

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 360 of 2020

Lokesh Garg, S/o Late Shri Madan Lal Garg, Aged About 50 Years, R/o Ex-Councilor, Near to the House of Shyam Bihari Sahu, Besides Government School, Bhatagaon, Shyam Prasad Mukherjee Ward No. 63, Bhatagaon Chowk, Ring Road, PS Tikarapara, District- Raipur (C.G.)

--- Petitioner

Versus

1. Brijmohan Singh Sisodia, S/o Uttam Singh Sisodia, R/o A-11, Flower Valley, VIP Road, Raipur, District- Raipur (C.G.)
2. Commissioner Municipal Corporation, Near Mahila Police Thana, Gandhi Udyan, Raipur, District- Raipur (C.G.)

--- Respondents

For Petitioner	:	Mr. Kishore Bhaduri, Advocate.
For Respondent No. 1	:	Mr. Manoj Paranjpe, Advocate.
For Respondent No. 2	:	Mr. Pankaj Agrawal, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

30/06/2020

Heard.

1. This petition is being disposed of at the motion stage.
2. This petition is preferred under Article 227 of the Constitution of India praying for quashment of order dated 02.06.2020 passed by the court of Civil Judge (Class-II)- VII, Raipur in Civil Suit No. 182A/2019.
3. It is submitted by learned counsel for the petitioner that the

petitioner is owner of the land which is adjacent to the land belonging to respondent No. 1. Respondent No. 1 has filed a civil suit praying for relief of mandatory injunction. The petitioner has contested claim of respondent No. 1 in his written statement and also filed a counter claim pleading that respondent No. 1 is raising construction over his land which obstructs the right to air and light of the petitioner. The petitioner had filed an application under Order 39 Rule 3 of C.P.C. for granting ex parte temporary injunction, which was dismissed, however, the application filed by the petitioner under Order 39 Rule 1 & 2 of C.P.C. is pending for reply. Application under Section 151 of C.P.C. praying for interim relief has been rejected by the impugned order. The claim of the petitioner is that the construction which is being raised by the respondent No. 1 is illegal. Complaints were made to Municipal Corporation, Sub-Divisional Magistrate and Police, on which no action was taken and the petitioner was advised to go for a civil litigation.

4. It is further submitted that unless and until the property in dispute is demarcated, the dispute between the parties will not be resolved, therefore, interference of this Court is sought for a direction to demarcate the dispute property.
5. Learned counsel for respondent No. 1 opposes the submissions made by counsel for the petitioner and submits that this petition is not maintainable. The petitioner has challenged the order dated 02.06.2020 which was passed on application filed under Section 151 of C.P.C. praying for grant of interim relief. As the

prayer was made by the petitioner under Order 39 Rule 3 of C.P.C. which was dismissed and the application under Order 39 Rule 1 & 2 of C.P.C. were pending, therefore, the petitioner had no occasion or opportunity to file such application praying for interim relief when the main application for interim relief was itself pending.

6. Learned counsel for respondent No. 1 further submits that the petitioner has not come with clean hands before this Court. Copy of the application filed by the petitioner under Order 39 Rule 1 & 2 of C.P.C. and the counter claim are not supplied to respondent No. 1 till date. Respondent No. 1 has obtained permission and sanction from the Municipal Corporation for construction and the construction is accordingly being made. Respondent No. 1 has filed return reply in which he undertakes that he will raise the construction on his land, strictly in accordance with the map sanctioned by the corporation and no construction shall be raised in the government land or over the land more than the area sanctioned for construction. In case, if any, violation is found, then respondent No. 1 undertakes to demolish such portion of construction which may be found to have exceeded the plan of sanction, at his own expenses. It is further submitted that this petition is brought with malicious intension which may be dismissed.
7. Learned counsel for respondent No. 2 submits that Commissioner, Municipal Corporation, Raipur is not a necessary party in this case as it had not been arrayed as a party in the

civil suit. It is further submitted that this petition is preferred under Article 227 of the Constitution of India, therefore, it is the supervisory jurisdiction, in which, respondent No. 2 could not have been made party, hence, the case brought against respondent No. 2 may be dismissed.

8. I have heard learned counsel for the parties and perused the records.
9. The petitioner herein who is defendant, gave appearance before the trial court on 22.02.2020 and filed counter claim along with applications under Order 39 Rule 3 of C.P.C. and also application under Order 39 Rule 1 & 2 of C.P.C. The application under Order 39 Rule 3 of C.P.C. was heard exparte on 24.02.2020 and dismissed by the trial court. The case was fixed for reply and argument on application filed by the petitioner under Order 39 Rule 1 & 2 of C.P.C. and also on the application under Order 26 Rule 9 of C.P.C. However, it appears that the petitioner did not pursue the matter any further until the petition was filed before this Court on 09.06.2020.
10. The normal functioning of the High Court as well as the Sub-Ordinate Court was suspended from 23.03.2020 by the High Court vide order No. 40 (Mis.)/II-14-1/2020 dated 23.03.2020 which continued for sometime and vide order No. 50(Mis.)/II-14-1/2020 dated 16.05.2020, the High Court and the Subordinate Courts were partially reopened for normal functioning. However, that order has been modified vide order No. 55(Mis.)/II-14-1/2020 dated 26.05.2020 which is continuing.

11. Instructions in order No. 40 (Mis.)/II-14-1/2020 dated 23.03.2020 are still continuing and followed for the Subordinate Court. The relevant instruction in the above mentioned order is as under:-

“For other Subordinate Courts (viz. Commercial Court, Family Court, Industrial Court, Labour Courts (etc.)

1. Considering the extraordinary situation, normal functioning of the Court will stand suspended during the above period. The functioning of the above Courts shall be bare minimal with minimum support staff to be deputed on rotational basis, to deal with only extreme urgent cases, as to be decided by the concerned Judge presiding over the Court/ Principal Judge of the Family Court. No filing of fresh cases shall be allowed. However, the above period will not be counted for working out the period of limitation.”

12. According to the direction in the order of this High Court mentioned hereinabove, any litigant, on the ground of urgency, is entitled to file application for urgent hearing in the court concerned. That court can entertain such application and also hear the matter accordingly.
13. In the present case, the challenge to the impugned order is on the allegation filed by the petitioner under Section 151 of C.P.C., is totally out of place. After dismissal of the application under Order 39 Rule 3 of C.P.C., the petitioner had opportunity to pursue hearing on application under Order 39 Rule 1 & 2 of C.P.C., which he has not done so far. Similarly, the petitioner could have pursued the hearing on the application under Order

26 Rule 9 of C.P.C. The relief sought for by the petitioner can be subject to outcome of orders on these applications and when any such order is passed on these applications, only then the supervisory jurisdiction of this Court may be started. The order impugned in this petition, is not fit to be challenged in the supervisory jurisdiction, therefore, this petition is disposed of and dismissed.

14. The petitioner is at liberty to file application for urgent hearing before the Court concerned/ before the court of District Judge, seeking urgent hearing on application filed by him under Order 26 Rule 9 of C.P.C. and under Order 39 Rule 1 & 2 of C.P.C.
15. In view of the above, this writ petition is disposed of at motion stage itself.

Sd/-

(Rajendra Chandra Singh Samant)
Judge