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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No.26 of 2015**

Ramesh Kumar Tiwari, S/o Late Ram Dayal Tiwari, aged about 73 years, R/o Bemetara, Police Station Bemetara, Revenue District Bemetara, Civil District Durg (Chhattisgarh)

---- Appellant**Versus**

1. State of Chhattisgarh through the Secretary, Urban Administration and Development, Mahanadi Bhawan, Mantralaya, New Raipur (Chhattisgarh)
2. The Collector, Bemetara, District Bemetara (Chhattisgarh)
3. The Sub-Divisional Officer, Bemetara, District Bemetara (Chhattisgarh)
4. The Joint Director, Town and Country Planning, Collectorate Campus, Durg, District Durg (Chhattisgarh)
5. The Chief Municipal Officer, Municipal Council, Bemetara, District Bemetara (Chhattisgarh)
6. The Tahsildar, Bemetara, District Bemetara (Chhattisgarh)

---- Respondents

For Appellant	: Shri Shrawan Agrawal, Advocate
For Respondents No.1 to 4 and 6	: Shri U.N.S.Deo, Government Advocate
For Respondent No.5	: Shri Sushobhit Singh, Advocate
For Intervener	: Shri Santosh Bharat, Advocate

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri Justice P. Sam Koshy****Order on Board****Per Navin Sinha, Chief Justice****30/7/2015**

1. An application has been filed for leave to intervene on behalf of one Shri Sourabh Tiwari. Appropriately, it should have been filed as an interlocutory application which would then have been given a number. However, it is ignored for the present and the intervention application is allowed.

2. The present appeal arises from order dated 4-12-2014 dismissing Writ Petition (C) No.2361 of 2014. The learned Single Judge held that the 400 Square Feet of land in question belonged to the Government and was recorded as Government Grass Land situated on Mohabhatta Road, Bemetara. The construction raised by the Appellant was not only an encroachment but was also unauthorised and therefore

the Appellant was not entitled to any relief.

3. Learned Counsel for the Appellant submits that if the construction was unauthorised and his actions constituted an encroachment, there was no justification for the Respondents to lease out the construction in question to Sanskritik Vivekanand Utkarsh Parishad, Bemetara, the Intervener, on rent. There is no reason why the Appellant's application for grant of lease could not have been considered. Since he had raised the construction in question, he had a preferential right to be considered for grant of lease first.

4. Learned Counsel for the Municipal Council submitted that the land with structure was handed over to the Council after the State authorities removed the Appellant encroacher in an Anti-Encroachment Drive. The Appellant does not deny or dispute that he was an encroacher and had raised the construction without permission. The allotment was made by the Council to the Intervener on 30-9-2013. The Council has given a show-cause notice to the Intervener on 27-7-2015 asking it to vacate within seven days. Necessary corrective action has therefore been taken.

5. Learned Counsel for the Intervener submits that he is the President of Sanskritik Vivekanand Utkarsh Parishad, Bemetara. The Parishad was an NGO running a Library meant for public utility and not for personal gain in the leased structure.

6. We have considered the submissions on behalf of the parties and are satisfied to dispose this appeal at the stage of admission itself.

7. It is not in dispute that the land in question belongs to the Government. Likewise, it is also not in controversy that the Appellant does not have any order for settlement of the land in his favour much-less permission in accordance with law for raising any construction upon the

same. To the extent that the Appellant has been removed from the land in question and dispossessed of the structure raised by him, both the acts of his being contrary to the law, we find no reason to interfere with the order under appeal.

8. An illegal construction undoubtedly can be held to have been vested in the State. But, the State cannot be permitted to unjustly enrich itself by leasing it out to a third person for financial gain as has been done. The lease granted by the Municipal Council to the Intervener on 1-3-2014 was for a period of one year which has also expired. The Intervener therefore also has no legal right to continue on the lands in question.

9. If the structure had been demolished by the State or used exclusively for Government purposes only is a completely different aspect of the matter.

10. The Municipal Council does not appear to have been averse to continuing with the lease to the Intervener rather than to remove the offending construction and restoring the land to its original condition. The show-cause notice dated 27-7-2015 referring to the Court orders takes it beyond controversy that but for the same the Council would have allowed the Intervener to continue thereby enriching the Council from the investment made by the Appellant.

11. In the facts and circumstances of the case, it is therefore ordered that the land in question can be used only in the manner identified and mentioned in the Lay Out Plan of Bemetara Town which we are told is a newly developing District Town and not in any other manner or for any other purpose.

12. Subject to the same, if the Council proposes to lease out the structure, it is required to be done in a manner in consonance with Article

14 of the Constitution with equal opportunity to one and all including the Appellant and the Intervener so that the Council which is the protector of the public finances gets the best rental value for it.

13. The Municipal Council shall ensure that the premises in question are vacated by the Intervener within a maximum period of three weeks from today. Thereafter, the Municipal Council shall proceed for any fresh settlement only in accordance with law or demolition of the structure in accordance with the Development Plan as it may propose.

14. The appeal is disposed with modification of the order under appeal.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE