
(2009) 04 CHH CK 0009
In the Chhattisgarh High Court

Purshottam Sarin and Others

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 22-04-2009

Acts Referred:

Constitution of India, 1950 — Article 19, 226, 243W, 32

Citation : (2009) 4 MPJR 14

Hon'ble Judges : Dharendra Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dhirendra Mishra, J.—The above petitions are being disposed of by this common order, as the petitioners herein have impugned the action initiated by the respondents whereby they are being dispossessed from the lawful possession of the Nazul lands by demolishing their shops/residential houses constructed over the land.

2. Case of the petitioners namely Purshottam Sareen & Kum. Urvashi Agarwal, in brief, is that the petitioners and other shopkeepers have constructed their shops on Subhash Marg between Railway Station and Telgahani Naka, Raipur. They are in peaceful and settled possession over their shops since decades and the said shops are their sole means of livelihood. In the year 1940 a dispute arose about the ownership of the disputed land between the then Malgujars and the Government of C.P. & Berar with respect to the ownership of the disputed land and the Nagpur High Court held that the State of Madhya Pradesh is the exclusive owner of the land. After the aforesaid decision the Government of Madhya Pradesh legalized the possession of the petitioners & the petitioners' ancestral interest & title and agreed to give permanent lease to each person for a period of 30 years on a condition of payment of premium as determined by the concerned authority after they complied with the condition. Recommendations were made for permanent Patta for 30 years with renewal clause for another 30 years.

Misc. Petition No. 1231/92 was filed in the High Court of Madhya Pradesh and in the said petition an interim order was passed on 8.4.1992 in favour of the petitioners. The then Additional Collector and the Administrator of the Municipal Corporation addressed a letter (Annexure P-2) to the association categorically mentioning therein that the encroachments within 65 ft. width over the road in question shall only be removed. The above miscellaneous petition was disposed of vide order dated 7.12.1994 (Annexure P-3), as no reply was filed by the respondents, with a direction that if the respondents want this land for widening the road, they should proceed in accordance with law and should not use high-handed practice. However, the State Government did not issue any renewed lease deed despite they had completed requisite formalities for the same. On the other hand, the petitioners were served with a notice u/s 133 of the C.G. Land Revenue Code, 1959 (for brevity 'Code, 1959') mentioning the petitioners as encroachers, whereas, the petitioners are having permissive possession. However, the proceedings u/s 133 of the Code, 1959 was dropped vide order dated 11.2.2009 (Annexure P-4).

W.P. (c) No. 1676/09 was again filed by the other similarly situated inhabitants of the locality and the same was disposed of by this Court vide order dated 9.2.2009 (Annexure P-5). In pursuance of the order dated 9.2.2009 a notice under Sections 322 & 323 of the Municipal Corporation Act, 1956 (for brevity 'Act, 1956') was issued to the petitioners, which was never served on the petitioners and the same was affixed on their boundary walls. The petitioners and other traders went to the office of the respondent Municipal Corporation with reply to the said notice, however, since no one was prepared to accept the reply, they handed over the same to one Kamaldeep, Caretaker. However, respondent No. 5 in a most autocrat manner demolished the entire buildings only by giving half-an hour notice to the occupants in utter disregard of the rule of law and ignoring earlier protective order passed by this Court.

With the above averments the petitioners have prayed that the respondents be restrained from disturbing peaceful possession of the petitioners over the Nazul land; declare that the petitioners are in lawful possession over the Nazul land in question; direct the respondent authorities to reconstruct the structure of the petitioners, as it originally existed, at their cost; and further direct them to pay suitable compensation for the acts of omission and commission of demolition of structure. It has been further prayed that the petitioners be allowed to carry on the business from the said premises after reconstruction without any interference and in case land is actually required for widening of road, alternate reasonable suitable site be provided.

3. Case of petitioner namely Jeev Rakhan Pansari (W.P. (c) No. 1086/09), in brief, is that he is running a betel shop and general stores near Railway Station, Subhash Road, Raipur after purchasing the same from Arun Parmar and others vide registered sale deed dated 31.3.1999 for a consideration of Rs. 90,000/- (Annexure P-2). His name has been duly mutated in the municipal records

(Annexure P-3). He is registered shopkeeper under the Shops and Establishment Act, 1958 and his registration certificate is Annexure P-4. He has also obtained tobacco license (Annexure P-5). The petitioner was served with a notice dated 13.2.2009 (Annexure P-6) whereby he was asked to vacate the said shop within two days, failing which he shall be removed by the authorities under the purported exercise of powers under Sections 322 & 323 of the Act, 1956 and in pursuance of the said notice, major portion of the shop of the petitioner was demolished.

With the above averments, the petitioner has prayed for a direction to the respondents to reconstruct the structure of the petitioner, as it originally exists, at their cost; to pay suitable compensation for their acts of omission and commission of demolition of structure; and to allow the petitioner to carry on the business in the said place after reconstruction.

4. Case of the petitioners in W.P. (c) No. 1574/2009, in brief, is that their places of business are located on Subhash Marg between Subhash Chowk to Telghani Naka. They are in peaceful and settled possession of their respective accommodations and earning their livelihood by running business in the said accommodations since decades. In the year 1976, the then State Government issued orders to the petitioners to deposit balance of premium so that formal lease may be granted and accordingly they deposited the amount and in view of above no order was passed by the revenue authorities disturbing the peaceful possession. However, the State Government did not issue or renew the lease deed in favour of the occupants though requisite formalities were completed way back. These petitioners have further averred that they moved an application for renewal of lease, however, the concerned authority did not pass any order on their application for renewal of lease. The revenue officer vide notice dated 10.2.2009 (Annexure P-7) directed the petitioners to appear in his office on 12.2.2009. On 12.2.2009 the petitioners moved an application for renewal of lease, however, the petitioners subsequently came to know that their application for renewal of lease has been rejected though the same was never communicated to the petitioners.

After W.P. (c) No. 767/2009 was disposed of vide order dated 9.2.2009, the respondent Corporation issued notice of Annexure P-8 under Sections 322 & 323 of the Act, 1956. The same was never served upon the petitioners and it was affixed on their boundary wall. They went to the Municipal office to submit their reply, however, the reply (Annexure P-9) was not accepted and the same was handed over to the Caretaker of the office. Thereafter, buildings/ shops of the petitioners as well as similarly situated inhabitants of Subhash Marg were demolished on half-an hour notice.

With the aforesaid averments, the petitioners have prayed that respondents be directed to rehabilitate and compensate the petitioners for the loss and damages occurred to them. They have further prayed for issuance of writ of prohibition permanently restraining the respondents from making any construction on the

demolished property until & unless the petitioners are rehabilitated and duly compensated.

5. Respondent Nos. 1 to 3 in their counter affidavit have submitted that the petitioners are not lessee as no lease was ever granted in favour of the petitioners by the State/ Department of Revenue in respect of the land over which structures/shops of the petitioners are standing. Since there is no lease in favour of the petitioners, the question of renewal of lease does not arise. The petitioners are encroachers on the aforesaid piece of land as per revenue records available with the respondents. Entire action of demolition is being undertaken by the respondent Municipal Corporation, therefore, detailed para-wise reply to the petitions has not been filed by respondent No. 1 to 3.

6. Respondent No. 4-Municipal Corporation, Raipur, in its common reply to all the petitions stated that the petitioners and other shopkeepers are encroachers of the land bearing Khasra No. 241 area 7.000 acres equivalent to 2.88 hectare situated at Subhash Marg, Raipur. The petitioners do not have any ownership or title of the said land. They do not have any government lease of the said land. The said land is a nazul land and marked as public road in the records of the respondent corporation. As per master plan (Revised Raipur Development Plan, 2021) (Annexure R-1) prescribed width of Subhash Marg is 25 mt. wide. Talks were initiated by the respondent-Corporation with the help of Local Administration with the shopkeepers /inhabitants of Subhash Marg in the month of May, 2008. Minutes of above meetings have been collectively filed as Annexure R-2. While talks were going on, the shopkeepers suddenly stopped attending the meetings when they were asked to produce the documents relating to title/ ownership of their respective lands. Petitioner-Purshottam Sareen personally participated in the said meetings. Shopkeepers had assured that they shall voluntarily vacate their encroachments/possession.

Proceedings u/s 133 of the Code, 1959 for removing encroachment were initiated in the month of May, 2008 itself, however, since the land in question is situated within the urban area and the provision is applicable to the obstructions in road or path or public land of village, the proceedings were dropped. Encroachments of the petitioners are near railway station which are causing traffic and hygienic hazards resulting in severe inconvenience to the public at large and because of this the Additional Divisional Railway Manager, Raipur vide his communication dated 5.2.2009 (Annexure R-4) requested for removal of encroachments and widening of road opposite to Raipur Railway Station. The Corporation was informed by the revenue authorities vide Annexure R-5 that there is encroachment over 2.833 hectares of land of Khasra No. 241 resulting in obstruction of thoroughfare.

The petitioners approached the Corporation and requested for alternate arrangement and assured that they shall remove their encroachments. Since the petitioners and other similarly situated persons had no title or ownership of the land in dispute, they were served with a notice under Sections 322 & 323 of the

Act, 1956 dated 13.2.2009 (Annexure R-6) and called upon to remove their encroachments within two days. Notice was duly accepted by Vishal Sareen, son of petitioner Purshottam Sareen, vide Annexure R-7. On expiry of stipulated period of notice, the respondent Corporation removed the encroachments of the shopkeepers, who were duly served with the notice. However, after passing of the interim order dated 17.2.2009 by this Hon'ble Court, demolition work was immediately stopped. Thus, demolition to the extent of 60% of the total structure has already been completed by 17.2.2009.

From the documents filed by the petitioner Purshottam Sareen, it would be evident that the property in question is shown in the name of Pooja Sareen and there is no document to show the title of petitioner Purshottam Sareen over the structure as well as land. Purshottam Sareen has never informed the respondent Corporation that he has applied for transfer of fresh lease deed in his favour to the State Government and as such he does not have any title or legitimate claim. Orders passed by the High Court in M.P. No. 1231/92 was with regard to then existing master plan and circumstances, however, after formation of the State of Chhattisgarh, new master plan was brought into force in the year 2001 and the same was notified in the year 2008 and therefore, the petitioners are not protected by earlier undertaking. From the petitioners' own pleadings it is evident that they were asked to remove the alleged encroachment on the nazul lands much prior to the issuance of notice and as such, they have sufficient knowledge about removal of the structure. Earlier also notices were issued and on their refusal the same were affixed on their respective premises and subsequently written notice was also served. Allegation of violation of the order passed by the High Court is denied.

In the written submission filed in W.P. (c) No. 1574/2009, the respondent-Corporation has further submitted that on the application of the petitioners for renewal of lease, two separate revenue cases were registered, objections were invited and finally their applications for renewal of lease were rejected on 13.2.2009 by the Nazul Officer. The order sheets have been filed as Annexure R-1. Since the petitioners have not impugned the above order whereby their applications for renewal have been rejected, the same has attained finality.

7. Respondent No. 5 in his separate counter affidavit has submitted that he has no personal grudge either against the petitioners or against anyone and he has acted in accordance with law keeping in view the inconvenience and problem faced by the public at large. Allegation of creating terror or fear has been denied. Allegation of expression of disrespect towards the High Court's orders has also been categorically denied.

8. Mr. B.P. Sharma, learned Counsel for the petitioners vehemently argued that the respondent authorities, in the purported exercise of powers under Sections 322 & 323 of the Act, 1956, on the pretext of widening of road resorted to demolition of shops of the petitioners and other traders of the locality in a most arbitrary manner, without following the statutory provisions of law, in violation of

the High Court. As many as 64-65 large buildings & shops have been fully or partially demolished by the use of 3D machines/ bulldozers.

The petitioners are in settled possession and their possession in the said premises relates to decades back even before coming into force of the Abolition of Proprietary Rights Act. The lands in question were recorded as abadi/maurasi lands in the revenue record. Referring to Part-IV, Sr. No. 1 of the Revenue Book Circulars, it was argued that the lands described as 'abadi land' under the Code, 1959 were to be included as Nazul land after declaration of such villages as town and the persons, who are legally occupying such lands by constructing their dwelling houses, have been declared as Bhumiswamis of the Nazul land. The Act, 1956 came into force in the city of Raipur only on 26.8.1967 and therefore, the persons in possession of the lands prior to coming into force of the Act, 1956 cannot be treated as illegal, trespassers and encroachers, as the laws made thereafter cannot be applied to such persons retrospectively. The occupants of the area were given Bhumiswami rights, they were also asked to deposit premium etc. for granting formal documents for their possession in the shape of lease deeds etc. and in some cases lease deeds have also been executed. The petitioners have entered into various transactions with regard to the said property and registered deeds have been filed to demonstrate that they are in settled possession. Respondent Corporation also accorded sanction to the petitioners to construct buildings.

Petition bearing M.P. No. 1231/92 was filed by various persons in the High Court of M.P. and the same was disposed of vide order dated 07.12.1994 with a direction that "if the respondents want this land for widening the road, they should proceed in accordance with law and should not use highhanded practice".

After W.P. (c) No. 1676/09 was disposed of by this Court on 9.2.2009, a notice dated 13.2.2009 was issued in purported exercise of powers under Sections 322 & 323 of the Act, 1956 and the petitioners were called upon to remove their encroachments within two days, failing which the same shall be got removed by the Corporation at their expenses. The notice was deliberately issued on Friday evening, with a direction to remove the encroachments by 15.2.2009 i.e. Sunday, in order to prevent the petitioners from approaching the Court and structures were demolished by the use of 3D machines and bulldozers on Sunday when respondent No. 5 personally came with the demolition squad and asked the occupants to vacate the premises within half- an hour. A bare perusal of show cause notice would reveal that it is not a notice but an order of removal of possession.

Referring extensively to various provisions of the Act, 1956 it was vehemently argued that Section 322 of the Act, 1956 was not in force prior to 30.5.1994 and in the earlier provisions there is no mention of any permanent structure. Since the structures were in existence on 30.5.1994, the petitioners cannot be proceeded u/s 322 of the Act, 1956. Even otherwise, if it is held that new Raipur Development Scheme, 2021 and Section 322 have retrospective operation, then

also the petitioners and other similarly situated persons cannot be treated as trespassers or encroachers, as they were accorded due sanction for construction of the structure in accordance with the provisions of Chapter-XIV of the Act, 1956. Since the petitioners were granted permission for construction and property tax was recovered from them from time to time, they are entitled to protect their possession on the Principles of Promissory Estoppel and Legitimate Expectations.

Sub-section (3) of Section 322 of the Act, 1956 empowers the Commissioner to remove any obstruction or encroachment as per Clauses (a) & (b) of Sub-section (1) after giving such notice, as may be prescribed, however, no rules/byelaws have been framed by the respondent Municipal Corporation in this regard and therefore, the respondents were precluded from removing the structure in the absence of any statutory rules.

Referring to the judgments of the Hon''ble Supreme Court it was argued that it is settled law that where any judicial process including quasi-judicial and administrative process, ensues civil consequences, the rule of law of natural justice enshrined in the maxim 'Audi Altarem Partem' comes into play. However, in the instant case the petitioners' shops, which were the only source of their livelihood, were demolished without affording opportunity of hearing. Requirement of law is not only fulfilling the formality of notice but requirement is that the time given for the purpose should be adequate in order to enable the aggrieved persons to make representation. In the absence of notice of the kind, the action becomes wholly vitiated. The arbitrariness in the action of the respondents is writ large, as they have acted highhandedly and in utter violation of the fundamental and constitutional rights of the petitioners and therefore, technical objection put forth by the respondents regarding maintainability of the writ petitions has no force and the petitioners cannot be relegated to pursue their remedies before the Civil Court.

Repelling the arguments of the respondents that the impugned notice under Sections 322 & 323 of the Act, 1956 has neither been challenged nor been filed, it was argued that the petitions were filed in hot haste as demolition was going on and therefore, the petitions cannot be thrown away only on this ground since notice issued by the respondents has been filed in other writ petitions.

Reliance is placed on the judgment of Hon''ble Supreme Court in the matter of *Canara Bank and Ors. v. Debasis Das and Ors.*; *Municipal Corporation, Ludhiana v. Inderjeet Singh*; *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan and Ors.*; *Grewal and Anr. v. Deep Chand Sood and Ors.* and *Smt. Kumari Bai and Ors. v. State of C.G. and Ors.*.

9. On the other hand, Mr. Alok Bakshi, learned Government Advocate for respondent-State as also Mr. Sanjay K Agarwal with Mr. K. Shakeel, learned Counsel for respondents- Corporation in their oral arguments as well as in the written submissions submitted that the Municipalities discharge constitutional

responsibility under Article 243W of the Constitution of India which empowers the State Legislature to extend such powers to the Corporation to enable them to function as institution of self-government. It has a constitutional responsibility of urban planning including town planning, regulation of land use and construction of building including roads & bridges under the 12th Schedule of the Constitution.

Referring to Section 19 of the C.G. Nagar Tatha Gram Nivesh Adhiniyam, 1973 it was argued that Raipur Vikas Yozna (Punarvilokit) 2021, (for short 'Yozna, 2021') was approved by the State Government in exercise of powers conferred u/s 19 (1) of the Act, 1973 and the same was published on 7.4.2008 u/s 19 (4) of the Act, 1973. In the said Yozna, the width of Subhash Marg from Gudhiyari Rail Bypass to Railway Station, Raipur has been prescribed as 25 meters. Railway station of the capital city Raipur is classified as "A-1 Class" and declared as 'model station' of Raipur division. It is imperative to provide adequate passengers amenities like circulating area, adequate lighting during night hours, beautification of station and easy approach of railway station from various directions are to be provided by the Railway authorities to the public at large.

Subhash Marg, where disputed structures exist, is situated over Khasra No. 241, which is recorded as the land meant for road. At the instance of the Collector, Raipur / Corporation, meeting of the shopkeepers/traders having unauthorized shops at Khasra No. 241 was convened on 13.5.2008 for amicable settlement. Petitioner-Purshottam Sareen participated in his personal capacity as well as in representative capacity on behalf of the traders of Subhash Marg in the said meeting. After deliberations, on the request of traders, the meeting was adjourned for two days for 15.5.2008. On 15.5.2008 all the traders including the petitioners were directed to submit documents of title to the Revenue Authorities and meeting was adjourned for 22.5.2008, however, in the adjourned meeting the traders including petitioner Purshottam Sareen did not participate. They also did not submit any document of their title. The concerned Tehsildar in his report mentioned that the shops are situated on Khasra No. 241 as per patwari record. In the above meeting it was also resolved to rehabilitate the affected traders/shopkeepers of Railway Gate Nos. 2 & 3 by giving them shops under the 'Mukhyamantri Swalamban Yozna'. The competent revenue authority conducted survey of Khasra No. 241 and submitted his report to the Commissioner, Municipal Corporation, Raipur on 23.5.2008 mentioning about the encroachment on the land bearing Khasra No. 241 meant for road by 64 traders/shopkeepers. From perusal of the report of the Additional Tehsildar it would be evident that petitioner-Purshottam Sareen has encroached over 66 sq. mt., petitioner-Kumari Urvashi Agarwal has encroached over 18 sq. mt., whereas, petitioner Jeev Rakhan Pansari has encroached over 36 sq. mt. of Nazul land.

Section 66 (1) (f) of the Act, 1956 mandates that the Corporation shall make adequate provisions for removing obstructions and projection in public streets and places and in spaces not being private property, which are open to enjoyment of public whether such spaces are vested in the Corporation or the

Government. Public Street is defined in Section 5 (49) of the Act, 1956. Section 322 (1) of the Act, 1956 prohibits any person from erecting or setting-up any wall, fence or any other structure to form an obstruction to or any encroachment upon any such public street without any written permission by the Commissioner. Sub-section (3) of Section 322 empowers the Commissioner to remove any such obstruction or encroachment, as prescribed in Clause (a) & (b) of Sub-section (1) of Section 322 after giving such notice to the persons, as prescribed. As per report of the Additional Tehsildar, the petitioners are the encroachers, who have encroached upon the public road, and therefore, they were served with the notice u/s 322 (1) of the Act, 1956 for removal of encroachment over the street/road.

Petitioners-Purshottam Sareen & Kumari Urvashi Agarwal in their writ petitions have averred that they are in permissive possession of Nazul land for a very long time and therefore, their possession over Nazul land be declared lawful and the respondents be restrained from interfering with their peaceful possession. They have also prayed for the relief of reconstruction of their premises and damages from the official respondents. These petitioners have neither challenged the notice u/s 322 (1) of the Act, 1956 nor have challenged the demolition of their premises. Petitioner Jeev Rakhan Pansari has also prayed for direction to the respondents to reconstruct the structure of the petitioner and to pay a suitable compensation and also to allow the petitioner to carry on the business in the said place. This petitioner has also not challenged the notice issued u/s 322 of the Act, 1956 nor challenged the demolition. Since the petitioners namely Purshottam Sareen & Kum. Urvashi Agarwal have not filed any document with respect to their right/title, whereas, as per document of Annexure P-5 it is clear that they are encroachers of Nazul land, as such they do not have any semblance of legal right in their favour and since, they have clearly pleaded in their writ petitions as well as rejoinder that they are in permissive possession of the Nazul land, the reliefs sought by the petitioners that they be declared in lawful possession of Nazul land and that the respondents be restrained from interfering with the peaceful possession, cannot be granted. Even otherwise such reliefs can be appropriately granted by a competent Civil Court under the provisions of the Specific Relief Act, 1963, as the same involves adjudication of disputed questions of fact requiring recording of evidence and such dispute cannot be gone into in a writ petition under Article 226 of the Constitution of India.

Notice u/s 322 (1) of the Act, 1956 and the consequent action thereupon have attained finality, as the petitioners have neither challenged nor questioned the legality and validity of the notice and therefore, the petitioners cannot be granted the reliefs beyond the scope of prayer made in the writ petitions. Petitioner-Purshottam Sareen has not even produced notice issued u/s 322 (1) of the Act, 1956 and since the petitioners have not impugned the validity and correctness of the notice u/s 322 (1) of the Act, 1956, it cannot be presumed that the official act of issuance of notice u/s 322 of the Act, 1956 has been irregularly performed. (Section 114 (e) of the Evidence Act).

It is settled law that it is wrong to presume that the Government or Corporation will act against the public interest. In the absence of challenge to the notice u/s 322 (1), the petitioners cannot claim the relief of reconstruction, damages and compensation. Even otherwise, the petitioners being encroachers/law violators are not entitled for any relief, as it is well settled that discretion cannot be exercised in such a fashion that it perpetuates illegality. The petitioners have no legal right over the land in question, which is apparent from their own pleadings. Further, from the documents filed by petitioner-Purshottam Sareen, it would be evident that one house was sold by Smt. Dayamati to Smt. Pushpa Sareen, wife of Purshottam Sareen. Since the petitioners have pleaded permissive possession over the nazul land, the applicability/ inapplicability of Act, 1956 is not available to the petitioners. Writ petitioners were not party in M.P. No. 1231/1992, they were also not party to W.P. (c) No. 768/09 and therefore, the arguments of the petitioners based on the orders passed in the above petitions cannot be accepted. Since the legality and validity of notice u/s 322 of the Act, 1956 has not been questioned nor any relief has been sought for quashment of above notice, the ground regarding inapplicability of Section 322 is not available to the petitioners. From the minutes of meetings (Annexure R-2) it would be evident that long deliberations and discussions were held with the petitioners and representatives of the traders for mutual settlement, however, when they did not produce requisite documents with regard to their title and absented themselves in the meetings held on 22.5.2008, it was decided to take appropriate action in the larger public interest for removal of the encroachments. It was also decided to provide shops on humanitarian ground to the shopkeepers/traders of Railway Gate Nos. 2 & 3, which is evident from the minutes of meeting dated 24.5.2008. Encroachment of the petitioners was established by demarcation report dated 23.5.2008 submitted by the competent authority, however, the petitioners did not care to challenge the above demarcation report before any competent court having jurisdiction over the matter and therefore, the petitioners cannot be permitted to challenge the authenticity of demarcation report in these petitions. The decisions relied upon by the petitioners are distinguishable on facts.

Reliance is placed on the judgments of the Hon'ble Supreme Court in the matters of Pratap Singh Alias Babu Ram and Anr. v. Dy. Director of Consolidation, Mainpuri and Ors.; Thakur Kishan Singh (Dead) v. Arvind Kumar; City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla and Ors.; State of Rajasthan v. Bhawani Singh and Ors.; Chandigarh Administration v. Laxman Roller Floor Mills Pvt. Ltd.; Surender Singh v. Central Govt. and Ors.; Oriental Bank of Commerce v. Sunder Lal Jain and Anr.; Abdulla Yusuf v. State of C.G. and Ors.; Indore Municipal Corporation and Anr. v. Kundanlal; Madan Mohan Kaushik v. State of M.P. and Ors..

10. I have heard learned Counsel for the parties.

11. Before going into factual aspects pleaded by the respective parties, this Court proposes to deal with the legal submissions advanced by learned Counsel for the

respective parties.

LEGAL SUBMISSIONS ON BEHALF OF THE PETITIONERS

12. In the matter of Express Newspapers Pvt. Ltd. and Ors. v. Union of India while considering the submissions of the petitioners whether the executive action of the respondents was mala fide and politically motivated, the Hon"ble Supreme Court has observed that "use of power for a purpose other than the one for which the power is conferred is mala fide use of power. Same is the position when an order is made for a purpose other than that which finds place in the order". Referring to its earlier judgments the Hon"ble Supreme Court has further held in Para-20 that "the courts had always acted to restrain a misuse of statutory power and more readily when improper motives underlie it. Exercise of power for collateral purpose has similarly been held to be a sufficient reason to strike down the action. In State of Punjab v. Ramjilal it was held that it was not necessary that any named officer was responsible for the act where the validity of action taken by a Government was challenged as mala fide as it may not be known to a private person as to what matters were considered and placed before the final authority and who had acted on behalf of the Government in passing the order. This does not mean that vague allegations of mala fide are enough to dislodge the burden resting on the person who makes the same though what is required in this connection is not a proof to the hilt, the abuse of authority must appear to be reasonably probable". Considering the allegations in the petition, which stood specifically un-rebutted in the counter affidavit filed by the respondents and also considering overall facts and circumstances of that case, it was held that "the impugned notices issued to the petitioners were not issued bona fide in the ordinary course of official business for implementation of the law or for securing justice but were actuated with an ulterior and extraneous purpose and thus were wholly mala fide and politically motivated".

13. In the matter of Canara Bank¹ the Hon"ble Supreme Court has extensively dealt with the principles of natural justice that is to be followed by judicial, quasi-judicial and administrative authority while making an order affecting the rights of an individual and held thus;

Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen

in his civil life.

In Para-15 it has been further observed that "notice is the first limb of this principle. It must be precise and unambiguous. The time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated."

14. In the matter of Municipal Corporation Ludhiyana² the respondent / owner of the property was served with a notice by the Corporation against her purported illegal construction of shed threatening demolition. Subsequently, on oral request of the respondent, a compounding fee was fixed for condoning the illegal construction, however, the respondent failed to pay the compounding fee. A suit for permanent injunction restraining demolition was filed by the respondent and by an interim order learned Civil Judge restrained the respondent from undertaking demolition of sanctioned construction. However, another show cause notice was issued by the Assistant Town Planner of the Corporation under Sections 269, 270 of the Punjab Municipal Corporation Act directing demolition of the un-authorized construction and ultimately demolition order was issued. Appeal preferred by the respondent was allowed, however, in the meanwhile, un-authorized construction was demolished. In these circumstances, the Additional District Judge ordered that the parties are therefore relegated to the position as if no demolition was done. Writ petition filed by the Corporation was dismissed by the Division Bench of High Court. The Hon'ble Supreme Court dismissing the civil appeal of the Corporation directed the appellant to restore such construction for which order of sanction had been obtained and imposed a cost of Rs. 2,00,000/-.

15. In the matter of Ahmedabad Municipal Corporation³ the questions for consideration before the Hon'ble Supreme Court were (1) Whether the respondents are liable to ejectment from the encroachments of pavements of the roads and whether the principle of natural justice, viz., audi alteram partem, requires to be followed and, if so, what is its scope and content? (2) Whether the appellant is under an obligation to provide permanent residence to the hutment-dwellers and, if so, what would be the parameters in that behalf? Referring to the judgment of the Constitution Bench in the matter of Sodan Singh v. New Delhi Municipal Corporation reported in (1989) 2 SCR 1038 and Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, with approval it has been held thus;

The Constitution does not put an absolute embargo on the deprivation of life or personal liberty but such a deprivation must be according to the procedure, in the given circumstances, fair and reasonable. To become fair, just and reasonable, it would not be enough that the procedure prescribed in law is a formality. It must be pragmatic and realistic to meet the given fact-situation. No inflexible rule of hearing and due application of mind can be insisted upon in every or all cases. Each case depends upon its own backdrop. The removal of encroachment needs urgent action. But in this behalf what requires to be done

by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for passing or re- passing of the pedestrians on the pavements or footpaths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment. If the encroachment is of a recent origin the need to follow the procedure of principle of natural justice could be obviated in that no one has a right to encroach upon the public property and claim the procedure of opportunity of hearing which would be a tedious and time-consuming process leading to putting a premium for high- handed and un-authorized acts of encroachment and unlawful squatting. On the other hand, if the Corporation allows settlement of encroachers for a long time for reasons best known to them, and reasons are not far to seek, then necessarily a modicum of reasonable notice for removal, say two weeks or 10 days, and personal service on the encroachers or substituted service by fixing notice on the property is necessary. If the encroachment is not removed within the specified time, the competent authority would be at liberty to have it removed. That would meet the fairness of procedure and principle of giving opportunity to remove the encroachment voluntarily by the encroachers. On their resistance, necessarily appropriate and reasonable force can be used to have the encroachment removed. Thus considered, we hold that the action taken by the appellant-Corporation is not violative of the principle of natural justice.

16. In the matter of M.S. Grewal and Anr.⁴ the Hon''ble Supreme Court negating the objections regarding maintainability of writ petition observed thus;

The law courts exist for the society and they have an obligation to meet the social aspirations of citizens since law courts must also respond to the need of the people. Currently judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system- affectation of the people has been taken note of rather seriously and the judicial concern thus stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of the civil court''s obligation to award damages. The decision in D.K. Basu has not only dealt with the issue in a manner apposite to the social need of the country but the Court firmly established the current trend of "justice-oriented approach". Law courts will lose their efficacy if they cannot possibly respond to the need of the society - technicalities there might be many but the justice- oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice.

17. In the matter of Smt. Kumari Bai⁵ the writ petitioners questioned the constitutional validity of Section 401 of the Act, 1956 which takes away the right of an aggrieved person of approaching the Civil Court by filing civil suit to obtain immediate and urgent relief without serving statutory notice as required under

Sub-section (1) of that section. Upholding the constitutional validity of Section 401 of the Act, 1956 it has been held that every High Court, under Article 226 of the Constitution, have powers, throughout the territory in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari for the enforcement of any of the rights conferred by Part III of the Constitution of India and for any other purpose. Where the administrative action of the State or other statutory public bodies is violative of the fundamental right or any other right or any statute is open to judicial review. It has been further held that in a case where the plaintiff's fundamental rights are violated by action of the Corporation or its authorities or officers it is open for the plaintiff to move the Supreme Court under Article 32 to enforce his fundamental rights. Thus, it is clear that an application under Article 226 of the Constitution before the High Court complaining of infringement of fundamental rights or any other constitutional right or any other right for infringement of fundamental rights guaranteed in Part-III of the Constitution of India is not barred on the ground that he has an alternative remedy u/s 401 of the Act by way of suit.

LEGAL SUBMISSIONS ON BEHALF OF THE RESPONDENTS

18. Mr. Sanjay K Agarwal, learned counsel for the respondents, in view of admission of the petitioners that they were in permissive possession over the disputed land, placing reliance on the judgment of the Hon''ble Supreme Court in the matter of Pratap Singh⁶ has submitted that permissive possession means possession over the property in question with the leave of the owner. If such person is asked to deliver possession and he declines to do so, it gives rise to a cause of action to the owner on the date on which he refuses to deliver the possession.

19. In the matter of Thakur Singh v. Arvind Kumar the Hon''ble Supreme Court while considering the adverse possession under Article 65 of the Limitation Act, 1963 has observed that "the possession thus initially being permissive, the burden was heavy on the appellant to establish that it became adverse. A possession of a co-owner or of a licensee or of an agent or a permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner. Mere possession for howsoever length of time does not result in converting the permissive possession into adverse possession."

20. In the matter of City and Industrial Development Corporation⁸ the Hon''ble Supreme Court has dealt with the scope of exercise of powers under Article 226 of the Constitution of India by the High Courts and it has been held that `the court while exercising its jurisdiction under Article 226 is duty bound to consider whether:

- a. adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved.
- b. Petition reveals all material facts;
- c. The petitioner has any alternative or effective remedy for the resolution of the dispute;
- d. Omitted.
- e. Omitted
- f. Omitted.

21. In the matter of State of Rajasthan v. Bhawani Singh and Ors. the petitioner asked for several reliefs including the relief to recognize her as full owner of the said plot; to declare that the said plot is a part of the abadi land; to declare that she has a right to construct buildings thereon and for a further direction to the respondents to grant her the requisite permission for construction. Considering the fact that title of the writ petitioner is very much in dispute, it has been held that the disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition.

22. In the matter of Chandigarh Administration¹⁰ it has been held that "it is settled law that unless the allegations are made in the writ petition and a relief to that effect is also prayed for in the writ petition, the High Court is not justified in issuing any order in excess of the relief prayed for in the writ petition".

23. In the matter of Surender Singh¹¹ the Hon''ble Supreme Court in Para-9 of its judgment has held that "copy of the impugned order must be produced and assailed in a writ petition under Article 226 of the Constitution. Where the order is not produced, it would be improper to quash the said order."

24. In the matter of Oriental Bank of Commerce¹² the Hon''ble Supreme Court referring its various earlier judgments with approval has held that "in order that a writ of mandamus may be issued, there must be a legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authorities".

25. In the matter of Abdulla Yusuf¹³ learned Single Judge of this Court also held that "Article 226 of the Constitution of India only empowers the Court to protect a legal enforceable right of a person". In the matter of Indore Municipal Corporation¹⁴ also it has been held that the Court has no power to permit the encroacher to continue his business on a public place on the basis that if he be removed, he has no other means of his livelihood in absence of any statutory powers to this effect.

26. In the matter of Madan Mohan Kaushik¹⁵ the Hon''ble Division Bench of the M.P. High Court while considering the scope of Sections 322, 322A of the Act, 1956 and Article 19(1)(g) of the Constitution of India has held that a mandatory

duty has been cast on the Commissioner, Municipal Corporation to remove the encroachment on the roads and accordingly, directions have been issued by the High Court to the Corporation to ensure that there are no encroachments on the roads.

27. The principles of law that can be deduced on the basis of the aforesaid judgments are that use of power for a purpose other than the one for which the power is conferred or when an order is made for a purpose other than that which is mentioned in the order, tantamounts to malafide use of powers. Where statutory power is misused and particularly when the same is exercised with improper motives for collateral purpose, it has a sufficient reason to strike down the action. It is not necessary for the petitioner to establish that a particular officer is responsible for acting malafidely.

Any judicial, quasi-judicial or administrative order involving civil consequences must be consistent with the rules of natural justice. The orders having civil consequences are to be made after proper notice to the affected person and the time to be given for the purpose should be adequate so as to enable him to make his representation. However, no inflexible rule of hearing and due application of mind can be insisted upon in every or all cases, each case depends upon its own backdrop.

In appropriate cases, to meet the social aspirations of citizens and to provide expeditious relief to an individual when needed, appropriate orders to undo any injustice can be passed and damages may also be awarded and the parties cannot be relegated to the civil courts for that purpose. Where fundamental right of an individual is violated, the aggrieved individual can always approach to the High Court and the Supreme Court under Article 226 and Article 32 of the Constitution of India.

28. If we examine the facts of the present case in the light of the principles laid down in the above judgments relied upon by the respective parties, this Court notice that case of the petitioners, in nutshell, is that they were in settled possession over the disputed land since decades by constructing their shops/dwelling houses over the same. Their predecessors in title were occupying abadi land. After the area was included in the town area, the abadi land was treated as Nazul land by implication of law. Erstwhile State Government decided to confer Bhumiswami right to the old occupants of the Nazul lands. Occupants were asked to pay premium etc. for granting formal documents for their possession in the shape of lease hold right and in some cases lease deeds were also executed. The petitioners as also erstwhile occupants of the disputed lands, treating themselves to be the owners of the property, have entered into various transactions with respect to the disputed property. They also applied for grant of sanction for constructing buildings etc. and the Corporation accorded them sanction after accepting requisite fee. In the earlier round of litigation between the persons belonging to the same locality and the Corporation, the orders were passed to the effect that if the respondents want land for widening of road, they should

proceed in accordance with law and should not use high-handed practice. However, after W.P. (c) No. 768/2009 was disposed of on 11.2.2009, the petitioners were served with two days' notice on 13.2.2009 and illegal demolition was carried out on 15.2.2009 i.e. Sunday, without allowing any time to the petitioners to reply the notice or to avail legal remedy available under the law. Present provision of Section 322 came into statute on 30.5.1994 by amendment. Since there was no analogous provision in the un-amended statute before 30.5.1994 and the possession of the petitioners is admittedly before 30.5.1994, the notice u/s 322 of the Act, 1956 to the petitioners on the basis of amended provisions is illegal.

29. The petitioners have not filed any documentary evidence in support of their above contention to establish that their predecessors in title were occupants of the disputed abadi land, which was subsequently converted to Nazul land after the area was included in town area. There is nothing on record to show that the disputed government nazul land was settled in favour of the occupants by the State on the basis of their old possession. On the contrary, undisputedly, the disputed land is situated over Khasra No. 241, which is mentioned in the revenue record as the land meant for road. However, there is sufficient evidence to show that the petitioners have constructed their shops/dwelling houses over the said land since long and they are in possession. Petitioners-Purshottam Sareen & Kum. Urvashi Agarwal themselves have admitted in their petitions as also in the rejoinder that they are in permissive possession. However, petitioner-Jeevrakhan Pansari claims right on the basis of a sale deed executed by the erstwhile owner in his favour. There is nothing on record to show that the owners had any legal right to the property in question.

The petitioners of W.P. (c) No. 1574/09 have annexed documents of Annexure P-1 being a lease for intra-municipal Nazul for Building purposes in favour of Kanhaiyalal & Gopallal executed on 7.10.1976. They have also filed sale deed executed in favour of Parasram by the lease holder and order of the Nazul Officer whereby the land in question has been directed to be mutated in the name of Parasram and on the basis of which the name of Parasram has been mutated vide order dated 12.9.1991. Subsequently, vide order dated 22.1.2007 the land has been further mutated in the name of petitioner No. 1-Dinesh Kumar on the basis of will executed by the said Parasram. However, there is no specific pleading in the petition with respect to the documents of Annexure P- 1. The petitioners have also averred in the petition that they had applied for further renewal of the lease deed in their favour and they have learnt that their applications for renewal of lease deed have been rejected. Respondent in their written submissions have also stated that application for renewal of lease deed has been rejected on 13.2.2009 and complete order sheets of the proceedings registered on the basis of application for renewal of lease deed has also been filed.

