

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.1941 of 2010**

1. M/s Gaurav Promoters & Builders, a partnership firm duly registered under the relevant provisions of the Indian Partnership Act, 1932 having its office at 81, Jairam Complex, Sharda Chowk, Raipur, acting in the premises through its partner Shri Raghvendra Chandrakar, S/o Shri N.S. Chandrakar, aged about 39 years, R/o Sriram Heritage, Katora Talab, Raipur Cg
2. Raghvendra Chandrakar, S/o Shri N.S. Chandrakar, aged about 39 years, R/o Sriram Heritage, Katora Talab, Raipur Cg

---- Petitioners**Versus**

1. State Of Chhattisgarh through the Secretary, Department of Town and Country Planning/Housing & Environment, D.K.S. Bhawan, Mantralaya, Raipur Cg
2. Raipur Municipal Corporation, Raipur, through Commissioner, Malviya Road, Raipur.
3. The Joint Director, Town and Country Planning Department, Raipur.

---- Respondents

For Petitioner :	Shri B. P. Sharma with Shri Y.S. Rajput, Advocate
For Respondents No.1 & 3 :	Shri Anmol Sharma, Panel Lawyer
For Respondent No.2 :	Shri Pankaj Agrawal, Advocate

Single Bench: Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****08/01/2020**

1. By this petition under Article 226 of the Constitution of India, the petitioner calls in question decision of the respondent-Municipal Corporation, Raipur,(Second respondent), rejecting petitioner's prayer for return of undeveloped land admeasuring 27,820 square feet.
2. The petitioner, desirous of developing residential colony, applied and obtained permission of the competent authority under Chhattisgarh Nagar Palika (Registration of Coloniser, Terms and Conditions) Rules, 1998 (In short "the Rules of 1998"). The possession of the land was handed over to second respondent on 22-01-2007.

It appears that the said piece of land surrendered in favour of the Corporation was not developed by the Corporation. At that time, the relevant provisions contained in the Rules of 1998, as amended in the State of Chhattisgarh vide notification dated 14-07-2006, contained a provision incorporated by way of proviso under sub rule(1) of Rule 10 of the Rules of 1998 that any land reserved for the persons belonging to weaker sections of the society, be handed over to the Municipal Corporation/Municipal Council/Nagar Panchayat, in accordance with the applicable rule at that time by the Colonizer for which cost has not been paid to the Colonizer by the Municipality and which land is vacant, may be released by the Municipality in favour of the Colonizer on deposit of the shelter fees on the rates prescribed under the Rules.

3. The petitioner seeking to invoke that option of return of land by depositing shelter fee, submitted an application on 11-02-2008 followed by various reminders, offering to pay shelter fee and return of the land which was earlier surrendered by him at the time of getting permission to develop residential colony as Colonizer. That application, however, came to be rejected by the Corporation on 30-11-2009. Such rejection was based on the ground that at the time when the application was moved, the option of deposit of shelter fee was not available, therefore, reserved land could not be returned. It is this order, which is under challenge in the instant petition.

4. Learned counsel for the petitioner would argue that on the date, when he moved application for return of land, proviso under sub rule(1) of Rule 10 of the Rules of 1998 was applicable in the State of Chhattisgarh, which entitled him to claim return of land by depositing shelter fee, upon satisfaction of the condition that the cost of the land has not been paid by the Municipality to the Colonizer and the land is lying vacant. He would submit that the decision of the Corporation, as revealed from the return, is based on letter dated 26-03-2007 passed by the State Government, Department of Urban Administration and Development, by which, operation of the aforesaid provision of return of land has been kept in abeyance. He would submit that this notification of keeping the operation of the provision in abeyance could not be continued indefinitely. According to him, the application of the petitioner was liable to be examined in the light

of the provisions contained in Rule 10 of the Rules of 1998, particularly proviso contained therein, which provided for return of the land, upon satisfaction of stated conditions.

5. On the other hand, learned counsel for the respondent/State would submit that in view of the amendment carried out in Section 292(B) of the Chhattisgarh Municipal Corporation Act, 1956, vide Chhattisgarh Municipal Corporation (Amendment) Act, 2011, option of return of land is restricted to those cases where Colonizers proposed small piece of area, which is less than one acre. Since, in the present case, it is argued, the area of colony proposed to be developed is more than one acre, the Act bars granting any benefit of return of land by depositing shelter fee.

6. Learned counsel for the respondent-Corporation submits that the main operative reason for rejecting petitioner's application for return of land was because the State Government had issued notification on 26-03-2007, by which, the provision relating to return of land as contained in proviso to sub rule(1) of Rule 10, inserted vide notification dated 14-07-2006 was kept in abeyance. At the time, when the petitioner made an application for return of land, the aforesaid order remained in force. Therefore, the Corporation could not return the land by allowing the petitioner to deposit shelter fee.

7. I have heard learned counsel for the parties and perused the records.

8. Indisputably, the petitioner had obtained permission to develop residential colony as Colonizer, after surrendering 15% of the land proposed to be developed, for being reserved for weaker sections of the society. The provisions contained in sub rule(1) of the Rule 10 of the Rules of 1998, as applicable in the State of Chhattisgarh, are as below:-

10. In residential Colonies, availability of Plots/Houses for the weaker sections of the society.--(1) In every residential colony in the urban area, out of the area of the developed plots by the Colonizer, fully developed plots equal to fifteen percent of the size of 32 to 40 square meter area, shall have to be reserved for persons belonging to economically weaker sections.”

9. According to this provision, the Colonizer was obliged to reserve 15% of the total land for the persons belonging to economically weaker sections of the society and this land was required to be handed over to the Municipal Corporation/Municipal Council/Nagar Panchayat or to such institution as the State Government may direct. This provision also required that the urban local body or the institution shall pay the cost of the reserved 15% land to the Colonizer equal to the sum of undeveloped land. This rule clearly stipulated that the sanction for layout plan and permission for development can be issued by the competent authority only when the advance possession of such land is taken over by urban local body/institution. The provision for payment of shelter fee was made in the aforesaid rule to the effect that any Colonizer, who desires to pay shelter fee against 15% reserved land, then he shall have to deposit such fee at the rate prescribed in that rule.

10. It is also not in dispute that the petitioner, at the time of obtaining permission, had not exercised the option of deposit of shelter fee, but he had surrendered 15% of the land. This is clear from the petitioner's own averments made in the writ petition, as contained in para 8.2 thereof. The petitioner's averment in the writ petition is that the possession of the land was also handed over to the Corporation on 22-01-2007. The petitioner was, thereafter, granted permission to develop colony.

11. When matter stood thus, an amendment was carried out in Rule 10 of the Rules of 1998, vide notification dated 14-07-2006. The State Government in exercise of its power conferred under Section 292(A), 292(B), 292(C) and 292(E) read with Section 433 of the Municipal Corporation Act, 1956 and Section 339-A, 339-B, 339-C and 339-E read with Section 335 and 356 of Chhattisgarh Municipalities Act, 1961, inserted proviso, after sub rule 1 of Rule 10 of the Rules of 1998. The said proviso reads as below:-

“Provided any land reserved for the persons belonging to economically weaker sections which had been handed over to the Municipal Corporation/Municipal Council/Nagar Panchayat, in accordance with applicable rule at that time by a colonizer for which the cost had not been paid to the colonizer by the municipality and which land is vacant, may be released by the municipality in favour of

the colonizer on deposit of shelter fee at the rates prescribed above.”

12. Thus, by such provision, scheme for return of land was added, which was not there earlier in the rules. Under the said proviso, the land which was handed over to the Municipal Corporation/Municipal Council/Nagar Panchayat in accordance with the applicable rule by the Colonizer could be released by the Municipality in favour of the Colonizer on deposit of the shelter fee, at the rates prescribed under the rules. A perusal of the aforesaid provision further shows that such return of land could be claimed, where cost has not been paid to the Colonizer by the Municipality and land is also lying vacant.

13. Apparently, in exercise of this option, which became available to the petitioner under the proviso added vide notification dated 14-07-2006, he offered to pay shelter fee and requested the Corporation to return the surrendered land. The main operative reason for rejecting petitioner's claim for return of land is that the State Government had kept the aforesaid provision in abeyance vide order dated 26-03-2007. That means, the provision of sub rule(1) of the Rule-10 of the Rules of 1998 was not deleted, but, by an administrative fiat, the effect of the said provision was kept in abeyance. It was because of this reason, the petitioner's claim was not examined on its merits by the Corporation and was rejected only on that ground that such option of return of land is not available.

14. The stand taken by the State Government that, in view of the provisions contained in Section-292(B) brought into force by way of amendment of 2011, the petitioner's claim cannot be accepted, because the petitioner had submitted his application for return of land way back on 11-02-2008. At that time, amendment had not come. The application of the petitioner was processed, but it was not brought to its logical conclusion, in view of the legal provisions, which were in force, at the time, when his application was moved and even at the time when his application was rejected. It was only because of the administrative order dated 26-03-2007, the petitioner's application was not considered. However, the rule itself was not deleted from the body of the rules and it very much existed therein. The administrative order of

the State Government issued on 26-03-2007, could not take away the petitioner's right of being considered, according to the then provisions existing under the law. The order of keeping the effect of provision in abeyance, could not be continued indefinitely. The petitioner's right of consideration of return of land was required to be examined under proviso added vide notification dated 14-07-2006.

15. As subsequent amendment in the year 2011 could not take away the right of the petitioner to be considered for return of land, in accordance with law, which was in force at the time of submission of land on 11-02-2008, rejection of petitioner's application by the respondent-Corporation only on the ground of administrative order dated 26-03-2007, does not appear to be in accordance with law.

16. In the result, the petition is allowed and the impugned order/letter of communication rejecting petitioner's application for return of land is set aside. The respondent-Corporation shall re-examine the petitioner's claim for return of land on the basis of relevant rules/regulations and provisions of law, as contained in the Chhattisgarh Municipal Corporation Act, 1956 and the Rules of 1998, which were in force/existence at the time of submission of application by the petitioner on 11-02-2008. The petitioner's entitlement shall be examined in the lights of various conditions, which have been clearly stated under the sub rule(1) of Rule 10 of the Rules of 1998, as amended vide notification dated 14-07-2006. Thereafter, the Corporation shall pass appropriate order on the petitioner's application for return of land. The decision on petitioner's application shall be taken by the Corporation as early as possible, considering it to be an old matter of more than 10 years, preferably within a period of three months from the date of receipt of a copy of this order.

SD/-
(**Manindra Mohan Shrivastava**)
J U D G E