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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No. 1384 of 2020

CM Dubey Shikshan Samiti, a Society Duly Registered Under The Provisions of the Chhattisgarh Societies Registrikaran Adhiniyum, 1973, Having Its Office At CMD College, Link Road, Bilaspur, District Bilaspur (Chhattisgarh) Pin Code- 495001. Through Its Chairman, Shri Sanjay Dubey, S/o Late Shri Bhagwat Prasad Dubey, Aged About 55 Years, CMD College, Link Road, Bilaspur District Bilaspur (Chhattisgarh) Pin Code 495001.

---Petitioner(s)

Versus

- 1.** State of Chhattisgarh Through The Secretary, Department of Urban Administration, Mantralaya, Mahanadi Bhawan, Nava Raipur, District Raipur Chhattisgarh. Pin Code- 492002.
- 2.** Director, Directorate of Urban Administration, Indravati Bhawan, Nava Raipur, Raipur District Raipur Chhattisgarh. Pin Code- 492002.
- 3.** Bilaspur Municipal Corporation, Through Its Chairman, Vikas Bhawan, Nehru Chowk, Bilaspur, District Bilaspur (Chhattisgarh) Pin Code- 495001.
- 4.** Building Officer, Bilaspur Municipal Corporation, Vikas Bhawan, Nehru Chowk, Bilaspur, District Bilaspur (Chhattisgarh) Pin Code 495001.
- 5.** Nav Bharat Press Limited, a Company Registered Under The Companies Act, 1956, Through Its Managing Director, Bus Stand Road, Bilaspur, District Bilaspur Chhattisgarh.

---Respondents

For Petitioner	:	Shri Manoj Paranjpe and Shri K.Rohan, Advocates.
For State	:	Shri Vivek Ranjan Tiwari, Addl. Advocate General.
For Respondent 3&4	:	Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03.07.2020

- 1.** The present writ petition has been filed primarily challenging the order dated 26.05.2020 (Annexure P/1) issued by the Municipal Corporation, Bilaspur to the petitioner's establishment alleging that there is an encroachment made by the petitioner in property situated at Khasra No.554/1 measuring about 0.3240 Hect. in Patwari Halka No.36 and unauthorized construction work is also going on in the said encroached land. Accordingly, the respondent-corporation have issued a notice under

Section 322/323 of the Municipal Corporation Act, 1956 (in short, the Act, 1956).

2. The contention of the petitioner is that, it is a property which has been duly allotted to the petitioner by the Municipal Corporation in exchange of the property which stood allotted in the petitioner's name. This land was exchanged with the land allotted for the establishment of Nav Bharat Press beside the property of the petitioner. It is further the contention of the petitioner that the property Khasra No..554/1 was all along in possession of the petitioner and the property was also being used by the present petitioner and it is only recently that they have started some renovation work on the old building existing and that there is no new construction whatsoever being constructed neither is there any sort of encroachment made on the public road or public street so as to attract the provisions of Section 322/323 of the Act, 1956.
3. The further contention of the petitioner is that, the respondent-corporation also does not seem to be sure whether there has been an encroachment made by the petitioner or not as would be established from Annexure P/8 dated 29.05.2020 wherein the respondent-corporation have asked the Tehsildar Bilaspur to conduct a demarcation of the property situating in Khasra No.554/1 measuring 0.3240 Hect. falling in Patwari Halka No.36.
4. According to the petitioner, the fact that the respondents have ordered for demarcation of the property itself would establish that there is an uncertainty in the mind of the corporation so far as whether the petitioner have made any encroachment or not.
5. At this juncture, the learned counsel for the petitioner submits that the petitioners have on 01.06.2020 (Annexure P/9) approached the Commissioner, Municipal Corporation, Bilaspur, giving the entire details of

the property owned by the petitioner's establishment along with allotment of land situated in Khasra No.554/1. It was further submitted by the counsel for the petitioner that in the past also there have been a couple of letters made by the petitioner requesting the authorities to conduct a thorough demarcation of the entire property belonging to the petitioner-institution including the land situating in Khasra No.554/1.

6. At this stage, the counsel for the petitioner submits that let the respondent-commissioner take an appropriate decision on the representation that the petitioner has made and the State authorities be directed to consider his application for demarcation of the entire property including the demarcation of land situated at Khasra No.554/1 and thereafter appropriate orders be passed in accordance with law and till then the impugned notice dated 26.05.2020 be kept in hold.
7. Learned counsel for the respondent-corporation at this juncture submits that if at all if the petitioners were aggrieved by Annexure P/1, they ought to have preferred an appeal under Section 403(2) of the Act, 1956. The counsel for the corporation however agreed to the proposition made by the counsel for the petitioner so far as representation of the petitioner to be decided on merits by the Commissioner in accordance with law and the counsel for the corporation also does not have any objection if the entire property gets demarcated before any further action is taken.
8. Given the entire facts and circumstances of the case, this court is of the opinion that it would be more appropriate if the Commissioner, Municipal Corporation Bilaspur is directed to first consider and decide the representation dated 01.06.2020 (Annexure P/9) filed by the petitioner. The Commissioner shall consider all the contents and the documents enclosed therein and if required, the entire property of the petitioner

including that of Khasra No.554/1 can also be demarcated and only then proceed further so far as order Annexure P/1 dated 26.05.2020 is concerned. The Commissioner can also consider granting personal hearing to the petitioner to explain the factual matrix of the case along with relevant records in support of their contention, if required.

9. The writ petition accordingly stands disposed of with the aforesaid direction.
10. Till a decision is taken, the impugned notice dated 26.05.2020 (Annexure P/1) shall not be acted upon.

Sd/-
(P. Sam Koshy)
Judge

inder