

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 203 of 2016**

(Against the Order dated 21.01.2016 passed by the learned Single Judge in WP-439/2001)

1. Smt. Harbans Kaur W/o Late Malak Singh, R/o House No. 531, Road No.4, Smriti Nagar, Bhilai, Distt. Durg, Chhattisgarh
2. Gurjeet Singh S/o Satnam, Aged About 38 Years R/o Indira Market, Near Power House, Rly. Station Power House Bhilai, Presently R/o M.I.G.-10, Vaishali Nagar, Bhilai, District Durg, Chhattisgarh

---- Appellants

Versus

1. Commissioner, Municipal Corporation Bhilai Distt. Durg, Chhattisgarh
2. Collector, District Durg, Chhattisgarh
3. Superintendent Of Police District Durg, Chhattisgarh
4. Station House Officer, Police Station Chhavni, Bhilai, District Durg, Chhattisgarh
5. Bhilai Matador Union, Bhilai, Distt. Durg, Through Its President Raj Kumar Jayaswal S/o Ramdeen Jayaswal, Care Of Jayaswal Furnitures, 90-C, Industrial Estate, Bhilai, District Durg, Chhattisgarh
6. State Of Chhattisgarh Through Secretary, Urban Administration And Development Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
7. Alok Kumar S/o Jagdish Kumar, R/o Choubey Colony, Raipur, Chhattisgarh

-----Respondents

For Appellants	: Shri Ashish Shrivastava and Shri Animesh Verma, Advocates
For Respondent-1	: Shri Manoj Paranjpe, Advocate
For State	: Smt Fouzia Mirza, Additional AG
For Respondent- 5	: Shri Ashish Surana, Advocate

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

Per Ajay Kumar Tripathi, Chief Justice

11.01.2019

1. The appeal is against the order dated 21.01.2016 passed by the learned Single Judge dismissing the writ application and refusing to grant the relief which had been prayed for. The reliefs are as under:

“(i) This Hon'ble Court may kindly be pleased to direct respondents No. 1 to 5 to place on record all files, records, documents relating to the representation made by the petitioners/reports lodged by the petitioners for its kind perusal.

(ii) This Hon'ble Court may kindly be pleased to issue a writ in the nature of mandamus commanding respondents no. 1 to 4 to take appropriate action against respondent No.5 and its members and other responsible persons on the representations and complaints of the petitioners, in accordance with law.

(iii) This Hon'ble Court further be pleased to issue command to the Station House Officer, Police Station Chhavni to register offence on the report lodged by the petitioner against the guilty persons.

(iv) This Hon'ble Court may kindly be pleased to restrain respondent No.5 and its members from using the plots of the petitioners as motor stand and also to restrain them from interfering with petitioners possession over the lease/plots in possession of petitioners by virtue of lease granted to them by the Corporation.

(v) Any other relief/reliefs which the Hon'ble Court may deem fit and proper in the interest of justice.”

2. There is a long history behind the present litigation starting with the decision of the Municipal Corporation of Bhilai (for short, 'Corporation') to settle the land in question on the basis of first come first serve as well as the highest bidder on lease for a period of 30 years. The petitioners, who are appellants before this Court entered into a lease agreement on 16.02.2000. The grant of such lease by the Corporation provoked respondent- 5 ie the Bhilai Metador Union or its members etc., to file a writ application seeking cancellation of the lease deed on various grounds. However, it seems the High Court of Madhya Pradesh was not impressed by such submission and challenge, therefore, Writ Petition-2704 of 2000

got dismissed on 01.05.2000. A copy of the same is available on record of the writ application as Annexure P/2.

3. Despite the dismissal of the writ application it seems that the Metador Union/owners wielded enough influence with the local politicians to get the building permission initially sanctioned to the appellants cancelled vide order dated 19.10.2000. The said cancellation of the building plan was challenged by the appellants by filing Writ Petition-68 of 2000. The writ court held that the Corporation did not have competence to cancel the building permission once granted. But despite the dismissal of the writ application of the Matador Union/owners by the Madhya Pradesh High Court and then setting aside of the building plan cancellation by the Chhattisgarh High Court, the appellants have not been able to make any construction on the property because of constant interference and frivolous complaints being made before various forums or authorities.

4. There is evidence to show that an erstwhile member of Legislative Assembly also intervened on behalf of the Metador Union/ Owners by raising accusing fingers against the then Municipal Commissioner that the settlement of the land by lease was not above board and therefore, the matter should have been examined by the Anti Corruption Bureau (ACB).

