

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.197 of 2017

Zaki Ahmed, S/o Late Abdul Salam, aged about 54 years, R/o Baijnathpara, Near Evergreen Chowk, Sirat Maidan Road, Mohd. Abdul Rauf Ward No.41, District Raipur (C.G.)

---- Petitioner

Versus

1. Municipal Corporation, Raipur, through Commissioner, Municipal Corporation, Raipur, District Raipur (C.G.)
2. Zone Commissioner, Zone No.7, Municipal Corporation, Raipur, Jaistambh Chowk, In front of Post Office, Old Head Office, Malviya Road, Raipur (C.G.)
3. Abdul Abrar, Shiv Mandir Street, Maudahapara, District Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Kishore Bhaduri and Mr. Pawan Kesharwani, Advocates.

For Respondents No.1 and 2: -
Mr. Pankaj Agrawal, Advocate.

For Respondent No.3: Mr. T.K. Jha, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

20/06/2017

1. The petitioner was issued notice under Sections 293 and 302 of the Chhattisgarh Municipal Corporation Act, 1956, against which he preferred an appeal before the appellate authority. This Court in W.P.(C)No.642/2015 decided on 16-4-2015 directed the appellate committee to decide the appeal expeditiously. When the appeal was preferred, the appeal committee presided by the Mayor of the Municipal Corporation held the appeal to be not

maintainable and dismissed the appeal against which this petition has been filed under Article 227 of the Constitution of India.

2. Mr. Kishore Bhaduri, learned counsel for the petitioner, relying upon the provisions contained in Section 403 (2) of the Chhattisgarh Municipal Corporation Act, 1956 would submit notice issued under Section 302 is appealable before the appellate authority and the appeal committee has incorrectly held that the appeal is not maintainable.
3. Mr. T.K. Jha, learned counsel for respondent No.3, would submit that the writ petition has framed and filed is not maintainable and forged document has been filed along with this petition which can be taken cognizance of by this Court.
4. I have heard learned counsel for the parties and perused the documents carefully.
5. A careful perusal of the notice issued to the petitioner would reveal that it is jointly issued under Sections 293 and 302 of the Chhattisgarh Municipal Corporation Act, 1956 alleging that without permission, construction is made on the ground floor whereas, Section 403 (2) of the said Act provides that appeal is maintainable and any person aggrieved by any notice or order issued or other action taken by the Commissioner under Section 302 of this Act or any rule or bye-law made thereunder can prefer appeal under Section 403 (1) before the competent authority of the Corporation. Therefore, it cannot be held that

appeal is not maintainable against the notice under Section 302 of the Act of 1956. Consequently, the impugned order is set aside. However, the respondent Municipal Corporation is directed to place the appeal before the competent authority in view of the provisions contained in Section 403 (1) of the Act, 1956. So far as the objection of respondent No.3 is concerned, same is kept open to be raised in appropriate proceeding before the appropriate authority. Since the matter is an old one, the appellate authority would consider and decide the appeal expeditiously preferably within a period of four weeks from the date of production of certified copy of this order after noticing to the parties concerned. However, till the appeal is decided the interim order dated 9-3-2017 would remain in force for that period. Parties will produce the certified copy of this order before the Commissioner, Municipal Corporation, Raipur on or before 27-6-2017 and the appeal shall be decided preferably by 11-8-2017.

6. The writ petition is disposed of finally with the aforesaid observation and direction. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge