IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 2nd OF FEBRUARY, 2024

WRIT PETITION No. 32105 of 2023

BETWEEN:-

1. **RAMCHARAN GAUD S/O RAMDAYAL GAUD, AGED ABOUT 63 YEARS, OCCUPATION: FARMER R/O VILLAGE JHAPAN, TEHSIL TENDUKHEDA, DISTRICT DAMOH (MADHYA PRADESH)**

2. **PRADEEP PATKAR S/O BARELAL PATKAR, AGED ABOUT 32 YEARS, OCCUPATION: SHOP KEEPER RESIDENCE OF VILLAGE JHAPAN TEHSIL TENDUKHEDA DISTRICT DAMOH (MADHYA PRADESH)**

3. **RAJU SEN S/O BIHARI LAL SEN, AGED ABOUT 28 YEARS, OCCUPATION: BARBER RESIDENCE OF VILLAGE JHAPAN TEHSIL TENDUKHEDA DISTRICT DAMOH (MADHYA PRADESH)**

4. **MOTI RAJAK S/O PARMU RAJAK, AGED ABOUT 31 YEARS, OCCUPATION: DRYCLEANER RESIDENCE OF VILLAGE JHAPAN TEHSIL TENDUKHEDA DISTRICT DAMOH (MADHYA PRADESH)**

5. **PRADEEP JOGI S/O CHAIN SINGH LODHI, AGED ABOUT 28 YEARS, OCCUPATION: SHOP KEEPER RESIDENCE OF VILLAGE JHAPAN TEHSIL TENDUKHEDA DISTRICT DAMOH (MADHYA PRADESH)**

6. **MUKESH JAIN S/O ASHOK JAIN, AGED ABOUT 43 YEARS, OCCUPATION: HOTEL OWNER RESIDENCE OF VILLAGE JHAPAN TEHSIL TENDUKHEDA DISTRICT DAMOH (MADHYA PRADESH)**

7. **ASHOK JAIN S/O RAMDAYAL JAIN, AGED ABOUT 49 YEARS, OCCUPATION: HOTEL OWNER RESIDENCE OF VILLAGE JHAPAN TEHSIL TENDUKHEDA DISTRICT DAMOH (MADHYA PRADESH)**

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8. **ASHOK JAIN S/O PRAKASH @ SUKKE JAIN, AGED ABOUT 45 YEARS, OCCUPATION: SHOP KEEPER RESIDENCE OF VILLAGE JHAPAN TEHSIL TENDUKHEDA DISTRICT DAMOH (MADHYA PRADESH)**

9. **BADRI SEN S/O HARIRAM SEN, AGED ABOUT 31 YEARS, OCCUPATION: BARBER RESIDENCE OF VILLAGE JHAPAN TEHSIL TENDUKHEDA DISTRICT DAMOH (MADHYA PRADESH)**

10. **DEEPAK JAIN S/O VINOD JAIN, AGED ABOUT 35 YEARS, OCCUPATION: SHOP KEEPER RESIDENCE OF VILLAGE JHAPAN TEHSIL TENDUKHEDA DISTRICT DAMOH (MADHYA PRADESH)**

11. **ANIL @ HALLE YADAV S/O LOCHAN YADAV, AGED ABOUT 30 YEARS, OCCUPATION: MILK DAIRY RESIDENCE OF VILLAGE JHAPAN TEHSIL TENDUKHEDA DISTRICT DAMOH (MADHYA PRADESH)**

12. **RAMJI JODI S/O PRITAM JOGI, AGED ABOUT 37 YEARS, OCCUPATION: BANGLE SHOP RESIDENCE OF VILLAGE JHAPAN TEHSIL TENDUKHEDA DISTRICT DAMOH (MADHYA PRADESH)**

13. **RAMKISHAN SEN S/O DHANNU LAL SEN, AGED ABOUT 35 YEARS, OCCUPATION: BARBER RESIDENCE OF VILLAGE JHAPAN TEHSIL TENDUKHEDA DISTRICT DAMOH (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI KAMLESH SINGH RAJPUT - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY OF FOREST FIRST FLOOR, SATPUDA BHAWAN BHOPAL (MADHYA PRADESH)**

2. **D.F.O. DAMOH FOREST OFFICE DAMOH DISTRICT DAMOH (MADHYA PRADESH)**

3. **GEM PARICHHETRA ADHIKARI RESIDENCE OF VILLAGE JHAPAN TEHSIL TENDUKHEDA DISTRICT DAMOH (MADHYA PRADESH)**

4. **S . D . M . REVENUE DEPARTMENT TEHSIL**

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TENDUKHEDA DISTRICT DAMOH (MADHYA PRADESH)

5. FOREST DIVISION OFFICER NAURADEHI (WILD L I F E) SAGAR DISTRICT SAGAR (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI HITENDRA GOLHANI - GOVERNMENT ADVOCATE)

This petition coming on for admission this day, the court passed the following:

ORDER

This petition is filed seeking the following reliefs:

> *"(1) That, this Hon'ble Court may kindly be pleased to issue writ in the nature of mandamus to quash Annexure P/2 dated 20.12.2023.*
>
> *(2) That, any other relief as this Hon'ble Court deemed fit and proper in the circumstances of this case, along with the cost of writ petition."*

2. It is the case of the petitioners that certain notices have been issued vide Annexure P/2 asking for removal of their shops in which they are running their businesses since last more than a decade. The petitioner No.1 is the owner of the property, for which, Bhoo Adhikar Rin Pushtika has been filed along with the petition to demonstrate that the same is an agricultural land and the shops were constructed to the land adjacent to the road, in which, the petitioner Nos. 2 to 13, who are the tenants of the petitioner No.1, are running their businesses. By way of impugned notices, they have been directed to remove the shops as a boundary wall is to be constructed in pursuance to Nauradehi National Park.

3. It is argued that the National Park is far away from the wall which is to be constructed. It is pointed out that 50% construction of the wall has already been carried out. As the land belongs to the petitioner No.1, no proceeding for acquisition of the land was taken up and by the notices the respondents have threatened for demolition of the shops, in case they are not being removed by

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the petitioners.

4. The record indicates that the land in question is an agricultural land. On a specific query was made to the learned counsel for the petitioners to demonstrate sanction or permission from the department for construction of the shops, he fairly submits that there was no sanction or permission to construct the shops in question. However, as the area in which the shops are constructed is adjacent to main road, therefore, they were constructed. Under these circumstances, the construction of the shops appears to be illegal as there was no sanction or permission from the competent authority. The petitioner No.1 shows himself to be the owner of the property. It is alleged that the respondents are constructing the wall on his property, meaning thereby, the respondents are encroaching upon the property of the petitioner No.1, for which, a remedy is available to the petitioner No.1 elsewhere. Under Article 226 of the Constitution of India, no such relief as claimed can be extended to the petitioners. The petitioners may approach the concerning civil court for protecting their rights and property.

5. Due to availability of alternative remedy to the petitioners, this court refrains from entertaining the writ petition. It is accordingly dismissed. However, the petitioners are always at liberty to approach the concerning civil court for redressal of their grievances.

(VISHAL MISHRA)
JUDGE

sj

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