5. Queries had been made, the ACB did not find any evidence of wrong doing. More fact findings have happened and after all kinds of protracted enquiries, none of the findings adverse to the detriment or interest of the appellants emerged. Since the above developments took place subsequently and came to the knowledge of the appellants with

regard to the decisions or the findings in different enquiries, an application for taking additional submission and documents on record with two annexures, Annexure D/1 and Annexure D/2 have been brought on record. Annexure D/1 is dated 27.10.2010 which is a letter of ACB and Annexure D/2 is a copy of the three member Committee of an enquiry dated 25.07.2013. The two have opined that the settlement or grant of lease of the land was not illegal.

6. All these facts, therefore, support case of the present appellants that they had legal valid lease in their favour in relation to the land and despite all efforts made either before a Court of law or before various authorities, the lease agreement has not been annulled or declared to be invalid. Almost two decades have passed either in litigation or enquiries held on complaints and allegations, made by persons at behest of the Metador Union/owners.

7. Before the learned Single Judge, arguments were made that such a writ application was not maintainable under Article 226 of the Constitution of India, they are highly disputed questions of fact and therefore, the relief so prayed for cannot be granted to the appellants. Such line of argument seems to have weighed with the learned Single Judge and therefore, he dismissed the writ application holding that the writ petition is not maintainable.

8. From the narration of facts, the validity of the lease executed on 16.02.2000 is no longer a question or a matter of dispute. The lease is still subsisting since it is valid and operational for a period of 30 years.

Despite controversies or litigations which were sought to be created, including impediment in the way of possession of the land in question, the mischief makers have not succeeded.

9. We also cannot be unmindful of a significant fact that respondent-5 or persons having some interest before the Madhya Pradesh High Court tried to assail the lease granted in favour of the appellants but failed since their writ applications stood dismissed. They do not have any right now to raise objections on the ground that they have been using the land as a Metador stand and they should be allowed to do so without any let and hindrance.

10. We also notice from the pleading in the writ application filed by the likes of respondent- 5 before the Madhya Pradesh High Court that a direction be issued upon the Corporation to declare the said land to be a Metador stand. This too was not acceded to by the High Court since the writ applications stood dismissed in *toto*. The said order of the MP High Court dated 01.05.2000 has attained finality, therefore, neither respondent- 5 or any of its members or owner have a legal, valid right to use the land in question for parking, since there is not a chit of paper in their favour which creates any right, much less of a legal kind.

11. The question therefore, arises according to the counsel for the appellants is whether the State can be mute spectator and a law abiding citizen in whose favour even judicial orders have stood the test of time can be made to suffer. Can the State be allowed to throw up its hands saying that it is a dispute in which the remedy will lie before, may be a Civil Court.

12. In normal course of things, if the dispute would have arisen between two private individuals arising out of a lease deed, then may be such persons could have been relegated to a court of competent jurisdiction but in the present case, the lease has been awarded and executed by a statutory body ie the Municipal Corporation of Bhilai merely because certain people have organised themselves to create obstruction in gross violation of law, by taking law in their own hands, neither the court nor the State can be allowed to be a mute spectator.

13. The district authorities therefore will give a notice, fix a time frame for respondent- 5 or its members to vacate the premises and if they try to take law in their hands, appropriate action may be taken against them, specially since respondent- 5 or persons whose interest they represent have miserably failed before a writ court earlier and have also failed to establish that the lease agreement entered between the Corporation as well as the appellants was not legal and valid. Nothing amiss in execution of such lease has been found both by the ACB as well as the three member Committee, set up by the State authorities at the instance of mischief makers as also a former member of the Legislative Assembly.

14. We are a country governed by rule of law. A person who is abiding by the law and is seeking protection under the law cannot be allowed to suffer for decades together merely because respondent- 5 have the muscle flexing capacity or have access to powers that be who are willing to intervene and support them even in their illegal act or action.

15. The order of the learned Single Judge dated 21.01.2016, therefore, is set aside. A direction is issued upon the municipal authorities, the district Collector, Durg as well as the Superintendent of Police, Durg to do the needful to ensure that the land leased out to the appellants no longer used as parking stand by any person, much less respondent No.5, its members or any other person. The order must be therefore, implemented within a period of eight weeks.

16. The appeal is allowed.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge