

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 561 of 2020**

Ramesh Kumar Yadav S/o Late Iccha Ram Yadav Aged About 65 Years R/o Gondpara, Subhash Nagar, In front Of Old Maharashtra Bank, District Bilaspur Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Its Secretary, Department Of Revenue, Mantralaya, Mahanadi Bhawan, Atal Nagar, District Raipur Chhattisgarh.
2. Collector Bilaspur, District Bilaspur Chhattisgarh.
3. Tehsildar Bilaspur, District Bilaspur Chhattisgarh.
4. Nazul Officer Bilaspur, District Bilaspur Chhattisgarh.
5. The Municipal Corporation Bilaspur, Through Its Commissioner, Municipal Corporation, Bilaspur, District Bilaspur Chhattisgarh.
6. Sanjeev Sinha S/o Late G.S. Sinha Aged About 42 Years R/o Gondpara, Subhash Nagar, Bilaspur, District Bilaspur Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Shashank Thakur, Advocate
For State	:	Mr. P. Acharya, Panel Lawyer
For Respondent No.5	:	Mr. Anumeh Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****05/02/2020**

1. The challenge in the present writ petition is to the issuance of the notice (Annexure P/1) dated 27.01.2020, passed by the respondent No.5. Vide the impugned order the respondent No.5 has requested the Superintendent of Police, Bilaspur for providing necessary police force for forceful eviction of the petitioner from the disputed premises.
2. The facts of the case in brief relevant for adjudication of the present writ petition is that the petitioner has been in possession of the property situated at Subhashnagar, Gondpara, Ward No.21/25, District Bilaspur. Undisputedly, the said property is a Government

nazul land. There is no official allotment made to the petitioner for occupying the said land at any point of time.

3. It would be relevant to take note of the fact that the petitioner at the first instance had filed a civil suit i.e. Civil Suit No. 710-A/2014 before the IVth Civil Judge Class-1, Bilaspur seeking a suit for declaration in respect of the said property. The said suit got dismissed on 12.07.2016. The said judgment and decree passed in the civil suit was further affirmed in first appeal i.e. Civil Appeal No. 54/2016 decided on 01.07.2017, passed by VIIth Additional District Judge, Bilaspur. The judgment and decree passed in the civil suit and in the first appeal got further affirmed in the second appeal i.e. **Second Appeal No. 637/2017 (Ramesh Kumar @ Lalua Yadav v. Municipal Corporation, Bilaspur & Ors.)** decided on 09.08.2018.
4. One of the neighbours to the petitioner had meanwhile initiated a proceeding under the Chhattisgarh Land Revenue Code, 1959 and the matter finally reached the High Court by way of a writ petition i.e. **WP227 No. 1349/2010 (Sanjeev Sinha & Anr. v. Ramesh Kumar Yadav @ Lalua & Anr.)** and this High Court finally on 01.10.2010 disposed of the writ petition holding in paragraph No.9 as under:-

“9. In view of the above, this Court is of the opinion that the order passed by the Tehsildar rejecting the petitioners' application under Section 248 of the Code has rightly been maintained by the Board of Revenue, however it is also apparent that the respondent No.1 is an encroacher on Government nazul land, therefore, the petitioners, if they so desire, initiate proceeding or may bring it to notice of the Municipal Corporation for removal of encroachment on Government land. The concerned authority may take action for removal of encroachment in accordance with law.”

5. Subsequent to the aforesaid order being passed by this High Court on 01.10.2010, wherein the petitioner herein was respondent No.1 in the said writ petition yet he had not questioned the said finding of the High Court before any other forum and the order thus has attained finality. Thereafter, the petitioner has been issued with various notices for vacating the premises, but the petitioner has not done so. In between, there was another writ petition filed by the respondent No.2, who was the petitioner in the earlier writ petition i.e. WP227 No. 1349/2010 (Sanjeev Sinha & Anr. v. Ramesh Kumar Yadav @ Lalsa & Anr.), which was registered as **WPC No. 3942/2019 (Sanjeev Sinha v. The Municipal Corporation, Bilaspur)**, and where this Court vide order dated 07.11.2019 on the basis of the submissions made by the counsel for the Municipal Corporation made the following observations:-

“2. According to the learned counsel for the respondent the last date as per the notice is ending today and action is likely to be taken thereafter if encroachment still continues.

3. Given the submissions made by the counsel for the respondent, this Court is of the opinion as of now nothing further remains to be done. Expecting the respondents to take appropriate steps in accordance with law on the notices that they have issued, the present writ petition stands disposed of.

4. It is expected that respondents shall take a prompt decision or action on the notice that they have issued as expeditiously as possible within a period of 45 days.”

6. The impugned correspondence under challenge issued by the respondent No.5 seems to be the consequence of the directions given by this Court on 07.11.2019. What cannot be lost sight of is the fact that the petitioner undoubtedly is an encroacher on the said piece of land. The fact that the petitioner is an encroacher now

stands established from the various judicial pronouncements referred to in the preceding paragraphs.

7. Given the said facts, the petitioner does not have any substantial right in his favour on the basis of which this Court can issue any appropriate writ in his favour. What is also required to be seen is that once when the findings have already come that he is an encroacher and the proceedings have been drawn for removal of the encroachment, the option available to the petitioner at that point of time itself was to challenge the said findings, which he has not done. Having not done so at that relevant point of time, the petitioner does not have any right to stall the subsequent proceedings drawn by the Municipal Corporation.
8. Today, during the course of hearing, the counsel for the Municipal Corporation submits that the petitioner himself has given an undertaking to the Municipal Corporation for vacating the said premises within a period of two days and therefore the authorities have given two more days to the petitioner on humanitarian ground for him to vacate the premises.
9. Given the facts that the petitioner has now given an undertaking to the respondent No.5 for vacating the premises peacefully within two days, this Court is of the opinion that nothing further remains to be decided in the present writ petition and the same accordingly stands disposed of.

Sd/-
(P. Sam Koshy)
Judge