

Writ Petition Nos.3162/2007, 22095/2012, 232/2013, Conc. 503/2013, W.P. No.7009/2014, Conc. No.913/2014, W.P.Nos.13607/2015, 13830/2015, 16785/2015, 2537/2016,3097/2016, 3979/2016, 4021/2016, 4065/2016, 4117/2016, 4159/2016, 4257/2016, 4428/2016 and 4744/2016 & Writ Petition Nos.15367/2015 & 18123/2015 & 21003/2015

28.03.2016

W.P.No.3162/2007

None appears for the petitioner.

Shri Anshuman Singh, learned counsel for the respondent/Corporation.

Following relief(s) have been claimed in this writ petition :-

“(i) By issuance of writ of Certiorari quash the impugned NIT No.कमांक/का. प. थं/लो. नि./07/ज.स.अ/186 dated 31/01/2006 (P-2) and also the consequential action taken pursuant to this NIT.

(ii) To issue writ of prohibition restraining the respondents from changing the use of the aforesaid area which is reserved for general parking and bus-stop within Scheme No.18 Madhatal Civic Centre Jabalpur.

(iii) To direct the respondents to remove the encroachment/material occupying the said area, reserved for general parking and bus-stop, pursuant to the impugned NIT dated 31/01/2007 (P-2).

(iv) To direct the respondents to properly develop the said open area reserved for general parking and bus stop situated within Scheme No.18, Marhataal, Civic Centre, Jabalpur Town so as to enable the members of the general public to utilize the same for the

purpose of parking and bus stop.

(v) Grant any other relief as thought fit by it in given or changed circumstances.

(vi) That the Hon'ble Court may be pleased to direct the demolition of the said two shops unlawfully constructed by the respondent No.8 over the area reserved for parking in the lay out and may be further pleased to direct the respondent nos.3, 4 and 5 to evict the respondent No.8 of the said parking area.”

As regards first two reliefs, the same have become academic in view of the stand taken by the Corporation that the Corporation has no intention to change the user of the subject plot within Scheme No.18 reserved for general parking and bus stop. Further, the Corporation has not and will not proceed with NIT dated 31.01.2006 nor intends to take any step to change the user of the subject plot which is reserved for general parking and bus stop.

The third relief claimed is to remove the encroachment/material occupying the said area reserved for general parking and bus stop. It is placed on record by the Corporation that all encroachments have been removed. Only two shops are still existing on the said plot. Those shops have been erected after taking due permission of the Corporation. In that sense, it is not unlawful construction.

Whether such permission could be granted or otherwise, is a matter which can be agitated before the appropriate Authority in the first place. We may not be understood to have approved the stand of the Corporation that the two shops are lawfully constructed. That question is left open. As a result, prayer Clause No.(iii) and (vi) do not survive for consideration.

Reverting to the prayer clause (iv), the Corporation has already prepared a comprehensive plan and has started implementing the same, which would redress the apprehension of the petitioners regarding proper development of the reserved plots for specified purpose.

As no other question arises for our consideration in this petition, this petition is **disposed of** on the above terms.

However, we once again reiterate that the question regarding the legality of two shops constructed by the respondent No.8 on the said plot reserved for parking and bus stop is left open to be considered in appropriate proceedings.

W.P.Nos.22095/2012 & 232/2013

Shri A.Rajeshwar Rao, learned counsel for the petitioners.

Shri Anshuman Singh, learned counsel for the Corporation.

Heard counsel for the parties on admission.

As in Writ Petition Nos.15367 and 21003 both of 2015, even these petitions have been filed by the employees of the Corporation seeking direction against the Corporation to refrain from dispossessing them from service quarters provided to them while in service. The petitioners are still in service.

If eviction action is taken by the Corporation under the provisions of Public Premises Act, it is open to the petitioners to give response to the show cause or eviction notice received by them individually. Assuming that the proposed action of the Corporation is under some different source of power, nothing prevents the petitioners from responding to the notice-cum-order received by them. It is for the appropriate Authority to consider the claim of the petitioners and if that decision is adverse to the petitioners, the petitioners will be free to question the same by way of appropriate proceedings, as may be advised.

We are not expressing any opinion on the correctness of any contentions raised by the petitioners.

We also place on record the statement made by

counsel for the Corporation that the petitioners are in occupation of premises and building which is not obstructing the road line in any manner and, therefore, the proposed action is not on that count.

We also place on record that the apprehension of the petitioners that the petitioners have been served with eviction order is misplaced as the counsel for the Corporation has taken a stand that the communication sent to the petitioners is only in the nature of eviction notice to which they are free to respond and the response given by each of the petitioners will be considered by the Appropriate Authority on its own merits expeditiously.

Petitions **disposed of** accordingly.

Conc No.503/2013

Ms. Neelam Goel, learned counsel for the petitioner.

Shri Anshuman Singh, learned counsel for the respondent/Corporation.

Heard counsel for the parties on admission.

Main Writ Petition in which interim relief was granted to the petitioner on 07.02.2013, has been disposed of in terms of order dated 18.03.2016.

In this contempt petition, vague allegation is made that after the order was passed on 07.02.2013 and served

on the respondent the road construction work continued unabated. This was done to circumvent the directions issued by this Court. In support, the petitioner relies on the communication Annexure C-2 and C-5.

From Annexure C-2, it is noticed that it is addressed to the Collector, Jabalpur and not to the Municipal Corporation much less to the respondent by name. However, only copy of this communication has been marked to the Commissioner, Municipal Corporation and Police Superintendent, Jabalpur respectively. On what date this copy of the communication was served on the contemnor personally is not stated in the petition. From Annexure C-5 it is noticed that even this is addressed to the Collector, Jabalpur.

As aforesaid, vague statement has been made that the petitioner served copy of the representation along with the order dated 07.02.2013 to the respondents intimating about the interim order. That is not enough. Moreover, the endorsement on Annexure C-2 would at best indicate that it has been delivered in the office of Municipal Corporation (Inward Section). It is not served on the respondents as such, so as to claim that the respondent-contemnor was served with the copy of the interim order

on 07.02.2013 itself.

The photographs appended to the petition Annexure C-4, nowhere indicate that the same were taken after the copy of the order was duly received by the respondent – to substantiate the allegation that the respondent inspite of knowledge of interim order continued with the digging work alongside the concerned road for road widening purpose. The digital date appearing on the four photographs appended as Annexure C-4 no doubt bear date after 07.02.2013. It is presumably 15.02.2013, 20.02.2013, 21.02.2013 and 24.02.2013, indicative of the road widening having been completed.

The fact remains that unless the averment in the petition is sufficient to proceed for contempt action, the Court should be loath to entertain such petition and more so when the main substantive petition has been disposed of on merits. Hence, no further action is required.

Contempt petition is **disposed of** accordingly.

W.P.No.7009/2014

Ms. Ruchika Pandey, learned counsel for the petitioner.

Shri K.S.Wadhwa, learned Additional Advocate General for the respondents/State.

Shri S.K. Shrivastava, learned counsel for the respondents 2 and 3.

Heard counsel for the parties on admission.

For the nature of the reliefs claimed in this petition, we decline to exercise writ jurisdiction.

The petitioners are free to pursue other appropriate remedy by way of civil suit for declaration and injunction or otherwise, if so advised. Such proceedings will have to be decided on its own merits in accordance with law.

Petition **disposed of** accordingly.

Conc.No.913/2014, W.P.No.13607/2015, 16785/2015 and W.P. No.3097/2016

Conc.No.913/2014

Shri Satish Kumar Verma – petitioner appears in person.

Shri Anshuman Singh, learned counsel for the respondent/Corporation.

Counsel for the Corporation has handed over the list of cases (being Writ Petition Nos.5765/2010 & 11635/2014), which according to him pertain to structures obstructing the road line and causing hindrance in the implementation of the action plan prepared by the Corporation, which is being monitored by this Court in

Conc. No.913/2014.

Accordingly, list all these cases on **30.03.2016**.

Writ Petition No.13830/2015

Shri Shashank Shekhar, learned counsel for the petitioner.

Shri Saurabh Sunder, learned counsel for the respondent.

Heard counsel for the parties.

This petition has been listed along with other connected cases in which direction has been issued to the Corporation to remove all structures obstructing the road line throughout the Corporation limits.

According to the Corporation, the petitioners are in occupation of building used for commercial activity. Further, the stand taken by the Corporation that the building is obstructing the road line is untenable and no such documentary evidence is available nor any communication has been received by the petitioners in that behalf.

The counsel for the Corporation submits that the Corporation cannot take any action against the petitioner in spite of the direction given by the Court in public interest litigation to remove all the structures obstructing the road

line, because of the interim order granted in this petition on 28.09.2015.

As that is the limited issue to be addressed today, we clarify that the interim order granted in this writ petition will be no impediment for the Corporation to proceed in respect of the structures which according to the Corporation are obstructing the road line by following due process, in accordance with law.

Inasmuch as, the issue in the present writ petition is somewhat different. It is to question the action of the Corporation on the basis of notice issued under Section 310 of the Corporation Act on the ground that the subject building occupied by the petitioners has become dilapidated and unsafe. That issue can be addressed independently. If the building is required to be removed, as obstructing the road as a whole, then the said question may not survive for consideration. However, if it is required to be removed in part as obstructing the road line, the question raised in this writ petition will assume significance and can be considered appropriately.

With this clarification, interim relief granted by this Court stands modified to the limited extent as aforesaid. In other words, Corporation shall not take any action against

the petitioners on the basis of show cause notice (Annexure P-1) and order passed by the Appellate Authority (Annexure P-11). However, will be free to proceed in accordance with law for complying the direction given by this Court in PIL to remove all structures obstructing the road line within the Corporation limits.

Writ petition shall remain connected to Contempt Case No.913/2014, in view of the above order. To be listed on **30.03.2016**.

W.P.No.2537/2016

Shri Vijay K.Shukla, learned counsel for the petitioner.

Shri Saurabh Sunder, learned counsel for the respondents/Corporation.

Heard counsel for the parties on admission.

Counsel for the petitioner submits that the petitioner has already made representation to the Commissioner after service of communication-cum-order dated 02.02.2016 (Annexure P/1). He submits that if the Commissioner decides the matter in issue against the petitioner, the petitioner may be given liberty to question the same by way of appropriate proceedings.

Counsel for the Corporation submits that the structure

in question is illegal and has been constructed without taking prior permission. The fact that no such permission has been obtained, is disputed by the counsel for the petitioner. If so, the Corporation may have to follow due process and it is open to the petitioner to make representation to the appropriate Authority of the Corporation, who in turn must decide the representation-cum-appeal expeditiously and communicate the decision taken thereon not later than three weeks from today, as assured. If that decision is adverse to the petitioner, the petitioner is free to question the same by way of appropriate proceedings. All contentions in that behalf are left open.

Petition **disposed of** accordingly.

W.P.Nos.3979/2016, 4021/2016 & 4744/2016

Shri U.S.Jaiswal, learned counsel for the petitioners.

Shri K.S. Wadhwa, learned Additional Advocate General for the respondents-State.

Shri Anshuman Singh, learned counsel for the Corporation.

Heard counsel for the parties.

From the show cause notice issued by the Corporation, it is amply clear that the structures occupied

by these petitioners are obstructing the road line. The Corporation has proposed to lay 120 feet wide road at the given site. That work has been held up due to obstruction of these structures which are the only structures to be removed by the Corporation. The subject structures could not be removed because of the interim protection given by the Court on 01.03.2016 by the learned Single Judge, which obviously is in conflict with the directions given by the Division Bench of this Court in Public Interest Litigation to the Corporation to ensure removal of all the structures obstructing the road line. As a result, no indulgence can be given to these petitioners.

Counsel for the petitioners submits that in that case, one week's protection be given to the petitioners to remove themselves from the structures along with their family members and the structures can be removed after 05.04.2016.

In view of this fair stand taken by the petitioners, we impress upon the Corporation not to precipitate any action till 04.04.2016 in respect of the structures which are subject matter of these two writ petitions only, but, the Corporation must report compliance about removal of even these structures to this Court on **06.04.2016**. To be listed

under caption “**Top of the List**” for that limited purpose.

W.P.No.4065/2016

Shri R.N.Singh, learned Senior counsel with Shri H.K.Upadhyay, learned counsel for the petitioner.

Shri Saurabh Sunder, learned counsel for the respondents No.2 and 3.

Heard counsel for the parties.

After considering the grievance of the petitioner, we called upon the counsel for the Corporation as well as the State to suggest some modification in the joint action plan submitted to the Court by the concerned Authority so as to assuage the apprehension of some of the affected persons, in particular, regarding the process of measurement of road. In this context, we find that the issue can be dealt with by the Authorities by providing some in-built mechanism so as to redress the grievance of the affected persons.

We have taken note of the constitution of the survey, assessment and measurement team consisting of all the relevant duty-holders. After the survey assessment and measurement has been done by the said team and if there is any grievance in that behalf, it would be appropriate that the Additional Commissioner and Additional Collector

should make themselves available to resolve those issues preferably on the spot or at the earliest opportunity before proceeding with further action. For that, Clause B.i can be added to paragraph 3 of the Action Plan.

Counsel for the Corporation as well as State submitted that appropriate modification will be done and presented to the Court on the next date. Similarly, modification may be necessary in paragraph 2 of the Action Plan. After the activity ascribable to Clause (C) contemporaneously, the Corporation must commence the work of construction/expansion of the given road, which may obviate fresh encroachment after the removal of the structure obstructing the road line. Even this change may be incorporated in the Action Plan before the next date.

The grievance of the petitioner is that there is possibility of improper measurement of road width and to identify the centre point of the road. We find that if the above value addition is done to the Action Plan, grievance such as this can be redressed at the earliest opportunity without causing any hindrance in the further action necessary for removing all the structures obstructing the road line and construction of road in question.

Counsel for the petitioner has invited our attention to

Annexure P-5 at page 79. He submits that if the structure belonging to the petitioner is likely to be affected and removed the petitioner may be entitled for compensation in that behalf as granted in Writ Petition No.13148/2006 decided on 13.09.2006. We find merits in the submission made by the counsel for the Corporation that liability to pay compensation is governed by the provisions of Section 306 of the M.P. Municipal Corporation Act, 1956 as soon as the land is added to the street by setting back or removal is deemed to be the part of the public street and vest in the Corporation. As a result of vesting also, reasonable compensation may be payable in terms of the proviso below sub-Section (1) of Section 305.

Be that as it may, the remedy for affected person at best is to apply for compensation but that would not prevent or be an impediment for the Corporation to remove the structures which are obstructing the road line for effectuating the Action Plan submitted before this Court and which action is being monitored by this Court.

For the time being, we defer the hearing of this petition to **30.03.2016**.

The interim order dated 01.03.2016 and continued thereafter should be no impediment for the statutory

Authorities to proceed in the matter to ensure timely execution of the Action Plan for removal of obstruction falling within the road line, which action is being monitored by this Court by following due process and in accordance with law.

W.P.No.4117/2016

Shri G.K.Shrivastava, learned counsel for the petitioner.

Shri Anshuman Singh, learned counsel for the respondent/Corporation.

Heard counsel for the parties.

Counsel for the Corporation submits that the Corporation has already initiated action against the occupier and owner of the building by issuing show cause notice dated 26.03.2016. After considering the response of the petitioner, further action would be taken in accordance with law. Therefore, the petitioner is free to pursue the remedy as may be permissible in law.

Counsel for the petitioner submits that according to the petitioner, the boundary wall marked by the petitioner is within the permissible limits and land owned and possessed by the petitioner. It is not obstructing the road line as such. Nevertheless, if the officials of the

Corporation were to point out the correct location upto where the road line passes through the land owned and possessed by the petitioner, the petitioner will take necessary corrective steps of altering the boundary wall without any loss of time. That would be without prejudice to the rights and contentions of the petitioner to pursue claim for compensation or set back as per law. We are not expressing any opinion on the merits of that controversy.

Post this matter on **06.04.2016** along with companion cases.

W.P.No.4159/2016

Shri R.P.Khare, learned counsel for the petitioner.

Shri K.S.Wadhwa, learned Additional Advocate General for the respondents/State.

Shri Anshuman Singh, learned counsel for the respondent/Corporation.

Heard counsel for the parties on admission.

Relief claimed in this petition is to direct the respondents to acquire the land of the petitioner in accordance with the provisions of the Municipal Corporation Act or the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and to pay compensation to the

petitioner in respect of land falling within the area for road widening.

Notably, the petitioner has not challenged the show cause notice issued by the Corporation on 04.02.2016 (Annexure P/6) in the present petition. We are conscious of the fact that the petitioner has made some representation to the Commissioner dated 08.02.2016 (Annexure P/7). That representation will have to be decided by the Commissioner on its own merits in accordance with law.

Reverting to the claim made in this petition, the petitioner will be free to pursue proceedings as may be permissible for claim of compensation stipulated in the respective enactment under which the area is affected because of road widening and obviously, only after substantiating the fact that petitioner was the owner of such land and that building affected by the action was constructed after obtaining necessary permission from the Municipal Authority.

Petition **disposed of** accordingly.

W.P.No.4257/2016

Shri Abhishek Arzaria, learned counsel for the petitioner.

Shri K.S.Wadhwa, learned Additional Advocate

General for the respondents/State.

Counsel for the respondents/State submits that the plot and structures referred to in this petition are falling within the road line.

Counsel for the petitioner is disputing this position. He submits that as per his information no road line passes through the subject plot.

Let the Corporation state on affidavit the correct factual position in this regard.

List on **30.03.2016**.

W.P.No.4428/2016

Shri Shashank Shekhar, learned counsel for the petitioner.

Shri Anshuman Singh, learned counsel for the respondent/Corporation.

Heard counsel for the parties on admission.

Counsel for the petitioner submits that only indulgence sought by the petitioner is to allow the petitioner to occupy the structures for another two months time within which the shifting process of the petitioner Bank to another premise will be completed. The petitioner is confident that the petitioner will be able to complete the shifting process well before the specified time of two

months.

As the petitioner is engaged in Banking activity, may take some time to make logistical provisions for banking operations including proper safety vaults and other measures which may be time consuming. For that, two months time is sought by way of abundant precaution. The petitioner Bank is free to make representation to the Commissioner, Municipal Corporation who may take appropriate decision keeping in mind that the petitioner is engaged in banking activity and including investments made in petitioner-Bank by common public in and around the said Bank. After such decision is taken, it may be communicated to the petitioner and also placed before the Court on the next date when Contempt Case No.913/2014 is notified for further hearing.

Petition **disposed of** accordingly, leaving all questions open.

W.P.Nos.15367/2015 & 18123/2015 & 21003/2015

Parties through their learned counsel.

List these matters along with Conc.No.913/2014 and companion cases on **30.03.2016**.

(A. M. Khanwilkar)
Chief Justice

(Sanjay Yadav)
Judge