

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.6995 of 2007**

1. Ashif Khan S/o Taiyyab Khan, Aged about 33 years, Shopkeeper, Plot No.E-15, Indira Market, Durg, District Durg CG
2. Amir Khan S/o Sheikh Bhai R/o Takiyapara Shopkeeper Plot No. E-29 Indira Market Durg District Durg Cg

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through: Secretary, Nagariya Prashasan, DKS Bhawan, Raipur, District Raipur (CG)
2. Municipal Corporation Durg Through: Commissioner Municipal Corporation Durg Distt- Durg Cg
3. Commissioner Municipal Corporation Durg District Durg Cg
4. Mayer -In-Council Municipal Corporation Durg Through Its President Municipal Corporation District Durg Cg

---- Respondents**And****WP No. 164 Of 2002**

- Mohd.Yusuf Chauhan S/o Mohd. Ibrahim, aged about 44 years, R/o Shanichari Bazar, Durg (CG)

---- Petitioner**Vs**

1. Municipal Corporation, Durg Through Commissioner, Municipal Corporation, Durg (CG)
2. Secretary, Municipal Corporation, Durg (CG)
3. The Collector (Nazul), Durg (CG)

---- Respondent**WPC No.6995 of 2007**

For Petitioners : Shri Manoj Paranjpe with Shri Prasoon Agrawal, Advs.
 For Respondent/State : Shri Manish Nigam, Panel Lawyer
 For Respondent/Corporation: Ms. Sharmila Singhai, Advocate

WP No.164/2002

For Petitioners : Shri VG Tamaskar, Advocate
 For Respondent/State : Shri Manish Nigam, Panel Lawyer
 For Respondent/Corporation: Ms. Sharmila Singhai, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****25/10/2017**

The aforesaid two petitions (WPC No.6995 of 2007 & WP No.164 of 2002) are being disposed off by a common order as petitioner in both the petitions are claiming allotment of plot on the basis of their previous long occupation in the same area known as Indira Market at Durg.

2. These two cases have checkered history.
3. Facts stated in the petitions by the respective petitioners as well as by the respondent-Corporation reveal that there were certain lands owned by the Corporation, Durg, which were proposed to be developed in the market place at Indira Market, Durg. For this purpose, 30 shops were proposed to be constructed. It was however found that the lands, on which, the shops were proposed to be constructed, a part of the same, was occupied by number of persons including the petitioners Mohd. Yusuf Chouhan, Ashif Khan S/o Taiyyab Khan and Aamir Khan S/o Sheikh Bhai in aforesaid two petitions. The Corporation in order to set at rest all the disputes and to pave way for construction of shops took a policy decision in its resolution dated 06-07-1982 to allot shops upon construction, to those who were in occupation. It however, appears that though resolution was passed on 06-07-1982, it did not materialize into a final allotment of shops in the name of occupants therein, which led to filing of number of petitions before the High Court of Madhya Pradesh as also

before this Court. The pleadings and the documents placed on record by the parties reveal that one Writ Petition No.1728/1985 was filed by one Sheikh Ismile and Nine others, in which, interim order was passed, but later on, that petition was withdrawn (as averred in Para 5.5 of WPC No.6995 of 2007). Thereafter, Misc. Petition No.1088 of 1986 was filed by as many as 10 persons including Sheikh Ismile and Taiyyab Khan. That petition was dismissed vide order dated 24-01-1997 though placing on record certain statements made by the parties and observations made by this Court, in following words-

“So far as the question of the agreement and cost of the construction is concerned these are the questions which can be answered only if a fact finding enquiry is held. In a writ petition under Article 226, this Court would not be justified in entering into the disputed question of fact.

The respondents in return para No.6 have submitted that the petitioners can, if they think proper, still ask for allotment of shop if they are willing to deposit the construction cost of the shop which was constructed by the Municipal Council or which may be constructed by the Municipal Council on the petitioners vacation and delivery of possession of the place where their unauthorised temporary structure is standing. It is made clear that if the shops are available and the petitioners pay the amount as proposed by the Municipal Corporation, the Corporation may consider the claim of the petitioners and may allot the shops in their favour. It would absolutely be in the discretion of the Corporation to allot or to refuse the allotment. The petition has no force, it deserves to and is accordingly dismissed. There shall be no orders as to cost. Security amount, if any, be refunded to the petitioners after due verification.”

Yet another petition was filed registered as W.P.No.2528 of 2001 before the High Court of Chhattisgarh by Sheikh Ismile, Asif Khan S/o Taiyyab Khan and Amir Khan, which was disposed off vide order dated 08-01-2002. The observation with which, the petition was disposed off, were as below:-

“The petitioners are in possession of respective plots of lands and they are running shops for the last about 20 years. It is also stated that earnest money has been deposited in respect of those plots of lands of shops. They are also ready to deposit 2%

supervision charges. It is contended that if the respondents calculate the actual amount of 2% supervision charges, the petitioners are ready to pay and proceed with construction of their respective shops. According to learned counsel for the petitioners, the respondents are taking steps to evict. It appears that there is no positive step that has been taken so far to evict the petitioners though an apprehension has been expressed at the bar today. Further, I am of the opinion that if eviction becomes necessary, the respondents can do so only by following procedure laid down in this regard. At the same time, in my view, it is for the respondents to consider if the prayer of the writ petitioners that after 2% supervision charges are deposited whether they can be permitted to start the construction. Two courses are now open to the respondents. One is to accept the prayer of the writ petitioners to allow them to deposit 2% supervision charges and to construct the respective shops and the other is if eviction otherwise becomes necessary, the petitioners would be given opportunity of being heard. In other words, eviction can be carried out only in due process of law by going through all relevant procedures laid down in this regard.”

4. It is worthwhile to mention here that as the matter had remained pending consideration before the Corporation authorities and was taken up from time to time, during the pendency of the petition i.e. W.P.No.2528 of 2001, one resolution was passed on 30-03-2001 recording background of dispute. It further recorded that in order to resolve the dispute, allotment of shop was offered to following persons:-

- | | | |
|-------------------|------------------------|----------------------|
| (A) Sheikh Ismile | (B) Tayyab Khan | (C) Mohd. Sirajuddin |
| (D) Subrati Khan | (E) Immamuddin Chouhan | (F) Yusuf Chouhan |

It further records that out of these persons, Yusuf Chouhan and Immamuddin Chouhan had deposited Rs.15,000/- with the Corporation and Subrati Khan and Sirajuddin did not agree with the proposal and prayed for allotment of shops at the place of their occupation and remaining two persons Sheikh Ismile and Taiyyab Khan stated that if they are allotted shops, they will withdraw their petitions. This resolution also recorded that Subrati Khan had

also filed a petition and obtained interim order from the Court with a direction for consideration of his case for allotment of shop in the same manner as has been done in the case of others. The resolution also recorded proposed allotment of shop to Sheikh Aamir.

Records of the case also speak that after the order was passed by the High Court of Chhattisgarh in W.P.No.2528 of 2001 on 08-01-2002, a meeting had taken place and resolution was passed on 16-12-2002 recording the facts relating to pendency of dispute and offer made by the Corporation and seeking opinion.

5. While matter stood thus, the petitioner-Yusuf Chouhan filed a petition W.P.No.164 of 2002 before this Court seeking allotment of plot No.13. During the pendency of this petition, the Corporation proceeded to issue an advertisement inviting tender for construction of shops at the disputed place, in respect of which, claims were being raised by Yusuf Chouhan, Asif Khan S/o Taiyyab Khan and Amir Khan. As no final decision was taken in the case of Asif Khan and Amir Khan, in respect of whom, earlier proposal for allotment of shops were made on certain conditions, these two persons had filed a petition registered as W.P.(C)No.6995 of 2007 before this Court and this Court had passed the interim order by staying the tender process.

6. In so far as the case of Yusuf Chouhan is concerned, learned counsel for the respondent-Corporation, referring to the averments made in the reply, submits that the plot, which was proposed to be allotted to Yusuf Chouhan is under occupation of one Sheikh Ismile I.e petitioner in WP(C)No.6995 of 2007 and therefore, unless that person is evicted from the said plot, no allotment proceedings could be made for allotment of shop in favour of Yusuf Chouhan.

7. Resolution passed by the Corporation earlier on 30-03-2001 clearly show that pursuant to offer made to Yusuf Chouhan, he had deposited the amount with the Corporation. Therefore, only impediment in allotment of plot to Yusuf Chouhan appears to be illegal occupation/encroachment of Sheikh Ismile. It is relevant to note that in the resolution dated 30-03-2001, there is clear mention that a statement was made by Sheikh Ismile that if he is allotted shop No.13, he would withdraw his case, though, later on, his petition was disposed off with a direction on 08-01-2002. This would mean that if other plot is proposed to be allotted to Sheikh Ismile, plot No.13 will become vacant. Sheikh Ismile is not before this Court. There is nothing on record to show that Sheikh Ismile has obtained any order from the Court. If that be so, in view of what has been observed by this Court earlier in its order dated 08-01-2002 in W.P.No.2528 of 2001, the Corporation should take appropriate steps to evict unauthorized occupants.

8. In view of above, the petition of Yusuf Chouhan (WPNo.164 of 2002) is disposed off with a direction that if Sheikh Ismile has been adjusted or allotted plot elsewhere and if he is occupying the plot proposed to be allotted to Yusuf Chouhan, the Corporation shall draw appropriate proceedings of eviction in accordance with law. Once the plot is vacated, it shall be allotted to Yusuf Chouhan on the terms and conditions as considered by the Corporation in its resolution dated 30-03-2001.

9. As far as the case of other two petitioners namely Asif Khan and Amir Khan is concerned, in the resolution dated 30-03-2001, it has been recorded that Taiyyab Khan had also proposed that if he is allotted plot, he will withdraw his case, though, as stated earlier, petition filed by his son Ashif Khan, Sheikh Ismile as also by one Amir Khan was disposed off vide order dated 08-01-2002

in WP No.2528 of 2001. Observations, which have already been quoted hereinabove, would show that the Corporation should take decision to allot the plot or to draw eviction proceedings. It has also not been done and much time elapsed without consideration and out of these three persons, Asif Khan and Amir Khan have approached this Court by filing petition W.P.(C)No.6995 of 2007 for consideration of their cases, but till date, neither shops have been settled nor they have been evicted. Hence, it would be just and proper in these circumstances that after lapse of four decades, the plots are settled in their favour on the appropriate terms and conditions as stated in aforesaid resolution referred to above as early as possible because for want of settlement of plots and construction of shops, the Corporation is not getting proper rent also and these persons are continuing to occupy the land with temporary hutment and running their shops earning livelihood. The tenders, which were invited by the Corporation in so far as plots occupied by these two petitioners Asif Khan and Amir Khan are concerned, shall not be proceeded any further. The claims of Asif Khan and Amir Khan are accordingly directed to be processed by the Corporation. Considering that the matter is pending since many decades, the Corporation shall take prompt decision in all the cases and pass appropriate orders in accordance with law within a period of three months from the date of receipt of a copy of this order.

10. With the aforesaid observations, both the petitions (WPC No.6995 of 2007 & WP No.164 of 2002) are finally disposed off.

Sd/-
(Manindra Mohan Shrivastava)
Judge