NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 647 of 2014

Murari Lal Sahu S/o Lt Ram Prasad Sahu Aged About 52 Years R/o Ward No.11, Baloda Bazar, Ps & Tah Baloda Bazar, Distt Baloda bazar- Bhatapara, Cg

---- Petitioner

Versus

1. Hari Kishan Sahu S/o Lt Ram Prasad Sahu Aged About 75 Years R/o Ward No.11, Baloda Bazar, Ps & Tah Baloda Bazar, Distt Baloda Bazar-Bhatapara, Cg

2. Municipal Council Baloda Bazar, Thorugh Chief Muncipal Officer, Municipal Council, Baloda Bazar, Ps & Distt Baloda Bazar- Bhatapara, Cg

3. Satish Praksah Singh Engineer, Municipal Council, Baloda Bazar, Ps & Distt Baloda Bazar- Bhatapara, Cg

4. State of Chhattisgarh, Through – Secretary Local Administration and Development Department, Mahanadi Bhawan, New Raipur, Raipur (CG)

5. Collector, Baloda Bazar – Bhatapara, Distt- Baloda Bazar – Bhatapar (CG)

---- Respondents

Shri H.V.Sharma, counsel for the petitioner.
Shri Bharat Rajput, counsel for respondent No.1.
Shri Anand Shukla and Shri Jaydeep Singh Yadav, counsel for respondent No.2.
Shri Ghanshyam Patel, counsel for respondent No.3.
Shri Vinod Tekam, counsel for respondents 4 and 5.

Order On Board

05/10/2015

A short issue arises for consideration in the present case.

The relevant facts are that respondent no.1, brother of the petitioner, is having land adjacent to the petitioner. There is long standing dispute going on between the parties and civil suit is also pending.

2. Respondent No.1 applied for grant of building permission before the Engineer of the Municipal Council. Initially, building permission was granted to respondent No.1 but later on, that permission was cancelled by the Licencing Engineer of the Corporation vide order dated 22/03/14. Against this order, respondent No.1 preferred

an appeal before the Collector. The appeal was allowed by the Collector vide impugned order dated 22/08/14 (Annexure P/1). It is this order which is under challenge before this Court.

3. Sole submission of learned counsel for the petitioner is that the Collector has no jurisdiction to act as Appellate authority as present is a case of Municipal Council and not a case of Nagar Panchayat. The Collector has been designated as Appellate authority under Section 308 of the Chhattisgarh Municipalities Act, 1961 (for short 'the Act of 1961') which applies only in a case relating to grant or refusal to grant permission for building in an area comprised in Nagar Panchayat. Provisions of Section 307 of the Act of 1961 will apply in case of Municipal Council under which the Appellate authority is the Council or the Appeal Committee, as the case may be.

4. Learned counsel for respondent No.1 fairly concedes this legal position and submits that if this Court holds that the present case is relating to Municipal Council, he may be granted liberty to prefer an appeal against order dated 22/03/14 before the duly constituted appellate authority as provided under Section 307 of the Act of 1961.

5. Learned counsel for the State and the Municipal Council also do not dispute the aforesaid legal position.

6. Section 307 of the Act of 1961 is applicable in matters of Municipal Council whereas Section 308 of the Act of 1961 applies in cases relating to Nagar Panchayat. The Collector is constituted as an Appellate authority only in those cases where it relates to Nagar Panchayat. This is clear from the bare reading of provisions contained in Section 308 of the Act of 1961.

7. Undisputedly, present is a case of Municipal Council. Therefore, the Appellate authority would be one as prescribed in Section 307 of the Act of 1961 i.e. Council or the Appeal Committee, as the case may be. But certainly, the Collector has no appellate jurisdiction in such cases.

8. The impugned order passed by the Collector is therefore, without jurisdiction. The order cannot be sustained and is set aside, however, respondent No.1 shall be at liberty to prefer appeal before the competent appellate authority as prescribed under Section 307 of the Act of 1961. Considering the totality of the circumstances, it would be fair to respondent no.1 that he is granted 30 days time to prefer appeal before the competent authority. If he does so, the Appellate authority constituted under Section

307 of the Act of 1961 shall consider his appeal without entering into any objection with regard to limitation.

9. The petition is accordingly allowed.

Sd/-
Manindra Mohan Shrivastava
Judge

Deepti