

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Orders on :30/01/2019

Order passed on : 18/03/2019

WP No. 3284 of 2004

1. Maturam Agrawal, aged 74 years.
2. Mulchand Agrawal, aged 70 years.
Both sons of Laxminarayan Agrawal.
3. Hanuman Prasad Agrawal, aged 51 years, S/o Gopi Ram Agrawal.
All residents of Gandhiganj, Raigarh, Chhattisgarh.

---- Petitioners

Versus

1. State of Chhattisgarh, through Secretary, Revenue, Mantralaya, D.K.S. Bhavan, Raipur, Chhattisgarh.
2. Secretary, Urban Development and Planning, Mantralaya, D.K.S. Bhawan, Raipur, Chhattisgarh.
3. Collector, Raigarh, Chhattisgarh.
4. Municipal Corporation, Raigarh, Through-the Commissioner, Municipal Corporation, Raigarh, Chhattisgarh.

---- Respondents

WP(C) No. 6759 of 2006

- Maturam Agrawal, S/o Late Shri Laxminarayan Agrawal, aged about 75 years, R/o Gandhi Ganj, Raigarh, Tahsil & District-Raigarh, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Urban Development & Planning, Mantralaya, D.K.S. Bhawan, Raipur, Chhattisgarh.
2. The Secretary, Revenue, State of Chhattisgarh, D.K.S. Bhawan, Raipur, Chhattisgarh.
3. Dr. S.K. Raju, Presently Posted as Collector, Raigarh, District-Raigarh, Chhattisgarh.
4. S.K. Sundrani, Presently Posted as Commissioner, Municipal

Corporation, Raigarh, Chhattisgarh.

5. The Collector, Raigarh.
6. The Municipal Corporation, Raigarh, through Commissioner.

---- Respondents

WP(C) No. 6797 of 2006

- Bajrang Lal Agrawal, aged about 53 years S/o Maturan Agrawal, Partner M/s Gopiram Maturam(Kerosene Oil) Kerosene Oil Dealer, a registered partnership firm at Sarangarh road, near Railway Crossing Raigarh, District-Raigarh, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary Food and Civil Supplies Mantralaya, Raipur, District-Raipur, Chhattisgarh.
2. The Director, Directorate Food and Civil Supplies State of Chhattisgarh, Raipur, District-Raipur, Chhattisgarh.
3. The Collector, Raigarh-District-Raigarh, Chhattisgarh.
4. The Food Officer, Collectorate, Raigarh, Chhattisgarh.

---- Respondents

WPC No. 7365 of 2007

- Maturam Agrawal, aged about 78 years, S/o Late Shri Laxmi Narayan Agrawal, R/o Gandhi Ganj, Raigarh, Tehsil & District - Raigarh C.G.

---- Petitioner

Versus

1. State of Chhattisgarh, Through: Secretary, Department of Revenue, D.K.S. Bhawan, Mantralaya, Raipur.
2. The Nazul Officer, Nazul Office Collectorate, Raigarh, District–Raigarh, Chhattisgarh.
3. The Collector, Raigarh, Chhattisgarh.

----Respondents

For Petitioners – Shri Kishore Bhaduri, Advocate.

For State/Respondents 1 to 3 – Shri H. S. Ahluwalia, Deputy A.G.

For Respondent No.4 – Shri Sourabh Sharma, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

18/03/2019

1. WP No.3284 of 2004 has been filed for issuance of appropriate writs for

protection of fundamental rights of the petitioners. This petition has been brought making statement that the petitioners have acquired the land in question bearing Najul Khasra No.1995/1, 1994/3 measuring 1,09,038 Sq. Ft. by registered sale deed dated 17-04-1960, on which they have raised construction. As the land was lease hold, hence, the petitioners become themselves leasees subsequent to the transfer. The lease was for the period starting from 1943 upto 1973. The petitioners filed application for renewal of lease before the revenue authorities and the case was registered as R.C. No.13/A-4 of 1978-79, which is kept pending. Again an application was filed on 30-03-1992 on that basis a Revenue Case No.1120/A-4/1991/92 was registered and the case has not been disposed off till date. Surprisingly, the petitioners had received a notice vide Annexure-P/7 mentioning that the lease of the land in question has expired on 30-11-1973 and no proceeding has been initiated for extension of that lease. Therefore, the petitioners were required to show cause why not the Najul land be vested with the Government and the construction made on it be demolished.

