

HIGH COURT OF JUDICATURE, CHHATTISGARH AT BILASPURWrit Petition No. 2407 of 2003PETITIONER:

Vijay Kumar Agrawal,  
S/o Mahesh Prasad,  
aged 50 years, resident of  
Motipara, Durg (C.G.).

Versus

RESPONDENTS:

1. Madhusudan Agarwal,  
S/o Jagdish Prasad Agarwal,  
aged 60 years, Sangam  
Press, Durg.
2. Collector,  
Nazul, Durg
3. Officer-In-Charge,  
Town and Country Planning,  
Durg.
4. Commissioner,  
Municipal Corporation,  
Durg.
5. State Govt. of Chhattisgarh,  
Through- The Secretary,  
Nagari Prasashan & Vikas Vibhag,  
D.K.S. Bhawan, Raipur.

POST FOR ORDER ON 30th AUGUST, 2003

Sd/-  
L.C. Bhadoo  
Judge

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Shri N. L. Shrivastava, Advocate for the petitioner.

Shri Sanjay K. Agarwal, Deputy Advocate General for the Respondent/State.

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**Before: Hon'ble Mr. Justice L.C. Bhadoo, J.**

**ORDER**

(Passed on 30<sup>th</sup> August, 2003)

1. The petitioner has preferred this petition under Articles 226/227 of the Constitution of India. The petitioner's case is that he runs a Printing Press near Mahatma Gandhi Higher Secondary School, Durg. The site plan prepared by Shri Pulak Bhattacharya, Naib Tahsildar enclosed with the report dated 5.9.2001 is Annexure P/1. There is one drainage behind the back of the petitioner's Printing Press for draining out the tap water and rain water which was existing on the nazul land of common use but the Respondent No.1 by encroaching upon the said land has constructed a tank of water thereby blocked the drainage. Now the water is blocked and the same is not drained out which

is adversely affecting the health condition of the petitioner's workers and also creating problem to the petitioner, therefore whole drainage system and civic amenities are adversely affected. One matter was filed before the Sub Divisional Magistrate under section 133 of the Criminal Procedure Code but the learned Sub Divisional Magistrate has declined to take any action on the ground that the dispute in question comes within the private nuisance. Against that order a revision was filed before the Additional Sessions Judge, who also declined to interfere with the order. On account of the blockage of drainage water is stagnating and bad smell is coming out of that stagnated water. Due to stagnation of water seepage has started in the premises of the petitioner and papers used in printing and various materials are being damaged and over all unhygienic environment has been created. The petitioner has requested that the respondents be directed to restore the outlet of rain and sewerage water by removal of the obstruction in the existing drainage.

2. I have gone through the order passed by the learned Sub Divisional Magistrate and also the Additional Sessions Judge. On the direction of the Sub Divisional Magistrate the Niab Tehsildar went on the spot and conducted the enquiry. After enquiry Niab Tehsildar as well as the S.D.M. has reached to the conclusion that the dispute in question comes under the private nuisance. More over nothing has come on record that the drainage system was on the nazul land or it is a private land because as per the record the Respondent No.1 has denied the existence of the drainage system since long and he has also denied the fact that the land in question upon which the drainage was existing is Nazul Land.
3. In view of the above facts of the matter the disputed question of facts are involved in this petition which requires through enquiry whether it is a nazul land or private land upon which drainage system was existing and such

disputed questions cannot be decided in writ jurisdiction. In order to redress his grievance the petitioner can approach a Civil Court if he so advised.

4. In view of the above I do not find any substance in this writ petition and to exercise discretionary powers under the extra ordinary jurisdiction. The petition is disposed of finally. *ad dismissed*

Sd/-  
L.C. Bhadoo  
Judge

Prakar

Id