

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(C) No. 1857 of 2015

1. Gaya Prasad Vaishya, S/O. Late Shri Jiyalal, Aged About 62 Years, Resident of Gitanjali Nagar, Bus Stand, Bilaspur (Chhattisgarh)

---- **Petitioner**

Versus

1. State of Chhattisgarh, Through The Principal Secretary, Department Of Urban Administration and Development, Mahanadi Bhawan, Mantralaya, Naya Raipur, Dist. Raipur (Chhattisgarh)
2. Municipal Corporation Bilaspur, Through Its Commissioner, Municipal Corporation Bilaspur, Vikas Bhawan, Near Nehru Chowk, Bilaspur, District Bilaspur (Chhattisgarh)
3. Commissioner, Municipal Corporation, Bilaspur, Vikas Bhawan, Near Nehru Chowk, Bilaspur, District Bilaspur (Chhattisgarh)

---- **Respondents**

For Petitioner	:	Mr. Amrito Das, Advocate
For Respondent No.1/State	:	Mr. S.C. Khakharia, Dy.A.G.
For Respondent No.2 & 3	:	Mr. A.S. Kachhawaha, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

14/10/2015

1. Challenge in this petition is to the notice dated 08.10.2015, issued by the respondent No.3.
2. Learned counsel for the petitioner submits that the petitioner was granted lease of the shop vide Annexure P/9, which was executed on 04.11.2003 for a period of 15 years. He would further submit that lease rent has also been paid up till March, 2016 according to Ex.P/12. It is

contended that the disputed shop is situated over Kh.No.488. He would further submits that in respect of the same land at earlier period of time dispute arose and the order of injunction was passed by the Civil Court, which has not yet been annulled. He would submit that in pursuant to the notice, dated 31.05.2015, the documents have been submitted to the Municipal Corporation, but the Corporation has turned deaf ears and has not considered the same despite the lease existing. It is contended that the petitioner is in lawful possession of the area, on the basis of the valid documents, therefore, he can not be forcefully evicted.

3. Learned counsel for the Corporation would submit that two letters were served to the different shopkeepers one of it was 31.05.2015 to submit document on the basis of which they continue the possession of shops 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 is situated over the Kh.No.488, it is a fact to be ascertained after demarcation of the said area.
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. The entire issue will settle down if the demarcation report comes to fore. After the demarcation is made 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