



RAJASTHAN HIGH COURT
HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 20387/2023

Sitaram Sharma Son Of Shri Sualal Sharma

----Petitioner

Versus

The State Of Rajasthan

----Respondent

Connected with

S.B. Civil Writ Petition No. 16213/2023

S.B. Civil Writ Petition No. 17130/2023

S.B. Civil Writ Petition No. 16846/2023

S.B. Civil Writ Petition No. 17131/2023

S.B. Civil Writ Petition No. 17304/2023

S.B. Civil Writ Petition No. 20407/2023

S.B. Civil Writ Petition No. 9649/2024

S.B. Civil Writ Petition No. 10445/2024

S.B. Civil Writ Petition No. 10473/2024

For Petitioner(s) : Ms. Pallavi Mehta.
Mr. Nikhilesh Katara with
Mr. Vishnu Kumar Sharma.
Mr. M.S. Raghav with
Mr. Vishwas Saini.

For Respondent(s) : Mr. Anuroop Singhi through V.C.
Mr. Arjun Parashar.
Mr. Nitish Kumar Bagri with
Ms. Shretima Bagri.

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN (V.J.)

Order

26/06/2024

1. We are only considering the interim prayer in item Nos. 206 to 212, 220, 228 and 229, looking to the fact that we are assigned the work of Vacation Bench.



2. All these matters have arisen out of **order dated 30.07.2021 in D.B. Civil Writ Petition No. 2929/2019**, wherein Hon'ble Division Bench after considering the judgment in case of **Gulab Kothari vs. State of Rajasthan : 2017 (1) WLC 562**, has issued directions in following manner:-

"9. In this view of the matter, the writ petition is allowed. The respondent-Jaipur Development Authority is directed to identify all the encroachment over the public road from Mansarovar Metro Station to Sanganer Flyover and other areas specified as aforesaid within a period of one month from the date of this order. After identifying the encroachment made, encroachments removal drive shall be undertaken and all encroachments shall be removed within a period of three months thereafter."

3. Thereafter, this matter came up before Hon'ble Division Bench on 10.10.2022, wherein it has been pointed out that in 357 cases as submitted before the Court, replies have been filed. The Court has directed that the Authority shall proceed to pass appropriate orders upon due consideration of material. Thereafter, the matter was further heard by Hon'ble Division Bench on 23.02.2023, 26.04.2023, 26.05.2023, 17.10.2023 and 15.03.2024.
4. Learned counsels for the petitioners while relying upon judgment of Hon'ble Supreme Court in the case of **Indore Development Authority v. Manoharlal & Ors.: (2020) 8 SCC 129**, submits that the writ petition(s) are pending before this Hon'ble Court and in the month of June, when there is vacation in this Hon'ble Court, the respondent- JDA has initiated the drive to demolish the construction over the



private property of the petitioner(s) in the garb of encroachment.

5. Learned counsels further submitted that initially a Notification under Section 4 of the Land Acquisition Act was issued and later, Notification under Section 6, and thereafter, an award was passed, but the possession of land was not taken till date. Learned counsel(s) further submitted that in the year 2002, the land was de-acquired and a Notification was issued, but after a suo moto cognizance by this Hon'ble Court, the Government had withdrawn the Notification in the year 2008 and same was challenged by the petitioners before this Hon'ble Court.
6. Learned counsels further submit that pending challenge of the Notifications, the JDA, all of sudden started to remove the construction on private land owned by the petitioners, in the name of directions of Hon'ble this Court.
7. Learned counsels further referred Section 72 of the JDA Act, 1982 and submitted that the power to remove encroachment is well defined by the legislature and the authorities to remove any encroachment when it is upon public land. Learned counsels further submitted that in case, a land is a private land, then the JDA has no Authority to remove any construction whatsoever under Section 72 of the JDA Act.
8. Learned counsels further submitted that the petitioners have applied before the JDA for Regularization and Patta, for which, a notice was also published for inviting objections, which clearly shows that the JDA has recognized the rights



of the petitioners, but all of a sudden for ulterior motives, they have started demolition by taking advantage of vacations in this Hon'ble Court. They further submitted that the petitioners are either Khatedar or Patta Holder of the Society and have rightful entitlement to remain on the property as their rights were not adjudicated by any judicial forum. Learned counsels further referred Rehabilitation Scheme of 2014 and New Act of Land Acquisition, 2013. Learned counsels further submitted that the notice to remove so called encroachment is itself illegal and beyond the Authority of the JDA, therefore, they are seeking for a stay on immediate demolition on the property owned by the petitioner(s).

9. Aforesaid contentions were opposed by learned counsels for JDA on the ground that they are being directed by Hon'ble Division Bench for removal of encroachment and under the directions of Hon'ble Division Bench, they are working to remove the encroachment of the petitioner(s).
10. Learned counsels further pointed out Section 3 of the Rajasthan Lands (Reconstruction of Transfer) Act, 1976 and submitted that once the land is acquired and award is passed, then the land vest in the JDA and no one acquires any right, title or interest in the property acquired by the JDA. Learned counsels also submitted that Hon'ble Division Bench has directed them to remove encroachments within one and a half month, failing which, the officials of JDA



would be held liable for not following the directions of this Hon'ble Court.

11. Learned counsels further referred the provisions of Land Acquisition Act and submitted that once award is passed, the land automatically vest in the JDA and according to Master Plan, the development work has to be carried out after removing the encroachment of the petitioners.
12. Heard learned counsel for the parties and perused the material as referred by learned counsels for the parties.
13. Since, we are a Vacation Bench and we are only considering theses cases for a very limited purpose with object not only to provide access to justice, but also to redress the grievances of the petitioner(s), cropped-up during vacation of this Hon'ble Court.
14. We have perused the order passed by Hon'ble Division Bench in DBCW No. 2929/2019, as both the parties have relied upon the order, passed in PIL.
15. In para No.1, the petitioner Babu Lal Sharma has sought direction to remove encroachment on New Sanganer in the area of Mangal Mandir, Cheel Gadi Restaurant opposite Saint Wilfard College and Arawali Marg, V.T. Road, Heera Path, Rajat Path and Swarn Path of Jaipur.
16. A perusal of referred material also indicated that the land was initially acquired for the purpose of development of Prithviraj Nagar, which was later de-acquired. It is also admitted fact that several constructions were raised on the





land acquired by the JDA (State Government) and a large part of land was already regularized and Pattas were issued.

17. Except SBCW Nos. 9649/2024, 10445/2024 and 10473/2024, others writ petitions were filed in the year 2023 and they are pending before this Hon'ble Court.

18. Hon'ble Division Bench has passed a general direction in PIL, which clearly means that the individual case of the petitioner(s) were neither examined nor adjudicated. A perusal of directions of Hon'ble Division Bench on 10.10.2022, reflect that the JDA would be under obligation to initiate removal of encroachment unless there is an interim order/stay order passed by any higher authority or by the court of law. Hon'ble Division Bench has further recognized the right of hearing and passing of appropriate order by the Authority concerned.

19. Now, a question is posed before us and that is very pertinent particularly in light of recent judgment of Hon'ble Supreme Court in the case of **Kolkata Municipal Corporation v. Bimal Kumar Shah : 2024 INSC 435**, wherein a two Judge Bench of Hon'ble Supreme Court on 16.05.2024 held that there are 07 Sub-Rights under Article 300-A of the Constitution of India and they were defined as under:-

- "i. **Right to Notice:** Duty of the State to inform the person that it intends to acquire his property.
- ii. **Right to be Heard:** The duty of the State to hear objections to the acquisition.



- iii. **Right to Reasoned Decision:** The duty of the State to hear objections to the acquisition.
- iv. **Duty to Acquire Only for Public Purpose:** The duty of the State to demonstrate that the acquisition is for public purpose.
- v. **Right of Restitution or Fair Compensation:** The duty of the State to retribute and rehabilitate.
- vi. **Right to an Efficient and Expeditious Process:** The duty of the State to conduct the process of acquisition efficiently and within the prescribed timelines of the proceedings.
- vii. **Right of Conclusion:** Final conclusion of the proceedings leading to vesting."

20. Hon'ble Supreme Court stressed that these Sub-Rights mark the real intent of the Right to Property under Article 300-A of the Constitution of India and non-compliance with these, will amount to a violation of the Right, being without the Authority of Law.

21. After considering aforesaid principle, when we look at the record, then no specific material is placed by the JDA with regard to the present petitioners, wherein the grievances of the petitioners were redressed in the manner as provided hereinabove as considered by Hon'ble Supreme Court in the case of **Kolkata Municipal Corporation v. Bimal Kumar Shah (supra)**. At this stage, neither we are considering the locus of the petitioners, nor examining their title except that their claim before the Court is that they are in possession of a private land and not a public land.



22. At this state, we are also not considering the judgment in the case of **Indore Development Authority v. Manoharlal & Ors. (supra)**, wherein under the old Land Acquisition Act, 1894, there are some guidelines with regard to lapse of the proceedings, but there is protection of proceedings as well. Similarly, we are not considering the provision under the New Land Acquisition Law (The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013) and the State Policy of 2014 for rehabilitation of affected persons.

23. As Hon'ble Division Bench has not passed any specific order with regard to petitioner(s) are concerned, therefore, if the petitioner(s) have a right to continue to remain in possession on the basis of title as claimed by them, then the order of Division Bench is not applicable upon them, but same has to be examined by the Court of Law. The petitioners are before us and by a thumb Rule, we cannot throw them out before ventilating their grievances.

24. Since, we are Single Judge, Vacation Bench and the order passed by Hon'ble Division Bench is general in nature for removal of encroachment, but if any person has any grievance on the basis of his rightful claim, then he can seek remedy. As a stopgap arrangement, we are inclined to grant protection to the petitioner(s) on private property owned by them till their matter is considered by a Regular Bench after Vacation.



25. In view of the aforesaid, I am of considered view that as the petitioner(s) are entitled for protection in exercise of powers under Article 226 of the Constitution of India, issue notice to unserved respondent(s).
26. Additional set of notice be sent through registered speed post as well.
27. In the meanwhile, the respondent-JDA is restrained from demolishing the construction of property of the petitioner(s) on private land, having rightful title of the land.
28. List all these matters before Regular Bench on 05.07.2024 for hearing.

(ASHOK KUMAR JAIN) (V. J.), J

PKS/206to212-220&228-229