

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (227) No. 737 of 2021**

Nasim Akhtar Khan s/o Late Gyasuddin Khan, aged about 62 years R/o MIG 1/49 Maharana Pratap Nagar, Korba, Police Chowki Rampur, P.S. City Kotwali, District Korba (C.G.),

Presently R/o Qtr. No. 22, Sector 07 Type 2A Balco Nagar korba, Tahsil and District Korba (C.G.)

---- **Petitioner**

Versus

1. Municipal Corporation, Korba through the Commissioner, Municipal Corporation, Saket Bhawan, Korba, P.S. Kotwali, Tahsil and District Korba (C.G.).

2. Vinay Kumar Singh S/o Late Sarju Singh, Aged about 57 years R/o Minus quarter, Subhash Block, Korba, Tehsil and District Korba (C.G.).

As the original Defendant No.2 (Sarju Singh died during the pendency of Civil suit, so the respondent No.2 is arrayed as party before this Hon'ble Court).

--**Respondents**

For Petitioner	:	Mr. Surfaraj Khan, Advocate
For Respondent No.1	:	Mr. Pankaj Agrawal, Advocate

Hon'ble Shri Justice Deepak Kumar Tiwari
Order on Board

21/12/2021

- The instant writ petition under article 227 of the Constitution of India has been preferred against the order dated 14/12/2021 passed in MJC (Civil) No. 63-A/2019 by the 1st Additional District Judge, Korba (C.G.) whereby the application filed by the petitioner under Order 26 Rule 9 of the Code of Civil Procedure has been rejected.
- Brief facts of the case are that the petitioner filed a suit for permanent injunction against the respondents under Section 307 (5) of the

Chhattisgarh Municipal Corporation Act, 1956 in respect of house bearing House No. 49, MIG 1, Maharana Pratap Nagar, Korba. Earlier the petitioner had filed a writ petition bearing WP(C) No. 1552/2019 stating that he had been served with notice for constructing his house over and above sanctioned map. In the said writ petition, the petitioner was directed to file a civil suit before the District Judge for grant of injunction, therefore, the said suit was filed. In the said suit, the petitioner moved an application under Order 39 Rule 1 & 2 of the CPC which was rejected by the trial Court vide order dated 01/11/2021 against which the petitioner has filed an appeal as MA No. 42/2021 and vide order dated 10/11/2021, this Court upheld the order of the trial Court. However, the petitioner was granted 45 days time to remove unauthorized construction over the drains, if any, failing which the Municipal Corporation was at liberty to take proper legal action in accordance with law. Thereafter, the petitioner moved another application under Order 11 Rule 12 of the CPC and under Order 26 Rule 9 of the CPC for appointing Commissioner and conducting survey/enquiry and preparing report because the petitioner has not constructed stairs over the drain line. The said applications have been rejected by the trial Court. Hence, this petition.

3. Counsel for the petitioner submits that the trial Court has rejected the application without appreciating proper application of law as all the rules and procedures are handmaid of justice, so looking to the controversy of the suit his application ought to be allowed.

4. Per contra, counsel appearing for respondent No.1 opposes the contention of the petitioner and supports the impugned order.
5. In the civil suit, the petitioner sought relief to restrain the notice dated 12/04/2019 issued by respondent No.1. Section 307 (2) (a) of the Chhattisgarh Municipal Corporation Act, 1956 enables the Municipal Corporation to issue written notice for any construction to show sufficient cause why such building or work shall not be removed, altered or pulled down and unless such person fails to show sufficient cause, the statute gives power to remove, alter or pull down the building or work, not as per norms of bylaws or any other requirement and expenses thereby shall be paid by the persons.
6. The petitioner may have the construction examined by any architect or engineer to match the compliance of the norms. The appointment of Commissioner under Order 26 Rule 9 of the CPC is discretionary power vested to the Court. The trial Court under Order 26 Rule 9 of the CPC has power to appoint commissioner at any stage of suit for ascertaining and showing light on the main dispute as well as fact leading to dispute. So looking to the controversy if the trial Court finds that relief as sought by the petitioner may be adjudicated without obtaining such report then this Court does not find any valid reason to interfere with the said order. The said order was passed under the discretion of the court for which reasons had been assigned.

7. Consequently, this Court does not find any substance in this petition. The same is dismissed.

Sd/-
(Deepak Kumar Tiwari)
Judge

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