

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2393 of 2016

1. Ramashray Prasad Sinha S/o Late Shri Ramji Prasad Sinha Aged About 63 Years R/o Azad Nagar, (Gazinagar) Birgaon District-Raipur, Chhattisgarh.
2. Rajman Gupta S/o Shri Dwarka Prasad Gupta Aged About 50 Years R/o Opposite Adwani School, Birgaon, District-Raipur, Chhattisgarh.
3. Mazrool Haq, S/o Shri Sadrool Haq, Aged About 50 Years R/o Vyas Talab, Birgaon, District-Raipur, Chhattisgarh.
4. Tirthraj Gupta S/o Shri Ramraj Gupta Aged About 45 Years R/o Vyas Talab, Birgaon, District-Raipur, Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh Through The Secretary Department Of Urban Administration, Mahanadi Bhawan, Mantralaya, Naya Raipur, District-Raipur, Chhattisgarh.
2. Municipal Corporation Birgaon Through Municipal Commissioner Birgaon, District-Raipur, Chhattisgarh.
3. Building Officer, Municipal Corporation Birgaon Birgaon, District-Raipur, Chhattisgarh.
4. Collector Raipur, District-Raipur, Chhattisgarh.
5. Tahsildar, Tehsil Dharsinwa, District-Raipur, Chhattisgarh.

---- Respondents

For Petitioners	:	Shri Mateen Siddiqui, Advocate
For Respondent-State	:	Shri Arun Sao, Dy. A.G., on advance copy

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

26/09/2016

Heard.

1. The petitioners have filed this petition aggrieved by the notices of demolition.
2. Learned counsel for the petitioners submits that the petitioners have not encroached upon any land of the Government or any land owned or transferred to the Corporation by the Government. According to the petitioners, even if the petitioners have encroached, it is a private land and not Government land, therefore, the respondent has no authority.
3. Learned Deputy Advocate General submits that it is a case of serious factual dispute which cannot be gone into in the writ petition and therefore, the petitioners should first approach the competent authority of Corporation for appropriate enquiry on factual aspect.
4. It appears that the petitioners were issued notices and according to the petitioners, they have also submitted their reply before the Corporation to vindicates their stand that they have not encroached upon the Government land or any other land of the Corporation.
5. The dispute is essentially of a factual nature. Whether or not the petitioners have encroached upon the Government land or Corporation land is a matter which can be decided only in enquiry on facts.
6. Having considered that the petitioners have already submitted certain reply before the Corporation but learned counsel for the petitioners is not in a position to inform the Court as to what happened on 07.09.2016 when the petitioners were called to appear before the competent authority of the Corporation, this petition is disposed off with the direction to the respondent-Corporation that the reply filed by the petitioners may be scrutinized and decisions may be taken on

petitioners' representation after scrutiny of the records available with the Corporation. The Corporation shall pass a speaking order in the matter before taking further action. The petitioners shall be afforded an opportunity of hearing, if already not granted. It is made clear that the petitioners shall not be entitled to more than one opportunity.

7. If the decision, finally taken by the Corporation is to the prejudice of the petitioners, it would be open for the petitioners to take appropriate remedy as provided under the law.

8. Till the matter is decided in the manner as directed above, the respondents shall not carry out any demolition proceeding.

9. The petition is finally disposed off.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Rekha