

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.3329 of 2017

(Arising out of notice dated 30-11-2017 issued by the learned
Commissioner, Municipal Corporation, Raipur)

Mahesh Kumar Sahu, aged 38 years, S/o Shri Mehtar Lal Sahu,
R/o House No.1/56, Suraj Nagar, Jhanda Chowk, Labhandi,
Raipur, District Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Avas Avam Paryavaran Vikas Vibhag, Capital Complex, New Raipur, District Raipur (C.G.)
2. Municipal Corporation, Raipur, through the Commissioner, White House, Gandhi Chowk, Raipur (C.G.)
3. Collector, Raipur, District Raipur (C.G.)

---- Respondents

Writ Petition (C) No.3327 of 2017

(Arising out of notice dated 30-11-2017 issued by the learned
Commissioner, Municipal Corporation, Raipur)

Amar Kumar Puri, S/o Late Shri Nanak Ram Puri, aged about 39
years, R/o Street No.2, Anand Vihar Colony, Mova, Raipur, District
Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Urban Administration and Development, Capital Complex, New Raipur, District Raipur (C.G.)
2. Municipal Corporation, Raipur, Through the Commissioner, White House, Gandhi Chowk, Raipur (C.G.)
3. Commissioner, Municipal Corporation, Raipur, (Bazaar and Najul), Raipur (C.G.)

---- Respondents

AND

Writ Petition (C) No.3330 of 2017

(Arising out of notice dated 30-11-2017 issued by the learned
Commissioner, Municipal Corporation, Raipur)

Girish Kumar Sahu, aged 36 years, S/o Shri Harinarayan Sahu,
R/o Near Sharda Chowk, RDA Building, Jorapara, Raipur, Distt.
Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Avas Avam
Paryavaran Vikas Vibhag, Capital Complex, New Raipur, District
Raipur (C.G.)
2. Municipal Corporation, Raipur, through the Commissioner, White
House, Gandhi Chowk, Raipur (C.G.)
3. Collector, Raipur, District Raipur (C.G.)

---- Respondents

For Petitioners:	Mr. Sudeep Johri, Mr. Sunil Otvani and Mr. Anshuman Shrivastava, Advocates.
For Respondents/State: Mr. Dhiraj Kumar Wankhede, Govt. Advocate.	
For Municipal Corporation, Raipur: - Mr. Pankaj Agrawal, Advocate.	

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

12/12/2017

1. Heard on the question of admission of these writ petitions and on
the application for grant of interim relief.
2. Since common question of law and fact is involved in these three
writ petitions, they were clubbed together and heard analogously
and are being disposed of by this common order.
3. The Municipal Corporation, Raipur, granted lease of shops
admeasuring 80 sq.ft., Opposite Khalsa School, Raipur to these
writ petitioners by lease agreement dated 18-1-2007 under the
Swavalamban Yojana. As per the document filed by the petitioners
(Annexure P-2), period of lease stood expired after the completion

of lease period. In the meanwhile, the Government has taken a policy decision to develop Oxy Zone to conserve and preserve environment, in the ESI Colony and nearby area and for developing the said area as Oxy Zone, feeling the requirement of shops held by the petitioners, the petitioners were served with notices dated 29-5-2017 to vacate the premises within three days led to filing of writ petitions by these three writ petitioners questioning legality and validity of those notices dated 29-5-2017. This Court by order dated 9-8-2017 permitted the Municipal Corporation, Raipur to withdraw the notice dated 29-5-2017 with liberty to proceed in accordance with law and to examine the individual cases. The Municipal Corporation, now, by the impugned notices dated 30-11-2017 having decided to rehabilitate the petitioners at Bhanpuri Ring Road No.2 in the vacant shops constructed under the Mukhyamantri Swavalamban Yojana, directed them to appear before the Commissioner, Municipal Corporation, Raipur on 4-12-2017 for drawl of lottery to allot shops. However, the petitioners did not appear before the said authority and have filed these writ petitions challenging the notices dated 30-11-2017 and calling in question the decision of the Government to develop Oxy Zone stating that developing the area as Oxy Zone is contrary to law and the impugned notices dated 30-11-2017 be quashed.

4. Mr. Sudeep Johri, learned counsel appearing for the petitioners, would vehemently submit that the impugned decision of the Government is contrary to law, as the proper procedure envisaged under the Chhattisgarh Municipal Corporation Act, 1956 has not

been followed and the livelihood of the petitioners will be affected if they are evicted from the land in question therefore, the Municipal Corporation and the State Government be restrained from evicting the petitioners from the suit premises and a protective order be granted, as shops to be allotted at Bhanpuri are in the outskirts of Raipur city and the petitioners will suffer and they have no business prospect at that place. Mr. Johri relied upon the decisions of the Supreme Court in the matters of Banatwala and Company v. Life Insurance Corporation of India and another¹, ITC Limited v. State of Uttar Pradesh and others², Sunil Pannalal Banthia & Ors. v. City and Industrial Development Corpn. of Maharashtra Ltd. & Anr.³, Bhaiya Punjalal Bhagwanddin v. Dave Bhagwatprasad Prabhuprasad and others⁴, Shri Rama Sugar Industries Ltd. v. State of Andhra Pradesh and others⁵ and Indian Aluminium Company v. Kerala State Electricity Board⁶, to buttress his submission.

5. Mr. Dhiraj Kumar Wankhede, learned Government Advocate appearing on behalf of the State of Chhattisgarh, and Mr. Pankaj Agrawal, learned counsel appearing on behalf of the Municipal Corporation, Raipur, would submit that the petitioners have earlier filed writ petitions questioning the notice of the Corporation dated 29-5-2017 and the Municipal Corporation was permitted to withdraw the said notice with liberty to proceed in accordance with

1 (2011) 13 SCC 446

2 (2011) 7 SCC 493

3 AIR 2007 SC 1529

4 AIR 1963 SC 120

5 AIR 1974 SC 1745

6 AIR 1975 SC 1967

law and now, the cases of the petitioners have been examined and finding that their rehabilitation is must and in order to rehabilitate them only on humanitarian and compassionate ground, the Corporation has decided to rehabilitate the petitioners by providing the vacant shops at Bhanpuri Ring Road No.2 and has incurred ₹ 20 lakhs in repairing the shops in order to bring them in proper condition and they have been directed to appear for getting the necessary formalities to be done and for vacating the subject shops, but they did not appear before the said authority and have filed writ petitions. They would further submit that the petitioners' lease in question had already come to an end and it has not been renewed which is apparent from Annexure P-2 filed by the petitioners and in addition to that they have been served with notice dated 11-12-2017 clearly informing that their lease period had already expired and they are not entitled to continue in absence of extension of lease. They would also submit that the petitioners are not entitled to question the order of the State Government developing an area as Oxy Zone, as it is purely an administrative decision of the Government and therefore the petitioners have no locus to challenge the same in these writ petitions and they are at liberty to challenge the same in appropriate proceedings, if they feel so, and as such, the writ petitions deserve to be dismissed.

6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the records with utmost circumspection.
7. Undisputedly, the petitioners have earlier filed writ petitions

questioning the notices dated 29-5-2017 issued by the Municipal Corporation, Raipur and the Municipal Corporation was permitted to withdraw the said notices with liberty to proceed strictly in accordance with law and to examine the individual cases. According to the Corporation, now the cases of the petitioners have been examined and in order to rehabilitate them, they are being allotted vacant shops at Bhanpuri Ring Road No.2 for which they were asked to come to the office of the Corporation for drawl of lottery, but they did not appear and it appears that they are not interested in the rehabilitation of their shops at Bhanpuri Ring Road No.2 i.e. the vacant shops constructed also under the Mukhyamantri Swavalamban Yojana. Their lease period had already come to an end as per their own showing in Annexure P-2 on 31-12-2016 (in case of petitioners Mahesh Kumar Sahu and Girish Kumar Sahu) and on 3-2-2015 (in case of petitioner Amar Kumar Puri), as such they have no right to continue in the said premises, however, in all fairness, the Municipal Corporation has decided to rehabilitate them at Bhanpuri Ring Road No.2.

8. The Supreme Court in the matter of **Jaswantsingh Mathurasingh and another v. Ahmedabad Municipal Corporation and others**⁷ has clearly held that a lease creates right or an interest in enjoyment of the demised property and a tenant or a sub-tenant is entitled to remain in possession of the demised property until the lease is duly terminated and eviction takes place in accordance with law. Thereafter, the Supreme Court looking to long stay of the tenant therein, has held him entitled for alternative premises by

⁷ 1992 Supp (1) SCC 5

holding as under: -

“16. It is seen that the appellant has been in possession as tenant for well over half a century and, therefore, it is injuriously affected by the scheme which has the effect of terminating his possession and this adversely affects its business in the demised premises. Since it is a running business over the years, the respondent is directed to provide an alternative premises by allotting a suitable shop within the city to the appellant; to put it in possession thereof and until then allow its occupation of demised shop. In case the appellant does not vacate or creates any obstruction in any form in the matter of possession, it would be open to the respondent to have the appellant ejected summarily. In this view we decline to interfere with the scheme. The appeal is accordingly allowed to the above extent and in other respects the decree of the courts below is upheld. But in the circumstances parties are directed to bear their own costs.”

9. Reverting back to the facts of the present case, the Municipal Corporation finding that the petitioners' lease has already determined by efflux of time and it has not been renewed and their eviction is likely to affect their livelihood, if they are evicted and uprooted without providing them alternative suit in the Raipur town, as they are staying at the present place for last ten years, decided to rehabilitate them at Bhanpuri Ring Road No.2, Raipur which is strictly in accordance with law and as held by the Supreme Court in **Jaswantsingh Mathurasingh** (supra). As such, the order Annexure P-1 granting the relief of rehabilitation is in favour of the petitioners.
10. So far as challenge of the petitioners to developing the area as Oxy Zone to conserve the environment is concerned, the petitioners in these writ petitions are not entitled to lay challenge to it, as it is a purely Government's policy decision to develop an area as Oxy Zone and the petitioners are at liberty to challenge the same in

other appropriate jurisdiction in accordance with law, but they cannot be held to be the persons aggrieved to seek an appropriate writ in these writ petitions while laying challenge to the notices dated 30-11-2017, as they have no legal right to question the said decision of the respondent and failed to establish the infringement of their legal right as their issue of eviction and question of rehabilitation have already been addressed by the respondents granting rehabilitation to the petitioners. (See **Calcutta Gas Company (Prop.) Ltd. v. State of West Bengal and others**⁸ and **Bar Council of Maharashtra v. M.V. Dhabolkar and others**⁹.)

11. As held, the notices / orders dated 30-11-2017 are in favour of the petitioners which they cannot challenge particularly in view of the fact that these writ petitioners have earlier filed writ petitions only challenging the notices dated 29-5-2017 and when their cases have been examined individually and they have been granted the relief of rehabilitation, now, they have improved their case and again filed writ petitions challenging the development of a particular area as Oxy Zone which they are not entitled to challenge by way of these writ petitions, as they have no locus to challenge the Governmental decision while laying challenge to the impugned notice Annexure P-1.
12. Thus, I do not find any merit in the writ petitions, the writ petitions deserve to be and are accordingly dismissed. However, it is made clear that the petitioners' right to get the shops at Bhanpuri Ring

8 AIR 1962 SC 1044

9 AIR 1975 SC 2092

Road No.2 is not closed on dismissal of writ petitions and they can pursue the matter with the Municipal Corporation, Raipur and in turn, the Municipal Corporation is obliged to rehabilitate them in the vacant shops at Bhanpuri Ring Road No.2 as per Annexure P-1 for which four weeks' time is extended for the petitioners for their appearance for drawl of lottery. If they approach, they shall be rehabilitated as per Annexure P-1 expeditiously so that they can settle down and start earning their livelihood without further loss of time. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma