

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 92 of 2021

PRT Construction, Through its proprietor, Mr. G.S. Solanki, S/o Shri T.S. Solanki, 869, Sunder Nagar, Near Kargil Chowk, District- Raipur (C.G.)

--- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Town & Planning Department, Mantaralay, Mahanadi Bhawan, Naya Raipur, District- Raipur (C.G.)
2. Real Estate Regulatory Authority, through its Registrar, Shastri Chowk, Raipur, District- Raipur (C.G.)
3. Municipal Corporation Raipur, through its Commissioner, Near Mahila Thana, Raipur, District- Raipur (C.G.)
4. Anand Shrivastava, S/o Ramesh Chandra Shrivastava.
5. Smt. Chhavi Dey, W/o Devojeet Dey.
6. Smt. Chitra Mukharjee, W/o N.N. Mukharjee.
7. Rajiv Shrivastava, S/o B.P. Shrivastava.
8. Smt. Ranjana Vishwas, W/o Uttam Vishwas.
9. Sanjiv Kumar Tripathi, S/o U.N. Tripathi.
10. Smt. Shabina Begum, W/o Sharif Khan.
11. Pawan Gajallewar, S/o Sadashiv Rao Gajallewar.
12. Kharshid Alam, S/o Nisar Ahmad.
13. Smt. Sumanti Marki, W/o Arail Marki.
14. Smt. Shefali Barman, W/o Vishwaroop Barman.
15. Udal Ram Dewangan, S/o Shiv Lal Dewangan.
16. Shiba Prasad Sen, S/o Ajit Kumar Sen.
17. Kartik Ghatwal, S/o Raviraj Ghatwal.

18. Kanchan Shrivastava, S/o Atul Shrivastava.
19. Vijay Chitmitwar, S/o Rajeshwar Chitmitwar.
20. Smt. Shikha Ghosh, W/o Ganesh Ghosh.
21. Smt. Mukul Rani Karmkar, W/o Harranjan Karmkar.
22. Vinay Rathore, S/o Shyam Lal Rathore.
23. Mrinal Choudhary, S/o Ashok Choudhary.

All are R/o Usha-Kiran Campus, Bhathagaon, Tahsil & District-
Raipur (C.G.)

--- Respondents

For Petitioner	:	Mr. Ashutosh Mishra, Advocate.
For respondent No. 3	:	Mr. H.B. Agrawal, Sr. Advocate with Mr. Amit Tirkey, Advocate.
For State	:	Mr. Gurudev I. Sharan, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

05/03/2021

1. This writ petition has been brought under Article 227 of the Constitution of India, against the order dated 15.12.2020 (Annexure P/1) passed by the Chhattisgarh Real Estate Appellate Tribunal, Raipur (C.G.)
2. It is submitted by learned counsel for the petitioner, that the petitioner, who is the appellant before the Real Estate Appellate Tribunal in Appeal No. 13/2020, filed an application under Section 75 of the C.P.C., praying for appointment of Commissioner for challenging the observation report submitted by the respondent side, which was not similar to the report of

site visit report and structural evaluation, submitted by the petitioner side. Therefore, there was requirement for issuance of commission, spot inspection and submission of report.

3. The learned Appellate Tribunal has not given any consideration that the issuance of commission for submission of report, which was essential for the resolution of the dispute between the parties and passed erroneous order of rejection. Hence, it is prayed that this writ petition be admitted for hearing and relief be granted to the petitioner.
4. Learned counsel for respondent No. 3 opposes the submissions and submits that the impugned order has been correctly passed, which needs no interference of this Court.
5. Learned State counsel has made formal objection.
6. Considered on the submissions. Section 53 of the Real Estate (Regulation and Development) Act, 2016 (for short “the Act, 2016”) provides as to in what manner, the Appellate Tribunal shall exercise the powers under the Act, 2016. Section 53 of the Act, 2016, is reproduced hereunder:- (QUOTE)

“53. Powers of Tribunal.—(1)The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice.

(2) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure.

(3) The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872(1 of 1872).

(4) The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;(c) receiving evidence on affidavits;

(d) issuing commissions for the examinations of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or directing it *ex parte*; and

(g) any other matter which may be prescribed.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)”

7. On plain reading of this provision, it is very clear that the provisions of the Civil Procedure Code, 1908, are not strictly applicable to the procedure before the Appellate Tribunal and the

Appellate Tribunal has the power to regulate its own procedure. The provisions in the C.P.C., which can be exercised by the Appellate Tribunal, are specifically mentioned in Sub-Section 4 of Section 53 of the Act, 2016, which does not include any power for issuance for local inspection. The report from the petitioner and the respondent side, both were submitted before the Real Estate Regulatory Authority (RERA) for consideration and the orders were passed by the Real Estate Regulatory Authority, which is under challenge before the Appellate Tribunal.

8. As the Appellate Tribunal has limited power to exercise the power, which does not include the power directing for issuance of commission for any local inspection, therefore, I am of this view that the learned Appellate Tribunal has not committed any error in passing the impugned order. Hence, the present writ petition is without any substance and liable to be dismissed.
9. Accordingly, the instant writ petition is dismissed and disposed of at motion stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge