

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 334 of 2019

(Arising out of Order dated 18.06.2019 passed by the learned Single Judge in
WPC-1851 of 2019)

1. Jai Prakash Gupta S/o Shri Rajaram Gupta Aged About 63 Years R/o Shiv Vatika, Ashwani Nagar, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Vijay Tiwari S/o Shri Naresh Prasad Tiwari Aged About 47 Years R/o Shiv Vatika, Ashwani Nagar, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Prafulla Pendse S/o Shri Prakash Pendse Aged About 43 Years R/o Shiv Vatika, Ashwani Nagar, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
4. Deepak Maheshwari S/o Shri Raman Lal Maheshwari Aged About 49 Years R/o Shiv Vatika, Ashwani Nagar, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
5. Naveen Richhariya, S/o Late Shri Mahendra Kumar Richhariya, Aged About 47 Years R/o Shiv Vatika, Ashwani Nagar, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

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Versus

1. State Of Chhattisgarh Through Secretary, Housing And Environmental Department, Mahanadi Bhavan, Naya Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Joint Director Town And Country Planning - Cum - Member Secretary, District Regularisation Authority, Regional Office, Rda Building, Infront Of Tahsil Office, Ge Road, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Collector Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
4. Commissioner, Municipal Corporation Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
5. Zone Commissioner Zone No. 5, Municipal Corporation, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
6. 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., District : Raipur, Chhattisgarh
7. Geeta Dei Agrawal W/o Shri Ramdayal Agrawal Aged About 77 Years R/o House No. 323-A, Maharshi Dayanand Marg, Sunder Nagar, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

-----Respondents

For Appellants	: Shri Yogesh Pandey, Advocate
For Respondents-1 to 3/State	: Shri GS Patel, Government Advocate

For Respondents- 4 and : Shri Pankaj Agrawal, Advocate
5/Corporation

For Respondents- 6 & 7 : Shri RN Pusty and Shri Pallav
Mishra, Advocates

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

Per PR Ramachandra Menon, Chief Justice

05.12.2019

1. The challenge is against the Order passed by learned Single Judge in WPC-1851 of 2019 on 18.06.2019, whereby the question of regularization was sought to be considered by the appropriate authority. This, according to the appellants is not correct or sustainable insofar as such a direction could not have been given for various reasons as projected in the Writ Appeal.

2. The prayers in the Writ Petition were in the following terms:

“10.1 that, the Hon'ble Court may kindly be pleased to call for the records of the regularization proceeding registered under Case No.1605/2003 by the respondent No.2 and may peruse the same.

10.2 That the respondent No.2 may kindly be directed to invite fresh/renewed application of regularization in respect of the subject construction (as per Annexure P/1-A) raised by the petitioners and consider the same on merits.

10.3 That, till a decision is taken by the Competent Authority under the Act No.21 of 2002 (ie the Distt. Regularisation Authority) on the fresh regularization application, the respondent No.5 may be restrained from taking recourse to any demolition activity in respect of construction raised by the

petitioners in pursuance of Annexure P/1-A and the said Annexure P/1-A may be quashed.

10.4 Any appropriate writ, direction or order may also kindly be passed in favour of the petitioners, which this Hon'ble Court deems fit in the circumstances of the case.”

3. The operative portion of direction as given in the Order reads as follows:

“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.”

4. Learned counsel for the respondents submits, as supported by the learned counsel for the State, that the direction given by the learned Single Judge has been considered and claim has been rejected on 16.09.2019. This being the position, the appeal itself has become infructuous, submits the learned counsel.

5. Learned counsel for respondents-6 and 7/ writ petitioners submits that the order passed pursuant to the said judgment is being subjected to challenge by approaching the appellate authority. It is open for the appellants herein to join the issue before the said authority. Insofar as no adjudication was done by the learned Single Judge on merits but for simply directing the matter to be considered and further since the said direction has already complied with, we need not go into the merits of the appeal.

6. It is open for the parties concerned to pursue appropriate remedy before the appropriate authority in accordance with law.

7. Appeal stands dismissed as infructuous.

8. If any such appeal is filed against the order dated 18.06.2019, it goes without saying, that opportunity of hearing shall be given to the appellants herein as well.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge