

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 81 of 2016

1. Balram Vishwakarma S/o Late Maal Dev Vishvakarma, Aged About 62 Years R/o Ward No. 1, Kotra Road, Raigarh District Raigarh (Chhattisgarh)
2. Shyam Sundar Dewangan, S/o Kishan Dewangan, Aged About 35 Years R/o. Kotra Road Raigarh District Raigarh (Chhattisgarh)
3. Kaushal Kumar, S/o Kishan Dewangan, Aged About 50 Years R/o. Ward No. 1, Kotra Road Raigarh District Raigarh (Chhattisgarh)
4. Dashrath Dewangan, S/o Vishnu Prasad Dewangan, Aged About 61 Years R/o Kotra Road, Raigarh, District Raigarh (Chhattisgarh)
5. Chandramani Patel, S/o Shiv Charan Patel, Aged About 40 Years R/o Kotra Road, Raigarh, District Raigarh (Chhattisgarh)
6. Rajendra Singh, S/o Late Nakshatra Singh, Aged About 41 Years R/o. Kotra Road Raigarh District Raigarh (Chhattisgarh)
7. Vinod Kumar Beriwaal, S/o Parasram Beriwaal, Aged About 52 Years R/o. Kotra Road Raigarh, District Raigarh (Chhattisgarh)
8. Rambali, S/o Baldev Lohar, Aged About 55 Years Ward No. 1 Kotra Road Raigarh District Raigarh (Chhattisgarh)
9. Smt. Phulmati, W/o Late Munarik Lohar, Aged About 50 Years R/o. Ward No. 1, Kotra Road Raigarh District Raigarh (Chhattisgarh)
10. Rudra Narayan Singh, S/o Damodar, Aged About 55 Years R/o Kotra Road Raigarh District Raigarh (Chhattisgarh)
11. Chandan Das, S/o Babulal, Aged About 30 Years R/o Kotra Road Raigarh District Raigarh (Chhattisgarh)
12. Balkrishna Upadhyay, S/o Girish Prasad Upadyay, Aged About 42 Years R/o. Kotra Road Raigarh District Raigarh (Chhattisgarh)
13. Shiv Shankar Sharma, S/o. Arjun Dutt Sharma, Aged About 38 Years R/o. Kotra Road Raigarh District Raigarh (Chhattisgarh)

---- Petitioners

Versus

1. State Of Chhattisgarh Through : Secretary, Department Of Urban Administration Of Rural Development, Mantralaya, Naya Raipur, Raipur (Chhattisgarh)
2. Nazul Officer, Nazul Office, Raigarh District Raigarh (Chhattisgarh)
3. Collector, Collectorate Building, Raigarh, District Raigarh Chhattisgarh

---- Respondent

For Petitioners	Shri Amit Sharma, Advocate
For Respondent/State	Shri Adhiraj Surana, Dy. GA

Hon'ble Justice Shri Prashant Kumar Mishra

Order On Board By

13/01/2016

1. The petitioners have allegedly encroached the government land entered as 'Public Road' in the Revenue Record/Nazul Record bearing Khasra No.26/210, situated at Baikunthpur, Kotra Road. One proceeding for removal of encroachment was initiated against Om Prakash Sharma. The said Mr. Sharma was not obeying the restraint order passed by the Nazul Officer and persisted with the construction, therefore, a writ petition was filed by one Pankaj Agrawal in WPC No.2167/2014, which was disposed of on 08.12.2015 in the following terms:-

“(1) In this petition under Article 226 of the Constitution of India, the petitioner has prayed for demolition of illegal construction raised on Government land/Nazul land bearing Khasra No.26/210 area 0.93 acres at Nazul Nagar, Baikunthpur Kotra Road, Raigarh.

(2) This petition was entertained despite the matter being pending before the Nazul Officer, Raigarh, because, respondent No.7 was allegedly continuing with the construction inspite of the fact that the stay order was granted by the Nazul Officer, Raigarh, asking him to stop the construction.

(3) Upon direction by this Court on 30.11.2015, the Nazul Officer, Raigarh is present along with the demarcation report. In the said demarcation report prepared in the presence of members of the locality, it has been pointed out that about 20 persons have encroached over the Government land/Nazul land to raise construction of shops and rooms either by erecting temporary structure or Pucca structure.

(4) Since encroachment of Government land is *per se* illegal and need not be countenanced, the writ petition is disposed of with a direction to respondents 3 & 4 to remove all illegal construction/encroachment within a period of one month from today.”

2. The petitioners' co-encroacher Om Prakash Sharma preferred Writ Appeal No.673/2015, which was disposed of by the Division Bench on 22.12.2015 in the following terms:-

“7. We therefore dispose the appeal with the following clarifications of the order passed by the Learned Single Judge :-

A. The Appellant shall appear before the Nazul Officer along with a copy of the present order on or before 13.01.2016.

B. It will be open for Respondent No.1 who had initially complained encroachment to be also present on that day.

C. The Nazul Officer shall fix the next date for hearing in presence of the parties or their representatives.

D. It shall be open for the parties to raise all contentions of facts of law.

E. The Nazul Officer shall then pass final orders in Land Encroachment Case No.28/2013-14 within a maximum period of 30 days from 13.01.2016.

F. Adjournment may be granted by the Nazul Officer to the parties only for just and valid reasons to be recorded in writing.

G. If hearing is delayed because of unavoidable circumstances, the time limit of 30 days may be extended to a maximum of 45 days only. If the Nazul Officer is satisfied that the Appellant was not cooperating, it shall be open for him to proceed ex-parte also so that the proceedings are finally concluded within the time fixed.

H. But in that event, the Nazul Officer is required to record reasons of the efforts made to persuade the Appellant for participation notwithstanding which, the Appellant did not participate compelling ex-parte proceedings.”

3. Since the petitioners have also allegedly encroached some part of government land on the same khasra number i.e. 26/210, for which the order has been passed by the Division Bench, the present writ petition is also disposed of with the following direction:-

- I. The petitioners shall appear before the Nazul Officer, Raigarh along with the copy of the present order on or before 22.01.2016. On such appearance being made, the Nazul Officer shall carry out the demarcation in the presence of the petitioners and if the petitioners are found to have encroached on any government land, the Nazul Officer shall pass formal order directing the petitioners to remove the encroachment, failing which the Nazul Officer, Raigarh or the Municipal Corporation, Raigarh shall proceed to remove the encroachment or demolish the illegal construction raised by the petitioners. Let the entire exercise be completed within a period of 30 days, which is extendable upto 45 days only for just and valid reasons.
- II. If the proceedings are delayed because of non cooperation of the petitioners, it will be open for the Nazul Officer to proceed ex-parte for concluding the proceedings within the outer time limit.
4. With the above observation, the writ petition stands disposed of.
5. Certified Copy today.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA