



2026:CGHC:13574

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WP227 No. 1119 of 2025**

1 - Moh. Asif Nawaj @ Shanu Nawaj S/o M.A. Basa, Aged About 64 Years R/o Krishna Nagar Near Masjid, Gudhiyaari, Raipur (C.G.)

... Petitioner(s)**versus**

1 - Nagar Nigam Raipur (C.G.) Through Commissioner Office At White House, Near Mahila Thana, Gandhi Udhyan, Raipur (C.G.)

2 - Nagar Nigam Zone No.-07, Office At Agrasen Chowk, Nagar Palika Complex, Telidhani Naka, Raipur (C.G.)

3 - State Of Chhattisgarh Through District Magistrate Office At Collectorate Office, Raipur (C.G.)

... Respondent(s)

For Petitioner(s)	: Mr. Diwesh Kumar, Advocate
For Respondent No. 1	: Mr. H.B. Agrawal, Sr. Advocate along
and 2	with Ms. Priti Yadav, Advocate
For State/ Res. No. 3	: Mr. Rohan Shukla, Panel Lawyer

Hon'ble Shri Justice Ravindra Kumar Agrawal**Order on Board****20.03.2026**

1. The present writ petition has been filed by the petitioner under Article 227 of the Constitution of India against the impugned order dated 02.09.2025 passed by learned 6th Civil Judge, Junior Division, Raipur (CG) in Civil Suit No. 12A/2025, whereby the application filed by the petitioner under Order XXVI Rule 9 of CPC, 1908, has been rejected.
2. Learned counsel for the petitioner would submit that the petitioner is prosecuting a civil suit for declaration of his easementary right over the grass land Khasra No. 1083 through which the plaintiff/ petitioner is having access way to approach his land. Over the said grass land, the respondents No. 1 and 2 have constructed a community hall in the year 2024. The petitioner is the owner of the land of Khasra No. 1094/1, 1093/1, 1084/3, 1086, 1096 and 1084/1 situated at Village Gudhiyari, Patwari Halka No. 49, Tahsil and District Raipur (CG), Ward No. 18, Sardar Vallabhbhai Patel Ward, Zone No. 7, presently within Ward No. 27 Ramdas Ward, Raipur (CG).
3. He would further submit that by the construction of community hall raised by Respondent No. 1 and 2, the land of the petitioner is surrounded by all the four corners and there is no access way to approach to his land and thereby, he is depriving by his rights over the property and also by his easementary rights to access. He moved an application before the learned trial Court under Order 26 Rule 9 for calling of the commissioner report with respect to the situation and location of the spot, so that the

issue of easementary right of the petitioner could be adjudicated properly but the said application of the petitioner has been rejected by the learned trial Court by holding that by calling the commissioner report the evidence cannot be created and collected. He would further submit that it is not any creation or collection of any evidence, but it is calling of the evidence from the Commissioner with respect to the location and situation of the spot. Therefore, the application of the petitioner may be allowed and the impugned order may be set aside.

4. On the other hand, learned counsel for the Respondent No. 1 and 2 vehemently opposes and would submit that the learned trial Court has rightly passed the order, rejecting the application of the petitioner.

5. I have heard learned counsel for the parties and perused the material annexed with the petition.

6. The main grievance of the petitioner is that his land is surrounded by all the four corners and there is no access way to approach to his land. It is the pleading of the petitioner in his plaint that in the year 2024, the respondent no. 1 and 2 have constructed a community hall which is adjoining to the land of the petitioner and over the grass land of Khasra No. 1083 which was being used by the petitioner as access way to approach to his land was blocked by constructing a wall there by the respondent No. 1 and 2 and thereby his approach access is obstructed and he is having no other way to approach to his land, therefore, except calling of the Commissioner's report, there is no other way to prove the grievance of the petitioner/ plaintiff before the learned trial Court. It is not a creation or collection of the evidence but it is only a calling of the evidence

from the Commissioner with respect to the location of the land of the petitioner. No prejudice is caused to other side if the application is being allowed and called the Commissioner's report.

7. From perusal of the document annexed with the petitioner, it also transpires that the construction of the community hall is carried out by the Respondent No. 1 and 2. From Perusal of the photographs annexed with the petition (Annexure-P/5), it further transpires that there was an obstruction by a wall. Whether or not the petitioner is having alternative access way to approach his land, it cannot be considered without calling of the Commissioner's report. Therefore, this Court is of the opinion that the learned trial Court ought to have issue commission by appointing any competent authority as Commissioner to submit the spot inspection report of the case.

8. Accordingly, the petition filed by the petitioner is allowed. The impugned order dated 02.09.2025 is set aside. The application filed by the petitioner under Order XXVI Rule 9 is allowed. The learned trial Court is directed to issue a commission with respect to the spot inspection report and to appoint a Commissioner with the consent of the parties and to proceed in accordance with law. The expenses of the said proceeding shall be borne by the plaintiff.

9. With the aforesaid observation, the present writ petition is allowed.

Sd/-

(Ravindra Kumar Agrawal)

JUDGE

sagrika