

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2643 of 2019

Yashwant Sinha S/o Shri R.P. Sinha Aged About 31 Years R/o
Azad Chowk, Azd Nagar Birgaon, Raipur, District Raipur
Chhattisgarh. **--- Petitioner**

Versus

1. State of Chhattisgarh through its Secretary, Department of Urban Administrative, Mahanadi Bhawan Mantralaya, Atal Nagar (Naya Raipur) District Raipur Chhattisgarh.
2. Municipal Corporation through its Commissioner, Birgaon, Raipur, District Raipur Chhattisgarh.
3. Building Officer Municipal Corporation, Birgaon, Raipur, District Raipur Chhattisgarh. **--- Respondents**

For the Petitioner	: Mr. Mateen Siddiqui, Advocate
For the State/R-1	: Mr. Alok Bakshi, Addl. Advocate Gen.
For respondents No.2 & 3	: Mr. Satish Gupta, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

30.07.2019

1. The instant writ petition is against the impugned notice dated 18.07.2019 (Annexure P-1) issued by respondent no.3 whereby the petitioner has been directed to remove the encroachment which is existing on the land.
2. Leaned counsel for the petitioner would submit that initially as per the order dated 27.02.2019 passed by the coordinate Bench of this Court, similar nature of notice was issued which was subject of writ petition. In the said order dated 27.02.2019, this Court had directed to demarcate the land in presence of the petitioner and other members of the locality

and thereafter shall further proceed after supplying the copy of demarcation report.

3. Learned counsel for the petitioner submits that after the said demarcation was carried out, it would show that the plot of the petitioner is adjacent and attached with the other other private land and no encroachment has been made on the government land whereas in the notice (Annexure P-1) issued by respondent no.3 the allegations have been attributed that the construction of petitioner has encroached upon certain government land.
4. Perused the document. The demarcation report is also on record as also the notice (Annexure P-1) wherein the petitioner has been directed to remove the construction.
5. Considering the nature of dispute, the fact as to whether the construction of the petitioner has encroached upon any land or not has to be ascertained and established during the complete procedure of enquiry and this fact can be established before the Civil Court by conducting proper enquiry and adducing evidence. In exercise of writ jurisdiction under Article 226 of the Constitution of India, the disputed fact cannot be gone into by this Court. Though Annexure P-1 contains that encroachment has been made yet the petitioner denies the same.
6. Under the circumstances, the factual aspect is to be ascertained before the Civil Court. Therefore, the petitioner is given liberty to seek appropriate remedy as may be available to him under the common law. The petitioner, if so advised, may file a civil suit within a period of two weeks from the date of receipt of copy of this order and may seek

appropriate direction from the Court. In the meanwhile, no demolition be carried out by the Corporation in respect of the property of petitioner till the period of 3 weeks

7. With the above observation, this petition stands finally disposed of.

Sd/-
GOUTAM BHADURI
JUDGE