

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1859 of 2012**

1. Awadh Dewangan S/o Asha Ram Aged About 36 Years Occupation Cycle Mechanic
2. Krishna Kumar Sen S/o Shri Nohar Sen Aged About 40 Years Occupation Barber
3. Dwarika Dewangan S/o Chetan Ram Aged About 50 Years Occupation Egg Shop
4. Deepak Gupta S/o Shriram Ji Aged About 28 Years Occupation General Shop
5. Smt. Rupa Bai, Aged about 50 years, W/o Late Shiv Yadav, Occupation – hotel Business, R/o Birgaon, Police Station – Urla, Tahsil & District - Raipur (C.G.) Civil & Revenue District – Raipur (C.G.)
6. Rajendra @ Raju Dewangan S/o Tekun Ram Aged About 31 Years Occupation Pan centre
7. Bharat Sen S/o Ramdayal Aged About 57 Years Occupation Barber
8. Smt. Ashiya Bee W/o Mohd. Salim Aged About 49 Years Occupation Bangle Shop
9. Mani Ram Sahu S/o Panch Ram Sahu Aged About 47 Years Occupation Vegetable Shop
10. Yogesh Sen S/o Bisouha Ram Sen Aged About 40 Years Occupation Barber
11. Kayyum Mohammad S/o Subhan Mohammad Aged About 55 Years Occupation Bangle Shop
12. Mantram Yadav S/o Ghasiya Yadav Aged About 40 Years Occupation Hotel

All R/o Nagar Palika Parishad, Post Birgaon, P.S. Urla, Tah. And Dist. Raipur
C.G. PIN 493221

---- Petitioners

Versus

1. The State Of Chhattisgarh Through The Secretary Urban Administration And Rural Development Deptt. DKS Bahwan Mantralaya Raipur, P.S. Civil Line, Post – Raipur, District Raipur (C.G.) PIN-492001.
2. Chief Municipal Officer Nagar Palika Parishad, Birgaon, P.S. Urla, Post Birgaon, District Raipur (C.G.) PIN 493221

3. Nagar Palika Parishad, Birgaon, P.S. Urla, Post Birgaon, Tah. And Dist. Raipur C.G. PIN - 493221
4. President Nagar Palika Parishad, Birgaon, P.S. Urla, Post Birgaon Tah. And Dist Raipur C.G. PIN - 493221

---- Respondents

For Petitioners	:	Shri Ratnesh Kumar Agrawal, Advocate
For Respondents/State	:	Ms. Smita Ghai, PL
For Respondents No.2 & 3	:	Shri Sourabh Sharma, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

02/07/2019

1. Heard.

2. The instant petition is being preferred with the following reliefs:-

“10.1 To kindly quash the impugned notice/advertisement issued by the respondent Chief Municipal Officer, Nagar Palika Parishad Birgaon dated 30.06.2012 (Annexure P-1).

10.2 To kindly be pleased to direct the respondent authorities to consider the case of the petitioners for allotment of shops by giving them preference at newly constructed commercial complex.

10.3 Any other relief/order which may deem fit and just in the facts and circumstances of the case including award of the cost of the petition may be given.”

3. It is contended on behalf of the petitioners that the petitioners were carrying on their business at Birgaon ward and they were carrying on small business to earn their livelihood. The Nagar Palika Parishad, Birgaon decided to construct a complex of the shops at three places numbering into 64, it is contended that the petitioners were told that they would be given preference if they vacate such

premises so that in lieu of such handing over of the vacant possession, the construction can be carried out.

4. Learned counsel for the petitioners would submit that pursuant to the promise so extended, the petitioners vacated their place of business and handed over the possession to the respondent Nagar Palika Parishad so that they could construct the shops and complex. He would further submit that subsequent to the construction of the shop, the advertisement was made by the respondent Nagar Palika Parishad, Birgaon, inviting applications under the Mukhyamantri Swawlamban Yojna from the different corners of the society, so that the newly constructed shops can be allotted. He would further submit that the petitioners since were promised to be given preference, the only prayer which has been made by the petitioners is that they may be allowed to make application and they may be given preference.
5. Per contra, learned counsel for the respondents No.2 & 3 would submit that no such promise of like nature was ever made to the petitioners so that they can be preferred over and above the candidates who are entitled. He would further submit that there is nothing on record to show that the promise of like nature was existing or was extended. He would further submit that if any such promise was made by any officer, the same would not be binding on the Nagar Palika Parishad, Birgaon, therefore, the case of the petitioners is without any basis.
6. Learned State counsel adopts the arguments advanced by learned counsel for respondents No.2 & 3.
7. Perused the documents. Perusal of the documents would show that the

petitioners were served with a notice in the year 2005 that they are the encroachers and they were directed to vacate the premises wherein they were running their business. There is nothing on record to show that any promise was made by the concerned Nagar Palika Parishad that in case of handing over the vacate possession which may allow the Nagar Palika Parishad to raise superstructure/complex/shops, after construction of shops the petitioners shall be given preference. Certain letters have been placed on record to show that some discussion has been made, however, there is nothing on record to fortify the contention of the petitioners qua the promise made. Therefore, in the absence of any document of resolution on behalf of the Nagar Palika Parishad, it would be difficult to hold that the petitioners were promised to be given preference for allotment of the shops in the newly constructed complex. Further with respect to the legitimate expectation the petitioners were required to prove that the expectation was legitimate. When the petitioners themselves were held rank encroachers, the said expectation cannot be within the domain of legitimate expectation, therefore, the petition has no merit and no relief can be granted to the petitioners. The petitioners, however, if are entitled according to the scheme may apply to the respondent Nagar Palika Parishad and the Court can only expect some sympathy which may be extended to them while deciding their applications.

8. With the aforesaid observation, the writ petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge