

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2125 of 2021**

M/s A.K. Traders, Through Its Proprietor Mohammad Salim, S/o Shri Kamal Ali, Aged About 45 Years, R/o Ward No 27, Durga Nagar, Power House Bhilai, Behind Sapna Talkies, Bhilai, District Durg Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through Principal Secretary, Department Of Commerce And Industries, Mantralaya, Mahandi Bhawan, Nawa Raipur, Atal Nagar, Raipur, District Raipur. Chhattisgarh.
2. Chief General Manager, District Trade And Industries Centre, Durg, District Durg Chhattisgarh.
3. General Manager, District Trade And Industries Centre, Durg, District Durg Chhattisgarh.

--Respondents

For petitioner – Ms. Naushina Afrin Ali and Shri Ajay Kumrani, Advocates.
For State- Shri Alok Bakshi, Addl. A.G.

Hon'ble Shri Justice Goutam Bhaduri**Order****11/06/2021**

Heard.

1. Challenge in this petition is to the notice dated 4/03/2021 (Annexure P-1) whereby the petitioner have been served with a notice to vacate the encroachment of a land adjacent to their lease hold right of plot No.18/A-5 admeasuring 6000 sq.ft.
2. Learned counsel for the petitioner would submit that the petitioner were granted a lease in respect of plot No.18/A-5 situated at Heavy Industrial Area, Bhilai on 2/05/2011. Subsequently, since the area for which lease was granted was not sufficient as such they used the abandoned land of nearly 18000 to 19000 sq.ft. which was adjacent to the lease hold land. It is stated that one application was filed by one associates of the petitioner to grant of the adjacent land by an application dated 14/10/2020 by way of lease however it was

informed by Annexure P-9 dated 11/01/2021 that the said land do not belong to the department respondent as such application was not considered. It is stated however the notices have been served to vacate the said land by respondent thereby it would mean that ownership of said land though do not belong to respondent yet they have asked to vacate the land. It is stated if the ownership of the land do not belong to respondent, then in such case a notice to vacate the land would be without jurisdiction.

3. Learned State counsel would submit that Annexure P-9 dated 11/01/2021 is communication to a letter dated 14/10/2020 and that too is addressed to one Proprietor M/s Sahisata Enterprises not to the petitioner. It is stated what was the contents of application of 14/10/2020 is also not clear. The petitioner were granted only 6000 sq.ft of land and they have stated that they used the adjacent land of 18000 sq.ft of Khasra No.482, despite the same was not granted to them. Therefore by their admission that they are the encroacher as such are not entitled to any relief.
4. Perusal of the record would show that the petitioner was granted a lease in respect of plot No.18/A-5 admeasuring 6000 sq.ft. by a lease deed dated 2nd May, 2011. The petitioner submits that the land for which the notices for eviction has been issued do not belong to the respondent which would be evident from the letter dated 11/01/2021 (Annexure P-9) inasmuch as the claim for allotment of adjacent land was refused to the associates on the ground that the said land do not belong to the respondent. Perusal of Annexure P-9 would show that it was addressed to one Saleem Khan, Proprietor M/s Sahisata Enterprises, not to the petitioner herein. The letter of reference, as has been pointed out by the State counsel of 14/10/2020 is not on record. Therefore for what dimension and direction and identity of plot rejection was made, it is

not clear. It would be a matter of evidence. The authenticity of Annexure P-9 also required to be proved during evidence and the authority of official who issued the same. Admittedly when the petitioner was only granted a lease of 6000 sq.ft of land, their right would be confined to only 6000 sq.ft. of land and even a single square feet of land if has been used without authority, it would amount to encroachment or trespass. The submission of the respondent that the additional land for which the notice have been issued do not belong to the respondent is also matter to be proved during the complete trial and that is a disputed question of facts. Under the background and circumstances, I am not inclined to exercise power under Article 226 of the Constitution of India to make a roving enquiry as to the ownership of the land for which the notices have been issued to the petitioner for which they are shown to be rank tress passer against the owner and the possession is required to be established against the owner. These are the matter of highly disputed question of fact. Therefore I am not inclined to admit this petition. Therefore petition sans merit.

5. At the fag end, learned counsel submits that the petitioner has preferred a representation before the authority that may be directed to be decided.
6. Considering the prayer made, authority may decide the representation of the petitioner in accordance with the rules and guidelines which is prevailing.
7. With such observation, the petition stands disposed of.

Sd/-
(Goutam Bhaduri)
Judge