

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 13.07.2020

Order delivered on 07-08-2020

WP PIL No.48 of 2020

1. Dr. Ajit Anand Degwekar S/o Shri Anand Damodar Degwekar Aged About 59 Years R/o Opposite Sapre School Ground Budhapara, District Raipur, Chhattisgarh.
2. Deepak Sharma S/o Late Shri Radha Mohan Sharma Aged About 55 Years R/o Opposite Sapre School Ground Budhapara, District Raipur, Chhattisgarh.
3. Rajesh Kadam S/o Shri Krishan Rao Kadam Aged About 44 Years R/o Opposite Sapre School Ground Budhapara, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
4. Bhupendra Daga S/o Shri Ratan Lal Daga Aged About 37 Years R/o Opposite Sapre School Ground Budhapara, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Petitioners

Versus

1. Union of India Through Director Smart Cities, Ministry Of Housing And Urban Affairs, New Delhi. Email Id-Ak.Mittal34.Gov. In. Contact No. 01123062127
2. State Of Chhattisgarh Through Chief Secretary, New Mantralaya, Mahanadi Bhavan, New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
3. The Secretary Urban Administration, New Mantralaya, Mahanadi Bhavan, New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
4. The Commissioner Municipal Corporation, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
5. The Zone Commissioner, Zone 7 Municipal Corporation, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

6. Director Smart City Project, Raipur., District : Raipur, Chhattisgarh
7. The Collector District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
8. The Tahsildar District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
9. Ijaz Dhebar Presently Chaired As Mayor, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
10. R.P. Mandal Presently Chaired As Chief Secretary, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
11. D.C. Patel Presently C.S.P, Police Station City Kotwali, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
12. Smt. Seema Kandoi Corporator (Parshad, Swami Vivekananda Sadar Bazar Ward No.45, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

-----Respondents

For Petitioner : Shri Prafulla N Bharat, Advocate
For Respondent No.2: Shri Sudeep Agrawal, Deputy
3, 7 & 8 : Advocate General.
For Respondent No.4: Shri Peeyush Bhatia, Advocate
5, 6 & 9

Hon'ble Shri P.R Ramachandra Menon,CJ
Hon'ble Shri Parth Prateem Sahu, J
C A V Order

Per Parth Prateem Sahu, J

1. The petitioners, said to be permanent residents of Budhapara area of the city of Raipur, have filed this petition in the nature of Public Interest Litigation ('PIL') raising grievance against the construction activities being carried out by respondent Nos. 4 to 6 over the playground of Madhav Rao Sapre School, Raipur and also on some part of J.R. Daani Girls School, Raipur by demolishing the structure, felling

about 50 trees and filling-up part of Swami Vivekanad Sarovar popularly known as 'Budhapara Talab'.

2. Grievance projected by the petitioners is that there is a pond by name "Swami Vivekananda Sarovar" (for short 'the pond'), situated in Sadar Bazar Ward No.45, Budhapara, Raipur. This pond is spread over an area of 72 acres and it is surrounded by many ancient temples. Some news published in a newspaper dated 28.5.2020 that some construction activities are proposed over the pond i.e. of construction of 'Laxman Jhulaas' to reach the statue of Swami Vivekananda, five view points, selfie points, fountains etc. and the development works will be costing about Rs.18 Crore. On 30.5.2020 in the afternoon the construction activities like digging playground, pathway with garden etc., were started over the playground of Madhav Rao Sapre School, by private contractor. The construction activity was objected by the local residents and when they asked them to show the documents relating to the project, the authorities present on spot instead of showing the documents, as demanded by the local residents, orally informed them that a shopping complex and Chaupati is to be constructed under the project

over playground. Other stand which the authorities have taken was of the beautification of the pond and that the part of playground area is taken for construction of a four lane road. Further grievance of the petitioners is that the Mayor, Municipal Corporation, Raipur in a press conference has made a statement that development of the city of Raipur, particularly beautification of the pond, is being objected at the instance of the political party in opposition. Petitioners have also come to know that under the said project an international football stadium is going to be constructed by reducing area of Madhav Rao Sapre Football Ground, but for all these activities there is no sanctioned plan or approved proposal of the competent authorities. The petitioners have further pleaded that their interest is to protect and preserve the open spaces like public garden, children playground etc. available as per the duly sanctioned scheme. Action of the respondents in raising construction and felling trees is destructive to the environment and will also affect health of the public at large. The act of respondents amounts to commercialization of playground area and filling up of pond. There is no requirement of four lane road over the projected area. The construction activities

will cause public injury. In sum and substance, grievance of the petitioners is that the construction activities are initiated by the Municipal Corporation, Raipur for beautification, construction, renovation etc. without there being any approval / sanction from the authority competent and without following the procedure prescribed under the Chhattisgarh Gram Tatha Nivesh Adhiniyam, 1973 (for short 'the Adhiniyam, 1973').

3. Respondents No.4, 5, 6 & 9 submitted their reply to writ petition pleading that the works, which is pointed out in the writ petition, are in the nature of renovation and beautification works of the pond & garden. The first phase of the aforementioned work was commenced on 11.5.2020 under which the work of removal of water hyacinth, silt etc. from the pond was done by the Municipal Corporation, Raipur and about 11 trucks loaded with seaweed, lake mud etc. have been excavated. On 25.11.2019 the respondent Municipal Corporation floated a NIT for the 'renovation & beautification work at the outer area of pond in Phase II'. The tender value was Rs.2.39 Crores and the work was to be completed within eight months including monsoon season. After evaluation of the bids received, the bid of M/s Akriti Construction, Raipur was found to

be lowest one and accordingly, the said firm was declared as lowest and successful bidder on 30.4.2020. The civil work was started which includes widening of road from Durga Devi Mandir & Sulabh Community Toilet towards Chandni Chowk Area, boundary wall development of girls school situated beside the lake, path way development, development of pond bank, street light development, landscaping, place making-sitting arrangement etc. Some area of the land belonging to the government school namely J.R. Dani School, which was lying vacant, was needed for widening of road to ease the traffic congestion. A 'no objection certificate' was issued by the President of School Management & Development Committee and also the Principal of J.R. Dani Girls School in favour of respondent No.4 that they have no objection in giving the required land if beautification of school and renovation work of the school building is done. As per schedule when the civil work commenced, some of the persons gathered at the spot and started raising objections and sensing something untoward, the police was called on spot. The respondent Municipal Corporation has not cut down any tree. There is no reduction in the area of the standard football playground known as 'Sapre

Ground”, but for some improvements and renovation work like erection of grill boundary along with restoration and leveling as proposed under the project. Under the project/plan, there is no proposal for filling of any portion of the pond and even the football ground is not going to be compromised from the standard size as per global norms. They have also pleaded that if any international stadium is to be built, then it will be constructed only after obtaining approval from the department concerned and Local Administration. For the present there is no project for construction of any commercial complex or chaupati except the planning of widening of road to cater the traffic congestion and parking space for this purpose only some part of JR Dani Girls School and Sapre ground is taken. The work of landscaping, health related activities like open gym, children’s playing equipments, walking space, greenery including junction improvement only will be carried out in the area in question and none of its part will be used for any commercial activity. Funds of Rs.670=06 Lakhs has also been allotted for renovation and re-development work of JR Dani Girls School. The PIL in its present form is not maintainable as it is

not filed by bonafide person but for political motivation and other oblique considerations.

4. Respondent State has also submitted reply to writ petition mentioning that the work started over the subject area of writ petition is in the nature of renovation and beautification of the surroundings of pond in a phased manner after following due process of law. An e-tender was floated by the Raipur Smart City Limited on 25.11.2019 for carrying out the works mentioned therein. The petitioners have not placed any material particulars to show that the said project is either at the risk of environment destruction or contrary to the scheme. Allegation that J.R. Dani Girls School is demolished for construction of international football stadium is stated to be misnomer. However, some portion of unused & vacant open land was taken with the consent of the School Management and Development Committee of JR Dani Girls School for widening of road to cater need of traffic congestion, which is purely a public purpose. Widening of road is a policy decision of the State Government and the Municipal Corporation, Raipur, which cannot be challenged or questioned before the Court. Neither there is any felling of trees nor any modification in the measurement of the standard football ground /

stadium of Sapre School. There is no basis for the petitioners to say that the playground of Sapre School will be replaced by a commercial complex & chaupati as there is no such plan or project of the Municipal Corporation, Raipur. It is within the domain the statutory authority under the Adhiniyam, 1973 to change the land use. Section 24 of the Adhiniyam, 1973 categorically envisages that the State Government shall have control of development and use of land. The public interest litigation is not appropriate forum for challenging the action of the respondents as different remedies for the same are provided under the Adhiniyam 1973.

5. The petitioners submitted rejoinder to reply filed by respondent Municipal Corporation, Raipur stating that the NIT placed on record is with regard to renovation & beautification of the pond and not for carrying out construction activities over JR Dani Girls School or Madhav Rao Sapre School Playground. For the beautification & renovation, there already exists an agreement between the Chhattisgarh Tourism Board and the Modern Maintenance. No tender for construction of road has yet been floated. The construction work is going on round the clock at war footing and in

support thereof the petitioners have filed some photographs. It has also been pleaded in the rejoinder that the respondents are interested in using the land of Sapre Ground for commercial purposes and sooner or later commercial construction activities would start on the area shown in the project. The documents sought by the petitioners under the Right to Information Act, 2005 were not supplied to them.

6. Respondent Municipal Corporation has filed an application for bringing some additional documents on record and pleaded therein that NIT floated for selection of agency for construction of stadium and development work at Nagar Nigam Ground. For selection of agency for redevelopment of Madhav Rao Sapre School and JR Daani Girls School two separate tenders were floated. Both these tenders are of the same date i.e. 2.6.2020. In support of aforementioned contention, they have also filed copies of all the three NITs as Annexure R6-1 & R6-2 respectively.

7. Mr. Prafulla Bharat, learned counsel appearing on behalf of petitioners submits that the respondents are going to construct a commercial complex and chaupati over the area in question. The construction of four lane road is without there being

any approval of the competent authority, which is evident from the pleadings on the part of the State as also the NIT issued for renovation and beautification work of the pond. The Mayor, Municipal Corporation, Raipur had issued a press statement that an international stadium is to be constructed over an open land / Madhav Rao Sapre Play Ground/football ground, which is not permissible under the law without following the procedure prescribed under the Adhiniyam, 1973. He also points out that earlier the erstwhile State of Madhya Pradesh had issued a Notification for the use of open ground of government schools during vacation period etc. and based on the said notification / circular, one writ petition was filed before this Court bearing WP No.179/2005, which came to be disposed off with a direction that use of school properties can be permitted for other purpose only in accordance with the Notification/Circular issued by the State Government in this regard and that no permanent structure can be raised over a playground. He points that as per Para-4 & 5 of the reply of respondents No.4, 5,6, & 9, the work of widening of road from Durga Devi Temple and Sulabh Community Toilet towards Chandni Chowk area is

said to be included in the tender notification dated 25.11.2019, but perusal of the scope of work as mentioned in the said NIT, it is clear that there is no mention regarding work of widening of road. Further referring to Para-9 of reply filed by respondent No.4 to 6 & 9, which relates to construction of international stadium, it is contended that it will come within the purview of change in use of land because there is no approval from the competent authority of the Town and Country Planning Department. Referring to Para-10 of reply, it is argued that from the pleadings made in this paragraph it is clear that respondents No.4 to 6 & 9 in clear terms have stated that for the time being the respondent Municipal Corporation is not having any project with regard to construction of a commercial complex, but the words used is “for now”, however, the petitioners have come to know from reliable sources that there is a project for construction of stadium and commercial complex. Without obtaining sanction or approval of plan from the competent authority concerned, the Municipal Corporation is proceeding with the construction activities in a very illegal and arbitrary manner. Referring to the letter, Annexure R4-6, it is argued that it is only a request letter for allocation of funds

and not the sanction letter of funds, as pleaded by the respondents. There is no mention of fencing work, construction work over Dani School & Sapre School. The documents filed along with application for taking additional documents on record as Annexure R6-1 & R6-2 pertain to the date prior to the date of filing of reply, but the same have not been placed on record along with reply to writ petition, which makes the entire action of the respondents suspicious. There is no document to show that competent authority has sanctioned the change of land use. Referring to some of the provisions of the Adhiniyam, 1973, like Sections 13, 14, 16 17, 23 & 23A, it is submitted that there is a procedure prescribed for bringing new development plans but none of these provisions has been complied with and followed by the respondents in the present case. He places his reliance on the decision of Hon'ble Supreme Court in the matter of **Jal Mahal Resorts Private Limited vs. K.P. Sharma** reported in **(2014) 8 SCC 804**.

8. Mr. Bhatia, learned counsel representing respondents No.4 to 6 & 9 submits that all the tenders, which are brought on record, are on-line tenders and have been widely published in the newspapers. Objection raised by the petitioners

with regard to widening of road is of first phase. There will be no commercial activities, as alleged by the petitioners in their petition, but the work of renovation of playground is going on. There is no encroachment over any area of school. New plantation is being done over the area, which is under the project of beautification and renovation. NITs have been floated subsequently on 2.6.2020 for the selection of an agency for construction of stadium and for development works at Nagar Nigam Ground, also known as 'Sapre Ground'. The allegations levelled by the petitioners that without there being any tender notice, the respondent authorities are carrying out construction of a stadium is not correct. There is no change in land use of a playground but by the tender work it will be development like a stadium. He also submits that this petition has been filed to ventilate political interest by some of the persons whereas the work projected is with regard to development of the city of Raipur and to meet out the public requirements to overcome with the traffic congestion apart from the development and beautification of the pond. It is also argued that submission of the petitioners that some portion of the pond is going to be filled is baseless as under the development plan there is no

proposal or plan to fill up any part of the pond. He places his reliance on the judgments of Hon'ble Supreme Court in the matters of **Janta Dal v. H.S. Chowdhary** reported in **(1992) 4 SCC 305**; **Dattaraj Nathu Ji vs. State of Maharashtra** reported in **(2005) 1 SCC 590**, **Gurpal Singh v. State of Punjab** reported in **(2005) 5 SCC 136**; **Rajiv Ranjan Singh 'Lallan' (VIII) Vs. Union of India** reported in **(2006 (6) SCC 613** and **Tehseen Poonawalla vs. Union of India** reported in **(2018) 6 SCC 72** to strengthen his submission that the writ petition in the shape of 'public interest litigation' should not be entertained where writ petition has been filed for personal gain or private profit or political motive or any oblique consideration. The petitioners should not be permitted to approach the Court under the public interest litigation when the petition is based on personal vendetta or for personal gain or as proxy of others for any extraneous motivation or for glare of publicity break. He points out that this petition is filed to sub-serve interest of opposition political party without any supportive documents in support of pleadings and to thwart respondent Municipal Corporation from undertaking developmental activities in the city of Raipur.

9. Mr. Sudeep Agrawal, learned Deputy Advocate General for the State submits that the entire petition is very vague . The petitioners have raised two grounds in the writ petition i.e. of commercialization of playground i.e. Sapre Ground, and after filing of reply, they have pleaded and argued with regard to change of land use. There is no change of land use as no construction activity of commercial complex over playground has been projected. E-tender was floated for beautification and renovation of the pond. The petitioners have not placed any material particulars in support of the grounds raised in the writ petition but for their pleadings and oral submissions. He submits that there is no basis in the submission made by the petitioners that demolition of JR Dani Girls School and open land of Sapre Ground will be used for construction of an international football stadium, rather portion of vacant & unused land of JR Dani Girls School has been permitted by the Principal and School Management and Development Committee of JR Dani School for widening of road. Referring to order dated 26.1.0.2018 passed by a Division Bench of High Court of Madras in M. Ramakrishna v. State of Tamil Nadu & ors, it is argued that the State Government is having

inherent right to make policy on a bonafide consideration for the purpose of renovation, demolition, alteration of part area for widening of roads. It was also argued that the Hon'ble Supreme Court in **Narmada Bachao Andolan vs. Union of India & ors** reported in **AIR 2000 SC 3751** has held that the Courts will not transgress into filed of policy decision. He also submits that the submission of learned counsel for the petitioners that use of land, as projected in the master plan, cannot be changed in any manner, is also not correct. He submits that Hon'ble Supreme Court in **Meerut Development Authority vs. Association of Management Studies & another** reported in **(2009) 6 SCC 171** has held that land use as mentioned does not mean use of every inch of land for that purpose only. He submits that looking to the increase in population, heavy traffic pressure on the area concerned, the State Government and the Municipal Corporation, Raipur find it appropriate to widen the road to cater the public need. There is no development of any area, as pointed in writ petition, for any private purpose. Referring to Section 24 of the Adhiniyam, 1973, he submits that under the Adhiniyam, 1973 the State Government itself is having control over the development and

use of land of the State. He also points out that the Adhiniyam, 1973 is a complete Code in which procedure is prescribed for raising grievance before the competent authority under the Adhiniyam, hence, this petition cannot be entertained. It is also argued that the petitioners have not placed any document to show that the construction activities initiated by the Municipal Corporation, Raipur are contrary to any of the plans or projects, but has placed reliance over some of the photographs and newspapers reporting which cannot be treated as a proof of fact reported therein. He also points out that the grounds taken by the petitioners in the rejoinder cannot be treated as part of the pleadings as per dictum of Hon'ble Supreme Court that the rejoinder cannot be treated as part and parcel of pleadings of writ petition.

10. In reply, learned counsel for the petitioners submits that if an area is reserved for a particular purpose then the land use of that area cannot be changed without following the procedure prescribed under the law and for this purpose, he relied upon the judgment of Hon'ble Supreme Court in the matter of **Municipal Corporation of Greater Mumbai and others Vs. Hiranman Sitaram Deorukhar and others** reported in **(2019) 14 SCC 411**. He also

places his reliance in support of the pleadings made in the writ petition as well as submission in the case of **Bangalore Medical Trust v. B. Section Mudappa** reported in **AIR 1991 SC 1902**. Lastly he submits that the law is not required to be pleaded but for facts. The petitioners have pleaded in detail about the facts of the case and mentioned that the same are contrary to law.

11. We have heard learned counsel for the parties and perused the documents placed on record by both sides.

12. To appreciate the submissions made by learned counsel for the petitioners, we have gone through the pleadings made by the petitioners and found that the petitioners have not pleaded in a very specific terms as to how the process of construction activities are contrary to the law. From the pleadings made in the writ petition it is clear that the petition has been filed on the basis of information gathered by them from some newspapers. They have not bothered to inquire and obtain the documents with regard to procedure adopted by the Municipal Corporation, Raipur for starting construction work but they have said that the construction work has been started without any sanction plan or approval. From the reply of

respondent Municipal Corporation it is apparent that the Corporation has floated NIT dated 25.11.2019 i.e. 7 months prior to filing of writ petition, for development / beautification of the pond, valuing the proposed work to Rs.2.39 Crores. Going through the tender document as annexed by the respondent Municipal Corporation, it is apparent that the tender work which has been floated and said to be commenced is for renovation and beautification of the open places which are already existing i.e. the pond. Under the said NIT, there is no mention regarding construction of any building structure. Submission made by the respondent Municipal Corporation in their reply that renovation and beautification works include work of widening of road and for that purpose only some portion of vacant and unused land of JR Dani Girls School, which is a government school, has been taken that too after obtaining no objection from the school management, for catering the public need and to reduce the traffic pressure and congestion on the existing road. It is not the case of the petitioners that for widening of road the respondent Corporation is using private property without there being any sanction of the competent authority or initiating any proceeding for acquisition of property,

but instead the respondents pleaded and produced the documents showing that consent has been obtained from the school management committee. This issue of widening of road cannot be entertained in this public interest litigation filed by the petitioners who are claiming themselves to be residents of that area, when their property rights are not affected, but the widening of road is done on the government school land after obtaining consent of the school management committee that too for the purpose of public need and not for private need. The fact that road will be used by the public only has also not been disputed by the petitioners.

13. So far as ground raised by the petitioners with regard to change of land use is concerned, the petitioners have not filed any document showing proposed construction of any commercial complex over the playground known as Sapre Ground but for their oral submission and filing of some photographs of digging on the playground. This submission was contradicted by learned counsel for respondent Corporation and the State by saying that there is no change of land use as alleged by the petitioners in their writ petition, but the work which has been shown through the photographs is

with regard to erection/ construction of grill boundary covering and protecting the existing playground. Dimension which is required for a football ground has also been seen to have been protected to which learned counsel for the petitioners could not able to controvert that the area of the ground available on the spot is not according to the specification of play area of a standard football ground. The use of some portion of vacant & unused land of a government school for widening of road is for the public need and to reduce the traffic congestion. Petitioners have not made any pleading or raised any specific ground that using of small portion of the school land will in anyway affect the proper administration of school. On the other hand, the respondents have issued the NIT for the renovation and development of both the schools i.e. Madhav Rao Sapre School & JR Daani Girls School, to which the petitioners cannot have any grievance.

14. Case laws relied upon by learned counsel for the petitioners and pleaded in the writ petition i.e. reported in AIR 1991 SC 1903 wherein the reserved park under the development scheme was converted into a hospital was the subject matter of the case and in that case Hon'ble Supreme Court has made

observations that recreation and preservation of open area for park and playground cannot be sacrificed by selling or leasing such sites. In the case at hand, there is no construction of any building over the open area as per tender notification dated 25.11.2019, but it is only a renovation and beautification work of the existing pond and widening of some portion of existing road area.

15. Another case relied upon by learned counsel for the petitioners is reported in (2019) 14 SCC 411 in which the subject matter was the area reserved for public park / garden under the development plan.

16. The crux of aforementioned two case laws is that the gardens / public parks reserved under the plan, the land use of those cannot be permitted to be changed without following the due process of law for raising a building construction over open land, to which there cannot be any dispute.

17. Coming back to the facts of present case. Submission made by learned counsel for the respondents that under the tender notification in first phase cleaning of garbage, slits of the pond etc. has been done and about 11 trucks garbage was removed and the pond has been cleaned. No dispute has been raised to this pleading and

submission of learned counsel for the respondent Corporation. In the reply as also in the course of argument, it is submitted by learned counsel for the respondent Corporation that the Corporation is not going to fill up any portion or inch of the ponds by raising any construction but for use of surrounding existing area of the pond for its beautification and development.

18.The playground known as 'Madhav Rao Sapre Playground' is only to be developed as a stadium, which appears from the NIT to be like mini stadium. The construction is only of the viewing galary with steel structure, tensile roofing and that too of 50 x 12 mt only, landscaping, fencing preparation of football ground pathway, rain water harvesting, drain, LED lighting and High Mast Pole Lighting. From the details of the work shown in the NIT for selecting agency for stadium development work, we find that use of playground is not going to be changed, rather it will be developed and even its land use will remain as it is.

19.In view of aforementioned submissions made by learned counsel for the respective parties, materials placed on record, we are of the view that there is no change of land use so far as the work of beautification & renovation of the pond is

concerned. Playground in question has been surrounded by grill boundary and even after converting it into a stadium by constructing view gallery on 50x12 mt. area, it will remain a playground. By widening of road, the property of any of the petitioners is not going to be affected as some unused and vacant land of a government school has been taken on consent for widening of road in order to cater the need of public to reduce the traffic congestion over the existing public road.

20. In the result, we do not find any substance in this public interest litigation warranting interference of this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. The petition fails and is accordingly dismissed.

21. In the facts and circumstances of case, the amount deposited towards security deposit is forfeited.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-