

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 2 of 2004**

Municipal Corporation, Korba Through Municipal Commissioner,
Korba, Head Office Saket Bhawan Korba, Tahsil & Distt. Korba
(Chhattisgarh)

---- Appellant

Versus

1.Chhattisgarh Rajya Vidyut Mandal Through-Chairman
Chhattisgarh Rajya Vidyut Mandal, H.O. Raipur, represented
through Authorized Officer Executive Engineer (Civil)(II)
Chhattisgarh Rajya Vidyut Mandal Korba (E) Korba, Tahsil Korba,
Distt. Korba (Chhattisgarh)

2. Jai Singh Agrawal aged about 41 years, S/o Ram Kumar
Agrawal, Resident of near Agrasen Bhawan, Durpa Road, Korba,
Tahsil & Distt. Korba (C.G.)

---- Respondents

For appellant - Shri H.B. Agrawal, Sr. Advocate with Shri Pankaj
Agrawal, Advocate.
None for the respondents.

Hon'ble Shri Justice Goutam Bhaduri

Order

24/10/2018

Heard.

1. Instant appeal is against the order dated 10th November, 2003 passed in Civil Suit No.5-B/2002 passed by the Second Additional District Judge (FTC) Korba whereby suit was decreed for Rs.1,30,634/- alongwith interest @ 6% per annum from 1/02/1997.
2. Despite repeated calls in the pass over counsel for the respondents did not appear as such in absence of the counsel appeal is heard.
3. As per the case of the plaintiff, plaintiff has commissioned 100 mega watt power plant at Korba wherein hospital and residential colony

were also developed. In order to safe guard such residential colony boundary wall was proposed to be constructed for which an application was preferred to the appellant/defendant No.1. After the construction commenced a notice was served to the plaintiff that without any permission construction has been started and it was stopped. Subsequently a settlement was arrived at and penalty was imposed and permission was accorded. Thereafter, permission was accorded to construct the boundary wall and according to the sanctioned map under supervision of the Municipal Corporation construction was re-started which was completed in the month of August, 1996. After completion of the construction on 12/09/1996 again notice was served by the Municipal Corporation to the plaintiff that they have flouted the permission of the construction of clause No.6, 7 & 8 and direction was given to demolish boundary wall within 24 hours of the service of notice. The plaintiff claimed that the board through its officer appeared before the defendant No.1 the Municipal Corporation and submitted that entire construction was made in supervision of the executive engineer and there was no breach of any condition was made of the conditions but because of another dispute the corporation turned blind.

4. It is further pleaded that representation having so made defendant Municipal Corporation contended that inspection of the boundary wall would be made in presence of both the officers ie. Officers of the C.G. Electricity Board. Thereafter further action would be taken till then boundary wall would not be disturbed. It was further pleaded that despite several request made defendant No.1 did not appoint any team of officer to make joint inspection and further also did not pass any order on the show cause notice dated 11/09/96, therefore the plaintiff was deprived of his right for hearing. It was further stated that in the meanwhile Municipal

Corporation encroached upon certain land of the plaintiff and started construction at the behest of the then President Jai Singh Agrawal who is defendant No.2. The plaintiff Electricity Board being aggrieved by such action of corporation of forcefull encroachment had filed a civil suit before the court whereby President Jai Singh Agrawal felt enraged and extended open threat to the officers and the employees of Electricity Board that unless the civil suit filed by board is taken back he will not allow Electricity Board to do any job or raise any type of construction within special area development of Korba. It was further pleaded that threat was extended that the earlier permission granted to raise the boundary wall shall also be cancelled thereby defendant No.2 Jai Singh Agrawal misused his power and position to cause demolition of boundary wall of the Electricity Board without any valid reasons.

5. It was further pleaded that because of the influence of defendant No.2 Jai Singh Agrawal without passing any order on the earlier notice dated 11/09/96 another notice was served on 14/11/96 and it was stated that as per earlier notice dated 11/09/96 if is not complied, boundary wall would be demolished. The said notice was served to the plaintiff on 15/11/96 at 12 am. Immediately thereafter plaintiff through its officer apprised defendant No.1 Municipal Corporation that construction was made according to the permission itself and request joint inspection be made of the same. It was further apprised if any fault is found it would be rectified. Said letter was received by defendant No.1 Municipal Corporation on 15/11/96 at 2 pm, however no decision was taken on that and subsequent thereto without any resolution from Corporation on 16/11/96 boundary wall was demolished by the Municipal Corporation. It was pleaded that the Municipal Corporation the defendant No.2 at behest of misused his position and carried out demolition of 135 meters for which

plaintiff has incurred an expenditure of Rs.1,31,500/-. It was pleaded that after demolition of the boundary wall to protect the colony on security plaintiff has to incur Rs.300/- per day expenses for guard which worked out to Rs.23,400/- till 31/01/2007. Therefore total amount of Rs.1,74,900/- was claimed with further damages @ Rs.300/- per day.

6. Defendant/appellant filed joint written statement and denied the allegation. It was stated that on 25/11/95 plaintiff Electricity Board had given an application to the defendant that instead of barbed wire fencing they want to raise brick wall. It was stated that to permit such construction, the plaintiff has deposited the requisite fee on 23/01/96 and before the permission was granted the plaintiff started constructing the boundary wall which was stopped by the Corporation and a notice was served on 6/02/96. It was further pleaded that thereafter on 24/02/96 area was inspected through officers and it was found that construction of the boundary wall was without sanction of corporation. Thereafter permission so sought for was rejected by an order dated 25/02/96 and intimation was given and plaintiff was asked to remove the construction so started.

7. It was further pleaded that thereafter certain meeting took place and plaintiff again sought for permission by letter dated 4/04/96. The corporation after consideration asked the plaintiff to deposit the settlement fees of Rs.1650/- which was deposited by the plaintiff on 4/06/96. Thereafter boundary wall was allowed to be constructed by letter dated 5/06/96 with seven conditions. It was further pleaded by the defendant that alongwith the permission map was also given and specifically it was stated that condition No. 6, 7 and 8 should be followed in construction of the boundary wall. It was further pleaded that subsequently it was stated by Corporation that the Electricity Board has flouted the condition No.8 of construction as such was served with notice on 11/09/96 and the

permission earlier granted was cancelled. It was further advised by the Corporation that the plaintiff itself should demolish the boundary wall within 24 hours and should inform the Municipal Corporation. It was stated that despite service of notice on 14/11/96 no reply was given. Eventually permission granted was cancelled.

8. Further it was stated in that notice since construction was not made according to the terms of permission, same was demolished.

9. The court below on the basis of the pleading of the parties framed six issues and had held that boundary wall was constructed after obtaining permission. It was further found that construction was made according to the sanction map and demolition on 16/11/96 was made illegally by the defendant No.1 as such court ordered that an amount of Rs.1,30,634/- alongwith interest @ 6% from the date of filing of the suit would be payable to the plaintiff. Being aggrieved by such judgement and decree the present appeal.

10. Learned counsel for the appellant would submit that the finding of the court below is perverse for the reason that court below had failed to appreciate the fact that construction was not made according to the permission granted. It is contended that permission clause No.6, 7 and 8 were not followed by the plaintiff and as such since construction was not according to the sanctioned map same was demolished. He further submitted that under the circumstances the judgement and order of the court below cannot be sustained which requires to be set aside.

11. No representation is made on behalf of respondents No.1 and 2 despite repeated calls and pass over.

12. Heard the appellant and perused the record. On behalf of the plaintiff Electricity Board A.R. Kaiwartya was examined, who was the then Executive Engineer in whose supervision the construction of the boundary

wall was carried out. The other witness Jitendra Shrivastava PW-2 was the Junior Engineer and PW-3 R.K. Gupta was Drafts Man were examined on behalf of the plaintiff. On behalf of the defendant, J.S. Dhillon Sub Engineer of Municipal Corporation, Korba was examined as DW-1. The then Executive Engineer Neeraj Pandey was examined as DW-2.

13. According to the statement of the witness PW-1 on 25/11/95 the application seeking permission to raise boundary wall was sent to the Special Area Development Office which subsequently became Municipal Corporation. The said document is Ex.P-1. It purports that the Electricity Board sought permission that in place of barbed wire fencing they had decided it to replace it by brick wall consequently permission was sought for the construction. Along with said Ex.P-1 lay out plan map was also sent which is marked as Ex.P-2. Witness further has deposed that thereafter he met officers of the then SADA Special Area Development Authority and after apprising them work order was given to the contractor to raise the boundary wall. It is stated subsequently they received letter dated 3/01/96 by way of Ex.P-3. The document Ex.P-3 would show that it was demand letter whereby amount of Rs.205/- was asked for by SADA to grant permission to raise the boundary wall. The said demand was deposited by the Electricity Board by Ex.P-13 on 23/01/96. It appears that since construction had started before the grant of permission as such letter were served by Ex.P-4 dated 6/02/96 by SADA to stop the construction and plaintiff has asked to demolish the wall. On receipt of such letter by Ex.P-5 dated 8/02/96 it was informed to the Commissioner Municipal Corporation, SADA that construction was stopped by Electricity Board. The witness has deposed the moment the notice Ex.P-4 was received the construction was stopped and further permission was sought for. These facts as came in evidence remains un rebutted.

14. As per PW-1 thereafter meeting was held with officers of Municipal Corporation and a settlement fees of Rs.1650/- was deposited by the Electricity Board on 4/06/96 by Ex.P-6. Thereafter by a letter dated 5/06/96 Ex.P-7 permission was granted alongwith condition. The reading of condition No.6 purports that construction was required to be made from Old Power House to ITI Chowk leaving the area of 30 feet from the middle of the existing road. Further clause-7 of condition shows that in condition further warranted that from Kosabadi to Rajgamar, 60 feet from the center of the road should be left. The condition clause-8 required that in blind turning, both sides at the distance of 10 feet after 1 ½ feet height of wall grill should be fitted. Map was also given which is marked as Ex.P-8.

15. Document and the statement when are considered together it would show that as per PW-1 and PW-2 A.R. Kaiwartya and Jitendra Shrivastava that construction started on 23/01/96 and stopped and after deposit of settlement fees final permission was accorded on 5/06/96 as per Ex.P-7. Earlier application seeking such permission to construct by Ex.P-1 and map attached to it Ex.P-2 when are compared with Ex.P-8 i.e. the map it shows that permission in respect of the same area was given for which application was made. The map Ex.P-8 is the same map which was submitted initially seeking permission.

16. It is admitted fact between the parties that SADA Korba became Municipal Corporation under the statute. As per PW-1 A.R. Kaiwartya before construction was made on 15/06/96 marking was made on place of construction. PW-1 deposed that construction was made on the place of marking as it was marked with the line and all the conditions were followed. He further stated that SADA had directed that on every turning 10 feet grill was to be placed and those directions were also complied with while carrying out the construction. It is further stated that the construction

was inspected by the officers of the SADA and grill were also specifically were inspected by the officers. The said averments are unrebutted in the cross examination. The defendant witness J.S. Dhillon DW-1 could not rebutt the suggestion that said site was inspected by officers of SADA namely Subodh Mehta Site Incharge and Neeraj Pandey Executive Engineer. The witness DW-1 admitted the suggestion that whenever on inspection if it is found by the Site Incharge that any construction is not carried out as per permission granted or not made according to the map, the Corporation ask to correct the same. He further admitted that plaintiff also informed that since grill were not complete and were under preparation of casting and informed that whenever grill would be delivered they would be installed till then the height of the wall was kept low. He further admitted the fact that grill was also installed over the wall. Witness volunteered that according to the permission grill were to be installed at 1 ½ feet, however grill was installed at 2 ½ feet. At the same time he admitted the fact that he had not measured height of the wall. So if the height of wall was not measured then how such opinion was arrived at is not clear.

17. As per DW-1 witness of the Municipal Corporation construction was to be made after plinth is excavated and demarcation is made. He further admitted the fact that in presence of both the engineers marking was made by the line. Therefore, averment that construction was not made over the marked line there is no evidence to this effect that place of construction of boundary wall was different.

18. PW-2 Jitendra Shrivastava stated that on 24/07/96 a letter was served by SADA and were asked to follow the condition -8 and according to said condition in the blind turning on both the sides at a distance of 10 feet at the height of 1 ½ feet grill was to be installed. Thereafter, SADA

officer had orally asked to increase the length of the grill and in compliance thereof Electricity Board had increased the length of grill and placed 100 feet of grill whereas according to the plan permission only 20 feet grill was to be installed. Witness further stated that boundary wall was completed on 11/09/96. Again a notice was served by the SADA and they stated that conditions 6, 7 and 8 were not followed. The said notice is marked as Ex.P-10. In reply to said notice Electricity Board stated that construction was made according to the permission given and hence called for meeting, however again another notice Ex.P-11 dated 14/11/96 was served by the Municipal Corporation. Perusal of the Ex.P-11 would show that Municipal Corporation wanted the demolition to be carried out on the ground that construction was not according to the permission. Said notice was replied by Ex.P-12 dated 15/11/96. Perusal of Ex.P-12 would show that Electricity Board maintained their stand that construction was made according to the map and repeated that the conditions were followed. The Electricity Board further requested that inspection be made jointly and further if any fault is pointed out that would also be rectified. It is further stated that despite such letter on 16/11/96 all of a sudden without any reason entire demolition of the boundary wall was carried out. Witness further stated that the Electricity Board requested not to demolish the entire wall asked to point out the defect so that they may rectify the same, however the Municipal Corporation demolished the wall of 135 meters and iron grill which was installed on the wall took it away with them.

19. PW-3 R.K. Gupta who is Drafts Man of the Electricity Board proved the map of Ex.P-2. He has also deposed the similar fact that when initially construction started it stopped. Witness stated that initially application for compromise was rejected. Subsequently, again permission was given on

payment of compromise fees of Rs.1760/-. The receipt is Ex.P-14. Witness has further proved the loss sustained by the Electricity Board on account of such demolition. It is stated that loss evaluated by the Engineer of the Electricity Board is reflected in calculation sheet marked as Ex.P-15 wherein signature of the Executive Engineer proved. According to the Ex.P-15 estimated loss of Rs.1,31,500/- was claimed along with removal of the spoils of Rs.20,000/- and further Rs.300/- per day expenses was claimed i.e. for security of watch and wards. In totality a claim of Rs.1,74,900/- was calculated.

20. On perusal of the statement of J.S. Dhillon DW-1 it is stated that initially construction of wall when was started by Electricity Board it was without prior permission, as such construction was stopped. It is stated subsequently after payment of the compromise amount of Rs.1650/- permission was accorded. Though there is some discrepancy of amount but common fact is stated that after payment of compromise fees the permission to construction was accorded. Though DW-1 stated that according to the instruction Electricity Board were directed to put a grill after 1 ½ feet over the wall and it was not followed but to establish such vital issue no documentary evidence was placed. The Municipal Corporation is a body corporate and acts through resolution and official note sheets. If it was the case of Municipal Corporation that construction was not carried out according to the conditions, then to substantiate such fact the inspection report, the respective note sheet should have been placed on record. Only bald, oral statement have been made by witness of Corporation that Electricity Board did not follow the conditions of the construction. As against this plaintiff witness stated that construction was carried out according to the condition, therefore in absence of any production of document i.e. note sheet, inspection report etc. evidence of

DW-1 cannot be accepted as gospel truth.

21. In the cross examination witness DW-1 has further stated that grill was placed on the wall but it should have been on the 1 ½ feet which was not done, thereby according to Corporation the putting of grill over the wall on certain heights were not followed. In the context being put to a specific question whether he had measured the height of the wall, witness stated that he has not measured the height of the wall at which height grill was placed. The course of action taken by municipal corporation therefore appears to be completely malafide and was with oblique motive. The motive as attributed by plaintiff and as deposed by PW-1 that municipal corporation tried to encroach upon a land belonged to the plaintiff as the corporation wanted to construct a housing complex in name of Rajeev Nagar. The witness further deposed that when the corporation started construction and tried to take over the land a civil suit was filed by electricity board whereby the corporation was injuncted to raise any superstructure and publication was made in news paper. Immediately on same day the electricity board received a notice from corporation. The witness has further deposed that thereafter the officers of electricity board were summoned by president of corporation Shri Jai Singh Agrawal and were pressurized to take back the case filed by the electricity board. PW-1 has further deposed that at that time Jai Singh Agrawal had directed to stop all work of electricity department and ordered for demolition of boundary wall. The witness has further deposed that when the officers of the electricity department met the commissioner of corporation he deposed that the president was adamant with the issue of Rajeev Nagar i.e. the suit filed by the electricity board against the corporation.

22. Therefore when the entire evidence i.e. documentary and oral evidence in the case is considered it leads to inference that since the

electricity board had filed a civil suit against corporation whereby the corporation was injuncted to interfere in the property of electricity board, the president of corporation became enraged and as a counter to it demolition of boundary wall was ordered. The said presumption is fortified for the reason that the corporation has failed to place any documentary evidence like inspection report, site visit report, report of the inspector of the zone to establish that boundary wall so constructed was not according to the sanctioned map. Therefore both the evidence when evaluated, the oral and documentary evidence adduced by board appears to be more reliable to believe. It appears that the officers of corporation shelving the rules of procedure to carry out a demolition succumbed to the whims of the then president of corporation Jai Singh Agrawal, who prevailed over the statutory procedure and natural justice. If those personal agenda of a particular person is carried out in the like manner the sanctity of an institution is destroyed from within. Any statutory body is expected to act and carry out it's work according to the particular statute governing it and not according to the whims of it's any office bearer as a counter blast to the act of board shelving all procedure of natural justice. The appreciation made by the trial court therefore can not be disturbed as otherwise it would have been a story book of a land, where no body would be responsible for anything and fixing responsibility would be an least popular activity. As such the trial court, the way responded to such arbitrary action need not be disturbed.

23. Now coming to estimated loss as has been projected in Ex.P-15, the Electricity Board stated that construction cost per meter was Rs.705.67 and demolition was carried out of 130 meter. The construction cost is proved by PW-1 and supported by PW-3 by Ex.P-15. The trial court has worked out the expenses to Rs.91,737/- i.e. 130×705.67 . I do not find

any abnormality in the same. The trial court has further allowed an amount of Rs.22,016/- as supervision charges @ 24% and store charge of 7.5% of Rs.6,880/-. The amount of Rs. Rs.22,016 + Rs.6,880 on what basis was granted is not clear and supported with any factual evidence so as to justify the same. Therefore, grant of Rs.22,016/- and store charges of Rs.6,880/- appears to be without any supportive evidence. Likewise the trial court has awarded Rs.10,000/- for removal of debris instead of Rs.20,000/- appears to be plausible. The quantum to remove the debris in all natural consequences can be presumed to have incurred to remove the spoils which were lying on the spot after demolition.

24. No other issue were framed on the other subject. Therefore after close scrutiny of oral and documentary evidence the finding of the trial court on the issue so framed appears to be just and legal except the decree for Rs.22,016/- and Rs.6,880/- as observed in the preceding paras. Therefore, appeal is partly allowed and the decree of Rs.91,737/- for the loss sustained for the illegal demolition of the wall and further Rs.10,000/- for removal of the spoils are allowed and the decree is modified to Rs.91,737 + Rs.10,000 to the extent of Rs.1,01,737/-. Further it is directed that the decree shall carry further simple interest @ 6% per annum from 1/02/97 till realization of the award.

25. Accordingly, appeal stands partly allowed. The decree be drawn accordingly. The cost of the suit and appeal to be borne by the appellant.

(Goutam Bhaduri)

JUDGE