

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on: 17/01/2017****Judgment delivered on: 16/03/2017****Civil Revision No. 61 of 2007**

- Abdul Haleem Khan S/o Shri Abdul Hakeem Khan, Akbar Khan, Ki Chawl Opp. Mission Hospital, Bilaspur, Tahsil-Bilaspur, District-Bilaspur,

---- Applicant**Versus**

1. M.J.Haque, S/o Shri M.M. Haque aged about 56 years, R/o Akbar Khan Ki Chawl Opp. Mission Hospital, Bilaspur (C.G.)
2. Mahendra Pradhan S/o Shri M.P. Pradhan, aged about 50 years, R/o Akbar Khan Ki Chawl Opp. Mission Hospital, Bilaspur (C.G.)
3. Municipal Corporation Bilaspur Through Commissioner, Bilaspur, Tahsil-Bilaspur, District-Bilaspur,
4. Kaneez Fatema Wd/o Shri Sayed Iqbal Hussain, aged about 50 years Tahsil-, District-, R/o Akbar Khan Ki Chawl Opp. Mission Hospital, Bilaspur (C.G.)
5. Ku. Kamla Dasaj D/o Shri D.R. Dasaj, aged about 82 years, R/o Akbar Khan Ki Chawl Opp. Mission Hospital, Bilaspur (C.G.)

---- Respondents

For the Applicants : Shri Manoj Paranjpe, Advocate.

For the Respondents : Shri Ashish Shrivastava, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV Judgment****16 /03/2017**

1. This revision is directed against the order of the First Additional District Judge, Bilaspur in M.J.C. No.5/91 passed on 09.02.2007 ordering removal of encroachment on the disputed land.

2. Applicant and others filed an application under Section 307(5) M.P. Municipal Corporation Act, 1956 on 20.03.1999, in which, it was stated that respondent No.1 sought permission for the construction on a piece of land recorded in his name and situated in Juni Line, Bilaspur and shown in Nazul sheet No.19, plot No.2/7, area 1800 Sq. feet. Construction was sanctioned by respondent No.3. This plot is part of "Akbar Khan Ki Chawl". Applicants are residents of plot No.6, 7 & 8 of "Akbar Khan Ki Chawl". Respondent No.1 started construction on the plot which was in excess to the area sanctioned for construction by respondent No.3, applicants approached respondent No.3 and on his inaction approached Commissioner Municipal Corporation, Bilaspur by filing an application on 10.01.1999. By order of Commissioner the plot was inspected and respondent No.1 was ordered to stay the construction. In the meanwhile, respondent No.1 had illegally occupied the land marked as C.C and D.D. as mentioned in suit map by raising construction on that land. Later on, applicants came to know that respondent No.3 fined Rs.1000/- and compounded the case against respondent No.1 and further permitted him to raise construction. Raising objection that the alleged construction was illegal against the provision of Municipal Corporation Act and Rules thereunder, prayer was made to the order for removal of construction on the illegally encroached land, as mentioned in this suit map.
3. Respondent No.1 denied the contents of application excepting the admitted facts and stated that the map produced was not perfect, respondent No.1 has not illegally encroached any land of "Akbar Khan

Ki Chawl” and neither the land is of common use of the residents of that area and prayed for dismissal of the application.

4. Respondent No.3 denying the statements in application against him, has stated, that the case of illegal construction against respondent No.1 was legally compounded and permission was given for construction accordingly which is a legal order. Applicants have not entitlement to raise any objection neither they have any rights on the Nistari land encroached, hence, they are not entitled for relief.
5. The applications were heard and decided by the First Additional District Judge, Bilaspur on 13.07.1998. The application was allowed. It was held that the compromise between respondent No.1 & respondent No. 3 was opposed to the principles of natural justice, hence, the order of construction was held illegal and set aside. Respondent No.1 was further directed to demolish and remove the disputed construction on the encroached land. The order of the First Additional District Judge, Bilaspur was challenged in Civil Revision No.1655/98 by respondent No.1. The revision petition was decided by this Court on 03.08.2006, the revision was allowed and the order of the Court below was set aside. The matter was remanded to the trial Court with a direction, that the Trial Court shall appoint a Local Commissioner, who should be an expert, preferably belonging to be Nazul Department, and conduct demarcation after giving notice to both the parties, which shall be performed by him on the basis of agreed map between the parties, which has been proved as Ex.P/16 in this matter.

After demarcation, a report of the said Commissioner shall be filed before the Court and after hearing the parties on the said report, and after examining the Commissioner if required; if the Court records a finding on the basis of over-all evidence that an encroachment is done by the applicants over the alleged area of the Nistari Gali, the trial Court shall pass fresh necessary order in this regard in accordance with the provisions of Section 307(5) of the Municipal Corporation Act, 1956.

6. Trial Court appointed a Commissioner for local inspection in compliance to the Order of this Court. On submission of commissioner report, the Commissioner H.P. Patel, Revenue Inspector (Nazul) was examined and cross-examined at length by the parties. Considering on the commissioner report, the evidence of Commissioner and arguments submitted by both the parties, the order dated 09.02.2007 was passed in which, the application under Section 307(5) M.P. Municipal Corporation Act, 1956 was partly allowed and order was passed, that the construction raised on the encroached land by respondent No.1 the staircase and flooring be demolished by respondent No.3, the order of trial Court is challenged in this appeal.

The grounds in this appeal are, that the impugned order is bad in law and perverse, the trial Court completely overlooked the deposition of Revenue Inspector(Nazul) H.P. Patel. It is clear from his deposition that he failed to demarcate the land in question, in accordance with the fixed and standard norms, further the inspection of the spot was in contravention to the direction of this Court given in order dated 03.08.2006. The construction

raised by the respondent No.1 as projection outside the plinth wall is not mentioned in the inspection map, Commissioner has mentioned only staircase and the flooring as encroachment and willfully omitted to mention the projection i.e. Balcony, which is right over the Nistari Gali, thus, land is encroached. The Commissioner further has not demarcated the encroachment with specific mention to the Nistari Gali. There had been no dispute on existence of Nistari Gali. On these grounds, it is prayed that this revision be allowed and the impugned order 09.02.2007 passed by the Court below be set aside and order be given for compliance of this Court dated 03.08.2006.

7. It is submitted by the learned counsel for the applicants, that demarcation conducted by the Commissioner in this case had not been in-compliance with the order of this Court. Only the land and construction in possession of respondent No.1 was measured, whereas the whole Nistari Gali was required to be measured to arrive at a correct finding. It was admitted by Revenue Inspector (Nazul) H.P. Patel in his cross-examination, that the projection over the Nistari Gali was present in the disputed construction, which has not been considered and no suitable order has been passed in this respect. Hence, prayed that the revision be allowed and the impugned order be set aside.
8. Learned counsel for the respondent has argued that the applicants have no locus standi to bring this kind of application. The order passed by the Court below has been complied with and the construction of encroached land has been removed. A request for ordering a fresh demarcation has also been made. It is further argued, that this revision has no merit which be dismissed.

9. It is not disputed that the respondent No.1 sought permission for construction on the land recorded in his name in records and the permission was granted by respondent No.3. Further it is not disputed, that respondent No.1 while raising construction on his land he further encroached the land. In compliance of the order of this Court, Revenue Inspector (Nazul) H.P. Patel was appointed as commissioner by the Court, who inspected the spot and submitted the report. As per this report, he found encroachment of on three places, on place marked as 'A' the encroachment of 54.5 Sq.ft., on place marked as 'B' the encroachment of staircase area 27.65 Sq.ft. and encroachment on place marked as C was 63.00 Sq.ft.. Ongoing through the inspection report, it is evident that there is no specific mention regarding the area of land in rightful possession of respondent No.1 and regarding the encroached land, as to their ownership or as to their purpose whether for common use or private use, has not been mentioned. The so called Nistari Gali, is not at all mentioned on the map prepared by the Commissioner. It was a necessity, as there is specific allegation of the applicants that respondent No.1 has encroached upon the Nistari Gali of "Akbar Khan Ki Chawl". Commissioner Shri H.P. Patel was examined. In his examination-in-chief, he has been mentioned all the details given in the spot map prepared by him in the capacity of Commissioner. He could not explain In cross examination about the land marks on the basis of which he inspected and measured the disputed spot and could not give satisfactory answers to the method of measuring the spot.
10. Considering the requirement of inspection, it is needed to revert back to the contents of original petition by the applicants. It is nobody's claim that the

land encroached by respondent No.1 belongs to them. The original submission was this, that the vacant land lying on the Southern part of the suit map had been Nistari land of the common use of the applicants. This means that the land in question was not owned by any of the party but was lying vacant and for the purpose of common use by the residents of the locality. The specific allegation in the main petition was this, that respondent No.1 had encroached on 3 feet land of Nistari land by constructing a wall and a projection. On the basis of these statements, the spot inspection map prepared by the Commissioner, needs consideration. The encroachment on place marked as 'A' is on the northern part of the plot shown on the map, an encroachment shown on place marked as 'C' also lies in the north of the plot as shown in the land. It is only the encroachment marked as 'B' seems to be relevant as per the statement of the applicants in this case, which lies in the south of the plot shown on the map. This encroachment shown on place marked as 'B' is in accordance with the statement of applicants in the main petition the Nistari Gali.

11. By the impugned order the trial court has ordered removal of encroachment of part 'B' which measures 27.61 Sq.ft., hence, it can be imagined, that this is a part of land where the Nistari Gali lies. It was from the beginning that applicants have stated that respondent No.1 while encroaching the land in question by raising construction has constructed a projection over the encroached land. The matter has been raised in this revision and in the argument by the applicants as well. It is clear that the Commissioner's report does not mention of any projection. During the course of argument, it was submitted by learned counsel for the respondent, that the encroachment

demarcated has been removed by the orders of the Court below and photographs were shown to this Court. On behalf of the applicants, it was objected that this is not the complete removal of encroachment so long as the projection over the Nistari Gali in the construction of respondent No.1 remains.

12. By order dated 03.08.2006, it was specifically ordered in para-12, that Court below shall specifically record a finding on the basis of inspection report and evidence, whether encroachment is done by the respondent No.1 over the land area of the Nistari Gali and pass order accordingly. By the impugned order, no consideration has been given to the projection on the Nistari Gali as alleged by the applicants. It seems that the matter of projection over Nistari Gali was not at all considered and neither any attention was drawn of the Court below.

13. On closely examining the evidence of Commissioner H.P. Patel Revenue Inspector (Nazul), it seems to be apparent that Commissioner did not demarcate the Nistari Gali and no question was put to him regarding the projection over the Nistari Gali, thus, it is clear that Commissioner failed to inspect the projection over the Nistari Gali as alleged by the applicants. Though, it appears to be failure of the parties as well for not having brought to the notice of the Court about the alleged projection over the Nistari Gali which could have been considered and suitable order may have been passed by the trial Court when the case was before the trial Court.

14. Considering all the averments, arguments and material on record, it is found that Commissioner has not complied the orders of this Court passed on

03.08.2006, in true sense, a formal inspection was done and report submitted accordingly. It was required of the Commissioner to demarcate and report about the land to which extent respondent No.1 is entitled and specifically mentioning and demarcating the land of the Nistari Gali. Further, encroachment on any land includes the projection as well which could not and should not have been omitted to inspect and report by the Commissioner, hence, for the reasons mentioned herein and aforementioned, this revision deserves to be allowed.

15. In view of above discussions, this revision is allowed and the impugned order is set aside. The case is again remanded back to the trial Court with a direction to get the disputed land inspected again by appointing of a Commissioner from Nazul department of State, giving specific direction to demarcate and report about the land of Nistari Gali and encroachment made on it by raising construction on ground level as well as on upper level by the construction of projection. On submission of report by Commissioner, the trial Court shall again afford the opportunity to both the parties to submit arguments, raise objection to the report and pass order in accordance with law.

Sd/-

(Rajendra Chandra Singh Samant)

Judge