

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WRIT PETITION (C) NO. 1656 OF 2017**

1. Suresh Chand Tiwari, S/o Late S. Tiwari, aged about 56 years, R/o Plot No. 529/3, Tiwari Firm House, Dadar, Korba, District Korba (C.G.)
2. Smt. Sudha Tiwari, W/o Dr. S.C. Tiwari, aged about 51 years, R/o Parsuram Nagar, Dadar Nala, Tahsil and District Korba (C.G.)

**... Petitioners**

**Versus**

1. State of Chhattisgarh, through Secretary, Revenue Department, Mahanadi Bhawan, Mantralay, New Raipur, District Raipur (C.G.)
2. The Collector, Korba, District Korba (C.G.)
3. Sub Divisional Officer, Korba, District Korba (C.G.)
4. Municipal Corporation, Korba, through Commissioner, Korba, District Korba (C.G.)
5. Tahsildar Nazul, Korba, District Korba (C.G.)

**... Respondents**

**WRIT PETITION (PIL) NO. 23 OF 2017**

1. Amarnath Agrawal, S/o Ram Avatar Agrawal, aged about 46 years, R/o 04 – Mahanadi Visthar Complex, Ghantaghar, Korba, Tahsil and District Korba (C.G.)
2. Rajesh Tamrakar, S/o Late Radheshyam Tamrakar, aged about 40 years, R/o 763 Savitri Complex, Main Road, Koasbadi, Korba, District Korba (C.G.)
3. Jagir Khan, S/o Salim Khan, aged about 25 years, R/o EWS 10, Dr. Rajendra Prasad Nagar, Ward No. 28, Phase-1, Korba, District Korba (C.G.)
4. Narayan Singh, S/o Late Fanu Singh, aged about 44 years, R/o Near Sub Station, Podibahar Road, Shivaji Nagar, Ward No. 24, Korba, District Korba (C.G.)
5. Santosh Thawaith, S/o Manoharlal Thawaith, aged about 42 years, R/o Near Jagannath Mandir, Gram: Dadar, Ward No.31, Korba, District Korba (C.G.)

**... Petitioners**

**Versus**

1. State of Chhattisgarh, through the Chief Secretary, Govt. of Chhattisgarh, Naya Raipur, PO: Rakhi, District Raipur (C.G.)
2. Collector, Korba, District Korba (C.G.)
3. Commissioner, Nagar Nigam, Korba, District Korba (C.G.)

**... Respondents**

**WRIT PETITION (C) NO. 1315 OF 2017**

Bhagwan Sharan Singh, S/o Late Ram Iqbal Singh, aged about 44 years, R/o Parsuram Nagar, Dada Nala, Tahsil and District Korba (C.G.)

**... Petitioner**

**Versus**

1. State of Chhattisgarh, through Secretary, Revenue Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur (C.G.)
2. Collector, Korba, District Korba (C.G.)
3. Sub Divisional Officer (Revenue), Korba, District Korba (C.G.)
4. Tahsildar (Nazul), Korba, District Korba (C.G.)
5. Revenue Inspector, Korba, District Korba (C.G.)
6. Municipal Corporation, Korba, through its Commissioner, Municipal Corporation, Korba, District Korba (C.G.)

**... Respondents**

**WRIT PETITION (C) NO. 1312 OF 2017**

1. Swapnil Dubey, S/o Deepak Kumar Dubey, aged about 10 years, minor through its guardian/grandfather namely Narendra Kumar Dubey, S/o late Madanlal Dubey, aged about 57 years, R/o Shivaji Nagar, Korba, District Korba (C.G.)
2. Satyam Dubey, S/o Deepak Kumar Dubey, aged about 8 years, minor through its guardian/grandfather namely Narendra Kumar Dubey, S/o late Madanlal Dubey, aged about 57 years, R/o Shivaji Nagar, Korba, District Korba (C.G.)

**... Petitioners**

**Versus**

1. State of Chhattisgarh, through Secretary, Revenue Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur (C.G.)
2. Collector, Korba, District Korba (C.G.)
3. Sub Divisional Officer (Revenue), Korba, District Korba (C.G.)
4. Tahsildar (Nazul), Korba, District Korba (C.G.)
5. Revenue Inspector, Korba, District Korba (C.G.)
6. Municipal Corporation, Korba, through its Commissioner, Municipal Corporation, Korba, District Korba (C.G.)

**... Respondents**

**WRIT PETITION (C) NO. 1319 OF 2017**

Smt. Kavita Tripathi, W/o Arun Tripathi, aged about 32 years, R/o Parsuram Nagar, Dada Nala, Tahsil and District Korba (C.G.)

**... Petitioner**

**Versus**

1. State of Chhattisgarh, through Secretary, Revenue Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur (C.G.)
2. Collector, Korba, District Korba (C.G.)
3. Sub Divisional Officer (Revenue), Korba, District Korba (C.G.)
4. Tahsildar (Nazul), Korba, District Korba (C.G.)
5. Revenue Inspector, Korba, District Korba (C.G.)
6. Municipal Corporation, Korba, through its Commissioner, Municipal Corporation, Korba, District Korba (C.G.)

**... Respondents**

**WRIT PETITION (C) NO. 1309 OF 2017**

Smt. Sudha Tiwari, W/o Dr. S.C. Tiwari, aged about 51 years, R/o Parsuram Nagar, Dadar Nala, Tahsil and District Korba (C.G.)

**... Petitioner**

**Versus**

1. State of Chhattisgarh, through Secretary, Revenue Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur (C.G.)
2. Collector, Korba, District Korba (C.G.)
3. Sub Divisional Officer (Revenue), Korba, District Korba (C.G.)
4. Tahsildar (Nazul), Korba, District Korba (C.G.)
5. Revenue Inspector, Korba, District Korba (C.G.)
6. Municipal Corporation, Korba, through its Commissioner, Municipal Corporation, Korba, District Korba (C.G.)

**... Respondents**

**CONTEMPT CASE (CIVIL) NO. 378 OF 2017**

1. Suresh Chand Tiwari, S/o Late S. Tiwari, aged about 56 years, R/o Plot No. 529/3, Tiwari Firm House, Dadar, Korba, District Korba (C.G.)

2. Smt. Sudha Tiwari, W/o Dr. S.C. Tiwari, aged about 51 years, R/o Parsuram Nagar, Dadar Nala, Tahsil and District Korba (C.G.)

... Petitioners

**Versus**

1. Mohammad Kesar Abdul Haque, Collector, Korba, District Korba (C.G.)
2. Virendra Bahadur Panchbhai, S.D.M. Korba, District Korba (C.G.)
3. Tularam Bharadwaj, Tahsil Nazul, Korba, Tahsil Korba (C.G.)
4. Ravi Shankar Rathore, Nayab Tahsildar, Korba, District Korba (C.G.)
5. Ajay Agrawal, Commissioner, Municipal Corporation, Korba, District Korba (C.G.)
6. M.S. Sidar, Revenue Inspector, Korba, District Korba (C.G.)
7. C.S. Sidar, Patwari Inspector, Korba, District Korba (C.G.)
8. Amarnath Agrawal, S/o Ram Avtar Agrawal, aged about 45 years, R/o 04 Mahanadi Vistar Complex, Ghanta Ghar, Korba, District Korba (C.G.)
9. Santosh Thwait, S/o Manohar Lal Thawait, aged about 42 years, R/o near Jagannath Mandir, Gram Dadar, Ward No.31, Korba, District Korba (C.G.)

... Respondents

- 
- Mr. Awadh Tripathi, Advocate, for the Petitioners in WPC No. 1656/2017 and Contempt Case (C) No. 378/2017.
  - Mr. Sanjay Kumar Agrawal, Advocate, for the Petitioners in WP(PIL) No. 23/2017.
  - Mr. Abhyuday Singh, Advocate, under instructions of Mr. Amrito Das, Advocate, for the Petitioner in WPC No. 1315/2017.
  - Mr. Manoj Paranjpe, Advocate, for the Petitioners in WPC No. 1312/2017 and WPC No. 1309 of 2017.
  - Mr. Sunil Otwani, Advocate, for the Petitioner in WPC No. 1319/2017.
  - Mr. Prafull Bharat, Additional Advocate General, for the State.
  - Mr. S.S. Baghel, Advocate, for the Municipal Corporation, Korba.
  - Mr. Ravish Verma, Advocate, for the Intervenor.
- 

**Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice**

**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**Per Thottathil B. Radhakrishnan, C.J.**

**01/08/2017**

1. We have heard learned Counsel for the Petitioners in the captioned Public Interest Litigation and the Petitioners in the other Writ Petitions and the Contempt of Court case, as well as learned Additional Advocate General for the State and learned Counsel for the Municipal Corporation, Korba.

2. The captioned Public Interest Litigation is filed on the allegation that there is a Nala from Ravi Shankar Nagar to Gram Dadar in Korba City and that the same has been encroached upon and constructions have been made illegally. The specific allegation is that, due to illegal encroachment,

the width of Nala has been reduced from 60 feet to 7 feet and this has adversely affected the draining of rain water and waste water particularly in rainy season, thereby affecting the residents of Kosabadi, Ravi Shankar Shukla Nagar, T.P. Nagar and Niharika Colony and that the roads in that areas become flooded. The Writ Petitions have been filed seeking a direction that the official Respondents be directed to take immediate steps for removal of encroachers from the Nala and Government land. Reliance is placed on, among other things, the judgment of the Apex Court in Civil Appeal No. 1132 of 2011 - judgment dated 28.1.2011.

**3.** On 26.4.2017, an order was mandated by this Court in Writ Petition (PIL) No. 23 of 2017, relevant portion of which is reproduced as follows:

“This writ petition relates to the Nala from Ravi Shankar Nager to Gram Dadar in Korba City. The allegation is that drainage/waste water of the city is flowing out since the said Nala has been encroached and constructions have been made by illegal encroachers. The plea of the petitioners is that as a result of the illegal encroachments, the said Nala which was originally 60 feet width presently has been reduced to 7 feet.

The materials which are available with the learned Additional Advocate General in Court today clearly indicate that the width of the Nala is more or less the same as pleaded by the writ petitioners.

The learned Additional Advocate General submits that the jurisdictional Revenue Authority has stated that in view of the revenue documents including the survey maps, government land including the beds of the Nala referred in paragraphs – 8.2 & 3 of the writ petition and portions of that Nala have been encroached upon. We are assured that all encroachments in that area will be removed by following due process and reported to this Court within a period of four weeks.

It is directed that such action shall be carried out in terms of what has been submitted today and reports shall be placed before this Court in the form of an affidavit of the Sub Divisional Revenue Officer concerned within four weeks.”

**4.** The different other captioned Writ Petitions were stand tagged along with the Public Interest Litigation on the premise that the actions impugned in those Writ Petitions were generated as a result of afore-quoted order. Certain applications seeking intervention were also filed in the Public Interest Litigation. Dealing with those situations, an order

was issued on 11.5.2017 in the Public Interest Litigation and the captioned Writ Petitions, relevant portion of which is reproduced as follows:

“We have heard the learned counsel for the respective petitioners, the learned Dy. Advocate General, the learned counsel for the Municipal Corporation and the learned counsel for the intervenor in Writ Petition (PIL) No. 23/2017.

What is required is a proper understanding of the order dated 26.04.2017 in Writ Petition (PIL) No. 23/2017 which was dictated in the presence and after hearing Shri Birendra Bahadur Panchbhai, SDO, Korba, who had instructed the learned Additional Advocate General on that day when the case called. All that has been minted in that order is that the materials available with the learned Additional Advocate General indicated that the width of the Nala is more or less same as pleaded by the petitioner and jurisdictional Revenue Authority stands by the report that portions of that Nala have been encroached upon. This is on the basis of the revenue records. The Bench was then assured that all encroachments in that area will be removed by following due process and report to this Court within a period of four weeks. Obviously, therefore, the direction contained in the last paragraph of that order that such action shall be carried out in terms of what has been submitted on that day necessarily requires the SDO and other officials of the Revenue and other departments of the Government to remove any encroachments only after giving the alleged encroachers an appropriate opportunity of hearing including regarding contentions of the report of the Revenue.

