

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3778 OF 2018

[Arising out of SLP (C) No.36272 of 2016]

Hemraj Chandrakar & Anr. .. Appellant(s)

Versus

State of Chhattisgarh & Ors. .. Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

- 1) Leave granted.
- 2) This appeal arises from the final judgment and order dated 28.09.2016 passed by the High Court of Chhattisgarh at Bilaspur in W.A. No.467 of 2016 whereby the Division Bench of the High Court dismissed the appeal filed by the appellants herein and upheld the order dated 08.04.2016 passed by

the Single Judge in Writ Petition (c) No.696 of 2016 by which the writ petition filed by the appellants herein was dismissed on the ground of delay and laches.

3) In order to appreciate the short legal issue involved in the appeal, few relevant facts, which lie in a narrow compass, need to be mentioned herein-below.

4) The appellants are the writ petitioners before the High Court.

5) Challenging the land acquisition proceedings, the appellants filed petition being Writ Petition (C) No.696/2016 before the High Court.

6) The Single Judge of the High Court dismissed the writ petition by order dated 08.04.2016 on the ground of delay and laches. Since the writ petition was dismissed on the ground of delay and laches, no ground of challenge raised by the writ petitioners

(appellants herein) was gone into by the Single Judge.

7) The writ petitioners felt aggrieved and filed intra-court appeal before the Division Bench. By impugned judgment, the Division Bench dismissed the appeal and upheld the order of the Single Judge with the following observations contained in Para 4 of the judgment:

“4. We have perused the record of the writ petition and in the writ petition there is not a single averment that the possession of the land has not been taken. In the writ petition, there is no averment much less any proof of the fact that this land has been taken over. Therefore, we have no reason to discard clear cut finding given by the learned Single Judge that the land has been used for development of Naya Raipur. Therefore, we find no merit in the appeal, which is accordingly dismissed.”

8) It is against this judgment, the appellants (writ petitioners) felt aggrieved and filed this appeal by way of special leave before this Court.

9) Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal, set aside the impugned judgment and remand the case to the Division Bench for deciding Writ Appeal No.467 of 2016 afresh in accordance with law.

10) The need to remand the case to the Division Bench of the High Court has arisen because from the perusal of Para 4 of the impugned judgment quoted supra, we find that the Division Bench observed, *“there is not a single averment that the possession of the land has not been taken. In the writ petition, there is no averment much less any proof of the fact that this land has been taken over”*.

11) Learned counsel for the appellants (writ petitioners), however, pointed out, by referring to the prescribed Column No.3 (particulars of the cause/order against which the petition is made) of

the writ petition, Para 4 of the application for grant of interim relief dated 29.02.2016 filed along with the writ petition, and paras 1.1, 1.20, 2.2, 2.4 and 2.7 of the writ appeal memo that the writ petitioners have made specific averments in these paras that they are in possession of the land in question.

12) Learned counsel, therefore, contended that the observation made by the Division Bench on this issue, which led to dismissal of their appeal, does not appear to be correct being contrary to the record of the case.

13) In our opinion, in the light of the averments made by the writ petitioners in the aforementioned paras, as detailed above, which seem to have escaped the attention of the Division Bench, the impugned judgment needs to be set aside.

14) We, therefore, consider it just and proper to remand the case to the Division Bench of the High

Court and request the Division Bench to decide the writ appeal afresh in accordance with law.

15) We, however, leave all the questions including the maintainability of the writ petition on any other grounds open for its decision. Indeed, it is for the Division Bench to decide the issues, while deciding the writ appeal, uninfluenced by any of our observations made in this judgment.

16) In view of the foregoing discussion, the appeal succeeds and is, accordingly, allowed. Impugned judgment is set aside. The appeal is restored to its original number before the Division Bench of the High Court for its disposal in accordance with law.

.....J
(R.K. AGRAWAL)

.....J.
(ABHAY MANOHAR SAPRE)

New Delhi,
April 13, 2018