

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1699 of 2015

1. Vikrant Singh S/o Ranvijay Singh, Aged About 24 Years R/o Deepak Nagar, Street No. 6, Ward No. 23, Durg, Civil And Revenue District Durg. (Chhattisgarh)
2. Roma Singh, D/o. Ranvijay Singh, Aged About 26 Years R/o Deepak Nagar, Street No. 6, Ward No. 23, Durg, Civil And Revenue District Durg. (Chhattisgarh)
3. Indu Singh, Wd/o Ranvijay Singh, Aged About 45 Years R/o Deepak Nagar, Street No. 6, Ward No. 23, Durg, Civil And Revenue District Durg. (Chhattisgarh)
4. Rishu Singh, D/o. Ranvijay Singh, Aged About 27 Years R/o Deepak Nagar, Street No. 6, Ward No. 23, Durg, Civil And Revenue District Durg. (Chhattisgarh)

---- Petitioners

Versus

1. State Of Chhattisgarh Through The Secretary, Local Self Government, Mandir Hasoud, Naya Mantralaya, Raipur . (Chhattisgarh)
2. Municipal Corporation, Durg Through Commissioner, G. E. Road, Durg (Chhattisgarh)
3. Joint Director, Nagar Tatha Gram Nivesh, G.E.Road, Durg, Dist. Durg (Chhattisgarh)

---- Respondents

Shri Pallav Mishra, counsel for the petitioner/s.
Shri Dilman Rati Minj, Dy.G.A. for the State.
Shri Satish Gupta, counsel for Municipal Corporation.

Order On Board

21/09/2015

By this petition, under Article 226 of the Constitution of India, the petitioner has prayed for quashing impugned notice dated 14/08/14 as also for grant of permission to construct shops on the first floor of the residential premises on the terms and conditions on which such permission was allegedly granted to one Mr.Sanjay Singh.

2. Learned counsel for the petitioner argued that the respondent / authorities are acting discriminately in as much as in the case of one Sanjay Singh, who resides in the same area and ward, he was granted permission to construct shops

on the first floor of the building for which, earlier, building permission was granted for residential purpose but when father of the petitioner applied for construction of shops on the first floor of the residential building, the same was illegally rejected vide order dated 21/02/11.

Learned counsel for the petitioners further submitted that when later on, father of the petitioner raised grievance that in similar case, permission was granted vide memo dated 26/05/11 (Annexure P/8), the Joint Director, Nagar Tatha Gram Nivesh, Durg informed to the Commissioner, Nagar Palik Nigam, Durg that permission for construction for commercial purposes can be granted after due examination of the case and other conditions. Later on, when permission was not being granted and the father of the petitioners apprehended demolition, he filed petition WP(C) No.4950/11 which was eventually dismissed as withdrawn on 27/02/12 with liberty to file fresh petition after challenging the order of rejection. Later on, father of the petitioners died. Petitioners received notice of the Corporation for submitting mutation orders in their favour. The petitioners have submitted all the relevant documents but again impugned order has been issued on 14/08/15 for removal of construction already made by the petitioners / their father.

3. The application earlier filed by the father of the petitioner for grant of permission to construct shops / commercial purpose in the residential building was rejected by the Corporation on 21/02/11 (Annexure P/6). It appears that later on, vide communication dated 26/05/11 (Annexure P/8), the Joint Director, Town and Country Planning informed the Corporation that in limited cases, permission could be granted. However, it appears that before Corporation could grant any permission, certain construction was already raised in respect of which, repeated notices were given to the father of the petitioner to remove construction. A writ petition was filed by the father of the petitioners which was dismissed as withdrawn with liberty to challenge the order of rejection. Even though that order was passed way back on 27/02/12, no petition was filed by Late Ranvijay Singh till he died. Thereafter, the Corporation kept on sending notices to the petitioner to submit relevant documents of mutation but the petitioners, having failed to submit any such document, now the Corporation has issued notice to remove construction which has been illegally raised without any permission.

In these circumstances, when the application for grant of permission to raise construction was already rejected earlier on 21/02/11, no case of deemed sanction under the provisions of Section 295 (3) of the Municipal Corporation Act, 1956 is made out.

4. It is apparent that construction which has been raised on the residential building is without any permission.

However, taking into consideration the averments in the petition and the submission that all relevant documents of mutation have been submitted before the Corporation, the Corporation authority may consider, if at all, it is permissible under the rules to regularize construction which has already been raised, by granting permission, if permissible under the law. Therefore, before proceeding to undertake any demolition, the aforesaid consideration may be made by the Corporation in the case of the petitioners.

5. With the aforesaid observations, the petition is finally disposed off.

Sd/-

Manindra Mohan Shrivastava
Judge