

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 3123 of 2020

- Moh. Sayeed Khan S/o Late Shri A.K. Khan Aged About 60 Years R/o Bsnl Colony , B.R. Road, Ward No. 12, District Rajnandgaon (Chhattisgarh),

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Urban Administration And Development Department, Mahanadi Bhawan, District Raipur (Chhattisgarh)
2. Municipal Corporation Rajnandgaon Through The Commissioner, Municipal Corporation, District Rajnandgaon (Chhattisgarh)
3. The Sub Divisional Officer Rajnandgaon, District Rajnandgaon (Chhattisgarh)

---- Respondents

For Petitioner	:	Mr. Saket Pandey & Mr. Anup Majumdar, Advocates
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For Respondent/ State	:	Mrs. Sunita Jain, G.A.
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For Respondent No. 2	:	Mr. Sandeep Dubey, Advocate
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Hon'ble Shri Justice Goutam Bhaduri

Order On Board

29.01.2021

Heard.

1. The instant writ petition has been filed to challenge the notice dated 25.11.2020 (Annexure P-10) wherein the petitioner have been served with a notice stating that he has encroached upon the government land and have raised certain superstructure. Therefore, the encroachment

should be removed within 24 hours of the receipt of the notice.

2. Learned counsel for the petitioner would submit that the petitioner had purchased the Nazul land bearing Khasra No. 3326/1 from the erstwhile lessee and he has not encroached upon the Nazul land and has constructed his superstructure which is 30 years old. However, without any substance, the vague notice Annexure P-1 dated 25.11.2020 has been issued branding that the petitioner has encroached upon the government land. He would further submit that the notice has been served by the Municipal Corporation claiming it to be their land which is completely illegal as Municipal Corporation itself is not aware of the fact that which part of the land belongs to them. He further submits that a copy of the map which is placed would show that the petitioner is in occupation of plot No. 6 out of entire land, Plot No. 2326/1 and out of that land certain part has been given to the Municipal Corporation therefore the petitioner cannot be branded to be the encroacher.

3. Learned counsel for the respondent No. 2 would submit that the petitioner have encroached upon the land of the Municipal Corporation and the Municipal Corporation needs the land for certain construction, therefore, the petitioner has been served with the notice to remove the encroachment i.e. superstructure. He would further submit that therefore the petitioner may not be protected as he is ranked as encroacher. The respondent also refers to certain correspondence wherein the petitioner and other likewise persons have admitted the fact that they have encroached over the land of the Municipal Corporation therefore they may be removed.

4. I have heard learned counsel for the parties, considered their rival submissions made and went through the record placed in the writ petition.
5. The petitioner herein before this Court is Moh. Sayeed Khan who claims to be the owner of the property. The notice is served on one Shahid Bhai on behalf of the petitioner, an agreement has been relied upon which purports that Iqbal Hussain the original lessee has entered into a agreement for sale of the property for Rs. Ten Lacs out of which Rs. Three Lacs Fifty Five Thousand has been received. Since the value of the property has been stated to be about Rs. 10 Lacs, as per Section 17 of the Indian Registration Act 1908 (henceforth 'the Act') read with Section 49 of the Act, the said document would be inadmissible in evidence and thereby the document, on which the petitioner has claimed his right itself is doubtful and inadmissible before the Court of law. It being so since Iqbal Hussain is not before this Court, the acquisition of the right by Moh. Sayeed Khan (the petitioner herein) on the basis of agreement cannot be insulated and protected by a judicial observation. Consequently, no relief can be granted to the petitioner for the aforesaid reasons.
6. Thus, the petitioner has failed to point out his locus as being lawful owner of the property therefore no protection can be granted in this writ petition to legalise an inadmissible transaction.
7. Accordingly, the writ petition stands dismissed.

Sd/-

(Goutam Bhaduri)
JUDGE

