

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
S.A. No. 608 of 2015

Miradevi, W/o. Laxmiprasad, aged about 55 years, R/o. Near Bus Stand,
 Katghora, District – Korba (C.G.)

----Appellant

Versus

1. Nagar Panchayat Katghora, through : Chief Municipal Officer, Katghora,
 District – Korba (C.G.)
2. State of Chhattisgarh, Through : the Collector, Korba (C.G.)

----Respondents.

 For Appellant : Mr. Mateen Siddiqui, Advocate
 For Respondent : Mr. Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

24/02/2016

Heard on admission.

1. This is an appeal against the judgment and decree dated 04.07.2015, passed by the learned Additional District Judge, Katghora, in Civil Appeal No.24-A/2007, by such appeal, the judgment and decree passed by the Civil Judge, Class-I, Katghora in Civil Suit No.136A/1998, dated 07.10.2003, whereby the respondents/defendants were asked to allot the shop constructed by the Nagar Panchayat, Katghora, was set-aside.
2. This second appeal is preferred by the plaintiff.
3. As per the plaint allegation, the appellant was in occupation of certain land at Bus-Stand, Katghora and was running her electricity shop. On 05.12.1988, a notice was served through the Tahsildar,

Katghora and the plaintiff was directed to remove the encroachment on an area admeasuring 20x60 sq.ft. and for non-compliance thereof, a fine of Rs.5,000/- was imposed. The plaintiff contended that the plaintiff was in possession of the said suit shop, wherein electricity connection was provided, wherein the defendant never objected to provide such electricity connection. Subsequently electricity and water connection were also disconnected. The plaintiff filed a suit for declaration of title and injunction was also prayed for that the defendant be restrained by permanent prohibitory injunction not to disturb the peaceful possession of the plaintiff. During the pendency of the suit, amendment was incorporated stating that on 07.12.98, despite the order was passed by the High Court to maintain status-quo, the respondents/defendants have demolished the shop on 12.12.1998 and thereafter, commercial complex was developed over such land and 35 shops were constructed. It was further pleaded that 9 shops were not allocated and were in possession of the defendant No.2. It was further pleaded that the shop may not be allocated in favour of the third party. It was further pleaded that the defendant, Nagar Panchayat, Katghora was not legally allocated the land and the proceedings of the allocation was not published in the Rajpatra, therefore, the title of the defendant over such land was that of an encroacher and therefore, could not have allocated the lands.

4. In reply to the plaint allegation, it was contended by the defendant that the land wherein the plaintiff was in possession was allocated to the Nagar Panchayat, Katghora from the State Government and the possession of the land was also given in the year 1982 to the

Nagar Panchayat, Katghora. Subsequently, some of the development were carried out over the part of the land and in the year 1998, for the public utility, bus-stand was being prepared over the said land, which was in the stage of completion. It was further contended that the plaintiff was not in legal possession of the said land and the construction was made over the government land. It was further stated that the persons who were in occupation of the land as encroacher, their case would be considered sympathetically. It was further contended that the said land was allocated to the Nagar Panchayat, Katghora on 04.01.1995 in revenue case No.41A/19/1995-96, to raise super structure.

5. The Court below after evaluating the evidence and the pleading, decreed the suit in part and directed that in case the plaintiff files an application for allotment of the shop, the same should be considered within one month on priority basis and the shop should be allotted to the plaintiff. Against such finding, the appeal was filed by the Nagar Panchayat, Katghora, which was allowed and the plaintiff was non-suited, thereby the judgment and decree of the Trial Court was set-aside. Hence, this second appeal.
6. Learned counsel for the appellant would submit that allotment of the land to the Nagar Panchayat, Katghora itself was bad as it was allocated to the traffic department by the State Government and not to the Nagar Panchayat. He would further submit that Nagar Panchayat, Katghora should have allotted the shop in favour of the plaintiff, since she was in possession of the part of land and was dispossessed. He would further submit that the finding of the

Appellate Court is completely perverse, therefore, the appeal be admitted for hearing.

7. Perused the judgment and decree of the Appellate Court and the Trial Court as also the pleadings and the documents.
8. The suit was filed for permanent injunction and declaration. In prayer clause, it was also prayed that the defendant be directed to allocate the shop in respect of the land, wherein she was in possession. The plaintiff (PW-1), Meera Devi admitted the fact that the land, wherein she was in possession was a government land and she was served with the notice to remove the encroachment by Ex.P/1. Admittedly as per the statement, the construction of the plaintiff was removed and subsequently, 30-40 shops were constructed over the land including the part of land, wherein the plaintiff was in possession. It is also admitted that the plaintiff was also fined for encroachment earlier to that also. It is further stated that in the year 1984-86, an fine amount of Rs.500/- was imposed, which was paid by her but subsequently, she was further directed to remove her super-structure. The evidence would show that the land wherein the plaintiff was in possession with the super-structure was demolished and Nagar Panchayat, Katghora raised a complex in the said land. This fact is stated by the plaintiff and also supported by the PW-2, Sheikh Imtiyak. Therefore, there is no dispute by the evidence of the plaintiff itself that the plaintiff was an encroacher over the government land and subsequently, the super structure, wherein she was carrying her business was demolished

and Nagar Panchayat during the period of time developed and constructed shops over the land.

9. Nagar Panchayat, Katghora on its behalf had examined one officer namely Anil Sharma as DW-1. The witness has stated that Nagar Panchayat, Katghora has acquired the part of the land alongwith the other land from the Revenue Department of the State and thereafter, the bus stand and waiting hall was prepared. It was further stated that there were 32-33 persons, were in possession and after constructions the persons who had applied for the shops were given the shop but the plaintiff had not filed any application for allotment. It is stated that, therefore, the shop could not be allotted to her. It is further stated that 32 shops were allotted to the different persons and no shops were left vacant in the said complex to allocate. There is no rebuttal to this fact. So on the date of evidence it was stated that no further shops remained for allotment or was lying vacant.
10. Reading of the plaint would show that the persons, who have been stated to be allotted the shops were required to be incorporated by way of amendment as party. The argument of the plaintiff that the Nagar Panchayat was not the owner of the land and the allotment was not legally done do not find any merit for the reasons that as per Ex.P/1, the plaintiff herself was a encroacher for which a notice was served and it is admitted by the plaintiff that she was the encroacher of the land i.e. Kh.No.236/1 for which she was also fined. Therefore, the possession of plaintiff was never legalized. Subsequently, when the shops and the encroachers were

removed, the super structure was raised. Perusal of the case file of the Court below do not show the fact that any prayer was made for temporary injunction not to allot or to withhold any shop, which was constructed. As against this, DW-1, has categorically stated that all the shops have been allotted. So, this can be assumed that no shops were left blank and all the shops stood allotted.

11. In a result, no relief could have been granted for want of proper prayer. The finding of the Appellate Court on the ground that no shops being vacant, consequently could not have been allotted can not be faulted with. Admittedly, the plaintiff was encroacher as per her own case and therefore, the finding of the Appellate Court that the land was given by the State Government to the Nagar Panchayat, Katghora after removing the encroachments can not be faulted with.
12. In a result no substantial question of law arises for consideration in this second appeal.
13. Accordingly, the appeal is dismissed at admission stage itself.

Sd/-
(Goutam Bhaduri)
JUDGE