

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2480 of 2021

1. Perna Educational Society Registration No. Raipur/ 67 Registered Address M I G A-22, Vijay Vihar, Priyadarshini Nagar, In Front Of Noran Industries, Raipur, District Raipur Chhattisgarh Pin Code 492006 Through Its President, Shri Praveen Chandrakar, S/o Shri SL Chandrakar, R/o Fafadih, Raipur, District Raipur Chhattisgarh
2. Central College of IT, Opposite Lal Ganga Shopping Complex, M. I. D. A. S., Fafadih, Raipur, District Raipur Chhattisgarh Pincode 492009 Through President Perna Educational Society, Shri Praveen Chandrakar, S/o Shri S L Chandrakar, R/o Fafadih, Raipur, District Raipur Chhattisgarh

---- Petitioners

Versus

1. Raipur Municipal Corporation Through Its Commissioner, Raipur Municipal Corporation, Nagar Nigam Head Office, Near Mahila Police Thana, Gandhi Udyan, Raipur, District Raipur Chhattisgarh Pin Code 492001
2. Zone Commissioner (Zone-2) Raipur Municipal Corporation, Police Colony, Moudhpara, Raipur, District Raipur Chhattisgarh Pin Code 495001

---- Respondents

For petitioners – Shri K. Rohan, Advocate.

For respondents – Shri Anumeh Shrivastava, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

23/06/2021

Heard.

1. The challenge in this petition is to the notice dated 8/06/2021 issued to the occupant to which the petitioner claims to be occupant of the building on the ground that the building is in dilapidated condition and therefore dilapidated part is required to be demolished and notice was served to the petitioner that he may remove the dilapidated part within 15 days, otherwise he would be responsible for any mishap and thereafter the Municipal Corporation may demolish the dilapidated building.

2. Learned counsel for the petitioner would submit that action under Section 309 of the Municipal Corporation Act, 1956 (hereinafter referred to as 'the Act of 1956') a detail scheme has been provided. It mandates that directly notice in like nature for demolition cannot be served. It is stated before such order are passed it requires the hearing to be given to the occupier or owner of the building whereas the notice Annexure P-1 has been served with a threat of demolition in case the dilapidated part is not removed.

3. Perusal of Section 309 of the Act of 1956 sub section-1 contemplates that the Commissioner shall give a notice in writing to the occupier or the owner that the building is unfit and signifying his intention to prohibit the further use of such building and the owner and the occupier shall be called upon to state in writing the objection to such prohibition within thirty days from the receipt of the notice. If no objection is made by the occupier or the owner and the Commissioner finds the objection is not well founded it may not be taken cognizance thereof. Otherwise if the objections are not satisfactory he may with the previous approval of the Mayor-in-Council prohibit further use of building. However, before such notice of like nature is given, the occupier or the owner shall be heard and would be given an opportunity of hearing before the Mayor-in-Council in person or by an agent to support his objection. Further sub-section 4 of Section 309 of the Act of 1956 says that whenever the Commissioner is of opinion that any building intended or used for human habitation is unfit then the structural alterations or repairs would be the first option and if it is not possible to carry out such alterations or repairs, the demolition of such building can be ordered for.

4. Perusal of Annexure P-1 would show that notice dated 8/06/2021 has been served to the petitioner calling upon him to remove the dilapidated part of building within 15 days or otherwise he would be liable for any mishap if any happens and thereafter the Municipal Corporation would remove such dilapidated part of the

building. Therefore directly the notice of demolition has been issued under Section 309 of the Act of 1956 which is not in conformity to section 309. Section 309 of Act of 1956 sets out a certain scheme before eventual demolition is ordered for. Therefore, the notice dated 8/06/2021 being against the very spirit and scheme of section 309 it is quashed.

5. The respondent/Municipal Corporation shall be at liberty to issue a fresh notice in accordance with the scheme of Section 309 of the Act of 1956 and shall follow the procedure prescribed under Section 309 of the Act of 1956. The Municipal Corporation may issue such notice and may conclude the proceeding within a reasonable time preferably within a period of four months. It is further made clear that if the building condition is dilapidated to the extent it may endanger human life, then it is the petitioner who has to take all care. This observation is made in the light of fact that petition is preferred by a registered society, through its president and real time occupier of the premises for use for longer period may be the employee of the society. Therefore the petitioner shall also ensure the safety of its employee. Therefore, if certain mishap happens, then in such case petitioner cannot absolve their liability or responsibility at the same time. Before such untoward incident happens, it is the duty of the petitioner to take all precautions.

6. With such observation, the petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE