

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 18 of 2006****Reserved on : 07.08.2018****Delivered on : 06.09.2018**

1. State of Chhattisgarh, Through the Collector, District- Bilaspur (C.G.)
2. M.S. Paraste, S/o Shri G.S. Paraste, aged about 48 years, Joint Collector, Bilaspur, presently posted as Additional Collector, Pendra, District- Bilaspur (C.G.)

---- Appellants**Versus**

Smt. Rama Meshram, W/o Shri Lalit Meshram, aged about 42 years,
R/o Tahsil & District Bilaspur (C.G.)

---- Respondent

For Appellant No. 1/State: Mr. Sanjeev Pandey, G.A.

For Appellant No. 2. : Mr. Avinash Choubey, Advocate on behalf of
Mr. Rajeev Shivastava, Advocate.

For respondent : Mr. Somnath Verma, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 29.06.2005 passed by Additional District Judge, Bilaspur (C.G.) in Civil Suit No. 12-A/2005, wherein the said court decreed the suit of respondent and awarded Rs. 1,50,000/- as compensation to the respondent against appellants for demolition of some part of her shop which was constructed over land bearing Khasra No. 759/02 area 3.00 dismil situated at Patwari Halka No. 23, Tifra, Bilaspur (C.G.)

2. As per the appellants, any construction is permitted only after leaving 40 ft. from middle of road of Public Works Department. The respondent constructed shop encroaching Government land and shop was found within 40 ft. from middle of road, therefore, the respondent and others were asked to remove the illegal construction. Some encroachers have removed their construction, but respondent did not remove her illegal construction that is why some part of illegal construction was removed in discharging official duty by the officers of revenue/ police department and the same was done bonafidely to maintain flow of traffic which was obstructed by illegal construction. Removal of illegal construction was necessary in public interest and no one objected to it. The act of removal of encroachments was the sovereign act done in good faith.
3. Learned counsel for the appellants submits as under :-
 - (i) On the same road 60-70 encroachments were removed on that day by measuring 40 ft. from middle of the road and respondent also has not disputed this fact that 40 ft. from middle of the road is Government land and removal of encroachments over such Government land cannot be said to be illegal.
 - (ii) Removal of encroachment is ordered to ease the traffic, which was causing great inconvenience to the public at large. The same is done in public good therefore, neither government nor any officer is liable to pay compensation.
4. On the other hand, learned counsel for the respondent submits as under:-

- (i) Provision of Section 248 sub-clause (1) of M.P./C.G. Land Revenue Code, 1959 (for short "the Code, 1959") ought to have been followed before initiating the proceeding of removal of encroachment, but without adopting any procedure, demolition of some part of shop is illegal.
 - (ii) Act of the authorities is malafide and they are liable for wrong committed against the respondent.
 - (iii) Provision of Section 257 of the Code, 1959 is not applicable as the case is filed under the law of tort for wrong committed by the State authorities.
 - (iv) Finding of the trial court is based on proper marshaling of evidence and the same is not liable to be interfered.
5. The first question for consideration of this Court is whether the construction of shop by the respondent in the land in question is legal. As per Ex.P/1 which is sale deed in favour of the respondent and Ex.P/2 & P/3 are B-1 and Khasra entries respectively of the land in question, the land is agricultural land. If owner of the agricultural land wishes to divert his whole or any part thereof to any other purpose except agriculture, he has to apply for diversion of land as per Section 172 of the Code, 1959 which reads as under:-

"172. Diversion of land – (1) If a Bhumiswami of land held for any purpose in-

- (i) urban area or within a radius of five miles from the outer limits of such area;

- (ii) a village with a population of two thousand or above according to last census; or
- (iii) in such other areas as the State Government may, by notification, specify;

wishes to divert his holding or any part thereof to any other purpose except agriculture, he shall apply for permission to the Sub-Divisional Officer who may, subject to the provisions of this section and to rules made under this Code, refuse permission or grant it on such conditions as he may think fit:"

6. In the present case, the land is situated at Tifra, Bilaspur which is adjoining territory limit of urban area of Bilaspur city within a radius of less than five miles. Therefore, for using agricultural land for other purpose land ought to have been diverted for commercial purpose that is for constructing shop. From the evidence adduced on behalf of the respondent, it is not established that her agricultural land was diverted for constructing shop as per provisions mentioned above. In absence of diversion of land, construction of shop was illegal as a whole, therefore, it cannot be held that respondent legally constructed the shop.
7. From evidence of Chhatlall Kashyap (witness No. 1 of defendant No. 1) who is Patwari of Patwari Halka No. 23, Tifra, Bilaspur, encroachment was found in the shop in question after measurement. Again, construction within 40 ft. from middle of the road was treated as encroachment. From evidence of this witness, it is established that

a number of encroachers have removed their illegal possession willingly, but since the respondent has not removed her illegal construction, it was removed by the authorities for public good.

8. On overall assessment of both side, it is clear that agricultural land of respondent was not diverted for constructing the shop and illegal construction was in operation in the garb of any permission of Gram Panchayat. When agricultural land was not diverted as per provisions of the Code, 1959, Gram Panchayat has no authority to grant permission for constructing the shop in agricultural land in area mentioned in Section 172 of the Code, 1959. The officials of State Government have removed the encroachment as per direction of authorities and as per command of law which cannot be termed any wrong committed under law of tort.
9. Provision of Section 248(1) of the Code, 1959 is applicable regarding land which is agricultural land for which land revenue is payable and this provision is not applicable for any shop constructed in contravention of the Code, 1959. Argument advanced on behalf of the respondent is not acceptable. In view of this Court, finding of the trial court is not sustainable and the same is hereby reversed.
10. Accordingly, the judgment and decree passed by the trial court is set aside allowing the appeal. The decree is passed in favour of the appellants and against the respondent on the following terms and conditions:
 - (i) The appeal is allowed. The suit filed by the respondent is dismissed with cost.

- (ii) Parties to bear their own costs.
- (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge