
(2009) 10 CHH CK 0007
In the Chhattisgarh High Court
Case No : Writ Appeal No. 143 of 2009

Municipal Corporation	Vs	APPELLANT
Mandakim Ram and Another		RESPONDENT

Date of Decision : 21-10-2009

Acts Referred:

Municipal Corporation Act, 1956 — Section 305, 305(1), 322, 322(1), 322(2)

Citation : (2010) 1 CGLJ 260

Hon'ble Judges : Sunil Kumar Sinha, J;Rajeshwar Lal Jhanwar, J

Bench : Full Bench

Advocate : Sanjay K. Agrawal and Kasif Shakeel, for the Appellant; Kiranmayee Nayak, Shamim Rahman, Mamta Mishra and A.S. Kachhawaha, D.A.G. for State, for the Respondent

Judgement

Sunil Kumar Sinha, J.—Being aggrieved with the order dated 1st of May, 2009 passed in a batch of 55 writ petitions by the learned single Judge of this Court, the Municipal Corporation, Raipur (Respondent No. 1 in the writ petitions, hereinafter referred to as "the Corporation") has preferred these writ appeals.

2. The facts, briefly stated, are as under:

(i) The private Respondents/Petitioners had their shops/residential accommodations at Telibandha, G.E. Road, Raipur (C.G).

(ii) For the purpose of widening of the road, on 01.02.2009 some of the private Respondents/Petitioners were served with notices u/s 322/ 323 of the M.P(C.G) Municipal Corporation Act, 1956 (hereinafter referred to as "the Act, 1956") regarding removal of their alleged illegal constructions within 24 hours, failing which, it would be removed by the Corporation and the expenditure incurred for the same would be liable to be recovered from the concerned private Respondents/Petitioners.

(iii) Thereafter, on 01.02.2009 itself, a forcible demolition took place and the alleged illegal constructions were completely demolished by the Corporation.

(iv) Admittedly, the writ petitions were filed after the process of demolition was over.

(v) The private Respondents/Petitioners claimed that they were not in illegal possession, as such, they were not encroachers, therefore, the forcible demolition under the garb of Sections 322 & 323 of the Act, 1956, even without giving breathing time to the Respondents/Petitioners was totally illegal. During the course of hearing of the writ petitions, learned Counsel appearing on behalf of the private Respondents/Petitioners fairly submitted that since the structures have already been demolished, the Respondents/ Petitioners have no other right except the right to reasonable compensation for damages or loss that may be caused as a consequence of the demolition.

(vi) The contention of the Corporation before the learned single Judge. was that some of the private Respondents/Petitioners were encroachers and some of the constructions were not in accordance with law, therefore, the cases of the private Respondents/Petitioners were squarely covered by an earlier judgment passed by a learned single Judge of this Court in W.P(C). No. 1035/2009 Purushottam Sarin v. State of Chhattisgarh.

(vii) The learned single Judge observed vide Para 7 that the Corporation by order dated 23.03.2009 (Annexure A-1 filed in W.P.(C) No. 1796/2009 along-with application for taking additional documents on record dated 30.04.2009) has constituted a Committee in exercise of its powers as under:

(viii) The learned single judge further observed that in another decision in W.P. (C) No. 1118/2009 Jagdeo Singh Garcha v. Nagar Palika Nigam Raipur the matter was disposed of on 26.3.2009 on account of statement made by learned Counsel appearing for the Corporation that the Respondent Corporation shall ensure that the Committee submits its report within a period of one month, as per the order dated 23.03.2009 subject to cooperation of the Petitioners traders. He also submits that after report is received from the said Committee, the terms of agreement contained in Annexure P-4 shall be implemented within a period of 15 days.

(ix) The learned single Judge also observed that on examination, the Committee has found that there are 4 types of land i.e., (i) land allotted on regular patta; (ii) land obtained on authorization; (iii) Bhumi Swami land, and (iv) encroachments, which were demolished for the purpose of widening of the street. Thereafter, referring to the provisions of Section 387 of the Act, 1956, the writ petitions were disposed of in terms of the directions contained in Para 14 of the impugned order as under:

14. This Court, in Purushottam Sarin (supra) has dealt with the cases of encroachers only and as such, the Committee may be re-constituted under the provisions of Sub-section (1) of Section 387 of the Act, 1956 having proper representation from such persons who are aggrieved and compensation or damages may be payable to them. The Committee so constituted for the purpose

of rehabilitation and compensation, as the case may be, within the time prescribed under the provisions of this Act, 1956 shall go into the details with regard to the title and nature of the land while determining compensation and rehabilitation. If there is any dispute with regard to title or the status of the land or the amount of compensation, the Petitioners are at liberty either to raise the dispute before the Committee or to take recourse to competent jurisdictional court as provided under Sub-section (4) of Section 387 of the Act, 1956.

3. Mr. Sanjay K. Agrawal, learned Counsel appearing on behalf of the Corporation would submit that the Committee earlier constituted by the Corporation was for the rehabilitation of the displaced persons, therefore, it was not a Committee in terms of Section 387(1) of the Act, 1956, therefore, the directions for reconstitution of the Committee under the provisions of Sub-section (1) of Section 387 of the Act, 1956 was not proper and the Committee so constituted earlier cannot be directed to go into the details with regard to title and nature of the land.

4. Mr. Agrawal would further submit that the private Respondents/Petitioners had claimed in their writ petitions to dispose of the same in terms of the order dated 29.03.2007 passed in W.P. (C) No. 257/2007 Deepak Kumar Shrivastava v. Municipal Corporation and Anr. but the same cannot be done because in case of Deepak Kumar Shrivastava (supra), the ownership of the land was admitted and he was issued a notice u/s 305(1) of the Act, 1956, whereas in the present cases the ownership of the private Respondents/Petitioners were not admitted by the Corporation and they were served with notices u/s 322/ 323 of the Act, 1956, treating them as encroachers. Therefore, the writ petitions filed by the private Respondents/Petitioners were liable to be dismissed.

5. On the other hand, Smt. Kiranmayee Nayak, learned Counsel appearing on behalf of the private Respondents/Petitioners supported the order passed by the learned single judge, whereas Mr. A.S. Kachhawaha, learned Deputy Advocate General appearing for the State/Respondent No. 2 supported the contentions of Mr. Sanjay K. Agrawal, counsel for the Municipal Corporation.

6. We have heard learned Counsel for the parties at length and have also perused the records of the writ appeals as well as the writ petitions.

7. The Petitioners mainly claimed in their writ petitions that "Respondent No. 1 (the Appellant herein) be directed to give compensation to the Petitioners according to the provisions of Section 387 of the Municipal Corporation Act, 1956 as per the order dated 29.03.2007 passed in case of Deepak Kumar Shrivastava (Supra). Section 387 of the Act, 1956 reads as under:

387. Arbitration in cases of compensation, etc.--(1) If an agreement is not arrived at with respect to any compensation or damages which are by this Act directed to be paid, the amount and if necessary the apportionment of the same shall be ascertained and determined by a Panchayat of three persons of whom one shall be appointed by the Corporation, one by the party, to or from whom

such compensation or damages may be payable or recoverable and one, who shall be Sarpanch, shall be selected by the members already appointed as above.

(2) If either party or both parties fail to appoint members within one month from the date of either party receiving written notice from the other of claim to such compensation or damages, or if the members fail to select a Sarpanch, such members as may be necessary to constitute the Panchayat shall be appointed, at the instance of either party, by the District Court.

(3) In the event of the Panchayat not giving a decision within one month or such other longer period as may be agreed to by both the parties from the date of the selection of Sarpanch or of the appointment by the District Court of such members as may be necessary to constitute the Panchayat, the matter shall, on application by either party be determined by the District Court which shall, in which the compensation is claimed in respect of land, follow as far as may be the procedure provided by the Land Acquisition Act, 1894, for proceedings in matters referred for the determination of the Court:

Provided that--

(a) no application to the Collector for a reference shall be necessary, and

(b) the court shall have full power to give and apportion the costs of all proceedings in manner it thinks fit.

(4) In any case where the compensation is claimed in respect of land and the Panchayat has given a decision, either party, if dissatisfied with the decision, may within a month of the date thereof apply to the District Court and the matter shall be determined by the District Court in accordance with the provisions of Sub-section (3).

(5) In any case where the compensation is claimed in respect of any land or building, the Corporation may after the award has been made by the Panchayat or the District Court, as the case may be, take possession of the land or building after paying the amount of the compensation determined by the Panchayat or the District Court to the party to whom such compensation, may be payable. If such party refuses to accept such compensation, or if there is no person competent to alienate the land or building, or if there is any dispute as to the title to the compensation or as to the apportionment of it, the Corporation shall deposit the amount of the compensation in the District Court, and take possession of such property.

8. A perusal of Section 387 would make it clear that it applies only where an agreement is not arrived at regarding compensation or damages which are by this Act directed to be paid. Therefore, unless there is a direction by this Act to pay compensation or damages, the provisions of Section 387 of the Act, 1956 cannot be invoked. One of the instances where the compensation is directed to be paid by this Act is vesting of the land in the Corporation by virtue of an acquisition u/s 305 of the Act, which provides power to regulate line of buildings.

It provides that if any part of a building projects beyond the regular line of a public street, either as existing or as determined for the future or beyond the front of immediately adjoining buildings the Corporation may subject to Sub-clauses (a) & (b) require by notice either that the part or some portion of the part projecting beyond regular line or beyond the front of immediate adjoining building, shall be removed, or such building when being rebuilt shall be set back to or towards the said line or front and the portion of land added to the street by such setting back or removal shall henceforth be deemed to be part of the public street and shall vest in the Corporation. In such vesting, the Corporation shall make reasonable compensation to the owner for any damage or loss he may sustain in consequence of his building or any part thereof being set back. The text and texture of Section 305 would show that such vesting of the land in the Corporation is automatic and the only right which can be claimed against the Corporation under this Act on such vesting is the right of reasonable compensation which can be claimed by the owner of the land only. Therefore it is clear that when an automatic vesting takes place u/s 305 of the Act of 1956, the owner of the land shall be entitled to reasonable compensation, but if any encroachment is removed saying it to be an obstruction in the street, it would not be a case of vesting and the persons affected by the action of the Corporation while removing such encroachments would have no right to claim compensation under the Act, 1956 as is specifically provided in cases of vesting of the land of a owner in the public street.

9. This would be clear after going through the provisions of Section 322 of the Act, 1956 which deals with the prohibition of obstruction in streets. Sub-section (3) of Section 322 provides that without prejudice to the action under Sub-section (2), the Commissioner notwithstanding anything contained in this Act, may after giving such notice as may be prescribed, cause to be removed any obstruction or encroachment as described in Clause (a) and (b) of Sub-section (1). We may note that Section 322 or any other section following this section under Chapter XXVI never talks about compensation. Therefore, it is clear that if an action of removal of encroachment is taken u/s 322 it shall not be an instance where compensation or damages are directed to be paid by this Act. Therefore, among the two categories of the cases one of encroachers and the other of owners, only the owners would be entitled for reasonable compensation under proviso to Sub-section (1) of Section 305 and the procedure relating to arbitration u/s 387 would be attracted in those cases only. In the present cases, the Corporation is claiming that the private Respondents/Petitioners were encroachers. Therefore, they were served with notices u/s 322/ 323 of the Act, 1956. However, even after their removal, the aforesaid Committee was constituted for their rehabilitation on a suo motu action of the Corporation. Admittedly, the Committee referred to above, was not a Committee for the arbitration as defined u/s 387(1) of the Act and the directions for reconstitution of the said Committee having proper representation from such persons who are aggrieved and other directions relating to Section 387(1) cannot be given.

Therefore, the aforesaid directions contained in para 14 of the impugned order cannot be sustained.

10. Now the question arises as to what relief(s) would have been granted in the writ petitions. As stated above, the private Respondents/Petitioners mainly claimed in their writ petitions that the Appellant/Municipal Corporation be directed to give compensation according to the provisions of Section 387 of the Act, 1956 as per the order dated 29.3.2007 passed in case of Deepak Kumar Shrivastava (supra). The case of Deepak Kumar was disposed of by the learned single judge of this Court by passing the following order:

In view of the foregoing, this petition is disposed of with liberty reserved. to the Petitioner to invoke provisions of Section 387 of the Act, 1956 for appointment of arbitrator in accordance with the said provisions, if so advised. No order as to costs.

11. We note that in the said case, a notice u/s 305(1) of the Act, 1956 was issued by the Corporation as it was admittedly in respect of owner's matter. But the same position does not prevail in this batch of appeals. In the present cases, the private Respondents are claiming themselves to be the owners, whereas the Corporation has not accepted it and has acted u/s 322/ 323 of the Act, 1956. However, we hold that if, in fact, the private Respondents/Petitioners were the owners of their respective properties, their legal rights under the Act cannot be taken away merely on the ground that the Corporation in all its wisdom has chosen to proceed u/s 322 of the Act. The document relating to proceedings of the meeting of the Committee for rehabilitation dated 23.04.2009 has been filed on record. It shows that the Committee found that there were 4 types of cases. (See Page 143 of the Paper Book of writ appeal No. 143/2009). They were - (i) cases of land allotted on regular Patta; (ii) cases of land obtained on authorization; (iii) cases of Bhumi Swami land; and (iv) cases of encroachments. The Committee has also prepared a chart showing the affected persons belonging to such categories. This makes it clear that even the Committee for rehabilitation of the displaced persons had found that there were persons who were the owners or Patta holders or authorized occupants, whose constructions were also demolished by taking recourse to provisions of Section 322/ 323 of the Act, 1956 treating them as the encroachers. We feel that if the Corporation would have granted breathing time to the private Respondents/Petitioners, they would have brought all this to the notice of the authorities of the Corporation and at least the cases of the owners would have been sorted out through the process envisaged u/s 305 of the Act, 1956 and thereafter their cases would have been directly referred for consideration of compensation on account of automatic vesting of their lands in the Corporation. But nothing could be done as the forcible demolition took place in a highly arbitrary manner. During the course of arguments of writ appeals, we had made a query from the counsel for the Corporation that from where they got the time to be mentioned as 24 hours in the notice purported to be issued u/s 322/ 323 of the Act, on this, learned

Counsel for the Corporation could not tell us any basis for mentioning such short period in the notice for removal of the alleged encroachments.

12. Be that as it may, since the Corporation has constituted a Committee for rehabilitation of the displaced persons and according to their own documents, some of the displaced persons/privates Respondents/Petitioners were owners, we deem it appropriate to dispose of these writ appeals on the followings directions:

(i) The directions contained in para 14 of the impugned order dated 1st May 2009 are set-aside;

(ii) The committee constituted for rehabilitation is directed to proceed further and to scrutinize the cases of the Petitioners/private Respondents herein in accordance with the norms prepared by them after giving opportunity to the private Respondents/Petitioners to present their claims;

(iii) The cases of the owners/persons who are entitled to get compensation under the Act, 1956, would be found out and those cases shall be dealt with as per the provisions of Section 305 of the Act, 1956, notwithstanding the fact that they were served with notices u/s 322/ 323 of the Act, 1956 and in such cases, if an agreement is not arrived at with respect to any compensation or damages, the aggrieved party shall have a right to invoke the provisions of Section 387 of the Act, 1956;

(iv) The cases of the private Respondents/Petitioners which are not covered under direction No. (iii) shall be dealt with in accordance with the norms for their rehabilitation, made by the Corporation.

13. Accordingly, the writ appeals stand disposed of with the aforesaid directions.

14. No order as to cost(s).