

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(C) No. 1865 of 2015

1. Ashok Kumar Sharma, S/o. Late Narmads Prasad Sharma, Aged About 70 Years, Shop No. 4, Ashok Electronics Centre, District Co - Operative Bank Line, Old Bus Stand Chowk, Bilaspur, Civil and Revenue District Bilaspur Chhattisgarh

---- **Petitioner**

Versus

1. Municipal Corporation, Bilaspur, Through the Commissioner, Municipal Corporation, Bilaspur, District Bilaspur, (Chhattisgarh)

---- **Respondent**

For Petitioner	:	Mr. Ravindra Agrawal, Advocate
For Respondent	:	Mr. A.S. Kachhawaha, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

15/10/2015

1. Challenge in this petition is to the notice dated 08.10.2015, issued by the respondent, wherein the petitioner has been asked to vacate the shop No.4, situated at Old Bus Stand, Bilaspur held by the petitioner.
2. Learned counsel for the petitioner would submit that the petitioner was granted lease of the shop No.4, by registered lease deed dated 03.07.1986 for a period of 30 years, which would expire in the year 2016. He would submit that the lease rent has been paid till 2016. He would further submit that lease deed do not show any khasra number of land but the demarcation has been shown in the lease deed. He would further submit that the petitioner was granted permission by the Corporation to raise super structure over such lease hold property,

accordingly, the super structure was also raised. He would submit that lease rent has also been paid, therefore, the petitioner having held the shop as lessee, he can not be forcefully evicted from the premises.

3. He would submit that pursuant to the notice dated 31.05.2015 (Annexure P-6), all the documents have been submitted to the Corporation, but the corporation has turned deaf ears and has not considered the same despite the existing lease. It is contended that the petitioner is in lawful possession of the area, on the basis of valid documents, therefore, the petitioner who is a lessee can not be forcefully evicted other than the due course of law.
4. Learned counsel for the Corporation would submit that letters and notices were served to the different shopkeepers initially on 31.05.2015 to submit documents on the basis of which they continue the possession of shops as the 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 which has been constructed has been constructed over the lease hold area is to be ascertained by demarcation of the said area as the lease might have been executed but actually construction might have been made other than the lease hold area over land comprised in public land of part of Kh.No.488.
5. 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 at the spot. Therefore, it is a factual aspect to be ascertained whether shop existed over such lease hold property or not

or whether the shop has been extended over the public lane bearing part of Khasra No.488.

6. 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 and shall also be obliged to demarcate the lease hold area, which was granted to the petitioner. The entire issue will settle down if the demarcation report comes to fore. After the demarcation is done the petitioner shall be at liberty to take recourse to remedy as may be available to him under the law.
7. 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.
8. The petition is accordingly finally disposed off.

Sd/-
(Goutam Bhaduri)
Judge