

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3166 of 2021**

- Pyush Shrivastav S/o Pramod Shrivastav Aged About 25 Years R/o Qr. No. G-63, Sector No. 6, Bhilai District Durg Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Administration Town And Country Planning Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa Raipur District Raipur Chhattisgarh
2. Municipal Corporation Durg Through The Commissioner, Municipal Corporation, Durg, District Durg (Chhattisgarh)
3. Dr. Pankaj Chandrakar S/o Late Laxminarayan Chandrakar Aged About 35 Years Prakratikchititsalaya, Ward No. 49 Padamnabhpur, Durg District Durg Chhattisgarh

---- Respondents

For Petitioner	:	Shri Anurag Jha, Advocate
For Respondents/State	:	Shri Sudeep Agrawal, Dy. AG
For Respondent No.2	:	Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order****08/09/2021**

1. Heard.
2. Challenge in this petition is to the proposed action by the Municipal Corporation, Durg to demolish the boundary wall which is alleged to be within the permissible limit of the lease hold right.
3. Learned counsel for the petitioner would submit that because of certain family

dispute from the original lessor, one brother namely Dr. Pankaj Chandrakar respondent No.3 had made a complaint, thereafter, the authorities are following the issue. He would further submit that the petitioner obtained the lease hold area in a lease agreement and was put to possession, therefore, the entire construction which has been made it is within the permissible limit of the lease hold area. Consequently, the proposed demolition would be against the law.

4. Per contra, learned counsel for the Municipal Corporation and learned State counsel would submit that the demarcation report has been placed on record which would show that apart from the lease hold area, the petitioner has encroached upon the certain part of government land and it is being the disputed question of fact, the same cannot be gone into fact finding by this Court in a writ petition. It is further submitted that once the demarcation report has been placed and it prima facie shows that certain encroachment has been made apart from the lease hold land, the petitioner cannot claim a right to save that area from demolition.
5. I have heard learned counsel for the parties and perused the documents. The petitioner claims that he is a lessee by an agreement which was from Nirmal Chandrakar vide Annexure P-5. As per the lease hold area, the land was given of Khasra No.141/4 admeasuring 1.214 hectare. The lease though is for more than 25 years but is not registered. It appears that certain complaints were made by one Dr. Pankaj Chandrakar which is Annexure P-2 in respect of lessor, his brother and lessee. It is not a case where the family dispute between the lessor is to be adjudicated. The only adjudication is confined to the fact whether the petitioner herein, who is a lessee, has encroached upon the land over and above his lease hold area or not?. The demarcation report has been

placed on record by the respondent. As per the demarcation report and the map which is attached, apart from the part of Khasra No.141 certain encroachment has been shown in the map. The demarcation report dated 28.06.2021 has also been placed on record vide Annexure R-2/4, which also purports the fact that apart from the Khasra No.141, the encroachment has been made on the government land bearing Khasra No.997 and 995/4 and certain boundary wall has been made. Therefore, this is a disputed question of fact as prima facie the documents filed along with the reply would show the fact of encroachment that cannot be ruled out subject to rebuttal in any proceeding. In this petition Nirmal Chandrakar from whom the petitioner has obtained the possession is not been made a party so as to appreciate the fact how much land lessor owned or was in possession before the lease was granted. There cannot be a roving enquiry in the writ petition especially in the teeth of the demarcation report and the map. Consequently, highly disputed question of facts are involved in this petition and the proper party i.e. Nirmal Chandrakar, from whom the petitioner got the possession, has not been arrayed, therefore, no adjudication can be made.

6. Accordingly, the petition being devoid of substance is liable to be and is hereby dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu