

HIGH COURT OF CHHATTISGARH, BILASPUR

• WPC No. 7451 of 2010

- Chhattisgarh Housing Board, Through- its Executive Engineer, Division-1, Kabir Nagar, Raipur, District- Raipur, C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh Through- Secretary, Revenue Department, D.K.S. Bhawan, Raipur, District-Raipur, C.G.
2. Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976
Collectorate, Raipur, District-Raipur, C.G.
- 3.A. Johan S/o Ram Bharosa
- 3.B. Sohan S/o Johan
- 3.C. Bhagirathi S/o Johan
- 3.D. Fuleshar S/o Johan
- 3.E. Roop Rai S/o Johan
- 3.F. Jogeshwar S/o Johan
- 3.G. Mantora W/o Puran D/o Ram Bharosa
- 3.H. Rambai W/o Bisahat D/o Johan
- 3.I. Lalmani S/o Sonau

From 3.B to 3.I are the sons and daughters of the 3.A and all 3.A to 3.I are the R/o P.H.No. 104, Danganiya, Raipur, District- Raipur, C.G.

---- Respondents

For Petitioner	:	Mr. Sanjay Patel, Advocate.
For Respondents No.1&2	:	Mr. Alok Bakshi, Additional A.G.
None for others		

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

15/01/2020

1. When the case was listed for hearing earlier on 22.02.2016, learned counsel for the petitioner brought to the notice of this Court, order dated 24.08.2011, passed in WPC No.7285 of 2010, which according to learned counsel for the petitioner, was passed in an identical matter. According to him, the present case is also identical. On this submission, learned State Counsel was granted time to verify the same and make his submission.
2. Learned State Counsel submits that on legal aspect, the averments made in

the present petition that the order was passed by the Competent Authority without hearing the petitioner, was also involved in WPC No.7285 of 2010 as is reflected from order dated 24.08.2011 passed in that case. He would, however, submit that only on that ground, petitioner may not be entitled to relief because long back, the Competent Authority has passed order regarding the land and there was no interim order operating in favour of the petitioner.

3. In the present petition, the petitioner has challenged the order passed by the Competent Authority on various grounds including the ground that the order was passed behind the back of the petitioner and without giving him any opportunity of hearing. In this regard, following pleadings have been made in the writ petition:-

"9.5. That the respondent No.3 had slept over the matter for about years from the acquisition, they had not raised this objection at the time of preparation of draft statement on the contrary another objection was raised by the respondent No.3 which was allowed by the competent authority. The respondent No.3 all of sudden after awaking from deep slumber, filed an application under Section 45 of the Act, 1976 for correction of clerical mistake and for divesting the acquired lands and the competent authority also without looking to the facts that the acquired lands had already been handed over by the competent authority itself to the petitioner, without giving any information, without making the petitioner as party, without giving any notice, passed the impugned orders behind the back of the petitioner and divested the acquired lands to the respondent No.3 while the petitioner is still in possession lands in dispute against and in grave violation of law with this regard under the Act, 1976 and the Act, 1999 and in complete violation of principle of natural justice."

4. To this ground, the return of the respondent is completely silent and there is no denial on this ground that the petitioner is not afforded any opportunity of hearing before passing of the impugned order by the Competent Authority. In fact, respondent/State did not dispute that the present petition and the other writ petition i.e. WPC No.7285 of 2010 are identical in nature. Following averments have been made in the return filed by the State.

"3. That, the petitioner on the similar facts has filed another petition claiming the similar reliefs. The said petition has been registered as W.P.(C) No.7285/2010. The answering respondents have filed a detailed reply to that petition.

4. That, common question of law and fact is

involved in both the writ petitions. Therefore, the answering respondents crave leave of the Hon'ble Court to permit them to adopt the return filed by them in W.P.(C) No.7285/2010 as reply to this writ petition also. Copy of the return filed in W.P.(C) No.7285/2010 is annexed and has been marked as ANNEXURE R-1."

5. From the perusal of the aforesaid averments, it is clear that the State, not only stated that the present case is identical to WPC No.7285 of 2010 but has even adopted the return filed in that case, in the present case also.
6. WPC No.7285 of 2010 was allowed and the impugned order passed by the Competent Authority in that case was quashed only on the ground that the opportunity of hearing was not afforded to the petitioner therein and on a concession made by the Deputy Advocate General that the matter may be remitted to the Competent Authority to afford an opportunity of hearing to the petitioner and pass an appropriate order in accordance with law.
7. Therefore, in order to maintain parity, this Court is inclined to allow this petition only on the ground that the petitioner was not afforded any opportunity of hearing before passing the impugned order, though, the land in question was already allotted.
8. In that view of the matter, the impugned order (Annexure P-10) dated 14.03.1991 is hereby quashed. The matter is remitted back to the Competent Authority to consider and pass fresh order after affording proper opportunity of hearing in accordance with law and on its own merits.

Sd/-

(Manindra Mohan Shrivastava)
Judge