

(2020) 06 CHH CK 0014
In the Chhattisgarh High Court
Case No : Writ Petition (PIL) No. 53 Of 2020

Priyanka Shukla

APPELLANT

Vs

Municipal Corporation, Bilaspur And Ors

RESPONDENT

Date of Decision : 18-06-2020

Acts Referred:

Citation : (2020) 06 CHH CK 0014

Hon'ble Judges : P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

Bench : Division Bench

Advocate : Romir S. Goyal, Akash Kumar Kundu, Prafull N. Bharat, Mateen Siddiqui, Ruchi Nagar, Alok Bakshi

Final Decision : Dismissed

Judgement

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1. This petition is filed pro bono public by a lawyer of this Court seeking for the following reliefs :

"10. i) Issue a writ of mandamus or any other writ, order or direction in the nature of mandamus to the Respondent authorities allot low-income

housing apartments to families which have been evicted from the CG Housing Board projects in the Imli Bhantha, Bahatarai Geetanjali City and

Bahatarai Ashram in Sarkanda, Bilaspur.

ii) Issue a writ of mandamus or any other writ, order or direction in the nature of mandamus to the Respondent authorities to find suitable alternative

housing for the residents of Chhatpara who will be displaced by the Arpa Development Project, which is close to the river and allows them to continue

with their livelihoods which are dependent on their access to the river.

iii) Issue a writ of mandamus or any other writ, order or direction in the nature

of mandamus to the Respondent authorities to rehabilitate the displaced residents as per the guidelines of the Model Rehabilitation Policy of the Chhattisgarh State.

iv) Direct the respondents to pay compensation to the families of the evicted persons for any losses suffered by them in view of the illegal eviction as deemed fit by this Hon'ble Court.

v) Any other Order as this Hon'ble Court may deem fit and appropriate in the light of the facts and circumstances mentioned hereinabove.

2. Infact, the writ petition was filed on 10.06.2020. On pointing out extreme urgency, it was ordered to be listed on the same day in the 'after lunch

session' and was taken up accordingly. The learned counsel appearing for the Petitioner projected the sad plight of the persons whose cause is brought

out in the above writ petition, pointing out that the said persons, who are occupants of buildings constructed for the economically weaker sections and

low income groups by the State Housing Board, were forcibly being evicted and that the buildings were being demolished, virtually throwing them and

the children to the streets; that too during the COVID-19 pandemic period. The learned counsel pointed out that the occupants were having no place

of abode of their own and were occupying the said buildings on the basis of some oral permission and that they were residing there for quite long. It

was all of a sudden, that the Respondents sought to oust them from the buildings using force and to demolish the buildings, without any rhyme or

reason; despite the fact that applications preferred by the occupants for regularization / rehabilitation are still pending.

3. On receipt of advance copy of the proceedings, Mr. Alok Bakshi, the learned Additional Advocate General pointed out that the houses were

constructed by the Local Authority which was intended to be allotted to the eligible persons under a particular Scheme and that the present occupants

were encroachers. Mr. Prafull N. Bharat, the learned counsel appearing for the Local Authority pointed out that the present occupants were

encroached and broke opened the locks and occupied the buildings which were lying vacant and intended to be allotted to eligible persons under the

particular Scheme. It was also brought to the notice of this Court on 10.06.2020 that, the unauthorized occupants living on the river bank of 'Arpa' and

the slum dwellers were to be rehabilitated under the specific Scheme known as

""Integrated Housing and Slum Development Programme"" (for short, 'IHSDP'). The demolition effected was the unauthorized structures on the said Arpa river bank and the slum area after getting vacant surrender, on rehabilitation. The photographs produced by the Petitioner are in respect of the said instances, which do not have any connection to the cause in relation to the buildings pointed out by the Petitioner in the present writ petition. The occupants of the buildings herein were not law-abiding citizens and after encroachment into the buildings, they had also looped electricity using hooks from the electricity lines passing through the nearby road / passages. The learned counsel had submitted on that day that all the persons whose cause is sought to be projected had been evicted and the buildings had already been taken to custody. It was further pointed out that, most of the persons so evicted had already returned to their original dwelling places, but since there remained about 35 families, they have been taken care of and accommodated in the Community hall of the Local Authority.

