

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 105 of 2015

1. Mangal Das S/o Late Dayaram, Aged About 55 Years Caste Satnami, R/o Village Pirda, Tahsil Raipur, District Raipur (Chhattisgarh).....(Plaintiff)

---- Petitioner

Versus

1. Commissioner, Chhattisgarh Housing Board, Office At Shankar Nagar, Raipur (Chhattisgarh)

2. State Of Chhattisgarh Through Collector, Raipur (Chhattisgarh)

---- Respondents

For Petitioner.	: Shri Udhoram Koshaley, Advocate.
For Respondent No 1.	: Shri Sanjay Patel, Advocate.
For Respondent No 2/State.	: Shri Ramakant Pandey, Panel Lawyer.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

03/11/2015

Heard.

1. This appeal is preferred against the impugned order dated 29.09.2015 passed by the Trial Court in Civil suit filed by the petitioner/plaintiff seeking declaration and injunction against respondent/defendants by the impugned order. The appellant's application against respondent/defendants for grant of temporary injunction has been rejected.

2. At the outset learned counsel for the appellant appears and submits that the Housing Board has been allotted land upon execution of award dated 7.3.2014. The Housing Board has been raising construction of house under the scheme only over the

land acquired and handed over to it by Revenue Authorities

3. Learned counsel for the appellant argued that according to appellant in the injunction application alongwith the affidavit and Photograph, it is prima-facie clear that while raising construction the Housing Board encroached upon a part of the land of the appellant, comprised in Kasra No. 665/1, 665/2 and 664 admeasuring as 0.179, 0.153 and 1.032 Hectares respectively.

4. Learned Court below after going through the affidavits of the parties which have also been placed on record, has found that the plaintiff has failed to make out a prima-facie case that part of his land has been encroached.

Whether any encroachment has actually taken place or not would be clear only when a proper demarcation is done by the Commissioner that may be appointed by the Trial Court under the provisions of Order 26 Rule 9 CPC.

5 In view of the above consideration, in the absence of there being any demarcation of land to support the case of the plaintiff and clear statement made by the learned counsel for the Housing Board that construction is strictly confined to the land and the area handed over to them under award dated 07.03.2014, I am not inclined to interfere with the impugned order. Before parting, looking to the nature of controversy, it would be proper that the Trial Court, invokes its power to obtain local investigation report as provided under Order 26 Rule 9 CPC.

6. With the aforesaid observations and placing on record on the statement of the learned counsel for the Housing Board this appeal is dismissed.

Sd/-

Manindra Mohan Shrivastava

Judge