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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1851 of 2019**

1. Harivallabh Agrawal S/o Ramdayal Agrawal Aged About 44 Years
R/o House No. 323-A, Maharshi Dayanand Marg, Sunder Nagar
Raipur, District Raipur Chhattisgarh.
2. Smt. Geeta Devi Agrawal W/o Ramdayal Agrawal Aged About 77
Years R/o House No. 323-A, Maharshi Dayanand Marg, Sunder
Nagar Raipur, District Raipur Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Housing And
Environmental Department, Mahanadi Bhavan, Naya Raipur,
District Raipur Chhattisgarh.
2. Joint Director, Town And Country Planning - Cum - Member
Secretary, District Regularisation Authority, Regional Office, RDA
Building, In - Front Of Tahsil Office, G.E. Road, Raipur District
Raipur Chhattisgarh.
3. Collector, Raipur District Raipur Chhattisgarh.
4. Commissioner, Municipal Corporation Raipur, District Raipur
Chhattisgarh.
5. Zone Commissioner, Zone No. 5, Municipal Corporation Raipur
District Raipur Chhattisgarh.

---- Respondent

For Petitioners : Shri RN Pusty, Advocate.

For Respondent/State : Shri Aditya Bhardwaj, Panel Lawyer.

For Respondent/Corporation : Shri HB Agrawal, Sr. Adv. With Smt.
Priti Yadav, Advocate.

For Intervenor : Shri Yogesh Pandey, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

18/06/2019 :

1. The residents of the residential colony built by one Mahamaya construction preferred WPC No.1392/2019 seeking direction to the Municipal Corporation, Raipur for removal of encroachment made by the builder to reduce width of approach road of the colony by name 'Shiv Vatika' in front of Ashwini Nagar, Raipur. The writ petition was disposed of directing the Municipal Corporation to decide the representation of the petitioners therein within a period of 6 weeks from the date of submission of representation. Immediately thereafter the petitioners therein moved a representation to the Commissioner, who in turn issued impugned notice (Annexure-P/2A) dated 15.5.2019 to the petitioners for removal of encroachment. This notice was issued upon enquiry in which the petitioners were afforded opportunity of hearing.
2. It is the contention of the petitioners that under the Regularization of Unauthorized Construction Act, 2002, they had moved an application on 28.11.2002 which remained pending without there being any decision on it, therefore, as long as the said application is pending, the subject construction cannot be

removed, as it cannot be branded unauthorized.

3. Learned counsel for the respondents and intervenor as well, would submit that the petitioners never followed their application filed in the year 2002 and from the documents emanating from the office of Town and Country Planning, it is apparent that the petitioners' application for regularization filed in the year 2002 has been rendered infructuous, as the said rules have already been repealed.
4. Countering the submissions, learned counsel for the petitioners would submit that all those applications which were filed under the Regularization Act, 2002 but could not be disposed of during the operation of the said Act are required to be dealt with afresh by obtaining applications from such applicants whose applications were pending at the time of promulgation of Chhattisgarh Anadhikrit Vikas Ka Niyamitikaran (Sanshodhan) Adhiniyam, 2016 (for short 'the Act, 2016'), however, no such information was sent to the petitioners informing them that their application under the 2002 Act is treated void and they are required to move fresh application under the amended Act, 2016.
5. Be that as it may, since the petitioners appear to have moved an application for regularization in the year 2002 but the same remained pending and their case has not been dealt with under

the amended Act, 2016, ends of justice would be served if the Writ Petition is disposed of with a direction that in the event the petitioners move fresh application before the competent authority under the amended Act of 2016 within a period of one month from today, the competent authority under the Act shall consider and decide the application for regularization within parameters of the Act within a period of 3 months. Based on the outcome of the application for regularization, the Corporation would be at liberty to proceed with the impugned notice (Annexure-P/2A), if the construction raised by the petitioners is still found to be unauthorized.

6. Compliance of the order passed by this Court in WPC No.1392/2019 shall be made by the Corporation after the above indicated period.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve