

**HIGH COURT OF CHHATTISGARH, BILASPUR****W.P.(227) No. 1068 of 2015**

1. Mangat Rai S/o. Late Moolchand Agrawal, aged about 70 years, R/o. Ravi Marble, Manendragarh Road, Ambikapur, Police Station and Post Ambikapur, Civil and Revenue District Surguja (Chhattisgarh)
2. Krishna Kumar Agrawal S/o. Late Moolchand Agrawal, aged about 65 years, R/o. Ravi Marble, Manendragarh Road, Ambikapur, Police Station and Post Ambikapur, Civil and Revenue District Surguja (Chhattisgarh)
3. Suresh Agrawal, S/o. Late Shyamlal Singhal, aged about 58 years, R/o. Sajjan Colony, Manendragarh Road, Ambikapur, Police Station and Post Ambikapur, Civil and Revenue District Surguja (Chhattisgarh)
4. Rajesh Agrawal, S/o. Late Shyamlal Singhal, aged about 45 years, R/o. Sajjan Colony, Manendragarh Road, Ambikapur, Police Station and Post Ambikapur, Civil and Revenue District Surguja (Chhattisgarh)

**---- Petitioners****Versus**

1. Sushil Gupta S/o. Lalji Prasad Gupta, R/o. Near Narayan Stores, Deviganj Road, Ambikapur, Police Station and Post Ambikapur, Civil and Revenue District Surguja (Chhattisgarh)
- 2a. Smt. Premkumari Gupta, Wd/o. Late Satish Chandra Gupta, R/o. Sarkanda Bilaspur, Police Station and Post Bilaspur, Civil and Revenue District Bilaspur (Chhattisgarh)
- 2b. Harishchandra Gupta, S/o. Late Satish Chandra Gupta, R/o. Sarkanda Bilaspur, Police Station and Post Bilaspur, Civil and Revenue District Bilaspur (Chhattisgarh)
- 2c. Ravindra Chandra Gupta S/o. Late Satish Chandra Gupta, R/o. Sarkanda Bilaspur, Police Station and Post Bilaspur, Civil and Revenue District Bilaspur (Chhattisgarh)
- 2d. Pradeep Chandra Gupta, S/o. Satish Chandra Gupta, R/o. Sarkanda Bilaspur, Police Station and Post Bilaspur, Civil and Revenue District Bilaspur (Chhattisgarh)
- 3a. Smt. Laxmi Bai, Wd/o. Late Surendra Nath Gupta, R/o. Ambikapur Road Surajpur, Police Station and Post Surajpur, Civil and Revenue District Surajpur (Chhattisgarh)
- 3b. Vinod Kumar Gupta, S/o. Late Surendra Nath Gupta, R/o. Ambikapur Road Surajpur, Police Station and Post Surajpur, Civil and Revenue District Surajpur (Chhattisgarh)
- 3c. Smt. Geeta Devi, D/o. Late Surendra Nath Gupta, R/o. Ambikapur Road Surajpur, Police Station and Post Surajpur, Civil and Revenue District Surajpur (Chhattisgarh)

- 3d.** Satyaprabha Devi, D/o. Late Surendra Nath Gupta, R/o. Ambikapur Road Surajpur, Police Station and Post Surajpur, Civil and Revenue District Surajpur (Chhattisgarh)
- 4a.** Smt. Uma Gupta, Wd/o. Late Naresh Chandra Gupta, R/o. Civil Lines, Ambikapur, Police Station and Post Ambikapur, Civil and Revenue District Surguja (Chhattisgarh)
- 4b.** Bhairo Gupta, S/o. Late Naresh Chandra Gupta, R/o. Civil Lines, Ambikapur, Police Station and Post Ambikapur, Civil and Revenue District Surguja (Chhattisgarh)
- 4c.** Chandrashekhar Gupta, S/o. Late Naresh Chandra Gupta, R/o. Civil Lines, Ambikapur, Police Station and Post Ambikapur, Civil and Revenue District Surguja (Chhattisgarh)
- 5.** State of Chhattisgarh, through : Collector, Surguja, Ambikapur, District Surguja (Chhattisgarh)
- 6.** Collector, Surguja, Ambikapur, District Surguja (Chhattisgarh)

**---- Respondents**

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| For Petitioners                             | : Shri Manoj Paranjpe, Advocate |
| For Respondents 2c, 2d, 3b to 3d, 4a & 4b : | Shri A. K. Yadav, Advocate      |
| For Respondents 6 & 7/State                 | : Smt. M. Asha, P.L.            |

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**Hon'ble Shri Justice P. Sam Koshy**

**Order On Board**

**29.04.2016**

This petition under Article 227 of the Constitution of India has been preferred by the petitioners being aggrieved by the order dated 04.07.2015 passed by the 5th Civil Judge Class II, Ambikapur in Execution Case No. 21A of 1990.

**2.** The petitioners are aggrieved by the order dated 04.07.15 because of allowing of an application under Section 151 CPC filed by the respondents 1 to 4 who are the decree holders whereby the Court below while allowing the application under Section 151 CPC has passed an order restraining the respondents 5 & 6 who are the judgment debtors

from proceeding to consider the application for renewal of lease filed by the petitioners herein.

3. According to the counsel for the petitioners, the respondents 1 to 4/plaintiffs, in the year 1990, had filed a Civil Suit seeking for declaration of permanent injunction which was allowed in their favour and a judgment and decree was passed on 23.09.1991. Thereafter, the decree holders initiated execution proceeding which is pending for consideration before the Execution Court. During the proceedings of the execution case, the decree holders moved an application under Section 151 CPC seeking restraint from further processing of the application for renewal of lease filed by the petitioners herein. According to the petitioners, they were the lease holders of the said property since 1984 and that the validity of the lease was till March 2014 and they had timely moved an application for renewal which was pending for consideration since then and by the impugned order, the Court has restrained the Respondents 5 & 6 from further processing the said application for renewal of lease.

4. According to the petitioners, they are in peaceful possession of the said property by virtue of the lease which was granted in their favour way back in the year 1984 and they continue to enjoy the fruits from the said property uninterruptedly. It was submitted that the respondent/plaintiffs though initiated a suit against the Government before the Court below but the petitioners had not been made a party to the said suit. The petitioners were not aware of the judgment and decree dated 23.09.1991 nor were they at any point of time intimated about the developments by the respondent/plaintiffs. Therefore, according to the petitioners, the said judgment and decree of the year 1991 is not binding upon the petitioners. It was also argued by the counsel for the petitioners that even otherwise

the impugned order dated 04.07.2015 to the extent of restraining the respondents 5 & 6 i.e. the Authorities of the State Govt. from processing the application for renewal of lease is beyond the competence and jurisdiction of the Execution Court. According to the petitioners, by entertaining an application under Section 151 CPC that of the respondent/plaintiffs, the Court below has literally entertained an injunction application and has injuncted the respondents against the petitioners who were not a party in the execution case. According to the counsel for the petitioners, the order has been passed against the interest of the petitioners without making them a party or giving them an opportunity of hearing. Hence, the order being bad in law deserves to be set aside/quashed, exercising the supervisory nature of powers conferred upon this Court under Article 227 of the Constitution of India.

**5.** Shri A. K. Yadav, counsel appearing for the respondents 2c, 2d, 3b to 3d, 4a & 4b submits that the present petition is also not sustainable for the reason that it has been filed seeking for exercise of the powers conferred upon this Court under Article 227 of the Constitution of India which is supervisory in nature and the scope of judicial review under Article 227 is very limited and restricted. According to the counsel for the respondents, in the instant case, the order under challenge is an order passed by an Execution Court wherein the decree holders are pursuing their right for getting the decree executed against the defendants in the said suit. Thus, the petitioners in the instant case firstly do not have any locus to challenge the same in a writ petition. Secondly, the said petition under Article 227 of the Constitution of India may not be sustainable for the reason that the competence of the Court below in proceeding further with the execution of the case is not under question nor is it a case where there is a jurisdictional error committed by the Court below while passing the impugned order. It was contended by the counsel for the

respondents that there are also highly disputed question of facts involved in the case which cannot be looked into by the Writ Court while exercising extraordinary writ jurisdiction and therefore prayed for dismissal of the petition holding it to be not maintainable.

**6.** Having considered the rival contentions put forth by the parties and on perusal of the pleadings what is an admitted position is that a suit i.e. Civil Suit No.21A of 1990 was filed by the respondent/plaintiffs which stood allowed in favour of the plaintiffs and a judgment and decree was passed on 23.09.1991. It is also evidently clear that the respondent/plaintiffs have also initiated an execution proceeding for getting the judgment and decree executed.

**7.** During the pendency of the execution proceeding, the respondent/plaintiffs came to know about the fact that the defendants State i.e. the judgment debtors are in the process of considering the application of the petitioners for renewal of their lease deed which stood in the name of the petitioners. This fact necessitated the plaintiffs in moving an application under Section 151 CPC seeking for a restraint from the judgment debtor in processing the said application for renewal of lease and on which the impugned order dated 04.07.2015 has been passed.

**8.** Another admitted position as is reflected from the pleadings is that the petitioners till date have not moved any application before the Execution Court bringing all these facts to its notice as also their right over the said property but have straight way filed the present petition under Article 227 of the Constitution of India. From the pleadings, it is also reflected that the petitioners have not taken any step for moving an objection on their behalf before the Execution Court apprehending the prejudice that may be caused to their right and interest. The petitioners could have moved an application under Order 21 Rule 97 CPC before the execution Court.

**9.** Further, from the pleadings and the submissions made by the counsel for the parties it clearly reflects that there are highly disputed question of facts

involved in the case which needs to be first decided so as to decide the right, title and claim over the suit property. From the impugned order what is also reflected is that the judgment and decree is already under challenge in Misc. Appeal No. 08/2008 before the High Court of Chhattisgarh which is still pending and that the petitioners also could have moved an appropriate application in the said Misc. Appeal seeking for protection of their right, interest and claim over the suit property. It is also reflected from the impugned order that the Execution Court itself has stayed the execution proceedings by virtue of an interim order passed by the High Court and as such, there is no immediate threat likely to be caused to the petitioners in the execution proceeding except for the order or restraint passed against the State Govt. and Collector in further processing the application for renewal of lease.

**10.** So far as the order dated 04.07.2015 passed by the Execution Court restraining the State Govt. for further considering the application of the petitioners for renewal of lease is concerned, the same appears to have been passed keeping in view the fact that the renewal of lease was sought for the same suit land in respect of which there already exists a decree passed in favour of the respondent/plaintiffs. Once a substantive right has been created in favour of the respondent/plaintiffs by way of a judgment and decree against which executing proceeding is also pending, according to the Court below consideration of the application moved by the petitioners for renewal of lease by the State Govt. might have further complicated the issue.

**11.** So far as the substantive right of the petitioners over the suit property and also their claim for renewal of the lease deed pending before the State Govt. is concerned, the same would be in direct conflict with the substantive right which has been created in favour of the respondent/plaintiffs vide judgment and decree dated 23.09.1991. Therefore, the petitioners herein will have to take appropriate steps firstly

by moving before the execution Court by filing objection in the execution proceeding and secondly getting the judgment and decree dated 23.09.91 quashed, creating a right in their favour over the suit property and then claim for renewal of the lease. All these perhaps cannot be looked into by this Court while exercising the power under Article 227 of the Constitution of India which is more of a supervisory nature where the scope of interference is very limited.

**12.** In the light of the foregoing facts and circumstances of the case, in the opinion of this Court, the instant petition under Article 227 of the Constitution of India, at this stage, would not be sustainable for the reason that firstly the petitioners have not moved any objection before the Execution Court including an application under Order 21 Rule 97 CPC, secondly the petitioners have also not moved any application before the High Court where the execution proceeding has been stayed by the High Court and thirdly the petitioners have also not taken any step for quashing/setting aside of the judgment and decree dated 23.09.1991 passed in favour of the respondents 1 to 4/plaintiffs. Accordingly, the instant writ petition at this stage being devoid of merit is dismissed.

**13.** Needless to mention that the reluctance of this Court in interfering the present petition exercising its discretionary writ jurisdiction should not come in the way of the petitioners availing the other remedies available to them under law for redressal of their grievance before the competent Court including the Execution Court.

**Sd/-**  
**P. Sam Koshy**  
Judge