With this clarification, it is directed that the Petitioners will participate in the proceedings initiated, if any, and in such event, the Petitioners as well as the intervenor in Writ Petition (PIL) No. 23/2017 will not be dispossessed without following due process in terms of order minted in Writ Petition (PIL) No. 23/2017 on 26.04.2017. Similar would be the steps that will have to be taken by the officials in relation to the cases where notices have been issued against the persons who are the alleged encroachers over any part of the land which can be treated as part of Nala in question of the Nala in relation to Writ Petition (PIL) No. 23/2017 has been instituted.

Whatever orders or notices were issued will be treated as pre-decisional notice for all said purposes and the writ petitioners in WPC No.1315 of 2017, WPC No. 1312 of 2017, WPC No. 1319 of 2017 and WPC No. 1309 of 2017 and the intervenor in Writ Petition (PIL) No. 23/2017 will be entitled to object to those matters.”

5. Thereafter, another order was issued in the captioned matters on 22.6.2017 *inter alia* of the following effect:

“Learned Counsel for the State submits that two more weeks' time may be granted for filing a further affidavit in Writ Petition (PIL) No. 23 of 2017.

This request is accepted and this bunch of matters is adjourned to 12.7.2017.

In the meantime, the Petitioners in the Writ Petitions other than Writ Petition (PIL) No. 23 of 2017 and also the Intervenor in the Writ Petition (PIL) No. 23 of 2017 and other cases and also any other person to whom any notice has been issued by the competent authority will be entitled to place objections to the proposed proceeding before the competent authority and it shall be ensured that no demolition shall be effected without completing the due process in accordance with the statutory requirement, including deciding on objections.

If such proceedings have been carried forward, it shall be further proceeded from the present stage. It is clarified that if such procedure has already been adopted, demolition shall be effected only in accordance with law.

It is also clarified that pendency of this bunch of Writ Petitions should not stand in the way of any person aggrieved by any decision taken by the statutory authority challenging it before the competent superior statutory authority.”

**6.** The captioned Contempt of Court case is filed alleging violation of the aforementioned orders dated 11.5.2017 and/or 22.6.2017.

**7.** Now, the State has placed what it calls Compliance Report, dated 11.7.2017. That stands with Annexures A to F. We have taken note of the contents of that Report and we record it. The result of the aforesaid fact situation is that the facts and factors reflected through the Report dated 11.7.2017 by the State Government officials, will now govern the field and if any of the Petitioners in the other Writ Petitions or the Intervenor and the Applicant in the Contempt of Court case has any further grievance that will have to be worked out in the individual Writ Petitions which are for the present linked along with Writ Petition (PIL) No. 23 of 2017.

**8.** In the light of what is aforesaid, Writ Petition (PIL) No. 23 of 2017 is ordered recording the fact situation obtained as of now in terms of what is reported by the State Government officials through the Report dated 11.7.2017 and directing the State Government officials and the Korba Municipal Corporation authorities to ensure that the Nala mentioned in paragraph No.2 afore is appropriately maintained, ensuring proper and free flow of water through it. The parties in the other captioned Writ Petitions and the intervenors are left with liberty to pursue those litigations

and/or seek relief from appropriate jurisdictions. Writ Petition (PIL) No. 23 of 2017 is ordered accordingly and the other Writ Petitions and the Contempt of Court case are de-linked from the said Public Interest Litigation. They shall be listed as per the roster.

Sd/-  
**(Thottathil B. Radhakrishnan)**  
**Chief Justice**

Sd/-  
**(P. Sam Koshy)**  
**Judge**

/sharad/