

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 475 of 2014

Smt. Namrata Chawala Puri W/o Shri Gangan Puri Aged About 39 Years R/o Vaishali Nagpur Maharastra

---- Appellant

Versus

1. State of Chhattisgarh Through The Secretary Ministry Of Town & Country Planning Mantralaya Mahanadi Bhawan Capital Complex Naya Raipur (C.G.)
2. Municipal Corporation, Bilaspur Through Its Commissioner Bilaspur (C.G.)
3. Collector Distt. Bilaspur (C.G.)
4. Minocha Colony Residents Welfare Society, Green Park, Minocha Colony, Mungeli Road, Through Its R/o Shri Satyanarayan Agrawal, S/o Late Shri Shivdatta Rai Agrawal C/28, Minocha Colony, Bilaspur, Distt. Bilaspur (C.G.)

---- Respondents

And

Writ Appeal No. 476 of 2014

Smt. Kiran Chawala W/o Shri Subhash Chawala Aged About 58 Years R/o Ram Mandir Bhagat Singh Chowk, Vardha Maharastra

---- Appellant

Vs

1. State Of Chhattisgarh Through The Secretary Ministry Of Town & Country Planning Mantralaya Mahanadi Bhawan Capital Complex Naya Raipur (C.G.)
2. Municipal Corporation, Bilaspur Through Its Commissioner Bilaspur (C.G.)
3. Collector Distt. Bilaspur (C.G.)
4. Minocha Colony Residents Welfare Society, Green Park, Minocha Colony, Mungeli Road, Through Its R/o Shri Satyanarayan Agrawal, S/o Late Shri Shivdatta Rai Agrawal C/28, Minocha Colony, Bilaspur, Distt. Bilaspur (C.G.)

---- Respondents

For Appellant:

For Respondent No.2:

For Respondent No.4:

For Respondents No. 1 & 3/State:

Ms. Fouzia Mirza, Advocate

Mr. A.S. Kachhwaha, Advocate

Mr. R.S. Marhas, Advocate

Mr. B. Gopa Kumar, Dy. Advocate
General

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board

Per Navin Sinha, Chief Justice

07/09/2015

1. The present appeals arise from a common order dated 28.11.2014. The grievance raised in the Writ Petition were common that Respondent No.2, the Municipal Corporation, in the name of beautification and development of the garden, was illegally raising a boundary wall on their lands, identified as Plot Nos.1628/5 and 1628/6 respectively, situated in Bilaspur, commonly known as Minocha colony.
2. The Learned Single Judge held that the Writ Petition was raising seriously disputed questions of facts with regard to the area that may constitute the garden, roads, drainage etc. in the residential colony, layout of which was approved by the Municipal Corporation and that this inquiry was not possible in the writ jurisdiction leaving it open for the Appellants to ventilate their grievances under the ordinary civil remedies available to them.
3. Since the issues involved in both the appeals are common, they arise out of a common order and the municipal documents that have been placed before us are also common, they have been heard together and are being disposed by a common order.
4. Learned counsel for the Appellants submits that their ownership and title to the lands situated in Khasra No.1628/5 and 1628/6 is undisputed. No constructions can be raised on their lands unless and until they consent for the same. The Municipal Corporation cannot forcibly intrude into their properties for development of a park by raising a boundary wall etc. Learned Counsel has further sought to persuade us that the Appellants had never

consented for development of parks on their lands. The approval for development relied upon by the Municipal Corporation dated 24.7.1990 at Annexure R-2/15 was itself conditional in nature and not absolute.

5. Learned Counsel for the Municipal Corporation submitted that the Appellants along with one Smt Kailash Chawla had applied for development of Plot Nos.1628/4, 1628/5 and 1628/6 having a total area of 0.89 acres on 10.7.1990. The layout plan was approved on 24.7.1990. It contains the details with regard to the layout of the residential area, the road area, the park area and its dimensions. The application is signed by the Appellants also. Their signatures are not disputed. The park has existed since long and is only being beautified by construction of a boundary wall and a walk way.

6. Learned Counsel for Respondent No.4 representing residents' association submits that the Municipal Corporation was only replacing the dilapidated wall of the park which existed since 21 plus years past.

7. We have heard Learned Counsel for the parties. The application and approval granted as far back as 1990 have also been placed before us pursuant to our directions.

8. Rule – 26 of the Chhattisgarh Bhumi Vikas Rules, 1984 provides for licensing of architects. The development plan for the lands in question was submitted to the Municipal Corporation, Bilaspur on 10.7.1990 by the Appellants through Aivee Consultants. It is nobody's case that the latter were not licensed architects in terms of Rule – 26. The lay out plan covered Plot Nos.1628/4, 1628/5 and 1628/6. The approval dated 24.7.1990 mentions the total area of the three plots as 0.89 acres. An area 0.36 acres was reserved for residential area and 0.20 acres for road area. The park area was to consist of 0.33 acres. It does not appear that the Learned Single Judge had

the benefit of perusing this original plan as it was not brought to his attention leading to the conclusion that there was no material with regard to what were the area for residential construction, for roads, drainage, garden etc. In a Writ Petition, disputed questions of facts can also be examined to the extent that documentary evidence in support of the same is available. The approval dated 24.7.1990 narrows down the controversy in the present case only to the extent of 0.33 acres concerning the garden area. Implicitly, the area of construction for residence, road stands undisputed by the Appellants.

9. All that now remains to be determined is whether the park area is situated within 0.33 acres as per the approved plan dated 24.7.1990 or is there any deviation from the same.

10. It is also the contention of the Respondents that the dilapidated wall and pathway of the park which existed since long was being beautified only. Notwithstanding the same, the park can be developed only in accordance with the area approved in the lay out plan.

11. The Municipal Commissioner, Bilaspur is therefore directed to examine the lay out plan himself, visit the plots in question and have the measurement done in his presence with regard to the permissible area over which the park may exist measuring 0.33 acres in the manner approved in the lay out plan dated 24.7.1990.

12. The Municipal Commissioner, Bilaspur shall give notice to the Appellants and to the President of the Welfare Society, Respondent No.4 for the date and time and the measurements shall be carried out in their presence also. The Municipal Commissioner shall then ensure that the park area remains confined to 0.33 acres only as per the original approved lay out plan of Plot Nos.1628/4, 1628/5 and 1628/6.

13. The original records are returned to Learned Counsel for the Municipal Corporation.

14. The Writ Appeals stand disposed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE

Priya