

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 478 of 2014**

1. Jitendra Kumar Tiwari, aged about 40 years, son of Late Salikram Tiwari.
2. Manoj Singh Gumbar, aged about 31 years, son of Saheb Singh.
3. Raja Singh Gumbar, aged about 65 years, son of Saheb Singh.
4. Arvind Singh Thakur, aged about 32 years, son of Ghanshyam Singh Thakur.
5. Yashpal Sahu, aged about 40 years, son of Pusauram Sahu.
6. Trilok Singh, aged about 50 years, son of Nattha Singh.
7. Hemant Diwan, aged about 44 years, son of Vishwanath Diwan.
8. Sanni Gupta, aged about 42 years, son of Bharat Lal Gupta.
9. Devcharan Sahu, aged about 40 years, son of Maniram Sahu.

All the appellants are resident of Ward No. 7, Maro, Police Station and Nagar Panchayat Maro, District Bemetara, Chhattisgarh.

---- Appellants

Versus

1. State of Chhattisgarh, Through Secretary, Urban Administration and Development Department, Mahanadi Bhawan, Mantralaya, New Raipur, Chhattisgarh.
2. The Collector Bemetara, District Bemetara, Chhattisgarh.
3. The Nagar Panchayat, Maro, through the Chief Municipal Officer, Nagar Panchayat Maro, District Bemetara, Chhattisgarh.
4. The President, Nagar Panchayat Maro, District Bemetara, Chhattisgarh.
5. Suresh Kumar Patil aged about 32 years, son of Durdeshi Patil.
6. Vijay Kumar aged about 40 years, son of Bhav Singh.
7. Lovely Singh, aged about 40 years, son of Malak Singh.
8. Khelan Prasad Sharma, aged about 55 years, son of Dhangi Prasad Sharma.
9. Bhakla, aged about 35 years, son of Bugli Dhimar.
10. Sanjay Mishra, aged about 45 years, son of Ghanshyam Prasad.
11. Gajendra Pandey aged about 30 years, son of Parmeshwar Pandey.
12. Malikram Thakur, aged about 60 years, son of Late Deendayal Thakur.
13. Iqbal Singh Gumbar aged about 50 years, son of Maha Singh Gumbar.
14. Ramkumar Pathare, aged about 50 years, son of Chaitram Pathare.

15. Gulshan Sahu, aged about 25 years, son of Santosh Sahu.
16. Hemuram, aged about 28 years, son of Soni Ram.
17. Chandraman Patwa, aged about 55 years, son of Santram Patwa.
18. Rijheram, aged about 50 years, son of Kejuram Sahu.
19. Dilip Singh Thakur, aged about 42 years, son of Late Khamhan Singh.
20. Bhola Shriwas, aged about 40 years, son of Sarju Ram.

Respondents No. 5 to 13 are resident of Ward No. 7, Maro, Police Station and Nagar Panchayat, Maro, Bemetara, Chhattisgarh.

---- Respondents

For Appellants	:	Shri Bharat Rajput, Advocate.
For Respondent/State	:	Shri UNS Deo, Government Advocate.
For Respondent/Nagar Panchayat	:	Shri Akhilesh Kumar, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board

Per Navin Sinha, Chief Justice

15/07/2015

1. The present appeal arises from order dated 8.12.2014 dismissing Writ Petition (C) No. 2384 of 2014. The Learned Single Judge opined that the Appellants were rank encroachers. Despite repeated notices issued to them by the Nagar Panchayat, Maro, for removal of encroachments on government land, they had failed to do so. The writ petition was filed merely against a show cause notice.
2. Learned Counsel for the Appellants submits that the notice dated 16.7.2014 and the subsequent notices were not a show cause notice, but a final order under Section 223 of the Chhattisgarh Municipalities Act, 1961 (hereinafter called 'the Act') holding them to be encroachers communicating a decision already taken for their removal within 15 days. He submits that compliance with principles of natural justice, though not specifically mentioned

under Section 223 was inherent in it. The next submission is that the shops in question have been constructed nearly 30 years ago, the Appellants have been paying property tax and that the shops are located at a considerable distance from the proposed road and can easily be allowed to co-exist with the construction of the new road. The shops are the only source of livelihood for the Appellants and their families.

