

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 6161 of 1998**

- Rakesh Saraogi S/o Shri Satyanarayan Saraogi, Aged About 34 Years
Managing Director, Raipur Resorts And Properties Private Limited,
Shankar Nagar, Raipur, District Raipur, Madhya Pradesh

---- Petitioner**Versus**

1. State Of Madhya Pradesh Through Secretary, Housing And
Environment, Bhopal, Madhya Pradesh
2. The Municipal Corporation, Raipur, A Body Incorporated Under
Section 7 Of Madhya Pradesh Municipal Corporation Act, 1956 Having
Perpetual Succession And Common Seal, Near Jaistambh Chowk,
Raipur, Madhya Pradesh
3. The Commissioner, Municipal Corporation, Raipur, Madhya Pradesh
4. Anil Kumar Khetan, S/o Devi Prasad Khetan, C/o R.B. Seal Stores,
Moudhapara, Raipur, Madhya Pradesh

---- Respondent

For Petitioner : Shri Naman Nagrath, Sr. Adv. with Shri Sankalp Kochar
and Shri Manish Nigam, Advocates.

For Respondent/State : Shri Shashank Thakur, Govt. Advocate.

For Respondent/Corporation : Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****26/11/2018 :**

1. Assail in this writ petition is to the order passed by the Municipal
Corporation, Raipur on 30.12.1997 including the report of Jagatpati
Committee.

2. The petitioner would pray for a declaration that he is in possession of the plot in dispute ad measuring 16000 sq. feet. bearing Khasra No.117, 138 and 139 situated at new Bus Stand, Raipur, as the lessee of respondent No.2, Municipal Corporation, Raipur and that the respondent Corporation has no authority in law to take any action adverse to the interest of the petitioner without giving him any opportunity of being heard.
3. There is an order passed against the original lessee/allottee i.e. respondent No.4 canceling his allotment on the basis of report of the one Member Enquiry Committee namely, Jagatpati Committee. The petitioner would assail the order dated 30.12.1997 on the ground, inter alia, that he being the purchaser of the said plot from respondent No.4, who himself was auction purchaser of the plot, cancellation order could not have been passed without providing opportunity of hearing to the petitioner or for that matter to the respondent No.4. It is also contended that the report of Jagatpati Committee was in respect of the plots which were illegally allotted to several individuals or entities whereas respondent No.4 was the auction purchaser of the land upon payment of consideration and he was not allottee under any discretionary decision.
4. The Corporation would defend the action on the ground that in view of the Jagatpati Committee's report, the Corporation had no option but to cancel the allotment and further that respondent No.4 being lessee of the Corporation, he could not have executed the sale deed of the said

plot in favour of the petitioner.

5. The Writ Petition which was originally numbered as WP No.436/98 was dismissed on 6.3.2000 against which LPA No.88/2000 was preferred before the Madhya Pradesh High Court. In due course, the LPA came to be dismissed in view of the judgment rendered in the matter of **Jamshed N. Guzdar Vs. State of Maharashtra** {JT 2005 (1) SC 370}. However, in the meanwhile, on account of enactment of the Madhya Pradesh Uchcha Nyaylaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005, the LPA was revived and has been disposed of by the Division Bench of the Madhya Pradesh High Court vide order dated 3.3.2016 observing thus:-

“In that, the principal grievance of the appellant was that the Corporation, even if had jurisdiction to cancel the lease, ought to have followed the cardinal principles of natural justice by issuing show cause notice and giving opportunity of hearing to the appellant before passing the impugned order. No such opportunity was given to the appellant, to point out that the lease granted in favour of Respondent No.4 and subsequently transferred in the name of appellant was a valid lease and granted after following proper procedure. Moreover, the one man fact finding Committee appointed by the State Government was not a statutory Committee as such. Hence, the requirement of giving fair opportunity of being heard to the appellant before passing of the impugned order could not have been dispensed with. This contention was specifically raised before the learned Single Judge. However, it did not find favour with the learned Single Judge for the reasons recorded in Paragraph No.8 of the impugned judgment.

The learned Single Judge has noticed that the principles of natural justice are not an unruly horse; and it would depend on the facts and circumstances of

each case. At the same time, the learned Single Judge negatived the contention of the appellant without adverting to the crucial aspect raised by the appellant. In our view, the fact that no hearing was required to be given before the one man fact finding Committee, cannot dispense with the necessity to give opportunity by the Corporation, before passing the impugned order. It is well established position that the one man fact finding Committee was not a statutory Committee, as expounded in the case of **Motiram Mandyani and another Vs. State of Madhya Pradesh and another** reported in **AIR 2004 Madhya Pradesh 82**.

Requirement of giving opportunity of being heard before issuing the impugned order by the Corporation ought to have been followed in its letter and spirit. In our opinion, the learned Single Judge committed manifest error in rejecting the argument of the appellant without answering this aspect, though noted in Paragraph no.7 of the impugned judgment.

As a result, we deem it appropriate to set aside the impugned judgment; and to relegate the parties before the learned Single Judge for reconsideration of the entire matter afresh in accordance with law.

Accordingly, Writ Petition No.436/1998 filed by the appellant stands restored to the file to its original number for fresh consideration.”

6. The order passed by the Division Bench restoring the present writ petition with observations concerning adherence to the principles of natural justice is binding on the Single Bench. Therefore, in the facts and circumstances of the case, I deem it appropriate to quash the order dated 30.12.1997 and remit the matter back to the Corporation for considering the matter afresh after issuing notice to the petitioner as well as respondent No.4. Ordered accordingly.

7. Let the decision be taken by the Corporation expeditiously, preferably

within a period of 3 months.

8. In view of the above, the Writ Petition stands disposed of.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve