

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SMT. JUSTICE SUNITA YADAV

&

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

WRIT APPEAL No. 760 of 2022

KRISHNAKANT JAISWAL

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

*Shri Anand Vinod Bhardwaj with Shri Pawan Kumar Dwivedi,
learned counsel for the Petitioner .*

Shri Prashant Sharma, learned counsel for the Respondent [R-1].

Shri S.S. Kushwaha appearing on behalf of Advocate General.

Reserved on: 06/08/2024

Delivered on: 31/08/2024

ORDER

Per: Justice Milind Ramesh Phadke.

1. The instant Writ Appeal under Clause 2(1) of MP Uccha

Nyayalaya (Khand Nyaypeeth Ko Appeal) Act, 2005 is preferred against the order dated 17.06.2022 passed in WP No.1523/2022 whereby learned Writ Court without going into the merits of the matter had disposed of the writ petition in the light of the order dated 04.05.2022 passed in **WP No.26757/2021 (Smt. Renu Sharma(Mishra) and Another vs. State of M.P. and Ors)**.

2. The said order has been assailed on the ground that the ratio of the order passed in the case of Smt. Renu Sharma (supra) was not applicable to the present case, since in the said case, the lease agreement between the parties had expired and there was no renewal of the said lease and in that context, the counsel for the petitioner, therein had sought liberty to approach the appropriate forum and in light of the said fact, the said petition was disposed of with following directions:

"(1) In case petitioners take recourse to proceedings before appropriate forum within fifteen days from today, the interim protection against eviction shall continue for fifteen days only.

(ii) In case proceedings are initiated before the Authority or competent Court, the said Authority/Court shall decide the case on its own merits without being influenced by the order passed today.

(iii) With the aforesaid, these writ petitions stand disposed of."

3. In the present case, the lease was very much in existence till 25.04.2027, but it was terminated vide order dated 22.12.2021 alleging that the conditions of the agreement had been flouted, therefore, it was liable for cancellation, with a further stipulation that the possession of the shop be handed over to the corporation within a period of 30 days, else they will have to face legal consequences and since the order passed in the matter of **Smt. Renu Sharma (supra)** was not applicable to the facts of the present case, it was alleged that disposal of the petition in the light of the said order was *per se* illegal.

4. Learned Counsel for the appellant had raised a similar ground that the impugned order passed by learned Single Judge

suffers from perversity and illegality as it has been decided on the basis of an order, the facts of which were not akin to the present case and, therefore, the order passed by learned Single Judge was sought to be set aside and it was further prayed that the present petition be allowed and the notice/order dated 22.12.2021, be quashed.

5. This court while issuing notices vide order dated 09.07.2022, as an interim measure directed the respondents not to forcibly dispossess the appellants.

6. During the course of hearing on 02.08.2022, allegedly officials of the Respondent/State demolished the said shops, therefore, the matter was agitated before this court and vide order dated 26.08.2022, this court directed that till further orders no construction activity or further dispossession/demolition shall take place and it was also made clear that even the debris which was lying on the spot shall not be removed without leave of this court and status quo as it exists today shall be maintained by the parties. In the said order, the Collector was directed to file his affidavit in support of the reply about the course of events of

demolition undertaken without leave of this court.

7. On 15.09.2022, a reply in compliance of the order dated 26.08.2022 was filed on behalf of Collector District Gwalior, wherein in para 5 it was averred that the Revenue Authorities of State of MP including the Collector, Gwalior and SDO Jhansi Road since were not made party and, hence, they were not aware about the proceedings in the instant Writ Appeal and since the appellants had not submitted the copy of the relevant order before them, ignorantly direction to demolish some of the shops possessed by the appellants was passed and some shops were even demolished on 02.08.2022.

8. In para 6 of the reply, it was averred that on 03.08.2022, a joint meeting, including the members of Revenue Authorities, Transport Corporation (MPRTC) and various shop keepers were organized at Collectorate Gwalior, wherein a proposal to rehabilitate the 10 shop-keepers i.e the appellants herein was taken up, upon which the appellants have agreed by putting their signatures as a mark of consent.

9. Further in the application, it was averred that to realize the

proposal of rehabilitation of the appellants a Five Member Committee was duly constituted on 08.08.2022 to prepare a layout plan in respect of alternative land/shops proposed to be granted to the appellants for next 30 years (renewable lease) and, thereafter, to expedite and legalize the rehabilitation process further a proposal to initiate the proceedings exercising the powers conferred under M.P. Nagar Palika (Achal Sampatti Ka Antaran) Niyam 2016 was forwarded by SDO Jhansi Road, which was duly accepted and on 22.08.2022 proceedings in terms of Rule 10 (4) of above stated Rules of 2016 were initiated by forming a fresh Committee as per Nagar Palika Adhiniyam under the Chairmanship of Collector, wherein Committee took decisions for rehabilitation of the appellants.

10. In the reply, it was also averred that after decision was taken by the Committee to allot the alternative land for rehabilitation of the shopkeepers considering the fact that the earmarked piece of land was of the ownership of MPRTC, hence, the proposal was sent to the State Authorities i.e. Principal Secretary, Government of M.P., Transport Department, Bhopal for

grant of NOC or to surrender of ownership rights in favor of Revenue Department. It was only on 22.03.2024, that the Secretary, Transport Department State of MP wrote a letter to the Collector District Gwalior whereby it was informed to him that 2,500 ft.² land of the ownership of the Transport Department has been resolved to be given to the Revenue Department.

11. This fact was brought on record vide I.A. No.2656/2024 dated 02.04.2024 filed by the counsel for the State.

12. Counsel for the State as well as counsel for MPRTC submitted that the process of allotment of shop to the appellants is in progress and soon the appellants would be rehabilitated and shops would be allotted to them.

13. Learned counsel for the respondent/State had further submitted that in wake of allotment of the land to the Revenue Department when the matter was in process while taking into consideration the rules and regulations of M.P. Nagar Palika (Achal Sampatti Ka Antaran) Niyam 2016, it was found that Municipal Corporation is the competent authority within the municipal limits to allot land and taking into consideration the

aforesaid fact the SDO Jhansi Road, Gwalior had prepared the entire proceedings and had forwarded it to the Commissioner, Municipal Corporation. It was further submitted that vide I.A No.6664/2024 filed on 30.07.2024, the aforesaid fact has been brought on record as annexure-R.

14. It was further submitted that now since the matter has been resolved and the Commissioner Municipal Corporation in the light of the Rules of 2016, is a competent authority to rehabilitate the present appellants and is in the process of allotment nothing survives in this present appeal and, therefore, the present appeal can be disposed of as infructuous.

15. On the other hand, learned counsel for the petitioner had further submitted that the statement made by the counsel for the respondent/State is not to be trusted as firstly their officers have demolished the shops even when an interim order passed by this court was in operation and now it had shifted its burden over the Municipal Corporation, who was not a party to the writ petition and, thus, no direction thereof could be given to it for rehabilitating the appellants. It was further submitted that from the

reply dated 15.09.2022 filed by the Collector, it would be evident that the revenue authorities are playing hide and seek and are trying to shift their burden upon the other authorities, as from the said reply it would be evident that a total false statement was made on oath by the Collector that he was not aware of the interim order dated 09.07.2022 passed by this Court, when the said order was passed in presence of the Government Advocate representing the State and merely on the premise that he was not a party to the proceedings, he is trying to wriggle out of his miss-deeds which shows the basic character of State Authorities, in disobeying the orders of the Courts which amounts to contempt of court for which they are required to be punished. It was further submitted that for the said purpose separate contempt petitions are already pending.

16. Heard the counsels for the parties and perused the record.

17. In the Writ Appeal challenge is made to the order dated 17.06.2022 passed by learned Single Judge, who had disposed of the writ petition in the light of the order dated 04.05.2022 passed in the matter of **Smt. Renu Sharma (Supra)** on the ground that

the order on the basis of which the Writ Petition was disposed of was not applicable to the facts of the present case as therein the lease of the party had expired and was not renewed, but herein case the lease was very much in existence, but the same was cancelled on some extraneous grounds, thus, setting aside of the order passed by learned Single Judge and quashment of the notice/order dated 22.11.2021 issued by Respondent No.2 to 3 was prayed for.

18. The challenge on the aforesaid ground would have been of some consequence if the present situation of rehabilitation of the appellants would not have been thought of by the respondent, but since the process of rehabilitation of the appellants herein have reached to the extent of allotment of shops to the appellants, though on a different site and is laying with the Commissioner, Municipal Corporation, this court, without going into the merits of the matter, deems it fit to dispose of the present appeal with a direction to the Commissioner Municipal Corporation to allot land/shop to the appellants herein in an expeditious manner.

19. Though this court has not gone into the merits of the matter,

but is constrained to observe the behaviour of the Revenue Authorities, specially the then Collector, Gwalior who had in total disregard of the interim order of this Court dated 09.07.2022 had carried out demolition activities on 02.08.2022. Though this court vide order dated 26.08.2022 had directed the Collector to submit reply along with his affidavit to demonstrate the course of events of demolition, which was carried out without taking leave of this Court, to which a reply was submitted on 15.09.2022 and to had given a very lame excuse that since none of the Revenue Authorities including him was a party to the Appeal, therefore, he was not in the knowledge of the interim order dated 09.07.2022. The explanation afforded by the Collector is not ingestible, as firstly at the time of passing of the interim order, State was represented through Government Counsel and Secondly, when the appellants were fighting from tooth and nail for their rights and when the appellants were called by the Collector on 02.08.2022 for talks, it is not possible that they would not had informed him about the interim order or would not carry along with them the interim order of this court. Since the matter pertains to the shop

situated at bus stand Lashkar Gwalior, this Court presumed that it was very well within the knowledge of the Collector, Gwalior being the Revenue head of the district and even though he was having knowledge, he in total disregard of the command of this court had ordered the demolition of the shops, which is contemptuous.

20. Though the aforesaid act of the then Collector Gwalior amounts to contempt, but this court taking a lenient view, as a matter of caution, directs him not to repeat such an act in future.

21. Chief Secretary State of MP is directed to give the then Collector Gwalior a word of caution and advise him not to repeat such act which would be derogatory to the orders of this court and may cost him severely.

22. Thus, the present Writ Appeal is **disposed of** with a direction to the Commissioner, Municipal Corporation to allot land/ shops to the appellants within a period of **three months** from the date of receiving of certified copy of this order. It is further observed that till the allotment of land/shops to the appellants is made, the interim order dated 26.08.2022 shall be in

operation.

23. With the aforesaid direction, the appeal stands **disposed off**.

24. Office is directed to send the copy of this order to Chief Secretary, State of M.P.

CC as per rules/directions.

(Sunita Yadav)
Judge

chandni/- **31/08/2024**

(Milind Ramesh Phadke)
Judge

31/08/2024