

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 157 of 2015

1. Mathura Prasad, S/o Kunj Ram Sahu, Aged 70 years, R/o Village Rogda, Tahsil Nawagarh, District Janjgir - Champa, Civil & Revenue District Janjgir-Champa, C.G.

---- Petitioner

Versus

1. Smt.Bhagwati Sahu W/o Siyaram, Aged 35 Years, Sarpanch, Gram Panchayat, Rogda, Tahsil Nawagarh, District Janjgir Champa, C.G.
2. Gram Panchayat, Rogda, Through Its Sarpanch Smt. Bhagwati Sahu, Village Rogda, Tahsil Nawagarh, District Janjgir Champa (C.G.)
3. State Of Chhattisgarh Through The Collector, Janjgir - Champa, District Janjgir - Champa C.G.

---- Respondents

For Petitioner	Shri Rajeev Shrivastava, Advocate
For Respondent/State	Shri Sunil Pillai, P.L.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

09/03/2015

Heard learned counsel for the parties.

1. Petitioner has assailed the legality and validity of the order passed by the District Judge, Janjgir-Champa allowing the appeal preferred by the respondent Nos.1 & 2 and setting aside the order passed by the trial Court on 09.05.2013 whereby temporary injunction was granted in petitioner's favour.

2. Petitioner has filed the civil suit for declaration and permanent injunction to the effect that the petitioner is the owner of the suit land bearing Khasra No.1121 & 1122 situated at Village Rogda, R.I. Circle Nawagarh, District Janjgir-Champa and the respondent Nos.1 & 2 be restrained from raising any construction on the suit land. It was stated that the defendant No.2 is constructing a community hall on the petitioner's land, which is adjoining to Khasra No.1124, which is recorded as government land, however, the Gram Panchayat has encroached the petitioner's land and some part of construction is on petitioner's land.
3. The defendants came up with a plea that the petitioner's land is not encroached for construction of community hall, but the said construction is on government land bearing Khasra No.1124/1 and 1124/2. On Khasra No.1124/2 a panchayat building is already standing since 1970 and the new building is constructed after demolishing the old building, therefore, it can never be said that the construction is on petitioner's land.
4. The trial Court recorded the finding of existence of prima-facie case by observing that in view of the demarcation report, it cannot be concluded that the defendants are not raising any construction on petitioner's land. This Court has gone through the demarcation report (Annexure-P-4). The said report nowhere concludes that the construction is made on petitioner's land. As a matter of fact, the report states that the gram panchayat building was constructed at Khasra No.1124 and the present construction is made at the same place and that adjoining to the said khasra number, the petitioner's land is situated. There is no whisper that the construction is extended on petitioner's land.

5. In the considered opinion of this Court, the trial Court misread the demarcation report, therefore, the First Appellate Court has rightly interfered with the order because, the trial Court has restrained the construction of a public utility building i.e. community hall of gram panchayat. The said restrained order has the effect of denying the public to have their own panchayat building.
6. In the result, the writ petition, *sans substratum*, is liable to be and is hereby dismissed at the motion stage itself.

JUDGE

Gowri