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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 608 of 2018**

{Arising out of Order dated 28.06.2018 passed in Writ Petition (C) No. 1196 of 2015 by the learned Single Judge}

The Commissioner Municipal Corporation Bilaspur, Chhattisgarh.

---- Appellant

Versus

1. Bilaspur Infrastructure Pvt. Ltd, Registered Address Bf-1,1st Floor, Rajiv Plaza Opp. Axis Bank , Bilaspur District Bilaspur, Chhattisgarh, Through Ashok Agrawal A/o 50 Years, S/o Late Shri Jagmohan Das Agrawal R/o Kranti Nagar, Bilaspur District Bilaspur Chhattisgarh.
2. State Of Chhattisgarh Through The Secretary Department Of Urban Administration And Development, Mahanadi Bhawan Mantralaya, Naya Raipur Chhattisgarh.
3. The Joint Director, Town And Country Planning Bilaspur Chhattisgarh.
4. The District Regularization Authority, Through The Collector, Bilaspur District Bilaspur Chhattisgarh.

---- Respondents

AND**Writ Appeal No. 638 of 2018**

{Arising out of Order dated 28.06.2018 passed in Writ Petition (C) No. 1196 of 2015 by the learned Single Judge}

Vinay Saluja S/o. Late Mahendra Kumar Saluja Aged About 46 Years R/o. Near Gandhi Putla Juna Bilaspur P.S. Kotwali District Bilaspur Chhattisgarh.,
District:Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Bilaspur Infrastructure Pvt. Ltd. Registered Address BF-1, 1st Floor Rajiv Plaza Opposite Axis Bank Bilaspur District Bilaspur Chhattisgarh Through Ashok Agrawal S/o. Late Shri Jagmohan Das Agrawal Aged About 50 Years, R/o. Kranti Nagar Bilaspur District Bilaspur Chhattisgarh.
2. State of Chhattisgarh Through Secretary Urban Administration And Development Department Mahanadi Bhawan Mantralaya Naya Raipur (Chhattisgarh)
3. Commissioner, Municipal Corporation, Bilaspur (Chhattisgarh)
4. Joint Director, Town And Country Planning, Bilaspur Chhattisgarh

5. District Regularisation Authority, Through Collector, Bilaspur District Bilaspur (Chhattisgarh)

---- Respondents

For Appellant-Corporation	: Shri Kishore Bhaduri, Advocate.
For Appellant-Intervenor	: Shri Praveen Tulsyan, Advocate
For Respondent No. 1	: Shri Saurabh Dangi, Advocate
For Respondent/State	: Shri A.S.Kachhwaha, Additional Advocate General

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Ajay Kumar Tripathi, Chief Justice

13/09/2018

1. Heard counsel for the parties.
2. A batch of writ applications came to be filed against a decision dated 04.07.2015 passed by the Commissioner, Municipal Corporation, Bilaspur. By virtue of this decision, certain directions were issued to the Builder, namely M/s. Bilaspur Infrastructure Pvt. Ltd. to effect certain demolitions, modify the use of the property being so developed contrary to the approved and sanctioned map as also to ensure that the structure came in conformity with the sanctioned plan.
3. It was not only the Builder who rushed to the Court against such a decision but the hoards of persons who had made investment in the said property who decided to join hands with the Builder to assail the decision of the Municipal Commissioner.
4. All the cases got clubbed and heard together and the writ applications stood disposed off vide order dated 28.06.2018. Certain reliefs had been granted to the writ petitioners but it is some of the issues and questions of law which came to be decided by the learned Single Judge, that has compelled the Municipal Corporation to approach the High Court in this appeal.

5. A rather detailed argument has been made on both the sides but the issue is now confined to the interpretation or the curtailment of the power of the Municipal Commissioner by interpretation which has been given by the learned Single Judge to Section 299 of the Chhattisgarh Municipal Corporation Act, 1956 (hereinafter referred to as 'the Act') which is the issue. Since the learned Single Judge has given a strict interpretation as to the power of the Municipal Commissioner which he can exercise under Section 299 of the Act, the argument made on behalf of the Appellant counsel is that if such restrictive interpretation is given, ignoring the other substantive provisions of the Act in totality, there will be virtually no authority on the ground which can keep a check and balance, whether an individual or a Builder is making constructions within the frame work of the sanctioned and approved map or he is having a free run.

6. No doubt, Sections 299 and 299-A of the Act operate into two different areas. There cannot be a dispute that when it comes down to final cancellation or revision of permission for construction of a building, that power is vested in the State Government under Section 299-A of the Act. But to give a restrictive meaning to Section 299 by not accounting for Section 293, which also is part of Chapter XXIV of the Act which deals with "Building Control" will do violence to the statute. Section 293 of the Act reads as under:

"293. Prohibition of Erection or re-erection of buildings without permission.- (1) No person shall-

- (i) erect or re-erect any building; or
- (ii) commence to erect or re-erect any building; or
- (iii) make any material external alteration to any building; or
- (iv) construct or re-construct any projecting portion of a building which the Commissioner is empowered by section 305 to require to be set back or is empowered to give permission to construct or reconstruct:-
 - (a) unless the Commissioner has either by an order in writing granted permission or has failed to intimate

within the prescribed period his refusal of permission for the erection or re-erection of the building or for the construction or re-construction of the projecting part of the building; or

(b) after the expiry of one year from the date of the said permission or such longer period as the Commissioner may allow or from the end of the prescribed period, as the case may be:

Provided that nothing in this section shall apply to any work, addition or alteration which the Corporation may by bye-law declare to be exempt.

(2) If a question arises whether a particular alteration in or addition to an existing building is or is not a material alteration the matter will be determined by the Commissioner.

(3) Any person aggrieved by the order of the Commissioner in this behalf may appeal to the district Court within thirty days of such order in the manner prescribed therefor and the decision of the district court shall be final."

7. The provisions of Chapter XXIV of the Act therefore has to be read in entirety and individual interpretation to a particular provision virtually making the Municipal Commissioner to be a lame duck officer will be doing violence to the legislative intent of exercising control over the buildings under construction even on the basis of sanctioned plan.
8. Since there is no independent agency which has been created by the State which monitors, supervises and exercises control over a citizen or a builder whether the work of construction is being carried out strictly within the norms laid down under the Act as well as well as the sanctioned plan, the power of the Municipal Commissioner cannot be seen in isolation by reading Section 299 of the Act.
9. The finding of the learned Single Judge to that extent that the order of the Municipal Commissioner which arose under the circumstances when large number of violations were noticed beyond the sanctioned plan and in fact certain approval was also obtained by misrepresentation, the authority and power of the Municipal Commissioner to take a decision and give certain directions cannot be faulted with. To that extent, the decision

of the learned Single Judge is required to be read down.

10. Another aspect which has been pointed out by the learned counsel representing the Appellant-Corporation is that the learned Single Judge has relied on a series of decisions that the principle or the doctrine of promissory estoppel will come in the way of the Municipal Commissioner in exercise of his authority because once a plan is approved and sanction accorded thereafter, the Municipal Commissioner will be estopped from making any kind of intervention.
11. Principles of promissory estoppel cannot come to the aid and assistance of such deviants because there cannot be any estoppel against a statute and since the Act is a complete code by itself and the "dos and don'ts" are specific in nature, therefore, the power to be exercised by the Municipal Commissioner in cases of deviations, violations beyond or contrary to the sanctioned plan will be required to be re-visited under Section 293 of the Act.
12. An argument was sought to be advanced on behalf of the Respondent-Builder with regard to the compounding for which applications have already been made. Even remedial measures has already been taken by carrying out demolitions. The issue is still pending before the competent authority, therefore, the argument was intentionally limited to the issue as to what is condonable and to the extent the compounding can be ordered to be made.
13. The Court intentionally does not express any opinion on the factual aspects of the matter or the interpretation which is required to be given to Section 308-A of the Act. Those issues will be appropriately dealt by the competent authority.

14. The appeals stand allowed in terms of the above. But before parting, the Court would direct the concerned officers of the Municipal Corporation, Bilaspur that an early decision on the question of compounding be taken so that the dispute can be put to rest as well as the beneficiaries who are the purchasers of the developed property can enjoy the property peacefully.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE