



CGHC010095932024

2026:CGHC:33376

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 1651 of 2024

Order Reserved on: 9.7.2026

Order Delivered on: 3.8.2026

- Smt. Namita Rishi W/o Shri Sunil Rishi, Aged About 54 Years
Caste Punjabi, R/o Near Petrol Pump Mungeli Road, Minocha
Colony, Police Station Civil Line, Tahsil And District Bilaspur
Chhattisgarh.

... Petitioner(s)

versus

1. State Of Chhattisgarh Through Collector Bilaspur.
2. Municipal Corporation Bilaspur Through Commissioner, Municipal
Corporation Bilaspur Tahsil And District Bilaspur Chhattisgarh.
3. Building Officer, Municipal Corporation Bilaspur Chhattisgarh.

... Respondent(s)

For Petitioner(s)	:	Ms. Fouzia Mirza, Sr. Advocate along with Mr. Navin Shukla, Advocate.
For Respondent(s)/State	:	Mr. S. S. Choubey, G.A.
For Respondents No. 2 & 3	:	Mr. R.S. Marhas, Sr. Advocate along with Ms. Shruti Bhasin, Advocate.

Hon'ble Mr. Justice Amitendra Kishore Prasad

CAV ORDER

1. By way of this petition, the petitioner has prayed for following reliefs:-

“(i) That, this Hon'ble Court may kindly be pleased to call for the entire record concerning the case of the petitioner from the respondent authorities for its kind perusal.

(ii) That this Hon'ble Court may kindly be pleased to direct the respondent authorities to leave the land of the petitioner as per the demarcation report and construct the drainage away from the land of the petitioner.

(iii) That this Hon'ble Court may kindly be pleased to direct the respondent authorities in alternative to compensate the petitioner for illegally constructing the drainage on the petitioner's land in violation of the demarcation report and without acquiring the land by proper procedure.

(iv) Any other relief or relief(s) which this Hon'ble Court may deem fit or proper in the facts and circumstances of the case.”

2. Brief facts of the case, is that, the petitioner claims to be the owner of land bearing Khasra No. 1632/1 area 0.1210 hectares of Village-Mangla and in peaceful possession of the property situated at Village Mangla, Tahsil and District Bilaspur, having purchased the same through a registered sale deed dated 09.10.2020. According to the petitioner, the property forms part of an old holding where a residential house and boundary wall have existed for several decades, and the adjoining land bearing

Khasra No. 1552 is recorded as Government land earmarked as a road. It is the case of the petitioner that disputes regarding demarcation of the said Government land had earlier arisen, whereupon similarly situated landowners approached this Court in W.P.(C) No. 5596 of 2022, pursuant to which proper demarcation was directed to be carried out. Thereafter, the Additional Collector, finding defects in the earlier demarcation, directed fresh demarcation, and in subsequent proceedings this Court also directed the Municipal Corporation to cooperate in the demarcation exercise and, in connected matters, restrained the authorities from proceeding with the construction of the drainage. The petitioner alleges that despite the fresh demarcation report clearly identifying the Government land and the alignment of the proposed drainage, the respondent authorities, on 08.03.2024, demolished a portion of the petitioner's boundary wall and structure and proceeded to construct the drainage over the petitioner's private land in deviation from the demarcation report while leaving the properties of several similarly situated persons untouched. Though the petitioner immediately objected and submitted a complaint before the competent authorities, no action was taken, compelling the petitioner to invoke the extraordinary jurisdiction of this Court.

3. Learned counsel for the petitioner submits that the petitioner is the absolute owner and is in peaceful possession of the disputed property by virtue of a registered sale deed dated 09.10.2020 and

that the residential house and boundary wall standing thereon have been in existence for several decades. It is submitted that the controversy relating to the demarcation of the adjoining Government land is no longer *res integra*, as similarly situated landowners had earlier approached this Court by filing W.P.(C) No. 5596 of 2022, wherein, by order dated 15.12.2022, this Court directed the competent authorities to conduct proper demarcation of Khasra No. 1552. Pursuant thereto, demarcation proceedings were undertaken; however, finding the same to be defective, the Additional Collector, Bilaspur, by order dated 06.07.2023, allowed the revision and directed the authorities to undertake a fresh demarcation. It is further submitted that in W.P.(C) No. 3392 of 2023, this Court directed the Municipal Corporation, Bilaspur, to extend full cooperation in the demarcation proceedings, while in W.P.(C) Nos. 3663 of 2023 and 3722 of 2023, involving similarly situated landowners, this Court restrained the respondent authorities from proceeding with the construction of the drainage. Learned counsel submits that despite the aforesaid judicial directions and the fresh demarcation report clearly identifying the Government land and the proper alignment of the proposed drainage, the respondent authorities, in complete disregard of the demarcation report as well as the orders passed by this Court, arbitrarily demolished a portion of the petitioner's boundary wall and existing structure and proceeded to construct the drainage over the petitioner's private land. It is further contended that the

respondents have adopted a discriminatory approach by altering the alignment of the drainage so as to leave the properties of several similarly situated persons untouched while selectively encroaching upon the petitioner's property, thereby violating the guarantee of equality under Article 14 of the Constitution of India. It is also submitted that the respondents have deprived the petitioner of his property for a public purpose without initiating any acquisition proceedings or paying compensation, rendering the impugned action violative of Article 300-A of the Constitution. Learned counsel further submits that when the authorities arrived at the site on 08.03.2024 with excavators, the petitioner immediately brought to their notice the demarcation report as well as the orders passed by this Court and requested them not to proceed with the construction beyond the demarcated Government land; however, the respondents ignored the petitioner's objections and continued the construction in a high-handed and arbitrary manner, compelling the petitioner to submit a complaint before the Commissioner, Municipal Corporation, Bilaspur. It is thus submitted that the impugned action is wholly arbitrary, illegal, discriminatory and contrary to the binding judicial directions issued by this Court as well as the demarcation report, and therefore deserves to be quashed with a consequential direction restraining the respondents from interfering with the petitioner's property except in accordance with law.

4. On the other hand, learned counsel appearing for respondents No. 2 and 3 opposes the writ petition and submits that the petitioner is an encroacher upon Government land and has illegally occupied a portion thereof for several years by raising a boundary wall and other constructions. It is submitted that the petitioner is not the only encroacher, as several adjoining landowners had also unauthorizedly encroached upon the Government land and erected boundary walls and other permanent structures. Learned counsel submits that during the process of widening the existing road, it came to the notice of the authorities that several illegal constructions had been raised over Government land, whereupon the encroachments were removed in accordance with law and the road widening work was undertaken. Thereafter, with a view to providing better civic amenities and ensuring proper drainage facilities, the respondent authorities commenced construction of a drainage alongside the widened road. However, owing to the interim orders passed by this Court in connected writ petitions, the construction of the drainage and other developmental works could not be completed. Learned counsel further submits that the petitioner herself had challenged the earlier demarcation proceedings and sought a fresh demarcation before the competent authority, but is now selectively relying upon the subsequent demarcation report only because it allegedly supports her case. It is contended that the said demarcation report has not been accepted by the majority of

the affected landowners and, except for the petitioner and one other individual, none have supported the same. It is further submitted that the contention of the petitioner regarding the alignment of the drainage is wholly misconceived, as the alignment of every road or drainage cannot be expected to remain uniform or in a perfectly straight line throughout its entire stretch. The alignment necessarily depends upon several technical, geographical and engineering considerations and cannot be altered merely to suit the convenience or wishes of an individual landowner. Learned counsel also submits that the present petition raises several disputed questions of fact, including the issues relating to title, possession, encroachment, demarcation and the exact extent of the land allegedly affected, which cannot be adjudicated in exercise of the extraordinary writ jurisdiction under Article 226 of the Constitution of India. It is further submitted that the petitioner had initially availed the alternative remedy by instituting civil proceedings in respect of the subject property but subsequently withdrew the same for reasons best known to her. Therefore, having abandoned the appropriate civil remedy, the petitioner cannot seek adjudication of disputed factual issues in the present writ petition. Lastly, it is submitted that if the petitioner is aggrieved by the alleged encroachment upon or acquisition of her private land by the Municipal Corporation, the appropriate remedy available to her is to institute competent civil proceedings for declaration, possession, compensation or any other

consequential relief, and such disputed claims cannot be adjudicated or granted in the present writ petition. Accordingly, it is prayed that the writ petition, being devoid of merit and involving disputed questions of fact, deserves to be dismissed.

5. On the other hand, learned State counsel supports the submissions advanced by learned counsel appearing for respondents No. 2 and 3. It is submitted that the action of the respondent authorities has been taken strictly in accordance with law and in discharge of their statutory duties. Learned State counsel further contends that the controversy raised in the present writ petition involves disputed questions of fact, which cannot be adjudicated in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. Accordingly, it is prayed that the writ petition, being devoid of merit, deserves to be dismissed.
6. Having heard learned counsel for the parties and upon perusal of the material available on record, this Court finds that the principal controversy between the parties revolves around the correctness of the demarcation of the Government land bearing Khasra No. 1552, the alignment of the proposed drainage and the allegation of encroachment upon the petitioner's property. The petitioner asserts that the respondents have acted in deviation of the demarcation report and have constructed the drainage over her private land, whereas the respondents contend that the petitioner herself is an encroacher over Government land and that the

alignment of the drainage has been fixed on the basis of technical and engineering considerations. Thus, the controversy involves disputed questions of fact relating to demarcation, alignment and the exact location of the petitioner's property vis-à-vis the Government land, which cannot appropriately be adjudicated in exercise of the writ jurisdiction under Article 226 of the Constitution of India.

7. The Hon'ble Supreme Court in the matter of ***A.P. Electrical Equipment Corporation vs. Tahsildar and others, 2025 SCC Online SC 447***, the Hon'ble Supreme Court has observed as under:-

“48. Normally, the disputed questions of fact are not investigated or adjudicated by a writ court while exercising powers under Article 226 of the Constitution of India. But the mere existence of the disputed question of fact, by itself, does not take away the jurisdiction of this writ court in granting appropriate relief to the petitioner. In a case where the Court is satisfied, like the one on hand, that the facts are disputed by the State merely to create a ground for the rejection of the writ petition on the ground of disputed questions of fact, it is the duty of the writ court to reject such contention and to investigate the disputed facts and record its finding if the particular facts of the case, like the one at hand, was required in the interest of justice.

49. *There is nothing in Article 226 of the Constitution to indicate that the High Court in the proceedings, like the one on hand, is debarred from holding such an inquiry. The proposition that a petition under Article 226 must be rejected simply on the ground that it cannot be decided without determining the disputed question of fact is not warranted by any provisions of law nor by any decision of this Court. A rigid application of such proposition or to treat such proposition as an inflexible rule of law or of discretion will necessarily make the provisions of Article 226 wholly illusory and ineffective more particularly Section 10(5) and 10(6) of the Act, 1976 respectively. Obviously, the High Court must avoid such consequences.*

50. *In the aforesaid context, we may look into the decision of this Court in the case of State of Orissa v. Dr. (Miss) Binapani Dei, AIR 1967 SC 1269. In paragraph 6 at p. 1270 of the said judgment, this Court has been pleased to hold as follows:—*

“Under Art. 226 of the Constitution the High Court is not precluded from entering upon a decision on questions of fact raised by the petition. Where an enquiry into complicated questions of fact arises in a petition under Art. 226 of the Constitution before the right of an aggrieved party to obtain relief claimed may be determined. The High Court may

in appropriate cases decline to enter upon that enquiry and may refer the party claiming relief to a suit. But the question is one of discretion and not of jurisdiction of the Court.”

51. This Court in the case of *Gunwant Kaur v. Bhatinda Municipality*, (1969) 3 SCC 769 : AIR 1970 SC 802 observed as follows:—

“The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Art. 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Art. 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is

of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made, dispute sought to be agitated., or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.”

(Emphasis supplied)

52. In one of the recent pronouncements of this Court in *State of U.P. v. Ehsan*, 2023 INSC 906, this Court observed that:—

“28. We are conscious of the law that existence of an alternative remedy is not an absolute bar on exercise of writ jurisdiction. More so, when a writ petition has been entertained, parties have exchanged their pleadings/affidavits and the matter has remained pending for long. In such a situation there must be a sincere effort to decide the matter on merits and not relegate the writ petitioner to the alternative remedy, unless there are compelling reasons for doing so. One such compelling reason may arise where there is a serious dispute between

the parties on a question of fact and materials/evidence(s) available on record are insufficient/inconclusive to enable the Court to come to a definite conclusion.

29. Bearing the aforesaid legal principles in mind, we would have to consider whether, in the facts of the case, the High Court ought to have dismissed the third writ petition of the first respondent and relegate him to a suit as there existed a serious dispute between the parties regarding taking of possession. More so, when the High Court, in the earlier round of litigation, refrained from taking up the said issue even though it had arisen between the parties.

30. No doubt, in a writ proceeding between the State and a landholder, the Court can, on the basis of materials/evidence(s) placed on record, determine whether possession has been taken or not and while doing so, it may draw adverse inference against the State where the statutory mode of taking possession has not been followed [See State of UP v. Hari Ram (supra)]. However, where possession is stated to have been taken long ago and there is undue delay on the part of landholder in approaching the writ court, infraction of the prescribed procedure for taking possession would not be a determining factor, inasmuch as, it could be taken that the person for whose benefit the procedure existed had waived his right thereunder [See State of Assam v. Bhaskar Jyoti Sarma, (supra)]. In such an

event, the factum of actual possession would have to be determined on the basis of materials/evidence(s) available on record and not merely by finding fault in the procedure adopted for taking possession from the land holder. And if the writ court finds it difficult to determine such question, either for insufficient/inconclusive materials/evidence(s) on record or because oral evidence would also be required to form a definite opinion, it may relegate the writ petitioner to a suit, if the suit is otherwise maintainable.”

(Emphasis supplied)

53. Thus, it would all depend on the nature of the question of fact. In other words, what is exactly, that the writ court needs to determine so as to arrive at the right decision. If the only issue, that revolves around the entire debate is one relating to actual taking over of the physical possession of the excess land under the provisions of sub-sections (5) and (6) of Section 10 of the Act, 1976 respectively, then in such circumstances, the writ court has no other option but to go into the factual aspects and take an appropriate decision in that regard. The issue of possession, by itself, will not become a disputed question of fact. If all that has been said by the State is to be accepted as a gospel truth and nothing shown by the landowner is to be looked into on the ground that a writ court cannot go into disputed questions of fact, then the same may lead to a serious miscarriage of justice.”

8. Considering the fact that this Court, in earlier proceedings as well as the competent revenue authority, had directed demarcation of the land in question and in light of judgment rendered by Supreme Court in A.P. Electrical Equipment Corporation (supra) , this Court is of the opinion that the ends of justice would be served if a fresh demarcation is undertaken in the presence of all the concerned stakeholders. Accordingly, without expressing any opinion on the merits of the rival claims, the writ petition is disposed of with a direction that the competent Revenue Authority shall undertake a fresh demarcation of the land bearing Khasra No. 1552 as well as the adjoining lands, including the property claimed by the petitioner, after issuing notice to the petitioner, the Municipal Corporation and all other affected landowners, and shall complete the exercise strictly in accordance with law by taking into consideration the relevant revenue records, map, field book and other connected documents. The demarcation proceedings shall also identify the existing alignment of the road and the proposed drainage.
9. The aforesaid exercise shall be completed, as far as possible, within a period of 90 days from the date of receipt of a certified copy of this order. It is made clear that the rights and contentions of all the parties are kept open, and any further action with regard to construction of the drainage or removal of any alleged encroachment shall be taken only after completion of the aforesaid demarcation and strictly in accordance with law.

10. However, the parties are expected to resolve the dispute amicably so as to facilitate a just and expeditious decision in the matter. The continued pendency of the dispute would not serve the purpose of the Municipal Corporation with regard to the widening of the road and the construction of the drainage system, particularly when the drainage has already been in existence for a considerable period of time.
11. It is made clear that this Court has not expressed anything on the merits of the case.
12. With this observation and direction, the writ petition is **disposed of**.

Sd/-
(Amitendra Kishore Prasad)
Judge

Raghu Jat