

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A No.99 of 2014****Reserved on 18.01.2021****Pronounced on 25.01.2021**

Swapnil Nahar S/o Dr. Nand Kumar Nahar Aged About 32 Years R/o B-7,
Saket Apartment, Agrasen Chowk, Bilaspur, Tah. And Distt. Bilaspur C.G.,

---- Appellant**Versus**

Municipal Corporation Bilaspur S/o Acting Thru- Commissioner, Bilaspur,
Tah. And Distt. Bilaspur C.G.

-----Respondent

For Appellant:	Shri KA Ansari, Senior Advocate along with Shri Chinmay Chincholkar, Advocate.
For Respondent:	Shri Ashutosh Kachhwaha, Advocate.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**C A V Order**

1. This Miscellaneous Appeal has been preferred by the Plaintiff under Order 43 Rule 1 of the Code of Civil Procedure, 1908 (for short 'the CPC') questioning the propriety of the order dated 15.10.2014 passed in M.J.C No.362/2014 whereby, the trial Court has rejected the application for grant of temporary injunction. The parties to this Appeal shall be referred hereinafter as per their description in the Court below.

2. Briefly stated, the facts of the case are that the Plaintiff- Swapnil Nahar instituted a suit claiming declaration of title, injunction and for damages with regard to the property in question marked in red colour in Plaintiff Schedule – 'क' with a prayer that the Defendant – Municipal Corporation, Bilaspur (hereinafter referred to as 'the Corporation') be restrained from constructing a road on the said suit land and also for damages of Rs.80,000/- owing to illegal dismantlement of his boundary

wall. It is pleaded by him that he purchased the land bearing Khasra No.1633/3 admeasuring 1590 sq.ft from one Rajesh Choubey under the registered deed of sale dated 17.01.2006 for a consideration of Rs.96,000/- and likewise, purchased the part of Khasra No.1633/2 admeasuring 3225 sq.ft from Shiv Kumar Gupta and Smt Usha Gupta under the registered deed of sale dated 04.02.2006 for a consideration of Rs.1,93,500/-, which was numbered as Khasra No.1633/8 upon its mutation and both of his lands are adjoining with each other. According to him, he constructed fencing walls on the southern-northern side and western side of his land and alleged further in the Plaint that the Corporation under the garb of constructing the road connecting Gauravpath chowk to Mangla chowk, Mungeli road, has damaged illegally the fencing walls of him. Therefore, he has been constrained to institute the suit in the instant nature, along with an application under Section 151 of CPC for grant of temporary injunction restraining the Corporation from constructing the road on the suit land pending decision of the suit.

3. In reply to the aforesaid application, it is stated by the Defendant-Corporation that since the eastern side of the boundary wall was raised illegally by the Plaintiff, the same was, therefore, dismantled and is not in existence. It is stated further that the alleged construction of boundary wall was found to be on the Government land bearing Khasra No.1552 as revealed from the demarcation of it made on 06.09.2013 in presence of the Plaintiff and other interested persons and therefore, not only the Plaintiff's illegal construction but the constructions of others were also removed and despite of knowing the alleged demarcation, it was never put in question by him and therefore, he is bound by the same. It is contended further that

the entire work was being done in the Government land and the Plaintiff's application is therefore, liable to be rejected.

4. The trial Court, after considering the map (lay out) attached with the Plaint, observed that although the alleged lands i.e. Khasra Nos.1633/3 and 1633/8 were purchased by the Plaintiff, but the alleged boundary wall had been raised illegally outside the limits of his land. It observed further while referring to the provisions prescribed under Section 66 of the Municipal Corporation Act, 1956 that the alleged boundary wall was removed on public interest and as a consequence of it, rejected the application for temporary injunction.

5. Learned Counsel appearing for the Appellant/Plaintiff, while referring to the reply filed by the Defendant-Corporation, submits that as the Defendant has admitted the fact with regard to the removal of Plaintiff's boundary wall and therefore, an order ought to have been passed by restraining the Corporation from constructing the road pending decision of the suit. It is contended further that the alleged demarcation report made on 06.09.2013 as furnished by the Defendant-Corporation is, however, a forged document as it does not contain the signatures of anyone except the *patwari* and the Revenue Inspector and therefore, no reliance could have been placed on it. It is contended further that since the alleged land bearing Khasra No.1552 held by the Government was never transferred to the Corporation and therefore, it has no authority to construct the road as such on the said Government land. Having failed to consider the same in its proper manner, the Court below has committed a serious illegality in rejecting the application for grant of temporary injunction.

6. On the other hand, Shri Ashutosh Kachhwaha, learned Counsel for

Respondent-Defendant has supported the order impugned as passed by the trial Court.

7. I have heard learned Counsel for the parties and perused the entire relevant papers annexed with this Appeal carefully.

8. In order to get the discretionary relief, it is the bounden duty of the Plaintiff to establish his case by way of cogent and reliable evidence that in the event of its refusal, the same would cause an irreparable injury to him. However, the Plaintiff though purchased the land by virtue of the registered deed of sales dated 17.01.2006 and 04.02.2006, but has failed to establish the fact that the alleged boundary wall was raised in his own land. Even the lay out (map) attached with the Plaint would, however, show that the suit land marked in red colour is not the part of his land. It is to be observed here further that the Plaintiff should have applied for the demarcation of his land in order to show that the alleged construction of road is going to be made on his land, but has failed to make any effort in this regard. In absence thereof, it is difficult to hold that it was to be constructed on his land. That apart, despite furnishing the said demarcation report made on 06.09.2013 pertaining to the Government land bearing Khasra No.1552, no steps have been taken for its quashment.

9. True it is that there is no document placed on record showing that the alleged Government land has been transferred to the Corporation but by virtue of clause-(b) of sub-section (1) of Section 66 of the Municipal Corporation Act, 1956, it is clear that the Corporation, irrespective of the fact whether it is vested with it or not, has a right to do so by way of any means or measure for the public interest and as such, the Court below has

not committed any illegality in rejecting the application for grant of temporary injunction.

10. In view of above, I do not find any substance in this Appeal, which is accordingly dismissed. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
JUDGE

Priya