4. After the hearing held on 10.06.2020, we passed interim order of 'status quo' and ordered the case to be listed for further consideration on 12.06.2020; simultaneously, directing the Respondents to complete the pleadings. It was also made clear that the order of 'status quo' shall never be taken as a 'green card' by anybody to re-occupy the premises, if they had already been evicted. This Court also directed that, if any of the evictees was virtually wandering on the road, they shall be taken care of, on giving appropriate intimation in this regard and shall be accommodated in the Community hall or such other appropriate place by the Respondents, where such accommodation is arranged.

5. Pursuant to the above direction, both the Respondents State and the Local Authority have filed separate returns. We heard the learned counsel for the Petitioner, Mr. Alok Bakshi, the learned Additional Advocate General and Mr. Prafull N. Bharat, the learned counsel appearing for the Respondent/Local Authority at length, who made submissions with reference to the pleadings brought on record.

6. The learned counsel for the Petitioner reiterated the submissions already made, that the forcible eviction continues and that the Respondents have caused to register some criminal cases, falsely implicating some of the occupants in the above buildings, as a retaliatory measure.

7. According to the learned counsel for the Local Authority, the Petitioner has wrongly clubbed two separate and independent causes of action in one petition; that too without any factual foundation. It is pointed out that the demolition of the structures in the slum at Chatapara has got nothing to do with the occupants of the buildings referred to in the writ petition. Demolition of the structures at Chatapara was after rehabilitating the eligible persons. There is a project of new road construction along with side of river 'Arpa' (both the banks) from the existing Indirasetu to Chantidih Rapta and certain slums situated on the banks of 'Arpa' on both the sides were coming within the purview of the said project. In the said circumstance, an option was given to the residents of the slums to shift to the buildings constructed under the 'IHSDP' Scheme provided by the Local Authority. Many of the persons gave the consent; on the basis of which they were rehabilitated accordingly, particularly, in the COVID-19 situation. People from the entire slum (which included as many as 241 families) were shifted from Chatapara to these IHSDP houses situated at three different locations. Some of the residents of Chatapara slum area had moved this Court by filing writ petitions such as; WPC Nos. 1159/2020, 1160/2020, 1161/2020 and 1162/2020. These matters were finally heard on 09.6.2020 and stand reserved for orders. The Petitioners have not made any attempt to collect the factual data and have virtually suppressed these material facts, even going to the extent of misrepresentation, which is liable to be deprecated. The learned counsel points out that 'IHSDP' Scheme has been launched by the Central Government for having an integrated approach in ameliorating the conditions of the urban slum dwellers who do not possess adequate shelter and reside in dilapidated conditions. As provided under paragraph 3 'Coverage' of the 'IHSDP' Scheme, the target group under the scheme is 'slum dwellers' from all sections of the community, through a cluster approach and as per paragraph 5 'Financing Pattern', the sharing of funds would be in the ratio of 80:20 between Central Government and State Government. This being the position, the houses constructed / identified under this Scheme cannot be allotted to any encroachers, whose cause is sought to be projected by the Petitioner in the writ petition.

8. Mr. Prafull N. Bharat, the learned counsel for the Respondent / Local Authority submits that the very description given by the Petitioner that the

houses from which the persons concerned have been evicted / sought to be evicted were constructed under the "Atal Yojana of the Housing Board

itself is wrong. The Petitioner had originally impleaded the Chhattisgarh Housing Board as a Respondent in the party array, but subsequently the name

has been scored off. It is also submitted that the occupants had moved the Housing Board by filing applications for allotment of the houses and if at all

there is any such Scheme of the State Housing Board, it is always open for such persons to pursue the matter before the Housing Board; which

cannot be a ground for the said persons to continue their encroached occupation of the buildings constructed by the Municipality (for allotment to the

deserving persons under the 'IHSDP' Scheme). It is also pointed out that the reliance sought be placed on the judicial precedents{ Shantistar Builders

v. Narayan Khimalal Totame reported in AIR 1990 SC 630, PG Gupta v. State of Gujarat reported in 1995 Scale (1) 653 and Olga Tellis v. Bombay

Municipal Corporation reported in AIR 1986 SC 180} in the writ petition is quite out of context, as the said judgments have been rendered in different

contexts and are not applicable to the case in hand. It is also added that, it is not a question of tenancy or any permissible occupation and the persons

concerned started occupying the buildings after breaking open the locks and looping electricity using hooks from the nearby supply lines, paying scant

regard to the rule of law.

9. The learned counsel further points out that the buildings concerned were identified to be allotted to the eligible slum dwellers who had to be evicted,

under the 'IHSDP' Scheme. As borne by Annexure-R-1A dated 16.09.2019 (produced along with the return), a total of 2900 houses were to be

constructed under the 'IHSDP' Scheme and by that time, construction was completed only in respect of 1024 houses and accordingly, a proposal was

put up for allotment. The proposal was approved and forwarded for further steps as per proceedings dated 17.10.2019, but in the meanwhile, Election

was declared in November / December and the Election proceedings could be completed for electing the Mayor only in January, 2020. This being the

position, the proposal to effect the allotment made in September, 2019 could not be finalized and the allotment could not be effected immediately. It

was the reason for the above buildings to remain under lock and key, which came to be unauthorizedly occupied by the persons concerned after

breaking open the locks. Immediately, on coming to know about the high handed action, the Timekeeper appointed in the area by the Local Authority,

brought it to the notice of the Executive Engineer of the Local Authority by filing necessary proceedings. It was also pointed out that, when he resisted

the encroachment, he was abused and threatened of dire consequence. On receipt of the complaint from the Timekeeper, the Local Authority

preferred a complaint before the Police and since no immediate action was taken, the matter was reported to the Superintendent of Police as well.

Later, on taking further steps, Police help was provided. Since the names and particulars of the occupants were not known to the Local Authority, a

'general notice' was issued, asking to effect vacant surrender. Since the said notice was not accepted, it was pasted on the doors of the buildings. This

being the position, the averments and allegations raised by the Petitioner that the occupants were sought to be ousted without notice does not hold any

water.

10. It is also brought to the notice of this Court that in the course of further proceedings, the Police offered necessary help and the Officers of the

Local Authority went to the spot with Police Force for taking the buildings in possession. Many of the occupants vacated the premises and went back

to the places where they were dwelling earlier. Some of the occupants resisted and about 13 persons forcefully prevented the Public Officers from

doing their duty and they were pelting stones at the Department / police vehicles causing serious damage. This led to registration of FIR (Annexure R-

1/5) for various offences under the relevant provisions of law. It is also brought to the notice of this Court that all the unauthorized occupants as above

have already been evicted and most of them have returned to their places as mentioned already. Since there remained about 35 families, they were

taken care of and shifted to the Community hall as a temporary measure. The learned counsel submits that the direction given by this Court on

10.06.2020 has been honoured and adds that, if any evicted occupants are wandering on the road, they will be taken care of and accommodated in the

Community hall / such other places identified in this regard. The learned counsel points out that, despite the preparedness of the Local Authority in this

regard, nobody has come forward so far. The 35 families accommodated in the Community hall are provided with all the basic requirements for their

health and hygiene, as reflected from the photographs (Annexure R- 1/7) produced along with return.

11. In support of the submissions made by the learned counsel appearing for the Local Authority as discussed above, reliance is sought to be placed on

the verdict passed by the Apex Court in Dr. B. Singh v. Union of India and Others reported in (2004) 3 SCC 363 to the effect that a Public Interest

Litigant should take efforts to collect the data, instead of trying to make a roving enquiry, merely on the basis of some newspaper reports. Similarly,

reliance is also sought to be placed on the verdict passed by the Apex Court in State of Madhya Pradesh v. Narmada Bachao Andolan and Another

reported in (2011) 7 SCC 639 to highlight that the discretionary jurisdiction of this Court may not be extended to the persons whose cause is projected

in the writ petition, who do not have any regard to the rule of law and if at all they are having any grievance, it is for them to pursue the same before

the competent authority, in a legal manner.

12. After hearing both the sides, we find that the Petitioner has miserably failed to substantiate the alleged cause projected in the writ petition, which

has been filed in a casual manner, clubbing different causes of action and producing photographs of demolition at Chatapara, which has nothing to do

with the buildings mentioned by the Petitioner referring to the forceful eviction. The pleadings are also vague. We do not find any tenable ground to

interfere, particularly, when all the unauthorized occupants are stated as evicted from the buildings concerned. Though we are of the view that this is a

matter which is to be dismissed with cost, we presume that the correct factual position might not have been revealed to the Petitioner, who is a

lawyer, by the occupants whose cause is projected herein and hence, reluctantly, refrain from ordering any cost.

13. The writ petition is devoid of any merit. It is dismissed accordingly.