

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(C) No. 1850 of 2015

1. Rajesh Gupta, S/O. Krishna Gopal Gupta, Aged About 39 Years, At Present Address Of Shop No.11, Imlipara Road, Bilaspur, Police Station City Kotwali, Post Office Bilaspur, District Bilaspur, (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Department Of Nagri Kalyan, Mantralaya, Naya Raipur, Chhattisgarh
2. Collector, District Bilaspur, Collector Office, Near Nehru Chowk, District Bilaspur, (Chhattisgarh)
3. Commissioner, Municipal Corporation, Bilaspur, Vikas Bhawan, Nehru Chowk, Bilaspur, District Bilaspur, (Chhattisgarh)

----- Respondents

For Petitioner	:	Mr. Rakesh Sahu, Advocate
For Respondent/State	:	Ms. M. Asha, P.L.
For Respondent No. 3	:	Mr. A.S. Kachhawaha, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

14/10/2015

1. Heard.
2. Challenge in this petition is to the notice dated 08.10.2015, issued by the respondent No.3.
3. By a notice dated 31.05.2015, the Municipal Corporation, directed the petitioner to submit the documents, if any, with respect to the ownership of the property, wherein he is in occupation, as according to the Municipal Corporation, the petitioner is in occupation of land bearing khasra No.488, which is recorded as a road.

4. Perusal of the entire petition, this fact is not been prima-facie established that the petitioner was granted lease or license by Municipal Corporation. Neither any grant or lease is on record only receipts have been placed showing payment of rent. If the petitioner was inducted as a lessee or as a licensee, such fact has to be established, which can not be presumed or by probing enquiry. In absence of any documents filed by the petitioner it would lead to a fact finding and discovery of document. Perusal of the document shows that notice was issued to the petitioner to submit the documents on which he is in occupation of the land which bears part of Kh.No.488. Even if for the sake it is presumed that the petitioner was licensee, then certainly, the issue whether they are in possession over the same super structure which is comprised over Kh.No.488 has to be ascertained by adducing proper evidence and examination of facts. The documents which are placed with this petition do not substantiate in what capacity the petitioner is holding the shop.
5. Therefore, in any case the issue raised before this Court can not be examined in exercise of power under Article 226 of the Constitution of India as it would lead to search of file and collecting evidence as no document is placed on record to substantiate the same. However, it is observed that the petitioner would be at liberty to approach the Civil Court for redressal of his grievance, wherein the factual aspect can be considered at length when the parties adduce their respective evidence and discovery of the documents can be made during trial.
6. The Counsel for Corporation however has stated that they will demarcate the land of Kh.No.488 so as to find out whether the petitioner is in possession in part of land Kh.No.488, which is recorded

as road in the revenue records of the Corporation.

7. The demarcation if so made and petitioner is so aggrieved qua his possession over the land he would be at liberty to approach the competent Civil Court for his redressal. In the instant petition filed under Article 226 of Constitution of India in absence of any prima-facie document to show the possession of the petitioner to be that of lessee or licensee the issue can not be probed into.
8. Accordingly, the petition has no merit and is accordingly dismissed.

Sd/-
(Goutam Bhaduri)
Judge