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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 110 of 2016

- Dhyan Singh S/o Kartar Singh, Aged About 55 Years R/o Audyogik Ward, Sihawa Chowk, Dhamtari, Tahsil And District Dhamtari (Chhattisgarh)

---- Petitioner

Versus

1. Union Of India Through The Secretary, Ministry Of Railway, Rail Bhawan, New Delhi.
2. The Senior Section Engineer (Work), W. R. S. Raipur, District Raipur (Chhattisgarh)
3. The Divisional Railway Manager, South Eastern Central Railway, Raipur, District Raipur (Chhattisgarh)

---- Respondents

And

WPC No. 115 Of 2016

- Maksud Alam S/o Dargahi Ansari, Aged About 37 Years R/o Audyogik Ward, Sihawa Chowk, Dhamtari, Tahsil And District Dhamtari Chhattisgarh

---- Petitioner

Vs

1. Union Of India Through The Secretary, Ministry Of Railway, Rail Bhawan, New Delhi,
2. The Senior Section Engineer (Work), W.R.S., Raipur, District Raipur Chhattisgarh
3. The Divisional Railway Manager, South Eastern Central Railway, Raipur, District Raipur Chhattisgarh

---- Respondents

And

WPC No. 114 Of 2016

- Bhuwan Lal S/o Sheetal Das, Aged About 41 Years R/o Audyogik Ward, Sihawa Chowk, Dhamtari, Tahsil And District Dhamtari (Chhattisgarh)

---- Petitioner

Vs

1. Union Of India Through The Secretary, Ministry Of Railway, Rail Bhawan, New Delhi.
2. The Senior Section Engineer (Work), W. R. S. Raipur, District Raipur (Chhattisgarh)
3. The Divisional Railway Manager, South Eastern Central Railway, Raipur, District Raipur (Chhattisgarh)

---- Respondents

And

WPC No. 116 Of 2016

1. Surjit Singh S/o Late Shri Attar Singh, Aged About 38 Years R/o Audyogik Ward, Sihawa Chowk, Dhamtari, Tahsil And District Dhamtari (Chhattisgarh)
2. Kalim Khan S/o Abdul Ajim Khan, Aged About 40 Years R/o Audyogik Ward, Sihawa Chowk, Dhamtari, Tahsil And District Dhamtari (Chhattisgarh)
3. Arjun Singh S/o Late Shri Sher Singh, Aged About 28 Years R/o Audyogik Ward, Sihawa Chowk, Dhamtari, Tahsil And District Dhamtari (Chhattisgarh)
4. Jeet Singh S/o Late Shri Attar Singh, Aged About 44 Years R/o Audyogik Ward, Sihawa Chowk, Dhamtari, Tahsil And District Dhamtari (Chhattisgarh)
5. Afzal Khan S/o Abdul Rahman Khan, Aged About 39 Years R/o Audyogik Ward, Sihawa Chowk, Dhamtari, Tahsil And District Dhamtari (Chhattisgarh)

---- Petitioners

Vs

1. Union Of India Through The Secretary, Ministry Of Railway, Rail Bhawan, New Delhi.
2. The Senior Section Engineer (Work), W. R. S. Raipur, District Raipur (Chhattisgarh)
3. The Divisional Railway Manager, South Eastern Central Railway, Raipur, District Raipur (Chhattisgarh)

---- Respondents

And

WPC No. 113 Of 2016

1. Hasan Raja S/o Tajuddin, Aged About 32 Years R/o Sihawa Chowk, Near Railway Station, Dhamtari, Tahsil & District Dhamtari Chhattisgarh
2. Teejoram Bhandekar S/o Sbulal Bhandekar, Aged About 40 Years R/o Sihawa Chowk, Near Railway Station, Dhamtari, Tahsil & District Dhamtari Chhattisgarh
3. Gopiram Sahu, S/o Kapur Sahu, Aged About 45 Years R/o Sihawa Chowk, Near Railway Station, Dhamtari, Tahsil & District Dhamtari Chhattisgarh
4. Sanjay Dagaur S/o Fagguram Dagaur, Aged About 42 Years R/o Sihawa Chowk, Near Railway Station, Dhamtari, Tahsil & District Dhamtari Chhattisgarh
5. Dilip Sonkar S/o Ghasiyaram Sonkar, Aged About 45 Years R/o Sihawa Chowk, Near Railway Station, Dhamtari, Tahsil & District Dhamtari Chhattisgarh
6. Prahlad Wadhwani, S/o Late Shri Sahaj Ram Wadhwani, Aged About 42 Years R/o Sihawa Chowk, Near Railway Station, Dhamtari, Tahsil & District Dhamtari Chhattisgarh
7. Ikram Bhai S/o Afizuddin, Aged About 40 Years R/o Sihawa Chowk, Near Railway Station, Dhamtari, Tahsil & District Dhamtari Chhattisgarh
8. Mohd. Akram, S/o Mohd. Issuf, Aged About 32 Years R/o Sihawa Chowk, Near Railway Station, Dhamtari, Tahsil & District Dhamtari Chhattisgarh
9. Bhuvneshwar Sahu, S/o Punitram Sahu, Aged About 46 Years R/o Sihawa Chowk, Near Railway Station, Dhamtari, Tahsil & District Dhamtari Chhattisgarh
10. Sibtain Raza S/o Ismail Raza, Aged About 40 Years R/o Sihawa Chowk, Near Railway Station, Dhamtari, Tahsil & District Dhamtari Chhattisgarh
11. Rajju Ram Sahu, S/o Ankalha Sahu, Aged About 50 Years R/o Sihawa Chowk, Near Railway Station, Dhamtari, Tahsil & District Dhamtari Chhattisgarh
12. Mohd. Ajam Sheikh S/o Sheikh Fasuddin, Aged About 50 Years R/o Sihawa Chowk, Near Railway Station, Dhamtari, Tahsil & District Dhamtari Chhattisgarh
13. Abdul Salam, S/o Mohd. Salim Aged About 32 Years R/o Sihawa Chowk, Near Railway Station, Dhamtari, Tahsil & District Dhamtari Chhattisgarh
14. Mohd. Akram S/o Mohd. Safi, Aged About 45 Years R/o Sihawa Chowk, Near Railway Station, Dhamtari, Tahsil & District Dhamtari Chhattisgarh
15. Mohd. Raza, S/o Mohd. Shewar, Aged About 40 Years R/o Sihawa Chowk, Near Railway Station, Dhamtari, Tahsil & District Dhamtari Chhattisgarh

---- **Petitioners**

Vs

1. Union Of India Thorough The Secretary, Ministry Of Railway, Rail Bhawan, New Delhi,
2. The Senior Section Engineer (Work), W.R.S., Raipur, District Raipur Chhattisgarh
3. The Divisional Railway Manager, South Eastern Central Railway, Raipur, District Raipur Chhattisgarh

---- Respondents

And

WPC No. 111 Of 2016

1. Smt. Pushpa W/o Koveram Uike, Aged About 45 Years R/o Audyogik Ward, Sihawa Chowk, Dhamtari, Tahsil And District Dhamtari (Chhattisgarh)
2. Dilip Singh S/o Charan Singh, Aged About 60 Years R/o Audyogik Ward, Sihawa Chowk, Dhamtari, Tahsil And District Dhamtari (Chhattisgarh)
3. Daya Singh S/o Kartar Singh, Aged About 48 Years R/o Audyogik Ward, Sihawa Chowk, Dhamtari, Tahsil And District Dhamtari (Chhattisgarh)

---- Petitioners

Vs

1. Union Of India Through The Secretary, Ministry Of Railway, Rail Bhawan, New Delhi.
2. The Senior Section Engineer (Work), W. R. S. Raipur, District Raipur (Chhattisgarh)
3. The Divisional Railway Manager, South Eastern Central Railway, Raipur, District Raipur (Chhattisgarh)

---- Respondents

For Petitioners : Shri Goutam Khetrapal, Advocate
 For Respondent-SECR: Shri Abhishek Sinha, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

18/01/2016

1. Petitioners have assailed the legality and validity of the notice Annexure P-1, whereby the respondent No.2 The Senior Section Engineer (Work),

WRS, Raipur, has issued 15 days notice for removal of encroachment and vacation of the premises belonging to the railways, on which the petitioners have encroached.

2. Shri Khetrapal, learned counsel for the petitioners, would draw attention of the Court to the document Annexure P-2, whereby the Municipal Council, Dhamtari has received property tax from the petitioners as also to the proceedings Annexure P-3 drawn by the Tehsildar, Dhamtari, wherein the railways failed to submit any document proving its ownership on the land. On the strength of these documents, Shri Khetrapal would submit that the land does not belong to railways, therefore, the notice Annexure P-1 is without any authority of law.
3. Per contra, Shri Abhishek Sinha, learned standing counsel for the railways, appearing on advance notice, would show to this Court copy of the Khasra Panchshala of the subject land, wherein the railways has been mentioned as the owner of the land. He would further submit that in the receipt Annexure P-2, issued by Municipal Council, Dhamtari, also the owners of the property has been mentioned as the railways. He would also submit that the proceedings Annexure P-3 was not initiated on any application moved by the petitioners and/or the railways, but the Tehsildar Dhamtari drawn the proceedings on the basis of some memo issued by the Sub Divisional Officer (R), Dhamtari. He would submit that the railways not being properly noticed or not having moved the application, the said proceedings are not binding on railways. Even otherwise, Tehsildar cannot decide the title of any of the party under some proceeding wherein a memo issued by the SDO(R) was under consideration.
4. Having heard learned counsel for the parties and having perused the

papers, it appears, the railways has issued the notice to the petitioners for removal of encroachment and handing over the vacant possession. The petitioners have not produced any document showing any title in their favour. They are not claiming any relief to the effect that they are entitled to hold the property on the strength of any grant by the State Government or the railways. On the other hand learned counsel for the railways would show to this Court copy of the khasra papers showing the railways as owner of the property.

5. In the matter of **Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan And Others**¹, it has been held by the Supreme Court that encroachment on pavement/public street or any government land ought not to be countenanced and the same has to be removed expeditiously in the interest of public and the administration. It is held therein that in the case of encroachment of recent origin, there is no need of following the principles of natural justice, however, in cases where the encroachment is not of recent origin, notice of 10 days or two weeks for removal of encroachment would be sufficient compliance.
6. Similarly, in the matter of **Jagpal Singh & Ors. V. State of Punjab & Ors.**², the Supreme Court has held in paras-13 & 22:-

“13. We find no merit in this appeal. The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of villagers of the village. The

¹ (1997) 11 SCC 121

² AIR 2011 SC 1123

letter dated 26.9.2007 of the Government of Punjab permitting regularization of possession of these unauthorized occupants is not valid. We are of the opinion that such letters are wholly illegal and without jurisdiction. In our opinion such illegalities cannot be regularized. We cannot allow the common interest of the villagers to suffer merely because the unauthorized occupation has subsisted for many years.

22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all the State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.

7. Considering the above settled legal principles and in view of the fact that the petitioners have not placed before this Court any document proving their title or entitlement to remain in occupation of the land, all the writ petitions are disposed of with a direction that the Sub Divisional Officer (R), Dhamtari shall demarcate the area to ascertain as to what exact area is owned by the railways or the State Government. Demarcation shall be carried within a period of one month from today. On the basis of finding on the demarcation, which should be carried on in presence of the petitioners, the railways or the State Government, as the case may be, shall proceed with the removal of encroachment, in accordance with law.
8. Till the demarcation is carried on or for a period of one month from today, the subject demolition shall remain stayed. The petitioners shall co-operate

in the demarcation proceeding, failing which the protection may not inure to their benefit.

9. Certified copy today.

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Sd/-
Judge
Prashant Kumar Mishra