

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 3642 of 2019

Afroz Iqbal @ Afroz Diamond S/o Late Zafaruddin Aged About 44 Years R/o House No. 48, M I G , Housing Board Colony, Bande Ali Fatmi Nagar, Near Kendriya Vidyalaya, Circuit House Road, Chandmari, Raigarh, Tahsil And District - Raigarh Chhattisgarh.

---- Petitioner

Versus

1. Municipal Corporation, Raigarh, Through The Commissioner, Municipal Corporation, Raigarh, Town Hall, Raigarh District - Raigarh Chhattisgarh.
2. The Commissioner, Municipal Corporation, Raigarh, District - Raigarh Chhattisgarh.

--- Respondents

For petitioner -Shri Hari Agrawal, Advocate.

For respondents – Shri Sudeep Agrawal, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

04/10/2019

Heard.

1. The instant petition is preferred against the issuance of notice dated 1/10/2019 by the Municipal Corporation, Raigarh. Notice purports that certain construction which was carried out by the petitioner was not in accordance with the sanctioned plan or the town planning scheme, therefore he was directed to remove the same within 24 hours.
2. Learned counsel for the petitioner would submit that the permission was granted on 28/04/2016 in accordance with that the construction has been carried out, however subsequently all of a sudden after three years a vague notice have been served to the petitioner whereby final conclusion has been arrived at that illegal construction has been made. He submits that such final conclusion could not have been arrived at without giving any opportunity of hearing to the petitioner. He submits that notice is so vague it requires to be quashed.
3. Learned counsel for the respondents oppose the same and submits

that this petition is not maintainable as disputed question of law and facts are required to be ascertained, therefore the petitioner may approach concern civil court for redressal.

4. Heard learned counsel for the parties.

5. As per Annexure P-1 notice has been served on 1/10/2019 which purports that special note was appended that the petitioner has made illegal construction against the sanctioned map. Section 307 of the Municipal Corporation Act, 1956 (hereinafter referred to as 'the Act of 1956') contemplate that the Commissioner of the Municipal Corporation may require a person to show cause why the building may not be removed. Sub section 2 of Section 307 of the Act of 1956 reads as under:-

“307(2) If a building is erected or re-erected-

(a) without any sanction as required by Section 293(1); or

(b) when sanction has been refused; or

(c) in contravention of the terms of any sanction granted; or

(d) when sanction has lapsed under Section 300,

the Commissioner, unless he deems it necessary to take proceedings in respect of such building or work under Section 294, shall-

(a) by written notice, require the person who is erecting such building or executing such work or has erected such building or executed such work on or before such day as shall be specified in such notice, by a statement in writing subscribed by him or by an agent duly authorised by him in that behalf and addressed to the Commissioner, to show sufficient cause why such building or work shall not be removed, altered or pulled down; or

(b) shall require the said person on such day and at such time and place as shall be specified in such notice to attend personally or by an agent duly authorised by him in that behalf; and show sufficient cause why such building or work shall not be removed, altered or pulled down.”

6. Sub section 3 of Section 307 of the Act of 1956 shows that if person fail to show sufficient cause, Commissioner may remove, alter or pull down the building or work and sub section 5 gives right to the corporation or person aggrieved to apply to the District Court for injunction. In the instant case, reading of the Annexure P-1 would show that directly finding

has been recorded that illegal construction has been made, therefore the petitioner has claimed that he has not been heard.

7. Since disputed question of facts are involved in this case and evidence will be required, it is directed that the petitioner may reply to the notice dated 1/10/2019 to the Commissioner, Municipal Corporation, Raigarh and thereafter the Municipal Corporation, Raigarh after hearing the petitioner may adjudicate upon the same. It goes without saying that if the petitioner is aggrieved then he can avail remedy under sub section 5 of Section 307 of the Act of 1956. Said procedure may be carried out within a period of 60 days from the date of receipt of this order.

8. In the meanwhile, it is directed that the direction given in Annexure P-1 dated 1/10/2019 shall not be carried out.

9. With such observation, the petition stands disposed of.

Certified copy today.

Sd/-

(Goutam Bhaduri)

JUDGE