

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1866 of 2021**

- Gunjan Kumar Vishwas S/o Late Mohan Kumar, Aged About 55 Years R/o Ward No. 11, Nagar Panchayat, Gandai, District- Rajnandgaon (C.G.)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Urban Administration And Development Department, Mantralaya, Mahanadi Bhawan, New Raipur (C.G.)
2. The Chief Municipal Officer, Nagar Panchayat, Gandai, District- Rajnandgaon (C.G.)
3. The Tahsildar, Gandai, District- Rajnandgaon (C.G.)
4. Yogendra Agrawal S/o Prahlad Rai Agrawal, R/o Ward No. 11, Nagar, Panchayat, Gandai, District- Rajnandgaon (C.G.)

---- Respondents

For Petitioner : Shri Goutam Khetrapal, Advocate

For Respondents/State : Shri Gagan Tiwari, Dy. GA

Hon'ble Shri Justice Goutam Bhaduri**Order****26/03/2021**

1. Heard.
2. Learned counsel for the petitioner would submit that respondent No.4 Yogendra Agrawal exceeded his permissible limit of construction and has encroached upon the public street. He referred to the letter dated 02.03.2021 (Annexure P-7) issued by the Nagar Panchayat, Gandai, District Rajnandgaon and would submit that Yogendra Agrawal has been allowed to raise construction over the plot No.108/41 and out of 160 sq. meter 12.50 x 11 meter has been allowed for construction whereas he is constructing on 17.15 x 13 meter. He further refers to the letter dated 15.02.2021 and would submit that Nagar Panchayat, Gandai

has also issued letter to the respondent No.4 that there is clear violation of Section 223 and 187 of the Municipalities Act, 1961 though the order was passed to stop the work but respondent No.4 has refused to abide by it and continued the construction. He would further refer to the judgment passed by this Court in the case of ***Vinod Soni & ors. Vs. Rajesh Kumar Sahu & ors. (W.A. No.389 of 2016, decided on 22.09.2016)*** and para 4 of the said judgment and would submit that in respect of obstruction in public street, it should be restored to the public. The relevant para reads as under:-

“4. We do not find any merits in this Appeal. The State or the instrumentalities of the State are not the owners of the land in the real sense. In fact, the land is owned by public. The State holds the land in the trust for the citizens. Therefore, whenever any land of the State is encroached upon, any member of the public can come forward and claim that this public land has been encroached upon and the possession should be restored to the public through the Government.”

3. Considering the facts of this case and the tenor of the letter dated 15.02.2021 which shows that the letter was issued to respondent No.4 to stop the work and the information obtained under right to information by letter dated 02.03.2021 (Annexure P-7) shows that respondent No.4 appears to have exceeded the permissible limit of construction. The notice since has been issued on 15.02.2021 by the Nagar Panchayat, Gandai, they are directed to conclude the proceeding to the logical end within a period of 45 days from the date of receipt of the copy of this order and it should be ensured that the construction in the public street if is being made, the same should be removed.
4. With the aforesaid observation, the writ petition stands disposed of.

Sd/-
Goutam Bhaduri
Judge