

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(C) No. 1863 of 2015

1. Arun Tulsyan, S/o. Shyam Lal Tulsyan, Aged About 39 Years, Shop No.2, 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.2 hold by the petitioner, situated at Old Bus Stand, Bilaspur.
2. Learned counsel for the petitioner would submit that initially the shop was leased to one Satish Agrawal. Subsequently, the petitioner, Arun Tulsyan came into possession of the said shop, which was accepted by the Municipal Corporation by accepting premium and the premium of Rs.11,000/- was also paid by him in the year 2012. He further submits that according to the lease deed, the shop was granted for a period of 10 years, which expired in the year 2013, however, the respondent, Corporation has accepted the lease rent thereafter, which

would be evident from the receipt, wherein the lease rent of Rs.633/- was lastly paid on 22.09.2015. He would further submit that in the lease deed, khasra number of the land has not been shown and the demarcation of the said shop is shown. He would further submit that lease has not been annulled yet and by acceptance of the lease rent, the petitioner continues in the possession of the super structure with the shop No.2. He would further submit that pursuant to the letter dated 31.05.2015 (Annexure P/5), 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, he can not be forcefully evicted.

3. Learned counsel for the Corporation would submit that letters and notices were served to the different shopkeepers initially on 31.05.2015 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 lane of part of Kh.No.488.
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 at 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.
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