3. No counter affidavit had been filed on behalf of the Respondents before the Learned Single Judge. Separate counter-affidavits have been filed in this appeal. The common stand is that the Appellants are encroachers on government lands and had been given notices to vacate. They are rank encroachers not entitled to leniency or sympathy. The area in question is proposed to be used for construction of a bus stand and a shopping complex for beautification of the Nagar Panchayat. The counter-affidavit of the Nagar Panchayat also states that new construction would be allotted in accordance with law by open tender and in which the Appellants can also participate.

4. We have considered the submissions on behalf of the parties.

5. It is the assertion in the writ petition, not denied in the counter-affidavit that the shops in question run by the Appellants have existed for more than 30 years. Photographs were also placed on record in the writ petition. A visual clearly reveals that the construction have not come up over night. Apparently, they must have come up gradually by single construction which gradually spread. The counter-affidavit of the State and the Nagar Panchayat is completely silent why no action was taken when these constructions were coming up. The constructions were not insignificant objects not visible to the naked eyes of the officers. If it was by the side of the road. Surely the officials of the Nagar Panchayat had been travelling on the same every day and either preferred to turn a blind eye for reasons we would not like to discuss or either were not interested in doing their duties despite being paid salary.

6. Having said so, it will not amount to render a camouflage of legality on the constructions raised by the Appellants without the sanctity of law. The constructions clearly were unauthorised in the law. The question now is of balancing the competing interests.

7. The Appellants state that the shops are their source of livelihood and income for running their family and daily lives. Naturally, if the shops are demolished one fine day, the source of income will vanish while responsibility of daily life will continue. The miseries that will fall can lead to myriad situations for which not much imagination is needed. It is also the case of the Appellants that they have been paying property tax and that the shops are located at a considerable distance which will not hamper the new proposed programmes of the authorities.

8. It is not our jurisdiction to pronounce on whether removal of the encroachments is necessary or not for development purposes. That remains within the realm of the executive. The concern of the Court is only with regard to humane aspect of the issue and judicial review will only additionally examine infirmities in the decision making process. The notice dated 16.7.2014 can by no stretch of imagination be described as a show cause notice as to why the encroachments be not removed. It states in no uncertain terms that they were encroachers and decision had been taken to remove them. Even if they were to file a reply, it would be an exercise in futility as decision for removal had already been taken. Compliance with the principles of natural justice is inherent in Section 223 of the Act evident from the language used in sub-clause (3). The giving of a notice would be an empty formality and futility unless the person served with the notice is given an opportunity to defend himself. The question is not whether he has a valid defence or not, but whether opportunity of defence was given or not. We therefore read into Section 223 of the Act, compliance with principles of natural justice.

9. Applying the principles in AIR 1986 SC 180 (Olga Tellis v. Bombay Municipal Corporation), we issue the following directions:

(a) The notice dated 16.7.2014 and the subsequent notices pursuant thereto are directed to be treated as show cause notices.

(b) Keeping in mind that there may be others at the same location and who may not have approached the Court for various reasons, including financial, we direct the Nagar Panchayat, Maro that within one week of the date of receipt and/or production of a copy of this order before it, as this order is being passed in presence of the Counsel for the Nagar Panchayat also, it shall duly publicise by public notice including beat of drum, opportunity to file replies by the persons concerned within a maximum period of two weeks from the date of such publicity.

(c) The Nagar Panchayat will issue individual notices to those who file objections fixing a date for hearing. After hearing the concerned, the Nagar Panchayat will pass a final reasoned and speaking order.

(d) It is expected that the Nagar Panchayat shall keep all aspects in mind including the objections that may be taken. This benefit shall be available only to those who may have raised offending constructions which have existed for over 10 years or more only.

(e) If ultimately the objections are to be rejected and encroachments removed, the Nagar Panchayat will have to frame a scheme for rehabilitation as well as temporary rehabilitation in the interval pending new construction for those in Clause (d) only and also concessions for allotment to such

persons as mentioned in Clause (d) in the new proposed construction as they form a separate class and cannot be equated with fresh bidders.

(f) The Nagar Panchayat is not obliged to consider the cases of such persons who do not file any objections or those who file objections but do not participate in the hearing and also do not fall in Clause (d). The Nagar Panchayat shall be at liberty to proceed ex-parte against them also after reasonable opportunity, but after recording reasons of the opportunities granted despite which they refused to participate after which final orders may be passed.

10. The order under appeal is set aside. The writ appeal is disposed with the aforesaid observations and directions.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE