

(2018) 06 CHH CK 0078
In the Chhattisgarh High Court
Case No : WPIL No. 135 Of 2017

Manish Mahajan

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 19-06-2018

Acts Referred:

Constitution Of India, 1950 — Article 141, 144

Citation : (2018) 06 CHH CK 0078

Hon'ble Judges : Thottathil B. Radhakrishnan, CJ; Parth Prateem Sahu, J

Bench : Division Bench

Advocate : Varun Sharma, Y.S. Thakur, Anumeh Shrivastava

Judgement

Thottathil B. Radhakrishnan, CJ

1. We have heard the learned counsel for the Petitioner, the learned Additional Advocate General and the learned counsel for Municipal Corporation, Bilaspur.
2. Though amendments have been carried out, we are not inclined to issue any further notice to the Nagar Panchayat Tifra/Respondent No. 7 for the reason that the relief that should come through this Public Interest Litigation is not one that could come through, or as against, the said Nagar Panchayat.
3. The complaint in this Public Interest Litigation is about the encroachment into the limits of a public water body, which is a Talab known as Madho Talab in Tifra village of District Bilaspur.
4. Jagpal Singh and others v. State of Punjab and others; (2011) 11 SCC 396, was rendered by the Hon'ble Supreme Court of India laying down the law that illegal encroachments of village/Gram Panchayat lands shall not be regularized. Certain exceptionally exceptional situations were carved out in that judgment, to be utilized in favour of the marginalized, socio-economically challenged or other sectors which have been mentioned in that judgment. The Apex Court issued directions to all State Governments to prepare schemes for eviction of illegal

unauthorized occupants of Gram Sabha, Gram Panchayat, Poramboke and Shamlat lands. Schemes were to be formulated by the State Governments to provide for speedy eviction of illegal occupants after giving show-cause- notice and brief hearing. Implementation of the directions issued in that case were also to be monitored from time to time through reports to the Apex Court. Paragraphs 23, 24 and 25 of the said judgment are as follows:-

"23. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/ unauthorized occupants of Gram Sabha/Gram Panchayat/ Poramboke/ Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.

24. Let a copy of this order be sent to all Chief Secretaries of all States and Union Territories in India who will ensure strict and prompt compliance of this order and submit compliance reports to this Court from time to time.

25. Although we have dismissed this appeal, it shall be listed before this Court from time to time (on dates fixed by us), so that we can monitor implementation of our directions herein. List again before us on 3.5.2011 on which date all Chief Secretaries in India will submit their reports."

5. In terms of the aforesaid directions, while the State Governments are to frame schemes, it is also the bounden duty of the State Government concerned to ensure restoration of such lands to Gram Sabha and Gram Panchayat for the common use of villagers of the village concerned. The power of restoration or possession is essentially inbuilt also in the authority of the State to deal with such matters, including land conservation, land revenue etc. Therefore, the role of the Gram Panchayat or Gram Sabha or the Nagar Panchayat is only to act on behalf of the villagers and also manage such lands, which are restored from illegal occupants.

6. Hence, it is the bounden duty of the Government to proceed with action in relation to every piece of illegally occupied land which would fall within the orders and directions contained in the Apex Court's judgment in Jagpal Singh (supra). The orders and directions are to be read, understood, applied and obeyed as law laid by the Apex Court in terms of Article 141 of the Constitution.

Apart from that, the constitutional command and requirement in terms of Article 144 of the Constitution is that all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

7. Hence, Respondents No.1 to 5 are directed to act in obedience to the directions contained in the decision in Jagpal Singh's case (supra) and forthwith enforce the restoration of land from unauthorized and illegal occupants to the Gram Sabhas, Gram Panchayats or Nagar Panchayats concerned. This shall be immediately done in relation to Madho Talab in Tifra Village of District Bilaspur. In furtherance of the directions given by the Hon'ble Supreme Court to submit reports and having noticed that there is no effective implementation of any such scheme at least as far as Madho Talab is concerned, we direct the 2nd Respondent to place a detailed Action Taken Report in relation to the directions in Jagpal Singh's case (supra) before the Chhattisgarh State Legal Services Authority through its Member Secretary within a period of 45 days from today. Member Secretary, Chhattisgarh State Legal Services Authority will peruse the said report and place it before the High Court through the Registrar General on the administrative side for further consideration, as may be found necessary by Member Secretary, Chhattisgarh State Legal Services Authority. It will also be open to the Chhattisgarh State Legal Services Authority to seek further directions in such matters since it is within the purview of the Legal Services Authorities Act, 1987 to seek directions for furtherance of environmental protection and ecology management. This writ petition is ordered accordingly.