

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3153 of 2016**

- Govind Nankani S/o Shri Shobhraj Nankani, Aged About 40 Years R/o Pratapganj Para, Circuit House Road, Jagdalpur, Distt. Bastar (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through : Secretary, Revenue Department, Mantralaya, Naya Raipur, Civil & Rev. Distt. Raipur (Chhattisgarh)
2. Director, Town & Country Planning, Housing And Environment, Mantralaya, Naya Raipur, Distt. Raipur (Chhattisgarh)
3. The Collector, Jagdalpur, Civil & Rev. Distt. Bastar (Chhattisgarh)
4. The Joint Director, Town & Country Planning Department, Jagdalpur, Civil & Rev. Distt. Bastar (Chhattisgarh)
5. The Sub Divisional Officer Cum L.A.O. Jagdalpur Distt. Bastar Chhattisgarh.
6. Municipal Corporation, Through The Commissioner, Municipal Corporation, Jagdalpur, Distt. Bastar (Chhattisgarh)

---- Respondent

For Petitioner : Shri Harshal Chouhan, Advocate.
 For Respondent/State : Shri Vinod Deshmukh, Deputy GA.
 For Respondent No.6 : Shri B.L. Sahu, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****21/12/2016**

1. In this petition under Article 226 of the Constitution of India, the petitioner has prayed for a direction for restraining the respondents from demolishing the structure and to comply with the provisions of the Right to Fair Compensation and Transparency in Land

Acquisition, Rehabilitation and Resettlement Act, 2013, determine compensation, make payment thereof before widening the road.

2. It is alleged that an area of 67.5 square feet of land together with super structure belonging to the petitioner is sought to be used for widening of road but without initiating any acquisition proceeding or compensating the petitioner.
3. Admittedly, the area in question is within the jurisdiction of Municipal Corporation, Jagdalpur.
4. Under Sections 305 & 306 of the CG Municipal Corporation Act, 1956 (for short 'the Act, 1956') provisions have been made to regulate line of building and compensation. The said provisions are reproduced for ready reference:

“305. Power to regulate line of buildings.- (1) if any part of a building projects beyond the regular line of a public street, either as existing or as determined for the future or beyond the front of immediately adjoining buildings the Corporation may -

(a) If the projecting part is a verandah, step or some other structure external to the main building, then at any time, or

(b) If the projecting part is not such external structure as aforesaid, then whenever the greater portion of such building or whenever any material portion of such projecting part has been taken down or burdened down or has fallen down,

require by notice either that the part or some portion of the part projecting beyond the regular line or beyond the front of the immediate adjoining building, shall be removed, or that such building when being rebuilt shall be set back to or towards the said line or front; and the portion of land added to the street by such setting back or removal shall henceforth be deemed to be part of the public street and shall vest in the Corporation:

Provided that the Corporation shall make reasonable compensation to the owner for any damage or loss he may sustain in consequence of his

building or any part thereof being set back.

(2) The Corporation may, on such terms as it thinks fit, allow any building to be set forward for the improvement of the line of the street.

306. Compensation .- (1) No compensation shall be claimable by an owner for any damage which he may sustain in consequence of the prohibition of the erection of any building.

(2) The Corporation shall make reasonable compensation to the owner for damage or loss which he may sustain in consequence of the prohibition of the re-erection of any building or part of a building except in so far as the prohibition is necessary under any rule or byelaw:

provided that the Corporation shall make full compensation to the owner for any damage he may sustain in consequence of his building or any part thereof being set back unless for a period of three years or more immediately preceding such notice the building has by reason of its being in a ruinous or dangerous condition become unfit for human habitation or unless an order of prohibition issued under section 286 has been and still is in force in respect of such building.

(3) The Corporation shall make reasonable compensation to the owner for any damage or loss which he may sustain in consequence of the inclusion of his land in a public street but in assessing such compensation, regard shall be had to the benefits accruing to that owner from the development of the land belonging to him and affected by such street."

5. In the matter of **Tarabai Vs. Indore Municipal Corporation, Indore** {(1977) 1 MPWN 321}, it has been held that setting back by legal fiction shall have the effect of vesting that land in Corporation and such vesting does not depend on payment of compensation. In view of this, it cannot be held that until payment of compensation is made, the authorities are not competent to raise any construction for widening of road or for construction of drain. However, at the same time, every citizen whose land is included in the building line demarcated by the Corporation in accordance with Section 305 of

the Act is entitled to receive reasonable compensation as provided under the proviso to Section 305 and under Section 306 of the Act, 1956, though sub-section (3) of Section 306 further provides that in assessing such compensation, regard shall be had to the benefits accruing to that owner from the development of the land belonging to him and affected by such street.

6. In view of the above position of law, while refusing to restrain the Corporation to widen the road or to construct the drain, it is directed that the respondent Corporation shall ascertain the exact area owned by the petitioner and shall thereafter determine the compensation to which the petitioner is entitled under Sections 305 & 306 of the Act, 1956 on an application submitted by the petitioner in this regard within a period of one month from today along with a certified copy of this order. The respondent Corporation shall thereafter consider and decide the issue regarding compensation in accordance with law within reasonable time and preferably within a period of six months thereafter.
7. This Court has already taken similar view in the matter of **Smt. Savitri Devi Agrawal Vs. State of Chhattisgarh and Others** (WPC No.805/2012, decided on 3.5.2012).
8. With the above observations/directions, the Writ Petition stands finally disposed of at the admission stage.

Sd/-
Judge
(Prashant Kumar Mishra)

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HEADLINES

Setting back by legal fiction, under Section 305/306 of the Municipal Corporation Act, 1956 shall have the effect of vesting of land in the Corporation and such vesting does not depend on payment of compensation, therefore, the Corporation need not be restrained to widen the road or construct drain without making compensation.