

THE HIGH COURT OF MADHYA PRADESH
Writ Petition No.24040/2019
Smt. Laxmi Devi and others Vs. The State of M.P. and others

Gwalior, Dated :25/11/2019

Shri Balwant Singh Kushwah, Advocate for petitioners.

Shri Alok Sharma, Government Advocate for State.

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:-

- “A. Writ of certiorari may kindly be issued to declare the construction over the land in dispute by the respondent private party be illegal unauthorized and encroachment.
- B. Writ in the nature of prohibition may kindly be issued to prevent the respondent private party to raise further construction over the disputed property.
- C. Writ of mandamus may kindly be issued to cool down or destroy by dismantling the unauthorized construction of the hotel building and to remove the restriction/hindrane caused in the way of the petitioners in approaching the property.
- D. Costs of petition along with any other suitable direction or order may kindly be passed for protection of the property of the petitioner from unauthorized construction of the private parties.”

It is submitted by the counsel for the petitioners that respondent no.6 who is holding the post of Additional Director General of Police, Police Headquarters, is encroaching upon the land belonging to the petitioners and the petitioners have approached the authorities, but since no action has been taken, therefore, the present petition has been filed. It is submitted by the petitioners that the right to hold the property is a fundamental right and, therefore, this

THE HIGH COURT OF MADHYA PRADESH
Writ Petition No.24040/2019
Smt. Laxmi Devi and others Vs. The State of M.P. and others

petition is maintainable.

Heard learned counsel for the petitioners.

It is incorrect to say that the right to hold a property is the fundamental right. Further, this petition has been filed primarily against respondent no.6 in his individual personal capacity and not against any act done by him in the capacity of Additional Director General of Police.

It is also submitted by the counsel for the petitioners that respondent no.6 had also encroached upon some other plots and accordingly, the husband of the petitioner no.2 has filed a civil suit for declaration of title and permanent injunctions and by order dated 30/6/2014 passed in Civil Suit No.9-A/2013 the respondent no.6 was restrained from interfering with the possession, however, still the respondent no.6 has dispossessed the husband of the petitioner no.2, therefore the suit would not be an efficacious remedy. However, the counsel for the petitioners fairly conceded that the husband of the petitioner no.2 has not filed an application under Order XXXIX Rule 2-A of CPC. Furthermore, there is no averment in the petition that the order dated 30/6/2014 passed in Civil Suit No.9-A/2013 by Fourth Civil Judge, Class-II, Gwalior has attained finality or there is no stay order.

It is well established principle of law that the writ petition

THE HIGH COURT OF MADHYA PRADESH**Writ Petition No.24040/2019****Smt. Laxmi Devi and others Vs. The State of M.P. and others**

against a private individual is not maintainable. If the petitioner is of the view that the respondent no.6 is illegally trying to encroach upon the land or has illegally taken possession of the said land, then they have an efficacious remedy of filing a Civil Suit.

Under these circumstances, this Court is of the considered opinion that the petition, which has been filed in the present form, is not maintainable, as the same is primarily against a private person.

With aforesaid observations, the petition is **dismissed**.

Arun***(G.S. Ahluwalia)
Judge**