

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 152 of 2015

1. Ashish Paryavaran Samrankshan Samiti Through The General Secretary, Shri Vijendra Kumar Chowdhary, Son Of Late Shri Jag Narayan Chowdhary, Aged About 44 Years, Resident Of House No. 4-B, Link Road, Street No. 15, Ashish Nagar (West), Risali, Bhilai, District Durg, Chhattisgarh Pin 490 006.
2. Shri Vijay Kumar Uplopwar S/o Late Shri Gopal Rao Uplopwar Aged About 62 Years R/o A-4, Street-15, Ashish Nagar (West), Risali, Bhilai, Dist. Durg C.G.

---- Petitioners

Versus

1. State Of Chhattisgarh Through The Principal Secretary, Department Of Housing And Environment, Mahanadi Bhawan, Mantralaya, Naya Raipur, Dist. Raipur Chhattisgarh
3. Director, Directorate Of Town And Country Planning, Raipur, Chhattisgarh
4. Joint Director, Town And Country Planning, Regional Officer, Durg, District Durg, Chhattisgarh
5. Bhilai Municipal Corporation, Through The Commissioner, Bhilai, District Durg, Chhattisgarh
6. M/s I. Skyers, Infrastructures And Developers, A Partnership Firm, Through Its Partners - Shri N.L. Tushar, Residents Of Ashish Nagar (West) Risali, Bhilai, District Durg, Chhattisgarh
7. Shri C.K. Vijayan, Resident Of Ashish Nagar (West) Risali, Bhilai, District Durg, Chhattisgarh
8. Smt. Thankam, Resident Of Ashish Nagar (West) Risali, Bhilai, District Durg, Chhattisgarh
9. Smt. Tushara Girish Resident Of Ashish Nagar (West) Risali, Bhilai, District Durg, Chhattisgarh
10. Shri M.G. Hariharan, Resident Of Ashish Nagar (West) Risali, Bhilai, District Durg, Chhattisgarh
11. Shri M.G. Ramesh Babu Resident Of Ashish Nagar (West) Risali, Bhilai, District Durg, Chhattisgarh

---- Respondents

For Petitioner : Shri Amrito Das, Advocate
For Respondent / State : Shri Satish Gupta, Govt. Adv.
For Respondent No.4 : Shri H.B.Agrawal, senior advocate along with Shri Dhiraj Wankhede, Advocate
For Respondent No.5 : Shri Sunil Pillai, Advocate

Order On Board

27/07/2015

Though the case is listed for orders on stay application, looking to the nature of controversy involved and the issue before this Court, the matter is heard finally with the consent of the parties.

2. The petitioner has filed this petition aggrieved by order dated 27/01/15 to the extent that the Trial Court declined to continue interim protection to the plaintiff / petitioner.

3. Learned counsel for the petitioner submits that initially, the writ petition filed by the petitioner was dismissed as withdrawn on 11/11/14 with liberty to file appropriate civil suit. The interim order passed by the Court on 12/04/12 was directed to continue for a period of two months or order on interim protection / direction, whichever is earlier. It is submitted that the petitioner filed a suit along with application for temporary injunction. Learned Court below while deciding other applications, declined to continue interim protection vide impugned order. It is argued that the Trial Court ought to have decided application for temporary injunction and in all fairness, continued interim protection till the decision in the said application. It is submitted that respondent No.5 has proceeded to raise construction and if he is allowed to raise construction before decision on injunction application, the very purpose of seeking injunction would be frustrated, particularly in the backdrop that the suit has been filed when construction is being raised over an area reserved for park under an approved layout.

4. Learned counsel for respondents particularly counsel for respondent No.5 submit that the interim protection was granted by this Court only for a period of two months. As the Trial Court had not examined the merits of the case, the Trial Court did not commit any illegality in declining to continue the interim protection. It is submitted that proper course of action would have been to press the application for temporary injunction rather than approaching this Court.

5. The spirit of the order earlier on 11/11/14 was that as the petitioner has filed petition and interim order was continued since long, it would be proper to protect him for further period. It was implicit in that spirit that the Trial Court should also decide injunction application.

6. It is found that application for temporary injunction was not decided and interim order was brought to an end. It would have been fair to all the parties in the civil suit if the application for temporary injunction ought to be decided at the earliest.

Therefore, in these circumstances, I am inclined to dispose off this petition with a direction to the Trial Court to decide plaintiff's application for grant of temporary injunction within a period of two months from the date of receipt of copy of this order.

7. The parties to the suit are being represented in these proceedings. It is made clear that hearing on application for temporary injunction shall not be deferred on the ground of pendency of other applications and the application for injunction shall be decided within a period of two months. The plaintiff or other parties shall not be granted adjournment on the date when the case will be listed for arguments on temporary injunction. Till decision on application for temporary injunction, interim protection which has been granted by this Court on 04/03/15 shall continue.

The petitioner shall submit a copy of this order before the Court below within a period of 10 days from today.

Certified copy to all the parties.

Sd/-
Manindra Mohan Shrivastava
Judge