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IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

W.P.NO. 324 OF 2001

PETITIONER : Jawahar Lal S/o Ram Prasad Kashyap  
aged 27 (Twenty Seven) years,  
occupation agriculturist resident  
of and Permanent Address at village  
Bhalukona, Post Office Mohara,  
Tahsil Palari, District Raipur  
(Chhattisgarh).

VERSUS

RESPONDENTS : 1. Tahsildar Gopal Janghel aged 50  
(Fifty) years of Palari, Tahsil  
Palari, Sub Division Balodabazar  
District Raipur.

2. United Commercial Bank, Branch  
Palari.  
Through : Branch Manager, Palari  
Sub-Division Baloda Bazar,  
District Raipur.

3. Naib Tahsildar, Palari,  
Tahsil Palari, District Raipur.

4. The State of Chhattisgarh  
through the Secretary, Revenue  
Department, Raipur, Chhattisgarh

5. The Collector, Raipur,  
District Raipur (Chhattisgarh)

P.N. No. 302/01  
Petition by Shri J. L. Verma  
dated 26-2-01

PETITION UNDER ARTICLE 226 AND 227 OF  
THE CONSTITUTION OF INDIA, FOR ISSUE  
OF WRIT IN THE NATURE OF CERTIORARY  
PROHIBITION, MANDAMUS ETC. OR ANY OTHER  
APPROPRIATE, DIRECTION OR ORDER.

RECEIVED COPY.  
24/2/2007  
COURT OF JUDICATURE  
BILASPUR

for  
Contd...2

## आदेश पत्रक

W.P.No.334/2001

मामला क्रमांक

सन् 200

विरुद्ध

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
29-3-2001	<p>Shri <b>U.R.Verma</b>, learned counsel for the petitioner.</p> <p><b>Dr.N.K.Shukla</b>, learned Dy.Advocate General, for the State.</p> <p>Heard.</p> <p>Learned counsel for the petitioner submits that as the actions of respondent/Tahsildar are contrary to law, the attachment of property is bad, is without notice to the petitioner and as the Tahsildar has acted contrary to the orders earlier passed by the High Court and as the property of the petitioner, has been put to auction for recovery of the loan amount even when the loan was not taken by the petitioner, this Court must interfere.</p> <p>From the records annexed with the petition, it appears that on an earlier occasion the petitioner's father had come to the High Court in a writ petition. The High Court granted the relief to the petitioner's father inter-alia directing the Tahsildar under its Judgment dated 12-3-1999 that Ramprasad the father of the petitioner shall be entitled to file his objections before the Tahsildar and the said Tahsildar shall decide the objections in accordance with law. Undisputedly, after the orders passed by the High Court, the objections were filed and the objections were decided against Ramprasad. It appears that in the meanwhile, the present petitioner</p>	

[पीछे देखिये]

आदेश पत्रक ( पुर्वानुबन्ध )

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p>filed a suit in the court of Additional District Judge inter-alia submitting that the property belonging to the petitioner neither could be attached nor could be put to auction because the loan was time barred, the provisions of Lokdhan (Shodhya Rashi Ka Vasuli) Adhiniyam, was not applicable. He also contended that the loan was not taken either under the State sponsored Scheme or socially desirable scheme, therefore, the Tahsildar should not issue any R.R.C. It was also contended before the Civil Court that the property which belongs to the petitioner/plaintiff should not be attached or should not be put to auction. The Bank and the other parties appeared in the said civil suit and contested the application for grant of ad-interim injunction. The learned trial Court rejected the said application and while considering the prima-facie case observed that the suit prima-facie does not appear to be cognizable by the civil Court. It accordingly rejected the injunction application. Undisputedly, aggrieved by the said order rejecting application for injunction, the plaintiff/petitioner has filed a Miscellaneous Appeal in the High Court. In the said appeal, notices have been issued to the other side and the said appeal is still pending.</p> <p>Confronted with the legal position that on the face of pendency of the civil suit, how a writ petition would lie to the High Court, Shri Verma submits that as the Civil Court has already observed that it would have</p>	

## आदेश पत्रक

मामला क्रमांक

सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p>no jurisdiction to try the suit, the petitioner is left with to no remedy <del>but</del>/approach this Court.</p> <p>The argument is misconceived. The civil suit has not been dismissed for want of jurisdiction. The civil Court while deciding the application for grant of injunction has observed that the civil Court may not have jurisdiction to decide the suit. It is not in dispute before me that as on today, the civil suit is still pending.</p> <p>Shri Verma next submits that subsequent to filing of the suit, as number of the events have taken place and as the civil Court would have no jurisdiction to grant the relief to the petitioner, this Court must interfere. In the opinion of this Court, this argument cannot be accepted. Once it is admitted by the petitioner that at his instance a civil suit is filed and the same is pending, then, so long as the civil suit is pending, this Court would not exercise its jurisdiction under articles 226/227 of the Constitution of India. Even otherwise, when a civil suit is an alternative remedy and <sup>the remedy</sup> is available to the petitioner, this Court may refuse to interfere in a particular matter.</p> <p>In the present case, the suit has already been and instituted/ subsequent to filing of the suit the petitioner</p>	

[पीछे देखिये]

आदेश पत्रक ( पुर्वानुबद्ध )

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/Rao/	<p>has come to this Court in this writ petition. Whether the Tahsildar had the jurisdiction to attach the property, whether the R.R.C could be issued, whether the plaintiff had taken the loan, whether he is an exclusive owner of the property; are all questions of facts. All such questions can very conveniently be contested in the Civil Suit. It is however, made clear that if the suit of the plaintiff is dismissed for want of jurisdiction, then, the petitioner would be entitled to approach a competent forum. At this stage, it is not possible for this Court to interfere in the matter.</p> <p>The petition is dismissed.</p>	<p>Sd/- R.S. Garg Judge</p>

30/3/14

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