



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 297 of 2021**

Smt. Usha Sahu, W/o S.R. Sahu, aged about 60 years, Occupation Business, Partner of M/s Geetanjali Construction, Ameri Road, Nehru Nagar, Bilaspur, R/o Geetanjali House, Ameri Road, Nehru Nagar, Bilaspur, District Bilaspur (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh Through Secretary, Department of Urban and Rural Administration, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur (C.G.)
2. Municipal Corporation, Bilaspur, Through Its Commissioner, Municipal Corporation Bilaspur, Vikas Bhawan, Nehru Chowk, Bilaspur, District Bilaspur (C.G.)
3. Deputy Registrar, Registrar Office, Bilaspur, District Bilaspur (C.G.)

---- Respondents

(Cause-title taken from Case Information System)

For Appellant	:	Mr. Malay Shrivastava, Advocate.
For Respondents No. 1 & 3	:	Mr. Jitendra Pali, Deputy Advocate General.
For Respondent No. 2	:	Mr. Abhyuday Singh, Advocate.

Hon'ble Shri Arup Kumar Goswami, Chief Justice**Hon'ble Shri Sachin Singh Rajput, Judge****Judgment on Board****Per Arup Kumar Goswami, Chief Justice****21.02.2023**

Heard Mr. Malay Shrivastava, learned counsel for the appellant. Also heard Mr. Jitendra Pali, learned Deputy Advocate General, appearing for respondents No. 1 & 3 and Mr. Abhyuday Singh, learned counsel, appearing for respondent No. 2.



2. This appeal is presented against an order dated 05.08.2021 passed by the learned Single Judge in Writ Petition (C) No. 3070 of 2021, dismissing the writ petition holding that the petitioner has alternative statutory remedy to ventilate his grievances.

3. The order of the learned Single Judge, reads as follows:

“1. Heard.

2. Challenge in this petition is to the order dated 01.07.2021 (Annexure P-2) whereby the registration of the sale deed has been refused on the basis of the communicated dated 05.04.2021 (Annexure P-1) issued by the Municipal Corporation, Bilaspur.

3. Learned counsel for the petitioner would submit that since the title of the petitioner is not in dispute, therefore, the Registrar could not have refused the registration of the sale deed. It is further submitted that the refusal has been made on the basis of the letter dated 05.04.2021 (Annexure P-1) wherein the colonies have been earmarked which have been constructed without passing the layout from the Town & Country Planning Department. It is further submitted that when the execution and ownership is not in dispute then the refusal of the sale deed cannot be done.

4. Learned counsel for the Municipal Corporation would submit that lots of illegal colonies were constructed without there being sanction from the Town and Country Planning Department and when the survey was done it was found





that the several plots of which for the petition has been filed also falls within the area which has been earmarked as illegal colony. Consequently, orders have been issued as otherwise illegality would perpetuate.

5. Refusal to register a sale deed is governed by part XII of the Registration Act, 1908 (hereinafter referred to as 'the Act, 1908'). Section 72 of the Act, 1908 provides that in case the registration is refused except on the ground of denial of execution, an appeal would lie against the order of a Sub-Registrar refusing to admit a document to registration to the Registrar to whom such Sub-Registrar is subordinate. After the refusal by Registrar under Section 76 of the Act, 1908, the suit would be filed under Section 77 of the Act, 1908. therefore, the statutory scheme and remedy is been provided in case the refusal of the sale deed is ordered. Since the alternative statutory remedy is available, the petitioner may avail the same, if so advised.

6. The petition is accordingly dismissed.”

4. Mr. Shrivastava submits that the appellate authority would not have any jurisdiction or competence to examine the validity of the order dated 05.04.2021, and therefore, relegating the appellant to avail alternative remedy, in the facts and circumstances of the case, would be of no avail to him. As refusal of the registering authority to register the sale deed in question is because of the letter dated 05.04.2021, the learned Single Judge ought to have exercised jurisdiction under Article 226 of the Constitution of India, he submits.



5. Mr.Pali and Mr.Singh support the order of the learned Single Judge.
6. Having heard the learned counsel for the parties, we are of the opinion that the contention of Mr. Shrivastava has merit.
7. There is no gainsaying the fact that the appellate authority can examine whether the registering authority has committed illegality in refusing to register a sale deed. In the present case, what cannot be lost sight of the fact is that there is a letter dated 05.04.2021 issued by the Commissioner, Municipal Corporation directing not to register sale deeds in respect of the Khasra numbers which have been mentioned in the annexure to the letter dated 05.04.2021.
8. It is not within the domain of the appellate authority to examine competence or authority of the Commissioner, Municipal Corporation to issue such letter. This aspect of matter was not considered by the learned Single Judge. Therefore, we are of the opinion that the appellant ought not to have been relegated to avail alternative remedy.
9. Taking that view, the order of the learned Single Judge is set aside. Resultantly, the appeal is allowed.
10. The case is remanded back to the learned Single Judge for fresh disposal in accordance with law.
11. Registry will list this case before the appropriate Single Bench having roster on 15.03.2023, as a fresh case.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(Sachin Singh Rajput)
Judge