

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 2301 of 2021

- Arvind Kumar Dosaj S/o Late Bhagwan Das Dosaj, Aged About 55 Years
R/o Mig-58, Housing Board Colony, R.P. Nagar, Korba, District Korba
Chhattisgarh, ---- **Petitioner**

Versus

1. State Of Chhattisgarh Through Secretary, Urban Administration And
Development Department, Mahanadi Bhawan, Mantralaya, Capital
Complex, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh,
2. Municipal Corporation Bilaspur, Through Its Commissioner, Municipal
Corporation Bilaspur, Vikas Bhawan, Nehru Chowk, Bilaspur, District
Bilaspur Chhattisgarh,
3. Commissioner, Municipal Corporation Bilaspur, Vikas Bhawan, Nehru
Chowk, Bilaspur, District Bilaspur Chhattisgarh,
4. Assistant Building Officer, Municipal Corporation Bilaspur, Vikas Bhawan,
Nehru Chowk, Bilaspur, District Bilaspur Chhattisgarh, ---- **Respondents**

For Petitioner	:	Mr. Manoj Paranjpe, Advocate
For State	:	Mr. Alok Bakshi, Addl. A.G.
For respondents No. 2 to 4	:	Mr. Pankaj Agrawal, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

16.06.2021

1. Heard
2. Learned counsel for the petitioner submits that the Municipal Corporation
decided to shift the statue of Lord Agrasen from the center of the square to
a corner of the area over a private land. He submits that the petitioner is the
owner of lands bearing Khasra Nos. 515/1 & 515/2 wherein a building was
constructed and the area of 108.83 square feet was left out. Without having
obtained the consent of the petitioner, the Municipal Corporation started
disturbing the open area which was adjacent to the building so as to shift
the statue of Lord Agrasen as would be evident from the photograph which
is attached vide Annexure P/4. He submits that certain demolition was also
carried out in the area and without having acquired the land to which the
ownership belongs to the petitioner, the construction of the like nature

cannot be carried out. He further submits that after the petitioner objected to shifting of such statue of Lord Agrasen to the private land of the petitioner, the petitioner is served with a notice under Section 307 of the Chhattisgarh Municipal Corporation Act 1965 (hereinafter referred as 'the Act') for the existing building to brand it as not constructed according to sanctioned plan. It is further submitted that the said notice has been issued by way of an arm twisting method and the Municipal Corporation, so that the petitioner do not object to the shifting of statue by Municipal Corporation. It is stated that therefore, the Municipal Corporation may be directed to demarcate the land of the petitioner and thereafter may place the statue of Lord Agrasen in such area after due compensation is paid to the petitioner and acquisition of land is made.

3. Learned counsel for the respondent- Municipal Corporation submits that the petitioner can very well approach to the civil Court and pray for injunction inasmuch as the area whether belong to the petitioner is yet to be established. He submits that the notice under Section 307 of the Act issued to the petitioner is not challenged in this petition which pertains to construction of the building beyond the permissible limit of the sanctioned map. Therefore, since the construction exceeded the permissible limit, the petitioner may not be left out with any land. He further submits that the petitioner can approach the civil Court for declaration and injunction and the issue raised is a disputed question of fact as such the present petition is not tenable.
4. Perusal of the documents show that the petitioner claimed that the lands bearing Khasra No. 515/1 & 515/2 of area 4193 square feet is owned by the petitioner whereon over certain part of the land was kept open. The perusal of the documents show that a permission for construction of superstructure was allowed by Annexure P/2 dated 05.11.2016 and at present, and at

same time as of now, a notice Annexure P/6 dated 02.06.2021 has been issued to the petitioner that illegal construction has been made by the petitioner which is contrary to Section 307(3) of the Act. Therefore, since the allegation in notice by Municipal Corporation under Section 307 of Municipal Corporation Act 1956 is that the petitioner violated the permission as such this fact need to be ascertained whether the petitioner exceeded the permissible limit and on the land in which injunction is sought still belongs to the petitioner or not. These issues are highly disputed question of fact and needs detail evidence. The petitioner has to succeed on his own strength and therefore this Court cannot be expected to make a roving enquiry and collect the evidence on behalf of the petitioner.

5. The photographs attached along with this petition shows the demolished part of certain building which bears the date of 16.04.2021. So, considerable time has lost since then and the petitioner remained dormant. Why the petitioner after long time did not demarcated his land is a question of doubt. Whether the part of the land on which the petitioner claimed the ownership was covered within the ownership right of the petitioner or not is required to be adjudicated as by mere say that the petitioner is the owner of the said land, the said fact cannot be accepted as conclusive proof.
6. When a notice under Section 307(2) of the Act was served to the petitioner wherein it was alleged that an illegal construction has been made over and above the grant of sanctioned permission of the building, the identity of plot and the demarcation are still to be established before the competent civil Court which requires the evidence. This Court in exercise of writ jurisdiction cannot decide a disputed question of fact especially the identity of the plot. The petitioner is very well within his right and free to approach the competent civil Court for adjudication of his right, if so advised. Consequently, I am not inclined to allow this writ petition to go into disputed

question of facts.

7. Accordingly, the writ petition stands dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Vishakha