2026

1 - Smt. Usha Singh W/o Late Prahlad Singh Dau Aged About 66 Years Caste Gond, R/o Village Vijaypur, Boirdadar Tahsil And District Raigarh Chhattisgarh

2 - Ku. Posheswari Singh Dau D/o Late Prahlad Singh Dau Aged About 44 Years Caste Gond, R/o Village Vijaypur, Boirdadar Tahsil And District Raigarh Chhattisgarh

3 - Dhaneshwar Singh Dau S/o Late Prahlad Singh Dau Aged About 41 Years Caste Gond, R/o Village Vijaypur, Boirdadar Tahsil And District Raigarh Chhattisgarh

4 - Ku. Lakshmeshwari Singh Dau D/o Late Prahlad Singh Dau Aged About 36 Years Caste Gond, R/o Village Vijaypur, Boirdadar Tahsil And District Raigarh Chhattisgarh

... Petitioner(s)

versus

1 - State Of Chhattisgarh Through The Secretary, Department Of Revenue And Disaster Management, Mahanadi Bhawan, Nava Raipur, District Raipur Chhattisgarh

2 - The Collector Raigarh, District Raigarh Chhattisgarh

3 - The Sub-Divisional Officer (Revenue) Raigarh, District Raigarh Chhattisgarh

4 - The Tahsildar, Raigarh Tahsil Raigarh, District Raigarh Chhattisgarh

5 - Shiv Kumar Dau S/o Late Bhubhut Singh R/o Devlas Chowk, Beladula, Raigarh, Tahsil And District Raigarh Chhattisgarh

6 - Deepak Ekka @ R. Rafel Ekka Aged About 41 Years R/o Gopalpur Road, Boirdadar, Vijaypur, Raigarh, Tahsil And District Raigarh Chhattisgarh

... Respondent(s)

For Petitioner(s)	:	Shri Jai Kumar Dewangan, Advocate.
For State/ respondent	:	Shri Anil Pandey, GA.
For Respondent Nos.5 & 6	:	Shri Hari Agrawal, Advocate.

Hon'ble Mr. Justice Amitendra Kishore Prasad
Order on Board

14/10/2026

1. Learned counsel for the petitioner submits that by way of this petition, petitioners seek appropriate protective directions in respect of the subject property bearing Khasra No. 22/2 and 23/2, admeasuring 0.0225 hectare and 0.077 hectare, respectively situated at Village Vijaypur, R.N.M. No.01, Tahsil and District Raigarh Chhattisgarh which are the subject matter of Civil Suit No. 1/2026 and the application filed therein under Order 39 Rules 1 & 2 of Civil Procedure Code.
2. Learned counsel for the petitioner submits that during the pendency of the aforesaid civil proceedings and the application under Order 39 Rules 1 & 2 CPC, Tahsildar, Raigarh issued public notice / Ishtehaar dated 18.09.2026, including Khasra Nos.22/2 and 23 / 2 in the proposed sale proceedings and fixed 05.10.2026 for hearing of objections. The petitioners apprehend that continuation of the said proceedings may result in alienation of the disputed property and creation of third party rights, thereby prejudicing the petitioners and frustrating the effective adjudication of the pending civil proceedings.
3. Learned counsel for the petitioner submits that in the aforesaid circumstances, petitioners seek expeditious disposal of the pending application under Order 39 Rules 1 & 2 CPC and appropriate interim protective directions for preservation of the subject property, including

restraint against any further construction, boundary/compound wall construction, change of possession, demolition, physical alteration, sale, transfer, alienation or creation of any third-party rights, until consideration of the said application.

4. Learned counsel for Respondent Nos.5 & 6 submits that civil suit is pending for consideration before the trial Court and counsel for the petitioner by approaching this Court is initiating parallel proceedings. To support this submission, counsel for the respondent would place reliance in the matter of ***Qamruddin vs. Rasul Baksh and Another {1989 SCC OnLine SC 1}*** whereby Hon'ble Supreme Court has held the following in paragraph No.4:-

> ***4.*** *After hearing learned counsel for the parties we are surprised as to how the High Court entertained the writ petition under Article 226 of the Constitution for issuing a writ of certiorari and mandamus. When a suit is filed before a civil court having jurisdiction to entertain the same it may issue interim injunction and the party aggrieved may pursue its remedy before the appellate court and if it is further aggrieved it may invoke the revisional jurisdiction of the High Court under the Code of Civil Procedure. Ordinarily an interlocutory order passed in a civil suit is not amenable to extraordinary #xxxxxx jurisdiction of the High Court under Article 226 of the Constitution. More so when the aggrieved party has not exhausted the remedy available to it under the Code of Civil Procedure. The High Court in the instant case failed to realise that the defendant-respondents had not approached the High Court under Section 115 of the Code of Civil Procedure. The question whether an interim injunction should be granted or not is discretionary in nature, although the exercise of discretion is regulated by the principles set out in Order XXXIX, Rules 1 and 2 of the*

Code of Civil Procedure. If the order of injunction is passed by a competent court having jurisdiction in the mater, it is not permissible for the High Court under Article 226 of the Constitution to quash the same by issuing a writ of certiorari. In the instant case the learned Single Judge of the High Court further failed to realise that a writ of mandamus could not be issued in this case. A writ of mandamus cannot be issued to a private individual unless he is under a statutory duty to perform a public duty. The dispute involved in the instant case was entirely between two private parties, which could not be a subject matter of writ of mandamus under Article 226 of the Constitution. The learned Single Judge ignored this basic principle of writ jurisdiction conferred on the High Court under Article 226 of the Constitution. There was no occasion or justification for issue of a writ of certiorari or mandamus. The High Court committed serious error of jurisdiction in interfering with the order of the District Judge.

5. Having heard learned counsel for the parties and upon consideration of the submissions made, this Court is of the view that the dispute relating to the subject property is already pending consideration before the competent Civil Court in Civil Suit No. 1/2026, along with the application preferred by the petitioners under Order 39 Rules 1 & 2 of the Code of Civil Procedure, 1908. In view of the remedy available to the petitioners before the Civil Court, this Court is not inclined to entertain the present petition for grant of the interim protective directions sought for. The petitioners are, therefore, at liberty to pursue their remedies before the Trial Court and seek expeditious consideration of their pending application in accordance with law. The Trial Court is expected to consider the said application on its own merits, having

regard to the pleadings and material available on record, without being influenced by any observation made by this Court. It is made clear that this Court has not expressed any opinion on the merits of the dispute or on the entitlement of the petitioners to the interim relief sought.

6. Accordingly, the petition stands **disposed of** with the aforesaid observations.

Sd/-

(Amitendra Kishore Prasad)
Judge

Avinash