

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2817 of 2019**

- Ali Akbar S/o Late Amar Ali Aged About 62 Years R/o Imdadi Shop Near Godown, Baijnathpara, Maulana Abdul Rauf Ward No. 41, Raipur, Chhattisgarh

---- Petitioner**Versus**

1. Municipal Corporation Of Raipur Through The Commissioner Having Its Office Near Municipal Corporation Of Raipur Having Its Office Near Agrsen Chowk, Near Mangalam Complex, Tel Ghani Nakka Road, Raipur, Chhattisgarh
2. The Zone Commissioner Zone Number 07 Municipal Corporation Of Raipur Having Its Office Near Agrsen Chowk, Near Mangalam Complex, Tel Ghani Nakka Road, Raipur, Chhattisgarh

---- Respondents

For Petitioner : Dr. N.K. Shukla, Sr. Adv. With Ms, Priya Mishra, Advocate

For Respondents : Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****14/08/2019**

1. Heard.
2. The present petition is against the notice dated 07.08.2019 (Annexure P-13) for demolition of building within 7 days.
3. It is contended on behalf of the petitioner that a map seeking sanction of construction was submitted with the Municipal Corporation in the year 2012 vide Annexure P-3, since nothing was heard and therefore there was a deemed sanction and as such the construction was carried out. Subsequently, all of a sudden, the petitioner received a notice under Section 307 (2) of the C.G.

Municipal Corporation Act, 1956 (for short 'the Act, 1956'), which alleges that the petitioner has illegally constructed over and excess of the sanctioned map. It is further contended that the petitioner has raised the construction as per the sanctioned map and no excess construction was made, however, when the petitioner was called for the explanation of alleged additional construction from the municipal corporation, the petitioner without going into issued prayed that additional construction, if any may be regularized. Subsequently, it is stated that the petitioner was admitted to the hospital, however, the notice was served which could not be replied and eventually by 07.08.2019, the petitioner received the notice to remove the construction. It is further contended on behalf of the petitioner that the construction so carried out was according to the map and it was not disclosed in the notice that to what extent, the construction was made additional.

4. Learned counsel for the petitioner referred to the photographs (Annexure P-8) and would submit that the photographs would show that all the buildings are in same line and no additional construction has been made, therefore, the impugned notice may be quashed.
5. Per contra, learned counsel for the respondents opposes the arguments advanced by learned counsel for the petitioner and would submit that the petitioner has an alternative remedy to file appropriate proceeding before the District Court under sub-section (5) of Section 307 of the Act, 1956, therefore, the petition is not maintainable.
6. I have heard learned counsel for the parties and perused the documents.
7. Perusal of the documents shows that the Annexure P-3 is the sanction map and

according to the petitioner on the basis of which the construction was carried out. It is the stand of the Municipal Corporation that additional construction has been carried out. As per the notice given Annexure P-9 & P-11 given to the petitioner, what is the extent of additional construction, it is not depicted from the notice Annexure P-9. It is a matter of disputed facts. However, if the Municipal Corporation is claiming that additional construction is made, then it is also necessary to project that what kind & nature of additional construction exists and has been made by the petitioner. Since the notice has further been issued by Annexure P-13, which purports that the petitioner is directed to remove the construction, therefore, under the facts of this case, it is observed that the petitioner shall have the opportunity to file a civil suit to claim injunction and in such suit, the factual aspect may be made clear. The petitioner if so advised may prefer a civil suit within a period of 30 days after giving the statutory notices as required under the Act, 1956 and may claim injunction. In the meanwhile, there shall be stay of the notice Annexure P-13 dated 07.08.2019 for a period of 60 days from today.

8. With the aforesaid observation, the writ petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge