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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 3195 of 2016

Sharmaji Vishvakarma S/o Late Jaddu Vishvakarma, Aged About 85 Years
Jai Furniture And Om Jai Furniture, Shanichari Shop No.1 & @, Bilaspur,
P.S. City Kotwali, Bilaspur, District Bilaspur, (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Urban Development
Mantralaya, New Raipur, Distt. Raipur, (Chhattisgarh)
2. Municipal Corporation Bilaspur, Through The Commissioner Municipal
Corporation Bilaspur, Distt Bilaspur, (Chhattisgarh)
3. The Commissioner, Municipal Corporation, Bilaspur, Distt Bilaspur
(Chhattisgarh)

---- Respondent

And

WPC No. 3198 Of 2016

Ashok Manuja S/o Late Shri Chand Manjua, Aged About 55 Years Vijay
Furniture Shanichari Shop No 9, 10, 16 Bilaspur P.S. City Kotwali, Bilaspur
District Bilaspur Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh S/o Through The Secretary, Urban Development,
Department Mantralaya, New Raipur, Distt. Raipur, (Chhattisgarh)
2. Municipal Corporation, Bilaspur Through The Commissioner, Municipal
Corporation Bilaspur District Bilaspur Chhattisgarh
3. The Commissioner, Municipal Corporation Bilaspur District Bilaspur
Chhattisgarh

---- Respondent

And

WPC No. 3201 Of 2016

Pratap Rai Choudhary S/o Laxman Das Chaudhary, Aged About 53 Years
Ahuja T. V. Center Shanichari Shop No.2, Bilaspur, P.S. City Kotwali Bilaspur,
District Bilaspur, (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Urban Development Department Mantralaya, New Raipur Distt. Raipur, (Chhattisgarh)
2. Municipal Corporation Bilaspur, Through The Commissioner, Municipal Corporation Bilaspur, Distt. Bilaspur (Chhattisgarh)
3. The Commissioner, Municipal Corporation Bilaspur, Distt. Bilaspur, (Chhattisgarh)

---- Respondent

And

WPC No. 3203 Of 2016

Harish Kumar Chenani S/o Bhawan Das, Aged About 43 Years Ahuja Enterprises Shanichari Shop No 5, Bilaspur P.S. City Kotwali, Bilaspur Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through Secretary Urban Development Department Mantralaya New Raipur District Raipur Chhattisgarh
2. Municipal Corporation, Bilaspur Through The Commissioner, Municipal Corporation Bilaspur District Bilaspur Chhattisgarh
3. The Commissioner, Municipal Corporation Bilaspur District Bilaspur Chhattisgarh

---- Respondent

And

WPC No. 3213 Of 2016

1. Vishnu Hirwani S/o Late Gullumal Hirwani, Aged About 47 Years Ma Vaishnavi Furniture Shanichari Shop No. 14, Bilaspur P S. City Kotwali Bilaspur, District Bilaspur, (Chhattisgarh)
2. Shanker Hirwani, S/o Late Gullumal Hirwani, Aged About 47 Years Hirwani Furniture Shanichari Shop No.6, Bilaspur, P.S. City Kotwali, Bilaspur, District Bilaspur, (Chhattisgarh)

---- Petitioners

Vs

1. State Of Chhattisgarh Through The Secretary, Urban Development Department, Mantralaya, New Raipur, Distt. Raipur, (Chhattisgarh)
2. Municipal Corporation Bilaspur, Through The Commissioner, Municipal

Corporation Bilaspur, Distt. Bilaspur (Chhattisgarh)

3. The Commissioner, Municipal Corporation Bilaspur, Distt. Bilaspur, (Chhattisgarh)

---- Respondents

And

WPC No. 3202 Of 2016

Mahesh Malghani S/o Sajan Das Malghani, Aged About 55 Years Mahesh Confectionary, Shanichari Shop No.9, Bilaspur, P.S. City Kotwali, Bilaspur, District Bilaspur, (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Urban Development Department Mantralaya, New Raipur, Distt. Raipur, (Chhattisgarh)
2. Municipal Corporation Bilaspur, Through The Commissioner, Municipal Corporation Bilaspur, Distt. Bilaspur (Chhattisgarh)
3. The Commissioner, Municipal Corporation Bilaspur, Distt. Bilaspur, (Chhattisgarh)

---- Respondents

And

WPC No. 3200 Of 2016

Manoj Pamnani S/o Dharam Das Pamnani, Aged About 48 Years Ashish Plywood, Shanichari Shop No. 12, Bilaspur P. S. City Kotwali Bilaspur District Bilaspur (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Urban Development Department Mantralaya New Raipur Distt. Raipur (Chhattisgarh)
2. Municipal Corporation, Bilaspur Through The Commissioner, Municipal Corporation Bilaspur, Distt. Bilaspur Chhattisgarh
3. The Commissioner, Municipal Corporation Bilaspur District Bilaspur (Chhattisgarh)

---- Respondents

And

WPC No. 3211 Of 2016

Rameshwar Prasad Agrawal S/o Late Kashi Prasad Agrawal, Aged About 52

Years M. P. Traders, Shanichari Shop No. 16, Bilaspur, P.S. City Kotwali, Bilaspur, District Bilaspur, (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Urban Development Department, Mantralaya, New Raipur, Distt. Raipur, (Chhattisgarh)
2. Municipal Corporation, Bilaspur Through The Commissioner, Municipal Corporation Bilaspur District Bilaspur Chhattisgarh
3. The Commissioner, Municipal Corporation Bilaspur District Bilaspur Chhattisgarh

---- Respondent

And

WPC No. 3199 Of 2016

1. Manoj Nagwani S/o Ramesh Nagwani, Aged About 34 Years Kamal Furniture Shanichari Shop No. 4 Bilaspur P. S. City Kotwali Bilaspur District Bilaspur (Chhattisgarh)
2. Ramesh Nagwani S/o Late Takhat Nagwani, Aged About 65 Years Kamal, Furniture Shanichari Shop No. 7, Bilaspur P. S. City Kotwali Bialspur District Bilaspur (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Urban Development Department Mantralay New Raipur Distt. Raipur (Chhattisgarh)
2. Municipal Corporation, Bilaspur, Through The Commissioner, Municipal Corporation Bilaspur, Distt. Bilaspur (Chhattisgarh)
3. The Commissioner, Municipal Corporation Bilaspur, Distt. Bilaspur, (Chhattisgarh)

---- Respondents

And

WPC No. 3212 Of 2016

Ashish Kukreja S/o Shri Vashudev Kukreja, Aged About 23 Years Guru Ram Das Kirana Store, Shanichari Shop No. 3, Bilaspur P. S. City Kotwali Bilaspur District Bilaspur (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Urban Development Department Mantralay New Raipur Distt. Raipur (Chhattisgarh)
2. Municipal Corporation Bilaspur, Through The Commissioner, Municipal Corporation Bilaspur, Distt. Bilaspur (Chhattisgarh)
3. The Commissioner, Municipal Corporation Bilaspur, Distt. Bilaspur, (Chhattisgarh)

---- Respondents

And

WPC No. 34 Of 2017

Sandhya Shrivastva D/o Late B.L. Shrivastava R/o -In Front Of M.P. Transport Shanichari Bazar Furniture Line, District- Bilaspur, Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through- The Secretary, Urban Develop Department Mantralay New Raipur District- Raipur, Chhattisgarh
2. Municipal Corporation Bilaspur, Through The Commissioner Municipal Bilaspur, Chhattisgarh
3. The Commissioner Municipal Corporation, Bilaspur, Distict- Bilaspur, Chhattisgarh

---- Respondents

And

WPC No. 7 Of 2017

Panchu Sahu S/o Chamaru Sahu Aged About 50 Years R/o Furniture Line, Shanichari Padav Dharamshala, Gole Bazaar, Police Station City Kotwali, Bilaspur, Tahsil & Dirstrict Bilaspur, Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Urban Development Department, Mantralay New Raipur, District Raipur, Chhattisgarh
2. Municipal Corporation Bilaspur Through The Commissioner, Municipal Corporation Bilaspur, District- Bilaspur, Chhattisgarh
3. The Commissioner Municipal Corporation, Bilaspur, District- Bilaspur, Chhattisgarh

