

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 673 of 2015**

Omprakash Sharm,a S/o Hari Ram Sharma Aged About 53 Years, R/o Kotra Road, Raigarh, P. S. District Raigarh (Chhattisgarh).....
(Respondent No. 7)

---- Appellant

Versus

1. Pankaj Agrawal, S/o. Late Omprakash Agrawal, Aged About 32 Years R/o. Danipara, Raigarh, P. S. City Kotwali Raigarh, District Raigarh (Chhattisgarh).....(Petitioner)
2. State Of Chhattisgarh Through The Secretary, Department Of Urban Administration & Rural Development, Mantralaya Mahanadi Bhawan, Naya Raipur, Raipur (Chhattisgarh).....(Respondent No. 1)
3. The Collector Raigarh, District Raigarh (Chhattisgarh).....
(Respondent No. 2)
4. The Nazul Officer Raigarh, District Raigarh (Chhattisgarh).....
(Respondent No. 3)
5. The Municipal Corporation Raigarh, Through Its Commissioner, Municipal Corporation, Raigarh, District Raigarh (Chhattisgarh).....(Respondent No. 4)
6. The Superintendent Of Police Raigarh, District Raigarh (Chhattisgarh).....(Respondent No. 5)
7. The Station House Officer, Police Station, City Kotwali, Raigarh, District Raigarh (Chhattisgarh).....(Respondent No. 6)

---- Respondents

Appellant:	Shri Chandresh Shrivastava, Advocate.
Respondents No.1:	Shri Mateen Siddiqui, Advocate.
Respondents No.2 to 4:	Shri Prafull N. Bharat, Additional Advocate General.
Respondent No.5:	Shri Sudeep Agrawal, Advocate.

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

Order On Board**Per Navin Sinha, Chief Justice****22/12/2015**

1. The present appeal arises from order dated 8.12.2015 in Writ Petition (C) No.2167/2014. The Learned Single Judge has directed the Nazul Officer,

Raigarh to proceed with demolition of encroachments on Government land as identified in the demarcation report.

2. Learned Counsel for the Appellant submits that Land Encroachment Case No.28/2013-14 initiated by the Nazul Officer, Raigarh on 7.10.2014 has not achieved finality and no final orders have been passed. Further issues were sought to be raised with regard to a valid settlement in favour of the ancestors of the Appellant.

3. Learned Counsel for the Respondents submitted that land encroachment proceedings were initiated and despite interim orders prohibiting further construction on the lands, the Appellant did not appear before the Nazul Officer and continued the illegal construction. Demarcation of encroachment and identification of the unauthorized construction was done by the Nazul Officer in presence of the Appellant. The Learned Single Judge had examined the demarcation report, and then ordered demolition. The Appellant was himself not cooperating with the Nazul Officer before and therefore, if demarcation was done in his presence, the Court may not interfere with the order of the Learned Single Judge.

4. We have considered the submissions on behalf of the parties. According to the order of the Nazul Officer dated 7.10.2014, the Appellant is alleged to have made encroachment on Khasra No.26/210 which is stated to be a public road. The records reveal that despite prohibitory orders, the Appellant allegedly persisted with illegal construction. A demarcation report was then drawn up on the site. The allegations are that the Appellant was not cooperating in the proceedings before the Nazul Officer. It is an undisputed fact that no final orders have been passed in the land encroachment proceedings initiated by the Nazul Officer.

5. Though other arguments have been made on behalf of the Appellant,

we do not consider it necessary to deal with the same as we are satisfied that those are issues which may be raised by the Appellant before appropriate forum where the land encroachment proceedings are still pending.

6. Encroachment of Government lands cannot be countenanced at all. This is more so where it concerns a public road. But there must first be a finding of encroachment in accordance with law after proper opportunity of defence. That demarcation may have been done in presence of the Appellant, in our opinion, will not suffice and replace a final order to be passed by the Nazul Officer. It has been contented before us that the Appellant was not participating before the Nazul Officer for final disposal of the matter.

7. We therefore dispose the appeal with the following clarifications of the order passed by the Learned Single Judge:-

A. The Appellant shall appear before the Nazul Officer along with a copy of the present order on or before 13.1.2016.

B. It will be open for Respondent No.1 who had initially complained encroachment to be also present on that day.

C. The Nazul Officer shall fix the next date for hearing in presence of the parties or their representatives.

D. It shall be open for the parties to raise all contentions of facts of law.

E. The Nazul Officer shall then pass final orders in Land Encroachment Case No.28/2013-14 within a maximum period of 30 days from 13.1.2016.

F. Adjournment may be granted by the Nazul Officer to the parties only for just and valid reasons to be recorded in writing.

G. If hearing is delayed because of unavoidable adjournments, the time limit of 30 days may be extended to a maximum of 45 days only. If the Nazul Officer is satisfied that the Appellant was not cooperating, it shall be open for him to proceed ex-parte also so that the

proceedings are finally concluded within the time fixed.

H. But in that event, the Nazul Officer is required to record reasons of the efforts made to persuade the Appellant for participation notwithstanding which, the Appellant did not participate compelling ex-parte proceedings.

8. This order has been passed in presence of the Learned Counsel for the Appellant and Respondent No.1.

9. With the aforesaid clarifications of the order under appeal, the Writ Appeal is disposed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE