

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Judgment Reserved on 09.12.2020****Judgment Delivered on 06.01.2021****Writ Appeal No.444 of 2020**

*(Arising out of order dated 21.09.2020 passed in Writ Petition (C)
No.592 of 2019 by the learned Single Judge)*

Dev Kumar Dhiwar, S/o Late Shri Duwasiram Dhiwar, aged about 49 years, R/o Jagi Road, Beltara, District Bilaspur, Chhattisgarh

---- Appellant**Versus**

1. State of Chhattisgarh through The Collector, Bilaspur, District Bilaspur, Chhattisgarh.
2. Land Acquisition Officer cum Sub Divisional Officer (Revenue), Tehsil Bilaspur, District Bilaspur, Chhattisgarh.
3. National Highway Authority of India, through office of Project Director Project Implementation Unit Bilaspur, D-16, HIG-1, Abhilasha Parisar, Behind High Tech Bus Stand Tifra, Bilaspur Chhattisgarh.
4. Union of India, through Ministry of Road Transport and Highways, Government of India, 1 Sansad Marg, Gokul Nagar Connaught Place, New Delhi, Delhi.
5. Gram Panchayat Beltara through the Secretary, Gram Panchayat Beltara, Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondents

For Appellant : Shri Anup Majumdar, Advocate

For Respondent/State : Shri Sudeep Agrawal, Dy. Advocate General

For Respondents/UOI : Shri Ramakant Mishra, Assistant Solicitor General

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

C A V Judgment**Parth Prateem Sahu, Judge**

1. Challenge in this appeal is to the order dated 21.09.2020 passed by the learned Single Judge in batch of writ petitions whereby the petitioners therein have sought for relief of

compensation and alternative shops as rehabilitation measure along with quashment of the impugned eviction notice dated 07.02.2019 of petitioners therein from the alleged leasehold shops, which came to be dismissed. Out of total 19 petitioners in five different writ petitions, only one writ petitioner has filed this appeal challenging the impugned order.

2. Facts relevant for disposal of this appeal are that, the appellant along with 18 other petitioners have been allotted shops situated at Vyavasayik Parisar, Beltara on auction conducted by Gram Panchayat Beltara. The shops were situated over the land in possession of Gram Panchayat on Khasra No.1025/1/ka. After becoming successful in an auction proceeding, appellant along with other petitioners have entered into agreement and shops have been handed over to them for a period of three years on lease. The respondent No.3 acquired the land on which commercial complex is constructed. In the said commercial complex, shops of the appellants are situated, but they have not been given any compensation nor rehabilitated. The appellant along with other petitioners have raised grievance/objection before the Sub Divisional Officer (Revenue) on 31.03.2018 for not determining compensation in their favour, because the land over which shops are constructed by Gram Panchayat, Beltara, and possessed by petitioners has been acquired by respondent No.3 through respondent No.2. On the date of acquisition of land by respondent No.3, appellant along with other petitioners were in possession of the shops and doing their business. After completion of acquisition proceeding, eviction notice

has been issued to the appellant along with other petitioners therein, which made the appellant along with other petitioners to rush this Court by filing different writ petitions. The ground raised in writ petitions was that land acquisition proceeding initiated under the provisions of National Highways Act, 1956 (henceforth 'Act of 1956') provides for determination of amount of compensation even for the right of user of the land acquired. The respondent authorities have not considered that on the date of initiation of land acquisition proceeding and its finalization, appellant along with other petitioners were doing the business on the leased shops and were occupants. The appellant in his Writ Petition (C) No.592 of 2019 has sought for following reliefs :

“10.1 That, this Hon'ble Court may kindly be pleased to call for the entire records in relation to the case of the petitioners from the possession of respondents for its kind perusal.

10.2 That, this Hon'ble Court may kindly be pleased to issue a writ or writs/order or orders to direct the competent authority to determine the amount of compensation with respect to petitioners within a period of one month.

10.3 That, this Hon'ble Court may direct the respondent authorities to provide alternative shops as a rehabilitation measure to the petitioners.

10.4 That, this Hon'ble Court may kindly be pleased to quash the impugned eviction

notice dated 07.02.2019 being arbitrary, unreasonable and contrary to law.

10.5 That, this Hon'ble Court may direct the respondent authorities to restrain from paying any amount of compensation to Gram Panchayat, Beltara till the compensation with respect to petitioners is determined or in alternative direct the Gram Panchayat, Beltara to refund such amount of compensation to petitioners as determined by the competent authority.

10.6 That, this Hon'ble Court may kindly be pleased to grant any other relief/relief's in favour of the petitioners, which the Hon'ble Court deemed fit & just in the facts and circumstances of the case, including awarding of the costs to the petitioner."

3. Respondents No.3 and 4 submitted reply to writ petition pleading therein that land was acquired for the purpose of widening of Bilaspur-Kathghora National Highway NH-130. While denying the grounds raised in the writ petition of their entitlement of compensation, pleaded that appellant and other petitioners are not having any legal right under the law. Appellant and other petitioners are encroachers and not title holders of the land/shops. Lease deed executed in their favour came to an end after completion of period of lease mentioned therein. Land acquisition proceeding has been initiated strictly in accordance with Section 3 of the Act of 1956. Notification under Section 3G(3) of the Act of 1956 dated 03.12.2018 and 04.12.2018 was made and after determination of amount of compensation, the same was deposited. After publication of

notification under Section 3D of the Act of 1956 aggrieved person is having the remedy under the Act of 1956 (3G(5) to approach the arbitrator). Letter of Acceptance was executed in favour of M/s Bilaspur Pathrapali Road Pvt. Ltd., on 14.05.2018 for construction of road.

4. Respondent No.5 has filed separate reply pleading therein that lease deeds were executed in favour of the petitioners on different dates including appellant for a period of three years. After completion of period of three years, its life automatically expired and now they are unauthorized occupants, nor they have deposited lease rent since long. The competent authority has passed the award much prior to filing of the writ petitions i.e. 01.08.2018, hence, writ petition filed in the present form is not maintainable. The petitioners were having alternative remedy under Section 3G(5) of the Act of 1956. The petitioners have not deposited the entire rent amount and are defaulters. The ruling on which the petitioners have placed reliance on **Sayyed Ratanbhai Sayeed (Dead) through Legal Representatives and Others v. Shirdi Nagar Panchayat and Another** reported in **(2016) 4 SCC 631** is on different facts and not applicable to the facts of the present case. The petitioners have not filed any objection as envisaged under Section 3G(4) of the Act of 1956. The petitioners are not having any right of user of land acquired as their lease already came to an end much prior to initiation of land acquisition proceeding under the Act of 1956. They were given opportunity to get the alternative shops as per the proceedings of the Panchayat but that was not availed.

5. Learned Single Judge while considering the pleadings and submissions made by learned counsel for the respective parties came to the conclusion that acquisition has been done for public purpose. Gram Panchayat has offered alternative shops in the nearby vicinity to the petitioners. The respondent-Gram Panchayat even after noting the default on the part of the petitioners in not depositing the lease rent within the prescribed time and having arrears had offered alternative shops to the petitioners therein including the appellant on priority basis. On action of petitioners in not participating in the auction proceeding of shops which were offered to them presumption can be drawn that the petitioners are not interested in running their business, but have shown their interest only towards monetary compensation. Once after refusing to accept the proposal of allotment of alternative shops offered by Gram Panchayat, the petitioners cannot be permitted to say that appellant along with other petitioners were deprived of their livelihood. The judgment relied upon by the petitioners have been said to be on different facts of the case. One of the petitioners in Writ Petition (C) No.592 of 2019 made an application for allotment of alternative shop available and the shop was allotted to him. At present, six shops are lying vacant in other shopping complex built up by respondent authorities. Learned Single Judge has observed that remaining six shops may be allotted amongst 19 petitioners on priority basis through auction and whoever quotes the maximum amount be allotted the shops.

6. Shri Anup Majumdar, learned counsel for the appellant submits

that learned Single Judge has not considered the land acquisition proceeding to be under the Act of 1956 and passed impugned order. Appellant has raised specific grievance with regard to determination of amount of compensation for right of “user of land” as envisaged under Section 3G of the Act of 1956. It is obligation upon the respondent authorities to award monetary compensation to the persons whoever was using the land which was acquired by respondent No.6. Learned Single Judge has not considered that lease was not expired because respondent No.5 is collecting lease rent after increase of lease rent each year. The shops are not going to be demolished as the widening is projected only to the extent of 61 feet whereas the premises in dispute is located at the distance of 80 feet from the road. The eviction notice dated 07.02.2019 to be *per se* illegal and arbitrary as the said notice was issued without determining the amount of compensation or providing alternative shop under rehabilitation of the appellant. There is breach of applicant's right as envisaged under Article 21 read with 19(1)(g) of the Constitution of India. Appellant is also entitled for the amount of compensation as the property which was acquired by respondent No.3 was in occupation of the appellant and other occupants. Respondent No.5 has even not allotted any alternative accommodation overlooking the fact that appellant along with other petitioners were doing business over the subject land. It is lastly contended that respondent authorities have initiated the proceeding of allotment of six shops, but no procedure has been adopted by them. Shri Majumdar places his reliance on the ruling rendered by

Hon'ble Supreme Court in case of **Union of India and Others v. A. Ajit Singh** reported in **AIR 1997 SC 2669** and further **Sayyed Ratanbhai Sayeed** (supra) in support of his contention.

7. Per contra, Shri Sudeep Agrawal, learned Deputy Advocate General representing the State submits that the Land Acquisition Officer has concluded the proceeding strictly in accordance with law. No objection whatsoever has been raised by the appellant or any other petitioners in the writ petitions during the proceeding of land acquisition as they are well aware of their position and their entitlement. Respondent No.6 keeping in mind that appellant was doing the business in the shop constructed by Gram Panchayat has rightly considered their entitlement for another shop/business accommodation and offered the shops to the appellant along with other similarly situated petitioners on priority basis. The proceeding is placed on record by respondent No.5 in the writ petition and the appellant has willfully not accepted the offer given by Gram Panchayat of alternative shop.

8. Shri Ramakant Mishra, learned Assistant Solicitor General representing the Union of India submits that learned Single Judge has rightly taken into consideration the facts mentioned in reply submitted to the writ petition and further that appellant has failed to accept alternative accommodation offered to him, hence, it cannot be said that respondent authorities have not offered any alternative accommodation/shop to him for his survival. Appellant is not the owner of any land, he was only a lessee and his lease came to an end in the year 2005-06 after completion of period of three years.

There is no extension of period of lease as per law. Appellant is not having any right to claim any relief which has been sought for by him in the writ petition. Respondent authorities have awarded the amount of compensation to the owner of the property, hence, there is no merit in the appeal.

9. We have heard learned counsel for the respective parties and also perused the writ petition.

10. From the pleadings and submissions made by learned counsel for the appellant following questions arise for consideration of this Court : (i) whether the appellant is entitled for determination of any amount of compensation as 'User of Land', which was acquired by respondent No.3 for widening of National Highway Road; (ii) whether Gram Panchayat erred in not awarding any alternative shop for the purpose of running business to appellant and his entitlement even now for consideration of allotment of shop by respondent No.5; and (iii) whether respondent No.5 acted contrary to direction issued by learned Single Judge in paragraph-37 of the impugned order.

11. So far as submission made by Shri Majumdar, learned counsel for the appellant that respondent authorities have not considered that the building on which the shop was allotted to the appellant was acquired for the purpose of widening of National Highway Road, hence, respondent No.5 ought to have allotted some alternative shop for survival of appellant is concerned, perusal of reply filed by respondent No.5 to the writ petition would show that respondent No.5 has placed on record the copy of proceeding register of Gram

Panchayat wherein they have unanimously resolved that the persons/who are shopkeepers effected in widening of National Highway Road shall be allotted shops on priority basis and only if the affected persons do not show their interest, then only, shops to be allotted to other persons. The aforementioned proceeding recorded by Gram Panchayat dated 02.10.2019 would show that respondent No.5 in whose building/shopping complex the appellant was doing the business has offered the shop to the effected person in widening of National Highway Road. It is not the case that Gram Panchayat has not taken any action to provide alternative accommodation/shop to the effected shopkeepers, but have taken care to rehabilitate them by allotting shops for their business at appropriate nearby place available with them. One of the writ petitioners by moving application shown his interests and he has been allotted shop which was not disputed by the parties. The condition which has been mentioned therein in the proceeding dated 02.10.2019 that businessmen who are effected and not having arrears of rent against them, will be provided alternative shops. Respondent No.5 has further placed on record list of persons against whom arrears of lease rent was pending. There was arrears of rent of Rs.33,544/- against the appellant. The proceeding filed by respondent No.5 along with reply to writ petition and facts mentioned therein were not controverted by the appellant by way of rejoinder to it, hence, the said fact is deemed to be admitted by the appellant. It appears that appellant in view of arrears of lease rent pending against him might not be eligible for allotment of other alternative

shop as per proceeding and he might not opted for the same. It is not brought to the notice of the Court that even after passing of impugned order by learned Single Judge any application for allotment of shop is made by the appellant.

12. So far as ground raised by learned counsel for the appellant that compensation to be awarded to the appellant towards 'user of land' is concerned, perusal of entire fact would show that appellant was allotted one shop out of many situated over the land acquired by respondent No.3 on lease for a period of three years only. It is not a case where after acquiring the land over which the shops were constructed, appellant has not been offered any alternative shop for his business, but the appellant himself has not opted for said offer and because of it, shops available in new shopping complex known as "Rajiv Plaza" was offered to other persons. The case law relied upon by learned counsel for the appellant in support of award of monetary compensation in **Sayyed Ratanbhai Sayeed** (supra) specifically mentions that monetary compensation as calculated therein to be awarded only if an alternative site is not feasible, relevant portion of which is extracted below :-

"65.....In spite of assurances given, by its learned counsel, no information has been provided. In this premise, having regard to the ensuing consequences qua the appellants, we consider it appropriate to direct, to start with, the State and its functionaries to undertake an exercise to identify a suitable site to accommodate the

appellants. We make it clear that even if such a site is not available in the immediate proximity of the land presently in their occupation, a sincere endeavor would be made to locate a plot as near as possible thereto. The District Administration in coordination with the Sansthan and other authorities, as deemed necessary in law, would undertake the process. The appellants would also cooperate in the pursuit and would not delay the completion thereof. However, in case the endeavor to identify an alternative plot does not yield any result in spite of sincere efforts, the appellants would then be entitled to adequate monetary compensation as quantified herein.

66.It is reiterated that the compensation, as indicated hereinabove, would be payable to the appellants only if an alternative site is not feasible.....”

13. In the case at hand, respondent No.5 has filed proceeding showing that in a new commercial complex known as “Rajiv Plaza” affected shopkeepers are to be allotted shops on priority basis. This fact is not disputed by learned counsel for the appellant, but for his submission that as his business is affected, he is entitled for monetary compensation. We are not convinced with the said submission, more so, when case law relied upon by learned counsel for the appellant itself is specific that monetary compensation to be paid only if alternative site is not feasible.

14. So far as the other ground raised by learned counsel for the appellant that respondent authorities have not acted in accordance with direction issued by learned Single Judge for allotment of remaining six shops is concerned, it is for the appellant to file appropriate proceeding before the appropriate forum if any part of impugned order is not complied with by respondent authorities. In this writ appeal, this Court is only considering the correctness of impugned order passed by learned Single Judge.

15. Taking into consideration overall facts and circumstances of the case as discussed above as also the law laid down by Hon'ble Supreme Court in case of **Sayyed Ratanbhai Sayeed** (supra), we do not find any infirmity in the order under challenge passed by learned Single Judge. The appeal being devoid of substance, is liable to be and is hereby dismissed.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge