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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 2715 of 2020**

Mahesh Kumar Jani S/o Late Guruvantrai Jani, Aged About 63 Years,
R/o Kampti Line, District Rajnandgaon (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Urban Administration, Mahanadi Bhavan, Mantralaya, Naya Raipur, Post Office And Post Station Naya Raipur, District Raipur (Chhattisgarh)
2. Municipal Corporation, Rajnandgaon, Through Commissioner, District Rajnandgaon (Chhattisgarh)
3. Collector, Rajnandgaon, District Rajnandgaon (Chhattisgarh)
4. Sub Divisional Officer, Rajnandgaon, District Rajnandgaon (Chhattisgarh)
5. Building Officer, Municipal Corporation Rajnandgaon, District Rajnandgaon (Chhattisgarh)
6. Rani Smt. Mukhidevi Rajgami Sampada Samiti Rajnandgaon, Through Secretary, Rajnandgaon, District Rajnandgaon (Chhattisgarh)

---- Respondents

For Petitioner	:	Mr. B. D. Guru, Advocate
For State	:	Mr. Anand Verma, Dy. Govt. Advocate
For Respondents 2 & 5	:	Mr. Dhiraj Wankhede, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****09.11.2020**

1. The grievance of the petitioner in the present writ petition is the notice issued by the respondent no.2 on 23.10.2020 whereby the respondents intend to demolish the boundary wall surrounding the property which is occupied by the petitioner as a tenant and the respondent no.6 is the

owner of the said property.

2. The contention of the learned counsel for the petitioner is that the alleged boundary wall is in fact quite strong and it is not in a dilapidated condition. According to the petitioner, the action initiated by the respondents is malafide as it is based upon some complaint lodge by some persons with whom the petitioner is not having cordial relationship. The further contention is that the impugned notice is also bad in law for the reason that the same is in contravention to the provisions of Section 309 of the Municipal Corporation Act which provides for a particular procedure to be adopted by the Corporation in such circumstances.
3. At this juncture, learned counsel for the Municipal Corporation submits that Section 309 would be attracted only in the case the premises is occupied by the owner and here the petitioner being a tenant, the proceedings were initiated is, under Section 310 of the Municipal Corporation Act.
4. This Contention of the counsel for the Corporation would not be sustainable for the simple reason that once there is a specific provision prescribed under the Act, it is that provision of law which needs to be abided by the authority concerned and nothing prevented the respondent-Corporation from initiating proceedings against the respondent no.6 i.e. the owner of the property, for the same contention and should have then proceeded and decided the issue in accordance with law.
5. Given the specific provision under Section 309 of the Municipal Corporation Act, the writ petition at this juncture stands disposed of directing the Municipal Corporation to initiate appropriate proceedings

under Section 309 of the Municipal Corporation Act and thereafter to take appropriate steps in accordance with law. The Municipal Corporation authorities, if required, can take the assistance of PWD for testing the strength of the boundary wall to ascertain whether the same is in dilapidated condition or not.

6. Till the appropriate proceeding is not drawn under Section 309 of the Municipal Corporation Act, the impugned notice Annexure P-1 dated 23.10.2020 shall not be acted upon.
7. The writ petition accordingly stands disposed of.

**Sd/-
P. Sam Koshy
Judge**