

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(C) No. 1856 of 2015

1. Sitaram Matoliya, S/o. Late Durga Prasad Matoliya, Aged About 67 Years, Address Shop No. 1-A (Rajasthan Jalebi), Purana Bus Stand, In Front Of M.V. Market, Bilaspur, District Bilaspur, (Chhattisgarh)

---- Petitioner

Versus

1. The Municipal Corporation, Bilaspur Through Its Commissioner, Municipal Corporation, Bilaspur, District Bilaspur, (Chhattisgarh)

---- Respondent

For Petitioner	:	Mr. Umakant Singh Chandel, Advocate
For Respondent	:	Mr. A.S. Kachhawaha, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

15/10/2015

1. The prayer in this petition is to command the respondent not to dispossess the petitioner from the shop No.1-A, situated at Purana Bus Stand in front of M.V. Market, Bilaspur, District Bilaspur admeasuring area 359 sq.ft.
2. Learned counsel for the petitioner would submit that the petitioner was granted lease of the shop by registered lease deed dated 21.08.2006. The lease deed do not show any khasra number, however, the boundaries have been shown towards East road exists, towards North canal exists, towards South shop of one Chopda and at the West other shop exists. The dimension of the shop is shown as 1-A admeasuring 359 sq.ft. Learned counsel for the petitioner further submits that

according to the lease, construction was also made over the said lease hold property and the period of lease was granted up till 2036 i.e. for the period of 30 years. He would further submit that initially a notice was served to the petitioner on 31.05.2015 vide Annexure P/11, wherein he was directed to furnish all the documents. He would further submit that pursuant to the notice dated 31.05.2015, all the documents have been submitted to the Municipal Corporation and subsequently again on 11.06.2015 (Annexure P/13) a notice was served and despite existing lease, the Corporation is bent upon to get it vacated by forceful dispossession. He would further submit that in the year 1988 (Annexure P/7), the petitioner was granted permission to raise super structure and accordingly super structure was raised, therefore, it can not be stated to be illegal. He would further submit that further after grant of permission, second floor was also raised. He therefore, submits that the petitioner can not be forcefully evicted other than the due course of law.

3. Learned counsel for the Corporation would submit that letters and notices were served to the different shopkeepers initially on 31.05.2015 to submit the documents on the basis of which they continue the possession of shops as the part of which are over Kh. No.488 and same is earmarked as road. It is contended that the petitioner has constructed shop over Kh.No.488 and further to ascertain whether the shop which has been constructed has been constructed over the lease hold area is to be ascertained by demarcation of the said area as the lease might have been executed but actually construction might have been made other than the lease hold area over land comprised in public lane of Kh.No.488.

4. Prima-facie perusal of the documents would show that lease was executed in favour of the petitioner by the Corporation and the shop was constructed. However actually whether the shop is situated over the lease hold land or not is to be ascertained by demarcation of subject/disputed land on the spot. Therefore, it is a factual aspect to be ascertained whether shop existed over such lease hold property or whether the shop has been extended over the public lane bearing part of Khasra No.488.
5. The dispute is of factual nature and therefore, it would require measurement at the spot itself. Since the petitioner holds registered lease in his favour it would be fair to direct the Corporation to demarcate the shop and identity of it whether it is situated over Kh.No.488 or not according to the lease deed which has been executed in favour of the petitioner and shall also be obliged to demarcate the lease hold area, which was granted to the petitioner. The entire issue will settle down if the demarcation report comes to fore. After the demarcation is done the petitioner shall be at liberty to take recourse to remedy as may be available to him under the law.
6. In the meanwhile it is directed that till the demarcation is done as directed above, the Corporation shall not take any coercive steps against the petitioner in respect of the shop in question.
7. The petition is accordingly finally disposed off.

Sd/-
(Goutam Bhaduri)
Judge