

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPC No. 235 of 2020**

Smt. Vandana Gupta S/o Shri Omprakash Gupta Aged About 32 Years R/o Village Bhanora Balrampur District Balrampur Ramanujganj, Chhattisgarh. --- **Petitioner**

Versus

1. State of Chhattisgarh through The Secretary, Department of Revenue Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh.
2. The Collector Balrampur District Balrampur Ramanujganj Chhattisgarh.
3. The Tahsildar Balrampur District Balrampur Ramanujganj Chhattisgarh.
4. Patiya S/o Late Tumala Aged About 55 Years Cast - Uraon, R/o Village Bhanoura, (Khutahanpara) Police Station & Tahsil - Balrampur District Balrampur Ramanujganj Chhattisgarh.
5. Maini Devi W/o Patiya Aged About 53 Years Cast - Uraon, R/o Village Bhanoura, (Khutahanpara) Police Station & Tahsil - Balrampur District Balrampur Ramanujganj Chhattisgarh.
6. Kameshwar Giri S/o Mishrilal Shiv Prasad Giri Aged About 60 Years Cast Gosai, Village Bhanoura, Police Station And Tahsil Balrampur District Balrampur Ramanujganj Chhattisgarh. --- **Respondents**

For the Petitioner : Mr. A. N. Pandey, Advocate.
For the State/R-1 to R-3 : Mr. Aditya Bharadwaj, Panel Lawyer
for Respondents 4 & 5 : Ms. Varsha Sharma, Advocate.
For respondent no.6 : None

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

16.09.2021

1. The challenge in this petition is to the order dated 14.09.2018 passed by the Tahsildar, Balrampur (Annexure P-2) whereby a temporary injunction order was issued against the petitioner restraining any construction or further



alienation or change of nature of the suit property.

2. Learned counsel for the petitioner would submit that the said order of temporary injunction of the like nature cannot be passed in excess of jurisdiction by the Court of Tahsildar. He relies on a decision of this Court rendered in case of *Seraj Ahmad Vs. State of C.G., 2017 (4) CGLJ 559* and would submit that the order passed by the Tahsildar, therefore, is without jurisdiction.
3. Learned Counsel for the State would submit that the order is appealable, therefore, the petitioner should have filed an appeal u/s 44 of the Land Revenue Code.
4. Counsel for respondents 4 & 5 prays for time to file reply.
5. No representation is made on behalf of respondent no.6.
6. Considering the small issue involved about the jurisdictional point, the petition is heard finally. A perusal of the order which is challenged herein shows that the injunction order was issued by the Tahsildar on 14.09.2018, relevant paras thereof is reproduced hereinbelow:

अतः प्रारंभिक दस्तावेजी साक्ष्य के आलोक में इस न्यायालय द्वारा स्व प्रेरणा से वंदना ओमप्रकाश जाति सुण्डी तथा छ0 ग0 शासन को अनावेदक क्र. 7 एवं 8 के रूप में संयोजित किया जो छ0ग0 भू-राजस्व संहिता 1959 की धारा 32 एवं 43 एवं सहपठित सिविल प्रक्रिया संहिता 1908 XXXIX (2) के तहत प्रदत्त अधिकारों का अनुप्रयोग करते हुए ग्राम भनौरा स्थित वाद भूमि 329/1, 329/2, 329/3, 329/4, एवं 329/5, पर समस्त निर्माण कार्य एवं उसके किसी भी प्रकार से अंतरण या सरंचना में परिवर्तन के विरुद्ध एतद् द्वारा अस्थाई निषेधाज्ञा जारी की जाती है। उभय पक्ष प्रकरण में न्यायालय के आगामी आदेश पर्यंत अथवा सक्षम न्यायालय के आदेश पर्यंत ग्राम भनौरा स्थित वाद भूमि 329/1, 329/2, 329/3, 329/4, एवं 329/5, पर समस्त निर्माण कार्य एवं उसके किसी भी प्रकार से अंतरण या सरंचना में परिवर्तन से निषेधित किये जाते हैं।

सर्व पक्ष अवगत हो कि अस्थाई निषेधाज्ञा का भंग किया जाना अथवा उसकी अवज्ञा दण्डनीय अपराध है।

आदेश आज दिनांक 14-09-2018 को न्यायालय के हस्ताक्षर एवं पदमुद्रा से जारी एवं न्यायालय में उदघोषित।

7. Reading of the aforesaid order would show that nature of the

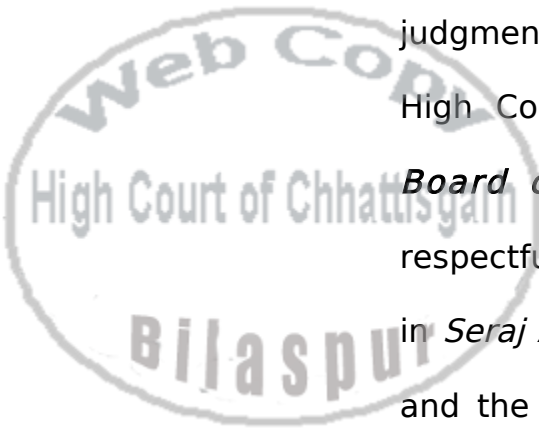


direction issued by the Tahsildar is in the form of injunction order whereby the entire construction which was to be made on the landed property was stayed and it was further directed that the nature of property shall not be changed and further alienation was also stayed.

8. This Court in *Seraj Ahmad Vs. State of Chhattisgarh & others 2017 (4) C.G.L.J. 559* has held that the order to grant injunction is surely vested in the jurisdictional Civil Court and the Revenue Courts cannot grant the order of injunction and it was held that the revenue order granting temporary injunction restraining the transfer would be without jurisdiction and without authority of law. The said judgment was based on a decision of the Madhya Pradesh High Court rendered in *Maya Lalchandani (Mrs.) Vs. Board of Revenue 2009 (3) MPLJ 660*. I am also in respectful agreement with the judgment passed by this Court in *Seraj Ahmad Vs. State of C.G. (Supra)* on earlier occasion and the relevant part of the decision is reproduced herein below:

2. Learned Counsel for the petitioner submits that the Sub-Divisional Officer (Revenue) has passed order on 10.03.2016 granting temporary injunction for which he has no jurisdiction, therefore, the order passed by the Sub-Divisional Officer (Revenue) is without jurisdiction and without authority of law. He relies upon a decision of the High Court of Madhya Pradesh in the matter of Maya Lalchandani (Mrs.) and others Vs. Board of Revenue and others in which the M.P. High Court has held as under:

“4. After going through the order passed by the learned President, Board of Revenue and taking into consideration the legal provisions, we are of the opinion that the directions issued in paragraph 7 of the order passed by the Board of Revenue cannot be





allowed to stand. Section 32 of the Land Revenue Code talks of the inherent powers of the Revenue Authorities while Section 43 talks of applicability of the Code of Civil Procedure. It is to be seen from Section 32 that nothing in the Land Revenue Code shall be deemed to limit or otherwise affect the inherent power of the Revenue Court to make such orders as may be necessary to meet the ends of justice or as may be necessary to prevent the abuse of the process of Court. Section 43 simply provides that unless otherwise expressly provided in the Code, the procedure laid down in the Code of Civil Procedure shall, so far as may be, followed in all proceedings under the Code. Section 43 in no case would authorise a Revenue Authority to grant an injunction. Section 43 simply provides that the procedure laid down in the Code of Civil Procedure so far as may be followed in all proceedings under the Code. It is also to be seen from the provision of the Code of Civil Procedure that an injunction can be granted only by civil Court and by none else. Section 32 of the M.P. Land Revenue Code only talks of the inherent powers of the Revenue Courts where they are required to make such order as may be necessary for the ends of justice or to prevent the abuse of the process of the Court. The powers under Section 32 can be exercised within the Code itself and not beyond the Code. If the Revenue Authority does not have the power to grant injunction then the Board of Revenue also could not grant injunction.”



3. The order to grant injunction is surely vested in the jurisdictional civil court, revenue courts cannot grant order of injunction. Therefore, the order passed by the revenue authority granting temporary injunction restraining transfer following the principle of law laid down in Maya Lalchandani (Supra) is without jurisdiction and without authority of law. It is accordingly set aside. However, the Sub-Divisional officer (Revenue) is directed to take decision on merits after hearing the parties in accordance with law, expeditiously,



within three months from the date of receipt of a copy of this order.

9. Considering the nature of stay order, certainly it would show that the Tahsildar has exceeded its jurisdiction which is vested under the Land Revenue Code and therefore, the order of the nature would be without jurisdiction and without authority of law. Since the order is without jurisdiction, as such, the petitioner even if has not availed the remedy of appeal, this Court in exercise of power under Article 226 of the Constitution of India can look into such issue when jurisdictional issue is involved in view of the decision of the Supreme Court rendered in *Whirlpool Corporation Versus Registrar of Trade Marks, Mumbai (1998) 8 SCC 1* wherein it has been held as under:

14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the





Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

16. *Rashid Ahmed v. Municipal Board, Kairana AIR 1950 SC 163* laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting writs. This was followed by another Rashid case, namely, *K.S. Rashid & Son v. Income Tax Investigation Commission AIR 1954 SC 207* which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse or to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, “*unless there are good grounds therefor*”, which indicated that alternative remedy would not operate as an absolute bar and that writ petition under Article 226 could still be entertained in exceptional cases.

(Emphasis supplied)

10. Further the Supreme Court in *Harbanslal Sahnia Versus Indian Oil Corporation Ltd (2003) 2 SCC 107 Para 7* reiterated the principles laid down in *Whirlpool Corpn. V. Registrar of Trade Marks (supra)* and held that inspite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies as observed in Para 7, which reads thus :

7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be





dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. V. Registrar of Trade Marks). The present case attracts applicability of the first two contingencies. More over, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.

(Emphasis supplied)

11. In view of the principles laid down by the Supreme Court and taking the instant case as an exceptional one, it would be appropriate for this Court to grant relief to the petitioner instead of driving her to avail the remedy of appeal despite availability of alternative remedy. Accordingly, the order of the Tahsildar dated 14.09.2018 being without jurisdiction is set aside. The writ petition is allowed.

Sd/-
GOUTAM BHADURI
JUDGE

