

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 28-01-2020

Passed on 08-05-2020

WP No. 4584 of 2004

- Sanjay Gupta s/o. Dr. Sharad Gupta aged about 41 years, resident of “Chandrama” Kakilash Nagar, Rajnandgaon (CG).

---- Petitioner

Versus

1. Collector (Nazul Branch), Rajnandgaon (CG).
2. Municipal Corporation through commissioner, Rajnandgaon (CG).
3. State of Chhattisgarh through Secretary, Public Housing Town Planning and Development, D.K.S. Bhavan, Mantralaya, Raipur (CG).

---- Respondents

For petitioner	:	None
For respondent No.1 & 2	:	Mr. Sourabh Sharma, Advocate.
For respondent No.3/State	:	Mr. Raghavendra Verma, GA.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Order

1. This writ petition is preferred under Article 226 of the Constitution of India for quashing the warrants of possession issued by the Collector (Nazul Branch) vide Annexures P/4 and P/5.

2. The case of the petitioner, in brief, is that the petitioner is owner of the land bearing area 0.90 acres of land mentioned in Annexure P/4 of the petition and 0.747 acres of land mentioned in Annexure P/5 of the petition. A residential colony by the name of "Shristi Awasiya Parisar" was being developed on the land. Copies of the layout plans are annexed as Annexures P/1 and P/2. The total area envisaged for development of residential colony was 5.98 acres. 15% of the land was ear-marked for Economically Weaker Section. The petitioner obtained colonizer licence in respect of development of the said colony in the year 1996. After five years of licence on 12-9-2001 petitioner received two warrants of possession dated 10-9-2001 issued by the Collector (Nazul Branch), Rajnandgaon whereby petitioner was directed to hand-over possession of 15% land reserved in the lay out plans to the Commissioner, Municipal Corporation, Rajnandgaon, as mentioned above. On 8-11-2004 the respondents started undertaking activity to start construction on the said 15% reserved land without following the legal procedure which was objected by the petitioner. Existing legal provisions say that slum clearance board could only take over possession of the land by making payment of cost of land to the owner. In exercise of power conferred under Madhya Pradesh Nagar

Palik Adhiniyam 1956 and Madhya Pradesh Nagar Palika Adhiniyam 1961 the Government framed the Madhya Pradesh Nagar Palika (Registration of Colonizers, Terms and Conditions) Rules 1998 (for short, "the Rules 1998"). As per Section 10 (8) of the said Rules, it was provided that if competent authority does not allot land to eligible persons then such land will be forthwith returned to the colonizer. In the instant case, neither compensation was paid to the petitioner nor land was allotted to the eligible persons. Thus, it was required to be returned to the colonizer. The petitioner had acquired his right under Rule 10(8) of the said Rules 1998 to obtain land back, therefore, order passed by the Collector (Nazul Branch) Rajnandgaon is liable to be quashed.

3. On the contrary, case of the respondents is that the colonizer licence was granted to the petitioner on 12-4-1996 and the petitioner was required to reserve 15% land for Economically Weaker Section. Licence was renewed as per provisions of CG Municipal Corporation Act, 1956 and as per CG Municipal Corporation (Registration of Colonizer, Terms and Conditions) Rule 1998 framed under Section 292-A (3) of the Act, 1956. Thereafter, on 12-9-2001 possession of 15% land was handed over to the Municipal Corporation Rajnandgaon by the petitioner which is land in question. Development work of the petitioner was completed on 28-8-2002 and the petitioner was granted certificate of completion of the development of the colony. There was

no such provision for returning of land at the time of grant of licence or renewal of licence, therefore, no case for returning of land is made out according to law and the Rules prevailing at the time of issuing licence and renewal of licence. Warrant of possession issued by the Collector (Nazul Branch) dated 12-9-2001 was duly executed and Corporation is constructing houses under "Atal Awas Yojna" on the aforesaid land. Construction work of 1000 quarters under this scheme has already been started. The petitioner is only entitled for compensation as per Rules, therefore, petitioner is not entitled for any relief.

4. I have heard learned counsel for the parties.

5. The only question for consideration of this court is whether the petitioner is entitled for returning of land and whether possession warrant issued by the Collector (Nazul Branch) as mentioned above is contrary to the Rules.

6. The case of the petitioner is regarding land which is situated in Municipal Corporation area of Rajnandgaon. Case of the petitioner falls within ambit of Section 292-A (3) of the CG Municipal Corporation Act, 1956 and Section 10 of the CG Municipal Corporation (Registration of Colonizer, Terms and Conditions) Rules 1998. Rule 10 of the Rules 1998 makes provisions for availing of plots/houses for Economically Weaker Section in the residential colony. Rules were amended by Government of Chhattisgarh on 14-7-2006 and again by

notification dated 26-3-2007. Fresh amendment was incorporated on 25-7-2008 whereas other Rules were substituted in Rule 10 with a new set of Rules. The case of the petitioner would be governed by unamended Rules because he was granted licence in the year 1996 which was subsequently renewed in the year 2000. In unamended rules, there is no such provision of returning of land to the colonizer which is reserved for Economically Weaker Section. The amended Rules which came into force in the year 2006 and 2007 have no bearing with the case of the petitioner. On the date of issuance of colonizer licence and on the date of renewal of licence, the statute did not provide for release of land which is reserved for Economically Weaker Section. The land is reserved for Economically Weaker Section, therefore, it cannot be returned to the colonizer and the Collector (Nazul Branch) is right in issuing possession warrant and taking possession of land in question. The petitioner is only entitled for compensation for the land in question as per valuation on the date of handing over the possession of land. It is not a case where the court can exercise its writ jurisdiction in such matters which have trappings of policy. In view of the above, no case for exercise of jurisdiction under Article 226 of the Constitution of India is made out.

7. Accordingly, the writ petition is liable to be and is hereby dismissed.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju