

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 836 of 2017

Smt. Anju Mittal, W/o. Shri Vikas Mittal, Aged About 32 Years, Caste Agrawal, Occupation Housewife, R/o. C- 34, Rishabh Green City, Pulgaon, Durg, Tahsil & District Durg, Civil & Revenue District Durg, Chhattisgarh

---- Petitioner

Versus

1. Rishabh Green City Resident Welfare Society Having Registration No. 21153/2011 Through Its President, Rishabh Green City Resident Welfare Society, Rishabh Green City, Rishabh Nagar, Durg, Police Station Fulgaon, Tahsil & District Durg, Chhattisgarh
2. Basant Kumar Katariya, S/o. Late Shri Champalal, Aged About 60 Years Occupation Colonizer, Proprietor Rishabh Green City, Fulgaon Ward No. 55, Police Station Fulgaon, Tahsil & District Durg, R/o. House No. 9/11, Rishabh Nagar, Durg, Tahsil & District Durg, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. B.P.Sharma, Advocate
For Respondent	:	Mr. Rahul Tamaskar, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

12.04.2018

Heard

1. The instant petition is against the order dated 13.10.2017 wherein the learned Court below has directed to return the complaint with a finding that after compliance of Section 401 of the Municipal Corporation Act, 1956 the plaintiff shall be entitled to file the suit again.
2. Learned counsel for the petitioner would submit that when a suit for declaration and injunction was filed, the Municipal Corporation was not arrayed as a party as defendant and no relief was claimed against the Municipal Corporation. It is submitted that the defendant having been filed an application under Order 1 Rule 10(2) of C.P.C. wherein it was stated that the Municipal Corporation is a necessary party, the trial Court directed to return

the plaint with a direction to make compliance of Section 401 of the Municipal Corporation Act. It is contended that the plaintiff being *dominus litis* he cannot be asked to forcefully join a party against his wish. It is contended that as per Order 1 Rule 10 (5) of C.P.C. in case a party is added as a party, the proceeding against him can only be deemed to have begun on service of summons and therefore without returning the plaint the compliance of Section 401 of the Municipal Corporation Act could have been made. The counsel therefore submitted that the learned Court below in the facts of the case failed to appreciate the provisions of Order 1 Rule 10(5) of C.P.C. and has passed the erroneous order.

3. Learned counsel for the respondent opposes the submission made and submits that the order is well merited which do not call for any interference.
4. Perusal of the order dated 13.10.2017 and record would show that a suit for declaration and permanent injunction was filed by the plaintiff. The suit was against one Rishabh Green City as defendant No.1 and one Basant Kumar Batariya as defendant No.2. After the service of notice of suit, an application under Order 1 Rule 10(2) read with Section 151 of C.P.C. was filed by the defendant No.1 and it was stated that the entire stoppage of the construction work was done at the behest of the Municipal Corporation Durg as by suppression of fact the permission for construction was obtained by the plaintiff over a road. Therefore, the Municipal Corporation had stopped the construction of plaintiff on a complaint of the people of the vicinity. Under those circumstances, it was stated that the Municipal Corporation who had actually stopped the work of plaintiff would be a necessary party.

5. The Court below after evaluating the facts observed that no claim against the Municipal Corporation has been directly made but the stoppage of the construction has been actually been made by the Municipal Corporation Durg, therefore, any order passed by the Court may affect the right of the Municipal Corporation as the subject suit property is situated within the Municipal Corporation. The Court observed that any order passed by the trial Court will directly affect of the order of the Municipal Corporation Durg. Consequently, the application under Order 1 Rule 10(2) of C.P.C. was allowed to hold that Municipal Corporation was a necessary party and was directed to be added as defendant.
6. The Court further observed that in order to array the Municipal Corporation as defendant in suit mandatory statutory notice under Section 401 of Municipal Corporation Act 1956 since was required and since the plaintiff has not complied with the notice, the plaint was returned to plaintiff for compliance of Section 401 of the Municipal Corporation Act. Further the liberty was given to the plaintiff to file a suit afresh after service of such notice. So considering the facts of this case, in the opinion of this Court, the order impugned do not suffer with any illegality or any vice of jurisdictional error in as much as the petitioner/ plaintiff is always at liberty to file the necessary suit after compliance of Section 401 of the Municipal Corporation Act. Therefore, under the circumstances this Court is not inclined to exercise its power under Section 227 of the Constitution of India to interfere such order.
7. Accordingly, the petition has no merit and is dismissed.