It is submitted that the issuance of notice by the respondents is colourable exercise of power which is arbitrary, capricious and unilateral. The respondents themselves have slept over the application filed by the petitioners and are trying to find excuses in the garb of non-renewal of the lease. Therefore, it is prayed that appropriate writ may be issued.

2. In WPC No.7365 of 2007, the subject matter is same. However, notice have been issued against the petitioner making a claim that vendor of the land in question Raja Naresh Chandra Singh was a member of Scheduled Tribes and the sale deed has been executed without complying with the provisions under Section 165(6) of M.P. State Land Revenue Code, therefore, the sale deed is illegal and the petitioner has no right over it, regarding which prayer has been made in this petition for issuance of writ of certiorari quashing the

show cause notice that was issued.

3. In WPC No.6759/2006 the subject matter is same regarding the land bearing Khasra No.194/3 and 193/1 measuring 1.9230. It is submitted that with respect to the widening of the roads the petitioner has himself proposed to leave a portion of land measuring 14 x 519 ft, regarding which a letter of intent vide Annexure-P/1 was also submitted to the respondents requesting for adopting the process of acquisition as per law and to compensate accordingly. The petitioner has been threatened by the respondents that construction of the petitioner shall be demolished without any legal proceedings. Therefore, the petition has been filed for issuance of a writ of mandamus in this respect that the respondents be directed to initiate prescribed proceedings under the law for acquisition of the land as proposed by the petitioner.

4. In WPC No.6797 of 2006 it is submitted that the petitioner is partner engaged in the business of storage, distribution and supply of Kerosene Oil at Raigarh in the name and style of M/s Gopiram Maturam (Kerosene Oil) Kerosene Oil Dealer. The license of kerosene oil dealership has been cancelled by the respondents vide order dated 28-11-2006, Annexure-P/1. The license of the petitioner has not been renewed. Under the demolition drive initiated by the State authorities under the garb of widening roads and despite the application filed by the petitioner his license has not been renewed. As the petitioner has order of this Court in his favour staying that proceeding of demolition, therefore, in an arm twisting manner his license has been cancelled and no consideration was given to the application of the petitioner for renewal of the same license, which is followed by the harassment of the petitioner in various manners. As the petitioner has no option to file appeal for the reason that office of Commissioner has been abolished, therefore, it is prayed that the order cancelling the license of the petitioner may be quashed along with the other orders passed by the respondents in this respect.

5. With regard to WP No.3284 of 2004 respondents No.1, 2 and 3 submits in reply that equally efficacious alternative remedy is available under the provisions of C.G. Land Revenue Code, 1959, Sections 92,93,94, 95, 96, 97, 98, 99, 100, 101, 102 and 103 equally deals with the assessment and re-assessment of land in urban areas. Subsequent to that, Section 44 of the C.G. Land Revenue Code, 1959 also provides for appeal from every original order under the Code and rules made thereunder. It is submitted that Annexure-P/7, the Show Cause Notice has been issued by a quasi judicial authority, to which the petitioners should respond, therefore, scope for interference of this Court is very limited. Therefore, there is very limited scope of interference by this Court and the petition under Article 226 of the Constitution cannot be invoked to grant any relief.

It is submitted in reply filed by respondent No.4/intervenor Municipal Corporation, Raigarh, that the Municipal Corporation has filed an application for allotment of some land from Khasra No.1994/03 and 1995/1 for allotment and for settlement of small shopkeepers under Chief Minister Swavalamban Yojana. As the matter is subjudice before this Court, therefore, the intervenor has interest in the outcome.

6. In reply in WPC No.7365 of 2007 it is submitted by the counsel for respondents that the order passed by the then Nazul Officer, Raigarh in Revenue Case No.33/A-6/59-60 dated 28/06/1960 was erroneous as no publication of notice was made granting time of 30 days to raise objections of the proceeding initiated from 21-05-60 to 25-05-60. Therefore, non-compliance of the legal provisions itself is a ground to hold that the order dated 28-06-1960 was illegal. Apart from that, vendor of the land, Raja Naresh Chandra Singh was a member of Scheduled Tribe and at the time of execution of the deed provision under Section 165(6) of M.P. State Land Revenue Code impleaded in the M.P. State Land Revenue Code had come into operation. In all the

properties situated in Raigarh the prior permission of Collector was essential for making such sale in favour of the petitioner. Therefore, the order passed in this case is void ab-initio. The revenue authority has power to review its own orders under Section 51 of the Land Revenue Code. Therefore, the petition brought by the petitioner is immature. The petitioner has a right to challenge the order passed by the review authority in case the order is passed against him. Therefore, it is prayed that the petition may be dismissed.

7. In reply in WPC No.6759 of 2006 the respondent No.6 opposes the ground raised in the petition and submits that the road widening has been done. Therefore, no reason is left for initiation of any acquisition proceeding. It is submitted that the petitioner can make a claim before the Court of Law if the land in his ownership and possession has been acquired for widening of the road. Therefore, the petition may be dismissed.

8. In WPC No.6797 of 2006 in reply the grounds raised in the petition has been opposed and it is submitted that the petitioner was afforded opportunity to show cause in the license cancellation proceeding No.16/2006 for which he has made representation. On the basis of the submissions made by both the sides a reasoned order was passed on 28-11-2006 cancelling the license for distribution of kerosene in favour of the petitioner under Clause 10 of M.P. Kerosene Vyapari Anugyapan Aadesh, 1979. The petitioner had remedy to appeal under Clause 16 of the Order, 1979, without preferring any such appeal he has brought this petition which is not maintainable.

9. Considered on the submissions made in WP No.3284/2004. It has not been specifically denied by the respondents that the petitioners have initiated proceedings for renewal of lease of the land in question. According to the submission of the petitioner, the issuance of notice vide Annexure-P7 to the petitioner appears to be unreasonable, in which, it is

stated that the petitioner has not initiated any proceeding for renewal of lease, therefore, on this basis, I feel inclined to allow this petition with a direction to the respondents to consider and decide the renewal of lease application of the petitioners, which are pending as RC No.13/A-4 of 1978 and 79 and RC No.1120A-4/1991-92, in accordance with law, regulation and rules in this respect within a period of six months from the date of passing of this order.

10. Considered on the submissions made by both the parties with respect to WPC No.7365 of 2007. In the proceedings initiated against the appellant under the provisions of under Section 170 B of the C.G. Land Revenue Code, the petitioner has all the opportunity to place evidence and defend his case and after the outcome of the said case, if it is not in favor of the petitioner, he has further remedy available. Therefore, no reason is available to entertain this petition. Accordingly, WPC No.7365/2007 is dismissed.

11. Considered on the submissions in WPC No.6759/2006. As per the submissions made by respondent No.6, the work of road widening has already been done and there is no reason for initiation for acquisition proceedings. In case, any land belonging to the petitioner has been acquired by the respondent without the acquisition proceedings, then the petitioner has opportunity to file a case before the Court of law. Since equally efficacious remedy is available to petitioner under the law, this petition is not maintainable which is dismissed accordingly.

12. Considered on the submissions made by both the parties in WPC No.6797/2006. As submitted by the respondents that the proceedings for cancellation of license of kerosene dealership of the petitioner was taken

up and after affording opportunity to the petitioner, the order dated 28.11.2006 has been passed. It has been submitted by the respondent side that an alternative remedy of filing appeal is available to the petitioner under Clause-16 M.P. Kerocene Vigyapan Adesh, 1979. In view of the same, I am of this opinion that this petition is also not maintainable which is dismissed accordingly.

13. The petitions are disposed off by this order.

Sd/-

(Rajendra Chandra Singh Samant)
Judge