

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 764 of 2019

1. Sheetal Devi, D/o Late Vanshdhari Aged About 88 Years W/o Late Thakur Prasad Kashyap, R/o Kashyap Nivas, Sadar Road, Infront Of Deepak Agency, Nagar Ambikapur, District-Surguja, Chhattisgarh.
2. Ramashankar Kashyap, S/o Late Thakur Prasad Kashyap, Aged About 63 Years, R/o Kashyap Nivas, Sadar Road, Infront of Deepak Agency, Nagar Ambikapur, District-Surguja, Chhattisgarh.
3. Arun Kashyap, S/o Late Thakur Prasad Kashyap Aged About 50 Years R/o Kashyap Nivas, Sadar Road, Infront of Deepak Agency, Nagar Ambikapur, District-Surguja, Chhattisgarh.
4. Anil Kashyap, S/o Late Prasad Kashyap Aged About 42 Years R/o Kashyap Nivas, Sadar Road, Infront of Deepak Agency, Nagar Ambikapur, District-Surguja, Chhattisgarh.
5. Deepak Kashyap, S/o Shri Baransi Lal Kashyap Aged About 40 Years R/o Kashyap Nivas, Sadar Road, Infront of Deepak Agency, Nagar Ambikapur, District-Surguja, Chhattisgarh.

---- Petitioners

Versus

1. Nagar Palik Nigam Ambikapur Through The Commissioner, Nagar Palik Nigam Ambikapur, District-Surguja, Chhattisgarh.
2. Feku Chand Kashyap, S/o Puran Chand Kashyap, Aged About 61 Years, R/o Kashyap Nivas, Sadar Road, Infront of Deepak Agency, Nagar Ambikapur, District-Surguja, Chhattisgarh.

---- Respondents

For petitioners : Mr. Suresh Kumar Verma, Advocate.

For Respondents : Mr. Bhupendra Singh, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

18/11/2019

1. The petitioners have filed the present petition being aggrieved by the judgment dated 4.9.2019 passed by the learned 7th Additional Sessions Judge, Ambikapur, District-Surguja in Miscellaneous Civil Appeal No.50A of 2015 by which the appeal preferred by the petitioners have

been dismissed.

2. It is submitted that petitioners are the occupiers of the property in question which is their ancestral property. Respondent No.1 without giving any opportunity of hearing issued memo dated 2.11.2015 **(Annexure-P/2)** stating that approval has been given by the Municipal Corporation for prohibiting the use of the building for residence under Section 309 (1) of Municipal Corporation Act, 1956 and further, the petitioners were given notice to vacate the premises of the said building within 20 days. It was also mentioned in the notice that in case the petitioners will not comply with notice given then they shall be evicted from building without any prior notice under the provision of 309 (2) of the Act, 1956.
3. It is submitted that a miscellaneous appeal was preferred before the appellate Court which has been erroneously dismissed making a mention that since no proceeding has been taken up against the petitioners under sub-sections (4), (5) & (6) of Section 309 of the Act, 1956, the appeal is not maintainable.
4. It is submitted by the learned counsel for petitioners that the memo dated 2.11.2015 of the Municipal Corporation itself shows that the respondent No.1 had initiated proceedings under Section 309 (5) of the Act, 1956, therefore, the order is passed without following any procedure which should have been set aside. Therefore, it is prayed that interference be made by this Court.
5. Learned counsel for respondents submits that the petitioners have filed appeal before the appellate Court by suppressing this fact that they are not the owners of the property. The order passed by respondent No.1 was based on the application filed by the owner having title on the building in question. It is also submitted that the proceedings initiated is only limited to provisions under Section 309(1) of the Act, 1956 against which no appeal could have been preferred. It is further submitted that the appeal under Section 309 (7) of the Act, 1956 can be preferred only against the order passed under Section 309 (4) (5) & (6) of the Act, 1956 regarding which there is no order of respondent No.1. Infact the petitioners are tenant in the said building, therefore, this petition is without any substance and the same is liable to be dismissed.

6. In reply, it is submitted by counsel for petitioners that they are occupier of the building and have the entitlement of hearing under the provision of Section 309 of the Act, 1956, hence, it is prayed that petition be allowed.
7. I have heard both the parties and perused the documents on record.
8. The respondent side has not produced any record of the proceeding to show as to in what manner the proceeding was initiated against the petitioners. The memo dated 2.11.2015(**Annexure-P/2**) simply mentions that the building in question has been prohibited for use under the provision of Section 309(1) of the Act, 1956 and the petitioners were ordered to vacate the said building under the provision of Section 309(2) of the Act, 1956. It nowhere mentions that any notice was served upon the petitioners before concluding that the building in question was not fit for human habitation or occupation which is specific requirement under Section 309(1) of the Act, 1956 which is reproduced as under :-

309.“ Provisions regarding buildings unfit for human habitation.-

“(1). If it appears to the Commissioner that any building intended or used for human habitation or human occupation for any purpose whatsoever is unfit for such habitation or occupation, he shall give notice in writing to the occupier or to the owner, if the building is not occupied, stating that the building is unfit and signifying his intention to prohibit the further use of such building for such purposes, and calling upon the occupier or owner to state in writing his objections to such prohibition within thirty days from the receipt of the notice. If no objection is stated by such occupier or owner within the said period, or if the objection stated appears to the Commissioner to be insufficient or not well founded, he may, with the previous approval of the Mayor-in-Council prohibit by an order in writing the further use of such building for human habitation or occupation and shall affix a notice to that effect on a conspicuous part of such building”.

9. On a plain reading of this provision, it is found that the respondent No.1 was under obligation to call for objection of the petitioners, who happen to be occupier of the building which is not at all in dispute, and it is only after hearing of the objections, the respondent No.1 would have been in a position to pass the order prohibiting the use of the building for which firstly, there was a requirement to affix a notice on the

building. The proviso of Section 309(1) is very clear and shows that it is mandatory that the occupier or owner of the building shall be given an opportunity before passing such order.

10. Sub-section 2 of Section 309 of the Act, 1956 provides that after the service of notice of prohibition, the occupier or user of the building shall be given time to vacate the premises regarding which order has been passed in the same memo dated 2.11.2015. On reading of the memo dated 2.11.2015, no mention is found regarding the order of demolition of the building, therefore, this order cannot be said to be an order passed under Section 309 (5) of the Act, 1956. Hence, the finding of the Court below that no order has been passed under Section 309(4), (5) & (6) of the Act cannot be held as an erroneous finding. Therefore, the dismissal of the appeal by the Court below does not appear to be against the provisions of law, but the peculiar circumstance that exists in this case that the proceeding under Section 309(1) & (2) of the Act, 1956 has been taken up by the respondent No.1 in an arbitrary, erroneous and illegal manner, for which there is no provision for filing any appeal under the Act, 1956. In such a situation, this Court has the power under Article 227 of Constitution of India to interfere and direct the concerned to proceed in accordance with law. Therefore, even though this Court has not found any fault in the order of the appellate Court, the fault lies in the memo dated 2.11.2015 **(Annexure-P/2)** which has been passed without following the procedure of law laid down in this regard. Therefore, that order/memo is required to be set aside in this petition.

11. Accordingly, the petition is allowed. Memo bearing No. 2812/नपाति/मनिअ/2015 dated 2.11.2015 **(Annexure-P/2)** is set aside and the respondent No.1 is at liberty to take up the procedures u/s 309 of Municipal Corporation Act, 1956 with respect to the building in question strictly in accordance with law as provided under the provisions of the Act, 1956.

Sd/-

(Rajendra Chandra Singh Samant)
Judge