

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 914 of 2012****Reserved on 04.11.2020****Delivered on 12.02.2021**

1. Budhram S/o Shri Hariram Kenwat, Resident of Nayapara, Durga Chowk, Baloda Bazar, Tahsil and District – Baloda Bazar (Chhattisgarh)
2. Shatruhan S/o Shri Arjun,
3. Durgesh S/o Shri Heera,
4. Balram S/o Late Seetaram,
5. Hansraj S/o Shri Ratiram,
6. Janardan S/o Shri Mangal,

The Petitioner no. 2 to 6 are Resident of Sanjay Colony, Baloda Bazar, Tahsil and District – Baloda Bazar (Chhattisgarh).

7. Khelan S/o Shri Dulesh, Resident of near Peetal Karkhana, Baloda Bazar, Tehsil and District – Baloda Bazar (Chhattisgarh)
8. Ramji S/o Shri Jhunau, Resident of Near Post Office, Baloda Bazar, Tahsil and District – Baloda Bazar (Chhattisgarh)
9. Punaram S/o Shri Sahbir, Resident of Purani Basti, Baloda Bazar, Tahsil and District – Baloda Bazar (Chhattisgarh)
10. Rajkumar S/o Shri Ramnarayan, Resident of ward No.13, Baloda Bazar, Tahsil and District – Baloda Bazar (Chhattisgarh)
11. Naresh Kumar S/o Shri Shiv Kumar, Resident of Bhaisa Pasara, Baloda Bazar, Tahsil and District – Baloda Bazar (Chhattisgarh)

---- Petitioners**Versus**

1. State Of Chhattisgarh Through Secretary, Urban Development Department, D.K.S. Bhawan, Mantralay, Raipur (Chhattisgarh)
2. The Collector, Baloda Bazar, District – Baloda Bazar, (Chhattisgarh)
3. The Chief Municipal Officer, Municipalities, Baloda Bazar, District –

Baloda Bazar (Chhattisgarh)

4. Ramen Vaishnav S/o Shri Raghunath Vaishnav
5. Ramkali W/o Shri Radheshyam Yadav
6. Ranjana Tiwari W/o Late Shri Suryadatta Tiwari
7. Ramkumar Jaiswal S/o Shri Dashrath Jaiswal
8. Tarun Sahu S/o Shri Ramchand Sahu
9. Nasir Khan S/o Shri Yakub Khan
10. Manharan Patel S/o Shri Bharat Lal Patel
11. Hori Lal Fekar S/o Shri Latelram Fekar
12. Santosh Kumar S/o Shri Chaitram Kannoje
13. Ankur Shrivastava S/o Shri Radheshyam Shrivastava
14. Rohit S/o Shri Gyaneshwar Bandhe
15. Ritesh Shrivastava S/o Shri Anil Shrivastava
16. Shivkumar Yadav S/o Shri Panchu Yadav

The respondents 4 to 16 are residence of Baloda Bazar, Tahsil – Baloda Bazar, District – Baloda Bazar (Chhattisgarh)

---- Respondents

For Petitioners	:	Mr. Palash Tiwari, Advocate
For Respondents 1 & 2	:	Mr. S. Dubey, Dy. Govt. Advocate
For Respondent 3	:	Mr. Y. S. Thakur, Advocate
For Respondents 4 to 8 & 10 to 16:		Ms. Rajni Soren, Advocate

Hon'ble Shri Justice P. Sam Koshy

CAV ORDER

1. The petitioners through the present petition have challenged the validity of the order dated 30.04.2012 (Annexure P-1) passed by the respondent no.3. Vide Annexure P-1 dated 30.04.2012 the respondent no.3 has allotted the shops in dispute to the private respondents 4 to

16.

2. This Court while entertaining the writ petition at the first instance vide order dated 25.06.2012 had stayed the allotment of shops till the next date of hearing.
3. The grievance of the petitioners in the present writ petition is that all the petitioners in the present writ petition were operating small shops (Gumti's) near the bus stand at district Baloda Bazar. The district administration, in order to develop the bus stand area, issued notices to the petitioners and got them evicted from their shops on the alleged assurance that after construction of new shops, the petitioners would be provided shops in the same locality. According to the petitioners, they were assured of the rehabilitation part by allotment of fresh shops on completion of the new shops which the district administration intended to build up at the said area. Now the petitioners are aggrieved of the fact that subsequent to the shops being constructed, the district administration have now passed the impugned order Annexure P-1 allotting new shops to respondents 4 to 16 which has led to the filing of the present writ petition.
4. Learned counsel for the petitioners relying upon the judgments of the Supreme Court in the case of *Olga Tellis v. Bombay Municipal Corporation* reported in (1985) 3 SCC 545 and in the case of *Sayyed Ratanbhai Sayeed (dead) through legal representatives and others Vs. Shirdi Nagar Panchayat and another* reported in (2016) 4 SCC 631 sought for quashment of Annexure P-1. At the same time they also sought for a direction to the respondents to consider the allotment of shops to the petitioners who were operating shops at the said place at an earlier point of time. In support of their contention, counsel for the

petitioners relied upon Annexure P-3 which is a document dated 04.02.2010 allegedly issued by the Chief Municipal Council, Baloda Bazar wherein it reflects that there was some sort of assurance given to the petitioners of being rehabilitated at the same place.

5. Shri Y. S. Thakur, learned counsel for the respondent no.3, on the other hand, opposing the petition would submit that the petitioners in fact do not have any indefeasible right created in their favour inasmuch as there was no such assurance or undertaking given by any of the authorities at any point of time of providing new shops after the same being constructed. According to the respondent no.3, in the course of establishment of the district Baloda Bazar, with an intention of developing the bus stand area of the said district, the administration thought of construction of 50 shops in and around the bus stand area. The authorities in due course of time have constructed those shops and in a most transparent manner decided for allocation of the shops by adopting the lottery system and the impugned order Annexure P-1 is an outcome of the lottery system applied for the purpose of allotment of shops. Counsel for the respondent no.3 made a categorical statement that the entire writ petition is based upon the document Annexure P-3 and which according to the respondent no.3 is a forged and fake document. The said document does not bear the signature of any of the CMOs. Moreover, such a correspondence could not have been issued by the CMO to the Assistant Engineer, PHE for the reason that the Assistant Engineer, PHE is not an officer under the CMO nor is an officer under the same department.
6. That, according to the respondent no.3, the interim relief obtained by the petitioners also is bad as it was by misleading the Court as also

relying on fabricated and fake documents. Counsel for the respondent no.3 referred to an affidavit which was filed by the CMO in the writ petition filed as per the order passed by this Court on 08.03.2013 and on the basis of which the affidavit dated 24.08.2015 was filed categorically stating that the document Annexure P-3 is not one which was issued from the office of the respondent no.3 and it is a fake and fabricated document.

7. The further contention of the respondent no.3 is that the respondents had issued an advertisement in respect of the allocation and based upon the advertisement, all interested persons were entitled for participating including the petitioners. Most of the petitioners herein also had participated in the allotment process and by virtue of the lottery system applied, the allotment fell in favour of the respondents 4 to 16 and thereafter the petitioners have adopted the ingenious method and filed the writ petition and obtained the interim relief.
8. Learned counsel appearing for the respondents 4 to 16 also took the stand which was taken by the counsel for the respondent no.3 and have said that the respondents 4 to 16 had all applied pursuant to the advertisement issued and were successful and therefore, the petitioners cannot question the impugned order as the same has been passed in a most fair, reasonable and transparent manner. Learned counsel appearing for the private respondents also contended that it is a case where the alleged possession claimed by the petitioners on the shops are on account of forcefully entering into the same by illegal means. That they should be immediately evicted and the possession should be handed over to the private respondents. Learned counsel further submitted that since the petitioners had with wide open eyes

participated in the selection process and they could not succeed, there was no ground available for them to turn around and question the allotment or the issuance of impugned order Annexure P-1. Counsel for the private respondents also submitted that the writ petition at the first instance also deserves to be rejected only on the ground that the petitioners have used fake and fabricated documents for establishing their claim and in the process have obtained interim protection from this Court.

9. Having heard the contentions put forth on either side and on perusal of records, some of the admitted factual position as it stands is that, there is no direct correspondence, agreement or an undertaking or an offer available with the pleadings to the writ petition to show that there was any sort of written agreement between the petitioners and the respondents 1 to 3 of being offered of any shops which would be constructed at the bus stand area. There is no document on the part of the petitioners with which they could justify their claim of rehabilitation and a claim on the shops constructed by the respondent no.3 at the bus stand area.
10. As regards the specific categorical averment of the respondent no.3 of Annexure P-3 being a fake and fabricated document, there is no rebuttal or clarification or justification which could be provided by the petitioners showing bonafides on the basis of which they have filed the said document. Admittedly, the impugned order has been passed after a lottery system applied by the respondents and further that there is no allegation of any favoritism shown by any of the respondents 1 to 3 towards the private respondents 4 to 16 so as to draw an inference of malafide on the part of the local administration. As regards the

judgments which have been referred to by the counsel for the petitioners, in those cases, there was an established admitted factual position of the pavement dwellers being in occupation at the place for a considerable long period of time which in the instant case is missing as there is no document available in this regard. Thus, those judgments are quite distinguishable on facts itself.

11. Given the aforesaid admitted factual matrix, this Court is of the opinion that firstly the writ petition has been filed on the basis of fake and fabricated document Annexure P-3, secondly there was no written assurance at any point of time offered by the local administration in favour of the petitioners, thirdly the impugned order Annexure P-1 has been issued after a fair and transparent lottery system applied and fourthly there is no malafide alleged against the respondents 4 to 16, hence, for these reasons no strong case has been made out by the petitioners calling for issuance of a writ of any nature or calling for an interference with the impugned order Annexure P-1.

12. The writ petition thus being devoid of merits deserves to be and is accordingly rejected. The Respondents 1 to 3 are directed to immediately ensure completion of the other formalities of handing over possession of the shops to the respective allottees in terms of Annexure P1.

**Sd/-
P. Sam Koshy
Judge**