

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 605 of 2018**

1. Kabir Sibbal S/o S/odevendra Singh Sibbal Aged About 24 Years R/o Shyam Nagar, Near Gurudwara, Telibandha, Raipur, Chhattisgarh. 492001
2. Devendra Singh Sibbal S/o S/o Shri Mahendra Singh Sibbal Aged About 53 Years R/o Shyam Nagar, Near Gurudwara, Telibandha, Raipur, Chhattisgarh. (Not Impleaded (As Party But Adversely Affected Of The Order)

---- Appellants**Versus**

1. State Of Chhattisgarh Through Its Secretary, Urban Administration Department Urban Administration Department Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
2. Municipal Corporation, Through Commissioner, Municipal Corporation, Nagar Nigam Head Office, Near Mahila Police Station, Raipur, Chhattisgarh.
3. Zonal Commissioner, Zone-3, Municipal Corporation, Nagar Nigam Head Office, Near Mahila Police Station, Raipur, Chhattisgarh.
4. Revenue Officer, Municipal Corporation, Nagar Nigam Head Office, Near Mahila Police Station, Raipur, Chhattisgarh.
5. Collector, Raipur, District Raipur, Chhattisgarh.
6. Tahsildar, Raipur, Tahsil And District Raipur, Chhattisgarh.
7. Rajendra Kumar Bervansh S/o S/o Late Shri Kartik Ram Aged About 54 Years R/o Talibandha, P. O. Ravi Gram Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Appellants	: Shri N. Naha Roy, Advocate.
For Respondent/State	: Shri Y.S. Thakur, Additional Advocate General.
For Respondent/Municipal Corporation	: Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Hon'ble Shri Prashant Kumar Mishra, Judge****Judgment on Board****01/08/2018****Per Ajay Kumar Tripathi, Chief Justice**

1. Heard counsel for the parties.
2. I.A. No.01 of 2018 is filed to condone delay of 9 days in filing the appeal. For the reasons indicated in the application, the same is allowed. Delay is condoned.

3. Three writ applications came to be filed before a learned Single Judge for common reliefs based on identical facts. The Municipal Corporation of Raipur acquired land of the writ Petitioners for expansion and widening of road, to which the land holders readily agreed. In lieu of such concession, the Municipal authorities promised them with allotment of certain shops in a Commercial Complex and it came to be allotted also which were Shops No.11, 12 and 13. Payment of Rs.10,000/- as premium and monthly rent of Rs.1,000/- was fastened upon the said allottees.

4. Even though shops were allotted, only vacant land was given possession of on which liberty was granted to the writ Petitioners to make their own construction. It seems that the present Appellant and even his neighbours who are residents of that area raised objections. Even a civil suit was filed for right of easement and the same stood dismissed. The present Appellant chose to file a writ application which was disposed off with liberty to approach the Collector with his grievances. Enquiry was held, reports were submitted and the Collector rejected the objection of the present Appellant.

5. Despite such developments, when the writ Petitioners could not move in the matter, they filed the writ applications seeking a direction upon the Corporation that the Corporation should facilitate the construction of the shops or make suitable arrangements, since admittedly, they handed over their land for expansion of road on a promise made by the Corporation.

6. The writ application came to be allowed and a direction was issued that the Petitioners would be allowed to construct their shops on the land originally allotted to them in terms of the order of the Municipal Corporation dated 01.06.2009 on depositing of premium within the fixed time.

7. Aggrieved by such an order of the learned Single Judge, the Appellants, who are said to be resident of that area have chosen to file the present appeal. This Court finds it a little strange that even though three writ applications were heard and decided together, they have chosen to assail the order only in relation to WPC No.1012 of 2018 meaning thereby that he has no objection against the order of the learned Single Judge insofar as two other petitions being WPC Nos.1010 of 2018 and 1065 of 2018 are concerned. In other words, insofar as the order of the learned Single Judge dated 17.05.2018 is concerned, it has attained finality in respect of two of those petitions.

8. Submission of counsel for the Appellants is that they were necessary party and deliberately they were not made party Respondents preventing them from appearing and assisting the Court in making a fair assessment in the adjudication. The other submission is that the revenue authorities did not give them a fair opportunity and some of the reports have been filed behind their back and that was the reason, why the Collector dismissed their objection.

9. So far as the Appellants not being made a necessary party in the writ applications are concerned, in our opinion, there was no occasion for the Petitioners or the Petitioner, who is private Respondent in the present appeal to implead them as a party looking at the fact that the issue as to their objection stood settled both in a civil suit as well as by the order of the Collector and it was inaction on the part of the Municipal authorities who had tried to resile from their promise as well as the decision taken by them, for that, the writ applications came to be filed.

10. So far as the second objection of the Appellants is concerned, since we are not sitting in appeal over the decision of the Collector, therefore, we are not required to go behind the circumstances under which the revenue authorities conducted the inquiry or spot verification and submitted their report. For that, the

Appellants may have remedy under the law. But, that issue cannot be agitated while assailing the order of the learned Single Judge dated 17.05.2018.

In the given facts that the Petitioners of the WPC Nos.1012 of 2018, 1010 of 2018 and 1065 of 2018 had bonafidely surrendered their land to the Municipal Corporation for expansion of road and in lieu thereof, the allotment of shops was made, and even letters were issued in their favour, the equity is also in their favour and therefore, if the learned Single Judge gave the direction upon the Municipal authorities in favour of the land holders to facilitate the construction of shops, then the said decision cannot be called illegal, arbitrary or erroneous in any manner.

11. The appeal has no merit, especially when already objection of the present Appellants and the proxy made by the neighbours raised before the civil Court for right of easement has gone against them.

12. The appeal therefore fails and it is dismissed.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Prashant Kumar Mishra)
JUDGE