

(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2862 of 2021

- Dr. Rajesh Kumar Muneshwer, S/o Muneshwer, Aged About 37 Years, Director IMI Multi Specialty Hospital, Khursipaar Bhilai R/o IMI Multi Speciality Hospital Shivaji Nager, Khursipaar District Durg Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh Through Administration Town & Country Planning Department, Mahanadi Bhawan, Mantralaya Naya Raipur (CG)
2. Municipal Corporation Bhilai Through Commissioner Municipal Corporation Bhilai District Durg (CG).
3. Deputy Commissioner Municipal Corporation Bhilai District Durg (CG)

---- Respondents

For Petitioner	:	Mr. Anurag Jha, Advocate
For Respondent No.1	:	Mr. Gagan Tiwari, Govt. Advocate
For Respondent No.2 & 3	:	Mr. H.B. Agrawal, Sr. Advocate with Mr. Pankaj Agrawal, Advocate

Hon'ble Mr. Justice Parth Prateem Sahu
Order On Board

15/07/2021

1. Petitioner has filed this petition feeling aggrieved by issuance of final notice dated 29.6.2021 (Annexure P-6) informing the petitioner to remove excess construction raised by him or the said construction will be demolished.
2. Mr. Anupam Jha, learned counsel for petitioner would submit that the petitioner is running a multi-speciality hospital since the year 2010. All the requisite permissions and license for

construction of hospital and its running have been obtained in accordance with law and in support thereof learned counsel referred to copy of license (Annexure P-1), stating it to be valid upto 26.12.2021, and receipts showing deposit of tax as per demand made by respondent Municipal Corporation. He further submits that vide order dated 17.3.2021 the petitioner has been permitted to treat Covid-19 infected patients in his hospital. He submits that as per contents of impugned notice itself, the petitioner has constructed hospital over an area of 441.30 sq. mt., whereas area allotted to him is only 399 sq. mt. In the year 2017 itself, the petitioner has submitted the plan as well as an application for regularization of excess construction, but without passing any order on that application, the respondent Municipal Corporation has issued notices on 2.6.2021, 14.6.2021 & 29.6.2021 i.e. impugned notice, calling upon the petitioner to remove illegal construction within stipulated time else the same will be demolished by respondent Corporation. He submits that the petitioner has also submitted representation/reply to impugned notice and prayed for regularization of construction, however, till date no action/ order has been passed on the representation/reply of the petitioner.

3. Mr. Gagan Tiwari, learned Government Advocate for respondent No.1-State would submit that notice under challenge (Annexure P-6) is issued by respondent Corporation authorities, hence it is for the counsel representing the

Corporation to reply submissions of petitioner.

4. Mr. HB Agrawal, learned Senior Counsel for respondent No.2 & 3 would submit that from the contents of impugned notice itself it is clear that area of land allotted to the petitioner is 399 sq. mt., whereas construction of hospital has been made by petitioner over 441.30 sq. mt. Meaning thereby, the construction has been made in excess of land allotted to the petitioner. He further submits that from the date mentioned in representation it is apparent that the same is submitted on 12.7.2021 i.e. after lapse of sufficient time from the date of issuance of notice, and on very next day i.e. on 13.7.2021, instant writ petition is filed. He further submits that if any reply/representation of petitioner is pending consideration, the same will be considered and decided by respondent Corporation authorities expeditiously in accordance with law.
5. I have heard learned counsel for the parties and perused the documents annexed along with petition.
6. It is not in dispute that subject building is a hospital and as per contents of impugned notice, the petitioner has raised construction on excess area of land than that of allotted to him. According to petitioner, reply/representation submitted by him has not been considered and decided by respondent Corporation authorities till date and if the permanent construction of petitioner is demolished without considering the grounds raised in reply/representation, then the petitioner

would definitely suffer irreparable loss. In these circumstances, this Court is of the considered view that ends of justice would be served if, while protecting interest of petitioner, this writ petition is disposed of with a direction to respondent Municipal authorities to decide representation of petitioner, which is pending consideration, within a specific time period.

7. At this stage, Mr. Jha, learned counsel for the petitioner seeks permission of this Court to file a detailed fresh representation raising all grievances, to which learned Senior Counsel for respondent Corporation has no objection.
8. Accordingly, this writ petition is disposed of with a direction to the petitioner to file a detailed fresh representation, within one week from today, before the respondent Municipal Corporation raising all the grounds as urged in this petition, and in turn, respondent Corporation is directed to consider and decide that representation within a further period of 15 days from the date of receipt of such representation, in accordance with law. The order/ decision on the representation of petitioner will be communicated/intimated to him. Till the representation of petitioner is decided, the respondent Corporation authorities will not take any coercive action against the petitioner pursuant to impugned notice (Annexure P-6).
9. Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-