---- Respondents

And

WPC No. 9 Of 2017

Smt. Santoshi Bai Yadav W/o Santosh Yadav Aged About 48 Years R/o Furniture Line, Shanichari Padav Dharamshala, Gole Bazaar, Police Station City Kotwali, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Mantralay New Raipur, District- Raipur, Chhattisgarh
2. Municipal Corporation Bilaspur, Through The Commissioner, Municipal Corporation Bilaspur, District- Bilaspur, Chhattisgarh
3. The Commissioner Municipal Corporation, Bilaspur, District- Bilaspur, Chhattisgarh

---- Respondents

For Petitioners	:	Shri Kishore Bhaduri and Shri Bhupendra Singh, Advocates
For State	:	Shri R.K. Gupta, Dy.A.G. for the State.
For Municipal Corporation	:	Shri A.S. Kachhawaha, Shri Manoj Mishra, Shri Shashank Thakur, Shri Akhilesh Kumar and Ms. Pushpa Dwivedi, Advocates

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

C A V Order

19/05/2017

1. This order shall govern disposal of all the petitions as the petitioners claims to be tenants of common lease holder and all of them have approached this Court apprehending demolition of their shops by respondents in view of the order passed by the Collector and Nazul Officer in allotting the land comprised in Plot No.17 admeasuring 1200 sq.ft., Plot No.18/1 admeasuring 32765 sq.ft. of sheet No.35 and plot No.14 of sheet No.36 admeasuring 4870 sq.ft. to the Municipal Corporation for construction of sewerage pumping station. All the petitioners claim to be tenants of the lease holder of the aforesaid land, running their small shops situated in the aforesaid parcel of land allotted to the Municipal Corporation.

For convenience, the pleadings and documents of WPC No.3195 of 2016 are being referred to.

2. According to the petitioners, a large chunk of land, which included above described land, was given by way of lease to one *dharam shala* Trust No.32 Office Pandit Chitani Prasad Mitani Prasad Dubey long back. The petitioners say that they were inducted as tenants in the shops constructed by the said Trust and for the last 40 years, they are running their business as tenants. According to the petitioners, they are licensed shop holders and paying rent to the Trust as tenants of the Trust and there is no dispute between petitioners on one hand and the Trust on the other. It is the case of the petitioners that based on oral direction of the respondents to vacate the land comprised in Plot No.17 and Plot No.18/1 of sheet No.35 and Plot No.14 of sheet No.36, the petitioners have approached this Court apprehending demolition of their shops and dispossession.
3. Learned counsel for the petitioners, referring to various documents placed on record, contended that the Trust was initially granted lease of various plots of Sheets No.35 & 36 in Shanichari Bazar at Bilaspur. This included disputed plots namely Plot No.17 admeasuring 1200 sq.ft, Plot No.18/1 admeasuring 32765 sq.ft and Plot No.14 admeasuring 4870 sq.ft. of sheet No.35. It was duly recorded in the maintenance khasra, all the aforesaid land being nazul land. The lease of the land was renewed from time to time in favour of the lease holder-Trust and the lease is still subsisting till 2017. According to the petitioners, lease has not been cancelled by the Nazul Authority under any valid proceedings drawn against their lease holder/landlord. Further submission is that when the petitioners enquired and collected various documents, they came to know that in respect of the land admeasuring 32765 sq.ft. , situated in Plot No.18/1 of Sheet No.35, the lease holder was later on recorded as bhumi-swami and to the best information of the petitioners, lease holder continues to be bhumi-swami even now. Thus, the petitioners are in valid occupation as tenants of the lease holder and as the lease holder is holding valid lease subsisting even on the date of filing of the petitions, the petitioners could not be threatened of dispossession and demolition. Learned counsel for the petitioners further contended that as per the information available with the petitioners, their

land lord/lease holder has approached the State Government with certain representation when it came to his notice that the land in dispute situated in aforesaid plots were allotted to the Corporation and the matter is pending with the State Govt. Therefore, unless the State Government gives a final verdict in the matter, the petitioners should not be dispossessed by the respondent -Corporation. According to them, when proceedings for allotment of land in dispute were initiated by the Nazul Authority on the application for allotment of land by Corporation, objections were invited by publication of notice in the newspaper, to which, one of the Trustees submitted his objection, but it was illegally rejected and the Nazul Authority proceeded to pass order of allotment of land in violation of the Law.

4. On the other hand, learned counsel for the State and Municipal Corporation jointly submit that the petitions filed by the tenants to protect their possession are liable to be dismissed because the lease holder has not challenged the order of allotment of disputed land to the Corporation. It is submitted that though in the past, the lease holder was granted lease of the disputed land, the lease no longer subsists and has come to an end, either because it was not renewed or because the lease holder died. The Corporation was in need of land for construction of sewerage pumping station, therefore, they applied to the Collector for allotment of land and proceedings were initiated, inquiry was made, objections were invited and finally, the lands in dispute were allotted to the Corporation. The lease holder having not challenged the order of allotment, the tenants are not entitled to protect their possession as they have only stepped into the shoes of the lease holder and they themselves are not the lease holder and they cannot claim a better interest than that of land lord/lease holder. According to respondents, the tenants have no locus to challenge the legality and validity of land allotment proceedings drawn by Nazul Authority on the application of the Corporation. It is further submitted that during the pendency of various proceedings, the representative of the lease holder never claimed that he has become bhumi swami, but only prayed for renewal of lease, which was not granted. Therefore, the tenants cannot be heard saying that the lease holder had later on become bhumi-swami of land admeasuring 32765 sq. ft, situated in plot No.18/1 of sheet No.35.

5. I have considered the rival submissions made by learned counsel for the parties and gone through the documents placed on record.
6. The records indicate that in the past, the land lord of the petitioners, named as Pt. Chitani Prasad Mitani Prasad Dubey Trust was granted lease of various plots situated in Sheet No.35 and Sheet No.36 in *mohalla* Shanichari Bazar and Khaparganj. The disputed plots on which the petitioners claimed to be inducted as tenants and running their respective shops are as below :

Sheet No.35 :-	(i)	Plot No18/1 admeasuring 32765 sq. ft.
	(ii)	Plot No.17 admeasuring 1200 sq.ft.
	(iii)	Plot No.14 admeasuring 400 sq.ft.
Sheet No.36:-	(i)	Plot No.14 admeasuring 4870 sq.ft.

The petitioners' challenge is confined to aforesaid plots as avered by them in the pleadings contained in the petitions, rejoinder and applications for taking document on record.

7. It is relevant to mention here that the Trust, which according to the petitioners is the lease holder and the land lord, has not filed any petition before this Court. The petitioners could not place on record any material to satisfy that the lease holder approached the Court of Law or having approached any authority, any order final or interim, has been passed in favour of lease holder in respect of land in dispute in the present case. The petitioners have not impleaded the lease holder as party in the present petition. The petitioners have come before this Court as tenants of the lease holder, who himself has not chosen to challenge the proceedings and order of allotment of the said land in favour of the Corporation. The documents which have been filed by the petitioners along with the petition, rejoinder and application for taking documents on record revealed that lease of Plot No.18/1 admeasuring 32765 sq.ft was granted to the Trust for a period up to 31.3.1994 as is reflected in maintenance khasra (Annexure P-1) but lease document of this plot is not on record. The petitioners have not placed before the Court any order or lease document to satisfy the Court that the lease of lease holder in respect of land in Plot No.18/1 subsists. On the other hand,

the records reveals that though an application for renewal of lease of Plot No.18/1 was filed by the lease holder but the lease was not renewed by the Nazul Authority.

8. As far as Plot No.17 of sheet No.35 is concerned, maintenance khasra entries filed by respondent-Municipal Corporation shows that the said plot No.17 admeasuring 1200 sq.ft. was granted by way of lease to the Trust for a period up to 31.3.1994. Along with the rejoinder, lease document (Annexure P-6) shows that lease was granted up to 31.3.1994. There is no document placed on record by the petitioners to show that lease of lease holder on Plot No.17 admeasuring 1200 sq.ft is still subsisting.
9. In so far as Plot No.14 of Sheet No.35 is concerned, it is the case of the respondent and also reflected from the records filed by respondents themselves that the lease of Plot No.14 admeasuring 400 sq.ft. of sheet No.35 was allotted to the lease holder and renewed up to 2027, but, there is no document placed on record to show that there is any lease subsisting in favour of lease holder in respect of Plot No.14 area 4870 sq. ft. of sheet No.36. Even according to State and Corporation, along with the Plot No.18/1 and 17 of Sheet No.35, Plot No.14 of the Sheet No.36 admeasuring 4870 sq.ft have been allotted and not Plot No.14 of Sheet No.35 admeasuring 400 sq. ft. That means that as far as Plot No.14 of Sheet No.35 is concerned, it has not been allotted to the Corporation and the Corporation does not lay any claim on this plot.
10. The records further speaks that the Corporation, in need of land, applied to the Nazul Department for allotment of land for construction of sewerage pumping station and on their application, the Collector (Nazul) initiated allotment proceedings by identifying land admeasuring 32765 sq. ft. of Plot No.18/1, land admeasuring 1200 sq.ft. of plot No.17 situated in sheet No.35 as also land admeasuring 4870 sq.ft. of Plot No.14 of Sheet No.36 and objection were invited. The records show that one Mahesh Dubey, claiming to be the representative of the Trust, objected to the same, but the objection was not sustained. Finally, the Collector passed an order on 9.11.2016 allotting the aforesaid land to the Corporation. The order of allotment passed by the Collector on 9.11.2016 has been filed as Annexure R-1 along with return of the State.

11. The petitioners are running their shops as tenants of Trust on the aforesaid land which have been allotted to the Corporation.
12. The aforesaid enquiry into facts, documents on record do not make out a case in favour of the petitioners that they are in occupation of land, inducted as tenants of lease holder of which lease still subsists much less there being any order placed before the Court to show that order of allotment of land by the Collector in favour of the Corporation has been either kept in abeyance or set aside in any judicial proceedings or order passed by any authority higher than the Collector.
13. It would only be unfair to decide the issue of legality and validity of allotment of land in favour of the Corporation in the absence of the lease holder who is not a party in these petitions. But the petitioners, having failed to substantiate from any document that a valid lease subsists in favour of their land lord, are not entitled to any relief from this Court.
14. All the petitions are accordingly dismissed.
15. It is made clear that this order shall not come in the way of lease holder nor these proceedings shall be treated as determination of any rights and claims of the lease holder in respect of the said land.
16. In the present case, learned counsel for the petitioners raised human aspect of the matter by submitting that the petitioners have been running their shops for the last forty years and even if it is found that the petitioners are not entitled to protect their possession, the State authority as well as Municipal Corporation should consider them for allotment of any alternative plots either in the same or near vicinity so that they may shift their shops and continue to earn their livelihood. This submission has been made without prejudice to challenge as dealt with herein-above.
17. During these proceedings, this Court observed on 4.4.2017 whether the Corporation could provide any alternative shops or accommodation to the petitioners as they have been running their business since long and the case was adjourned. However, no concrete proposal has come from the State or the Corporation assuring allotment of any alternative plots or shops on preferential basis to the petitioners either in the same market area or in any

market in the near vicinity.

18. Before parting with the case, I am inclined to observe that in case the petitioners apply to the Corporation or the State for allotment of any nazul plots or plots or shops available under the control and management of the Corporation, in the same or near vicinity, the same should receive due consideration by the State/Corporation being a welfare State, keeping in view that the petitioners' dispossession would eventually lead to disruption of their source of livelihood, subject to petitioners vacating present occupation.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen