

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**WA No. 68 of 2021****Judgment reserved on 17.03.2021****Judgment delivered on 08.04.2021**

{Arising out of Order dated 12/02/2021 passed in Writ Petition(C) No. 914 /2012 by the learned Single Judge}

1. Budhram, aged about 32 years, S/o Shri Hariram Kenwat, Resident of Nayapara, Durga Chowk, Baloda Bazar, Tahsil and District Baloda Bazar, Chhattisgarh, Now District Baloda Bazar-Bhatapara, Chhattisgarh
 2. Shatruhan, aged about 29 years, S/o Shri Arjun
 3. Durgesh, aged about 39 years, S/o Shri Heera,
 4. Balram aged about 35 years, S/o late Shri Seetaram
 5. Hansraj, aged about 40 years, S/o Shri Ratiram
 6. Janardan, aged about 37 years, S/o Shri Mangal
- Appellant 2 to 6 are resident of Sanjay Colony, Baloda Bazar, Tahsil and District Baloda Bazar, Chhattisgarh
7. Khelan, aged about 35 years, S/o Shri Dulesh, Resident of near Peetal Karkhana, Baloda Bazar, Tahsil and District Baloda Bazar, Chhattisgarh
 8. Ramji, aged about 44 years, S/o Shri Jhunau, Resident of Near Post Office, Baloda Bazar, Tahsil and District Baloda Bazar- Bhatapara Chhattisgarh
 9. Punaram, aged about 40 years, S/o Shri Sahbir, Resident of Purani Basti, Baloda Bazar, Tahsil and District Baloda Bazar, Bhatapara, Chhattisgarh
 10. Rajkumar, aged about 40 years, S/o Shri Ramnarayan, Resident of ward No. 13, Baloda Bazar, Tahsil and District Baloda Bazar, Bhatapara, Chhattisgarh
 11. Naresh Kumar, aged about 33 years, S/o Shri Shiv Kumar, Resident of Bhaisa Pasara, Baloda Bazar, Tahsil and District- Baloda Bazar, Bhatapara Chhattisgarh

-----Appellants/**Petitioners.****VERSUS**

1. State of Chhattisgarh through Secretary, Urban Development Department, DKS Bhawan, Mantralaya, Raipur Chhattisgarh, Now Mahanadi Bhawan Mantralaya, Atal Nagar, District Raipur Chhattisgarh
2. The Collector, Baloda Bazar, District Baloda Bazar, Chhattisgarh Now District Baloda Bazar, Bhatapara, Chhattisgarh
3. The Chief Municipal Officer, Municipalities, Baloda Bazar, District Baloda Bazar, Now District Baloda Bazar, Bhatapara, Chhattisgarh

4. Ramen Vaishnav, S/o Shri Raghunath Vaishnav, aged about 42 years,
5. Ramkali W/o Shri Radheshyam Yadav, aged about 45 years,
6. Ranjana Tiwari, W/o late Shri Suryadatta Tiwari, aged about 42 years,
7. Ramkumar Jaisawal S/o Shri Dashrath Jaiswal, aged about 29 years
8. Tarun Sahu S/o Shri Ramchand Sahu, aged about 29 years,
9. Nasir Khan S/o Shri Yakub Khan, aged about 35 years
10. Manharan Patel, S/o Shri Bharat lal Patel, aged about 32 years,
11. Horilal Fekar, S/o Shri Latelram Fekar, aged about 43 years
12. Santosh Kumar S/o Shri Chaitram Kannoje, aged about 43 years,
13. Ankur Shrivastava S/o Shri Radheshyam Shrivastava, aged about 22 years
14. Rohit S/o Shri Gyaneshwar Bandhe, aged about 42 years,
15. Ritesh Shrivastava, S/o Shri Anil Shrivastava, aged about 23 years,
16. Shivkumar Yadav S/o Shri Panchu Yadav, aged about 43 years.

Respondents 4 to 16 are resident of Baloda Bazar, Tahsil Baloda Bazar, District Baloda Bazar, Now District Baloda Bazar, Bhatapara Chhattisgarh

-----**Respondents**

For Appellants	:	Mr. Palash Tiwari, Advocate.
For Respondent-State	:	Mr. Sudeep Agrawal, Dy. Adv. Gen.
For Respondent 3	:	Mr. Yashwant Thakur, Advocate
For Respondents 4 to 16	:	Ms. Rajni Soren, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C.A.V. Order

Per Parth Prateem Sahu, J.

1. Correctness and sustainability of the order dated 12.02.2021 is put to challenge in this appeal, whereby learned Single Judge dismissed the writ petition and further issued a direction to Respondents 1 to 3 to ensure completion of formalities of handing over possession of the shops (Gumtis) situated near bus stand at Baloda Bazar to the respective allottees in terms of Annexure P-1.
2. Facts projected by the appellants in the writ petition are that the appellants/ petitioners are doing small business of cobbler, barber, tailoring, beetle shop etc. by constructing small Gumtis/ shops near bus stand area at Balodabazar, district Baloda Bazar-Bhatapara. Respondents 1 to 3 with an

object and view for development of town Baloda Bazar have issued notices to the appellants in the month of January 2010 to vacate their shops, remove encroachment and further assured them to provide newly constructed shops on the same place. Appellants have removed their structure, upon which, Respondent 3 constructed 14 new shops were not allotted to the appellants, but Respondent 3 had issued a notification dated 24.12.2010, inviting applications from the interested persons for allotment of shops. The action taken on the part of Respondent 3 was objected by the appellants, by filing a written objection dated 28.12.2010 before the Additional Collector and Sub-Divisional Officer, Baloda Bazar. The Additional Collector, district Baloda Bazar directed to consider the objection raised by the appellants but without considering the same, proceedings of allotment have been concluded *vide* Annexure P-1 notice/ order. New shops are constructed under the *Mukhyamantri Swavlamban Yojana* (for short “the Yojana”) only to accommodate the appellants/ petitioners but instead of allotting 14 shops to the 14 ousted persons from the locality, Respondent 3 has allotted the said shops to Respondents 4 to 16.

3. Respondent 3 resisted the objection of the appellants/ petitioners by filing counter affidavit stating that the appellants/ petitioners were encroachers over the land, they cannot claim it as a matter of right for allotment of the shops at the same place where shops are constructed by Respondent 3. Shops in question have been constructed under the Yojana (Scheme) to allot it to unemployed interested youths for self-employment. Allotment of the shops has been made by the Committee constituted and the allotment was made strictly in accordance with the scheme formulated. Annexure P-3, which was relied upon by the appellants/petitioners, has been stated to be a forged and fabricated document by filing counter affidavit. It was pleaded that no such letter was written and copy of the said document Annexure P-3 is also not available on record. There is no signature of Chief

Municipal Officer and there is no dispatch number. The said document has been filed only to mislead the Court.

4. Respondents 4 to 16 submitted reply pleading therein that the shops in question have been constructed under the Yojana and after completion of the procedure for allotment of the shops by way of a lottery draw, Respondents 4 to 16 became successful for allotment of shops in a very transparent manner.
5. Learned Single Judge, taking into consideration the pleadings on record, the documents, available on record, as well as the submissions made by the learned counsel for the respective parties, dismissed the writ petition by recording following :

“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.”

6. Mr. Palash Tiwari, learned counsel for the appellants submits that learned Single Judge has dismissed writ petition primarily taking into consideration the affidavit submitted by Respondent 3 that the document Annexure P-3 is a forged and fabricated document. He submits that Annexure P-3 was issued by Respondent 3 and the petitioners have made mention of the said document in their representation as well. Appellants are the poor pavement vendors and doing their small business after constructing Gumtis/ temporary structures for last so many years and are entitle for their rehabilitation at the same place where they were doing their business before. He further contended that 14 shops, which is the subject matter of the appeal, have been constructed only after handing over the vacant possession of the land by the appellants and they were assured for allotment of those shops to the appellants. Appellants are in permissive possession of the 14 newly constructed shops since long and considering this fact, this Court has granted interim order, restraining the Respondent 3 from evicting the appellants from the shops. Shops have been constructed by Respondent 3 under the scheme framed by the State Government under the Yojana. Under the said scheme, persons who are in occupation of the shops or houses over the government land, and being removed by the authority, then they are to be rehabilitated, hence, the 3rd Respondent is duty bound to rehabilitate the appellants by allotting 14 shops in their favour. The letter issued by Respondent 3 calling objection after issuance of notification before allotment of 14 shops is ante-dated. The action on the part of Respondent 3 is arbitrary and illegal. He submits that Respondent 3 has projected the case by filing an affidavit in the writ petition that Annexure P-3 is a forged and fabricated document. Even if claim of 3rd respondent is

accepted, though not admitted the same by the appellants, then also the street vendors/ pavement vendors being poor persons, doing small business, are having their right of livelihood under Article 21 of the Constitution of India. In support of his contention, learned counsel for the appellants relied upon the judgments of the Hon'ble Supreme Court in cases of **Bombay Hawkers' Union and others v. Bombay Municipal Corporation and others** reported in (1985) 3 SCC 528 and **Sodan Singh and others vs. New Delhi Municipal Corporation and others** reported in (1989) 4 SCC 155.

7. Mr. Yashwant Singh Thakur, learned counsel for Respondent 3/ Municipal Corporation submits that learned Single Judge, taking into consideration the entire facts and circumstances of the case, has rightly dismissed the writ petition being devoid of any substance which does not call for any interference. He submits that the appellants in their writ petition have not prayed for rehabilitation but for the allotment of the shops in question, appellants are encroachers and they are not having any right of allotment of the shops at a particular place or area. He submits that even all the appellants/ petitioners are not doing their business near the bus stand area, as argued by the learned counsel for the appellant, but, only two of the appellants ie. Appellant no. 6 and appellant no. 10, whose names find place in the list of the evicted persons as mentioned in Annexure P-7. Appellants, only to get undue benefit, have filed writ petition, projecting wrong fact that all the appellants/ petitioners were doing business near bus stand area by encroaching government land. Document Annexure P-3 relied upon by the appellants to claim that the assurance was given to the persons who are doing small business by encroaching the property of Municipal Corporation is a fabricated document. Out of 11 appellants, 8 appellants have already participated in the allotment of shops proceedings initiated by the 3rd Respondent, hence, they cannot challenge the action of allotment of the

shops after becoming unsuccessful in the allotment proceedings. Allotment of the shops has been made in a very transparent manner. Notification was issued calling application from the interested unemployed youths. After receiving the applications, allotment has been made on the basis of drawing lot.

As per the direction of the writ Court, specific affidavit has been filed by 3rd Respondent, that respondent 3 has not issued any letter like Annexure P-3. Appellants have not controverted the contents of the affidavit by filing counter affidavit. Appellants who have created a false and forged document, claiming the relief, are not entitled for any relief as sought for by them. Appellants at no point of time were permitted to occupy the newly constructed shops by Respondent 3 near bus stand area Baloda Bazar, but they after breaking open the locks took illegal possession of the shops. Due to interim order passed in their favour, Respondent 4 to 16, who became successful on draw of lot, could not get the possession of the shops. Appellants are law breakers. He further pointed out that as per the list Annexure P-7 placed on record, it is clear that only name of two of the appellants find place in that list which shows that the appellants have not approached this Court with clean hands. As reflected from Annexure P-4, under the Yojana, several shops were constructed by Respondent 3 ie. 50+14 which are to be allotted to the persons who made applications and became successful in the proceedings of allotment.

8. Ms. Rajni Soren, learned counsel for Respondents 4 to 16 submits that allotment has been made in favour of private respondents on 30.04.2012 but since then Respondent 3 could not be able to hand over possession of those shops. Appellants have forcefully occupied the shops and are continuing in illegal possession till date, without paying any rent to Respondent 3. She submits that appeal be dismissed and Respondent 3 be directed to handover the vacant possession of 14 shops in question in their

favour as per Annexure P-1.

9. We have heard learned counsel for the respective parties and also perused the record of writ petition as well as writ appeal.
10. The case of the appellants is that they were occupying the government land by constructing gumtis and doing small business. Though, the learned counsel for the appellants has made submissions that the appellants are street vendors/ pavement vendors, the document Annexure P-3 relied upon by the appellants to strengthen his submission that Respondent 3 has given assurance for allotment of shops to be constructed over the land which was encroached by them has been specifically stated in affidavit by Respondent 3 to be false and fabricated document, specific affidavit has been filed by Respondent 3 in this regard. Perusal of Annexure P-3 would show that the ground raised by Respondent 3 with regard to Annexure P-3 is false and fabricated document, appears to be correct. There is no sign of Respondent 3/ Chief Municipal Officer at appropriate place, there is no dispatch number and further it is written to Assistant Engineer, Public Health Engineer, Baloda Bazar. Perusal of Annexure A-3 further reveals that the same has been forwarded to the Additional Collector, Baloda Bazar. The appellants even after filing of the specific affidavit stating document Annexure A-3 to be forged and fabricated document and not issued by Respondent 3, have not controverted the submission and the affidavit of Respondent 3 in any manner. No counter affidavit has been filed in this regard. Appellants have not made any pleading and submission that how they came in possession of the said letter.
11. For the foregoing reasons, we do not find any error in the opinion recorded by the learned Single Judge that the document Annexure P-3 is a false and fabricated document and there was no written assurance given to the appellants at any point of time. From perusal of document Annexure P-7 filed by appellants in support of their claim and the particulars of appellants

shown in the cause title of appeal would clearly show that out of 11 names, name of only 2 persons find place in the list Annexure P-7, which is a list of persons who on the date of survey, were encroachers. In view of the above, the submission made by learned counsel for the appellants that all the appellants were doing small business since last so many years prior to the date of their eviction is also not sustainable, being contrary to the document relied upon by the appellants themselves.

Cause title of the writ petition would show that on the date of filing of writ petition, age of petitioner no. 1 to be shown as 22 years and the age of petitioner no. 2 as 19 years and the claim has been made by them that the petitioners were doing their business since last 15 years. The aforementioned fact pleaded by the appellants/ petitioners themselves in the writ petition and the representation made by them, show that the claim of appellants is not correct. They have not approached the Court with clean hands. Appellants though have stated themselves to be in permissive possession of 14 shops but there is no such pleading, either in the representation or on the date of filing of writ petition, in fact, in the application for grant of interim relief by the appellants, they have only prayed for stay of Annexure P-1 which is the list of persons who became successful for allotment of 14 shops. Had the appellants were given possession and they being in possession of the shops, could have very specifically pleaded and could have also prayed to a relief for protection of their possession over the shops, which is not there. Upon putting specific question to learned counsel for the appellants, with regard to prove of giving any permission of occupying the shops or the date since when they were in possession, learned counsel for the appellants submits that he could not able to state as to from which date the appellants are in possession over the shops in question. No document granting permission is placed on record.

12. From the aforementioned facts and circumstances of the case and the

submissions made by the learned counsel for the respective parties, it is clear that the appellants have taken forceful possession of the shops in question. As the appellants have entered the shops forcefully and took possession, the submission of the learned counsel for the appellants that they may be considered for their allotment of their shops at any other place, under any other scheme, is also not sustainable, because the persons who have taken the law in their hands, cannot be granted any relief from the Court of law. The said submission of the learned counsel for the appellants is hereby repelled. As it has been argued by learned counsel for Respondent 3 as well as Respondents 4 to 16 that the appellants are in forceful possession of the 14 shops in question, Respondent 3 after evicting them will be at liberty to draw proceedings for the recovery of rent against them in accordance with law.

13. For the foregoing reasons, we do not find any substance in this appeal, it is hereby dismissed accordingly. Respondent Nos.1 to 3 shall take all necessary steps to hand over the possession of the shops to the successful applicants in Annexure P-1 at the earliest.

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

Sd/-
(Parth Prateem Sahu)
Judge