
(2021) 10 CHH CK 0053
In the Chhattisgarh High Court
Case No : Writ Appeal No. 273 Of 2021

Bilaspur Sahkari Grih Nirman Samiti Maryadit	APPELLANT
Vs	
State Of Chhattisgarh	RESPONDENT

Date of Decision : 21-10-2021

Acts Referred:

Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 — Section 2(1)

Citation : (2021) 10 CHH CK 0053

Hon'ble Judges : Sanjay K. Agrawal, J;Arvind Singh Chandel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard on admission.
2. At the outset, Mr. K. Rohan, learned counsel appearing for respondent No.10, would take an objection that by order dated 11-8-2021, the interim order already granted on 24-8-2020 has been modified and as such, no right of the writ petitioner has been decided finally, therefore, writ appeal would not be maintainable in the light of the decision rendered by the Full Bench of this Court in the matter of Ajay Gupta v. State of Chhattisgarh and others AIR 2017 Chh 45 and accordingly the appeal deserves to be dismissed as not maintainable.
3. Mr. Rajeev Shrivastava, learned Senior Counsel appearing for the writ petitioner / appellant, would submit that the learned Single Judge has permitted respondent No.10 to make construction in accordance with the sanctioned map of the Municipal Corporation and that amounts to final order and as such, appeal would be maintainable.
4. Mr. Anumeh Shrivastava, learned counsel appearing for respondents No.5 & 6, would submit that no permission has been granted to respondent No.10 to make construction over the suit land.
5. We have considered the rival submissions made by learned counsel for the

parties and gone through the record with utmost circumspection.

6. The short question is, whether writ appeal is maintainable against the order dated 11-8-2021?

7. It would be appropriate notice paragraph 32 of the decision rendered by the Full Bench of this Court in Ajay Gupta (supra) wherein while dealing with writ appeal against the interlocutory order, it has been held as under: -

"32. 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."

8. Now, the question is, whether the impugned order dated 11-8-2021 can be termed as interim order and interlocutory order or whether it is a final order affecting the rights of the writ petitioner?

9. In the writ petition filed by the writ petitioner, the learned Single Judge while entertaining the writ petition by order dated 24-8-2020 directed that "there shall be no further construction carried out on the said land" and by the impugned order, it has been modified on the application filed by respondent No.10 that "respondent No.10 may carry out the construction in accordance with the map of Municipal Corporation, if sanctioned, subject to the fact that eventually if it is found that the land belongs to EWS of the colony of Petitioner, the entire structure would be removed or adequate compensation would be required to be paid to the appropriate authority or aggrieved". As such, the learned Single Judge has modified the earlier order by which the construction has been totally stayed by holding that construction can be made only in accordance with the sanctioned map of the Municipal Corporation and further held that if it is found that the land belongs to EWS of the colony of the petitioner, the entire structure would be removed or adequate compensation would be required to be paid to the appropriate authority or aggrieved. Thus, the interest of the petitioner has been fully protected by the impugned order while modifying the interim order dated 24-8-2020. Therefore, it cannot be held that the construction made cannot be undone and the effect of construction cannot be undone at the time of final hearing. As such, the order is termed as interlocutory order balancing the rights of the petitioner and respondent No.10, in that event, the writ appeal would not lie. Accordingly, the writ appeal is hereby dismissed in limine as not

maintainable. However, the learned Single Judge is requested to expedite the hearing of W.P.(C)No.1760/2020. No order as to cost(s).