From perusal of the reply filed by the respondent Corporation as also the minutes

of meetings convened for amicable settlement of the disputes between the parties it is observed that the respondents are ready and willing to properly rehabilitate the affected persons.

It is true that notice u/s 322/323 of the Act, 1956 was issued on 13.2.2009 and the petitioners were directed to remove their illegal encroachments within two days, failing which encroachments shall be removed by the Corporation without any further notice at their cost and accordingly encroachments were removed on the expiry of period on Sunday. The respondents have collectively filed the minutes of meetings dated 13.5.2008, 15.5.2008 & 22.5.2008. The petitioners in their rejoinder have not disputed the proceedings recorded in the above meetings dated 13.5.2008 & 15.5.2008 in which the petitioner-Purshottam Sareen and other members, traders and representative of the Station Road Vyapari Sangh participated. In the said meetings the traders were also apprised about the fact that as per development plan width of the road is to be 80 ft (24 meter). The names of traders likely to be affected from widening of the road, have also been recorded in the meeting. Affected persons were called upon to submit all the documents in relation to their possession and the meeting was adjourned for 22.5.2008. From perusal of the documents filed by the petitioners themselves it is found that a notice u/s 133 of the Code, 1959 was issued by the concerned Tehsildar for removal of the encroachments on the basis of encroachment report submitted by the Halka Patwari concerned against 64 individuals with respect to the same piece of land i.e. Khasra No. 241. However, the said proceeding was dropped on the objection of the non-applicants that the encroachments of town area cannot be removed u/s 133 of the Code, 1959, as there is a provision for the above purpose in the Act, 1956.

30. Mr. B.P. Sharma, learned Counsel for the petitioners vehemently argued that provisions of Section 322, which was brought in the statute with respect to permanent structure, and Yozna, 2021, have no retrospective application.

31. Repelling the above argument, Mr. Agarwal submitted that the petitioners have not impugned the notice issued to them u/s 322 of the Act, 1956. Petitioner- Purshottam Sareen has not even filed the notice u/s 322 and therefore, their objections regarding retrospective application of Section 322 cannot be considered in these petitions.

32. From perusal of the relief clause in all the writ petitions, it is evident that the petitioners have not prayed for quashing of notice u/s 322 of the Act, 1956. Even otherwise, Section 322 imposes prohibition of obstructions in the streets, which reads as under:

322. Prohibition of obstruction in streets-(1) No person shall, except with the written permission of the Commissioner granted in this behalf and in accordance with such conditions including the payment of rent or fee, as he may impose either generally or specially in this behalf:

(a) erect or set up any wall, fence, rail, post, step, booth or other structure

whether fixed or movable or whether of a permanent or temporary nature, or any fixture in or upon any street so as to form an obstruction to, or an encroachment upon, or a projection over, or to occupy any portion of such street, channel, drain, well or tank.

Sub-section (2) provides for punishment for contravention of Sub-section (1), whereas, sub-section (3) empowers the Commissioner to remove any obstruction or encroachment after giving such notice, as may be prescribed. Therefore, in the considered opinion of this Court, if the obstruction in streets is created by erection of permanent structure by any individual, he may be proceeded in accordance with Section 322 of the Act, 1956 irrespective of the fact whether the obstruction was in existence even before the Act, 1956 came into the force. Absence of this power in the un-amended Act prior to 1994 cannot be construed that by implication any obstruction made before 30.5.1994 stood regularized. Such an interpretation would make the Municipal Corporation completely powerless in removing old obstructions and it would be impossible to implement Yozna, 2021.

33. As far as the next argument of learned Counsel for the petitioners that the respondent Corporation acting in a most arbitrary and mala fide manner issued two days' notice to the petitioners on Friday i.e. 13.2.2009, calling upon them to remove the structure failing which the same would be removed by the respondent Corporation and expenses incurred by the Corporation shall be recoverable from the petitioners and thereafter, shops/buildings were demolished after the expiry of above period by the use of 3D machines and bulldozers by giving half-an hour notice to vacate the premises on 15.2.2009 i.e. Sunday, is concerned, from the pleadings of the respective parties undisputed facts may be deduced as under:

i. In the year 1992, 27 inhabitants of the locality in question had filed a writ petition and prayed for restraining the respondent-Corporation from disturbing their peaceful possession over the Nazul lands. In the absence of any reply by the respondent and on submission of learned counsel for the respondent Corporation, the petition was disposed of with a direction that if the respondents want this land for widening of the road, they should proceed in accordance with law and should not use high-handed practice.

ii. In the exercise of powers u/s 23 read with Section 18 (1) of the Act, 1973, the Yozna, 2021 was published in the month of October, 2007 and objections/suggestions were invited from the general public. Hearings on the objections were held in the month of December, 2007 by the Vikas Yozna Samiti and as per recommendations of the Samiti and report of the Director, Yozna 2021 was notified on 7.4.2008 and since the same is in force, as per Yozna 2021, width of Subhash Marg where the disputed shops exist is 25 meter.

iii. In a meeting convened by the Collector, Raipur on 13.5.2008 to resolve the traffic related problems of Railway Station area, the representatives of Subhash

Marg Traders" Union, the Municipal Commissioner and others participated. In that meeting also widening of Subhash Marg, as per Yozna, 2021, was discussed and suggestions were invited from the traders in this regard. Meeting was again convened on 15.5.2008 wherein persons likely to be affected due to widening of road was discussed and representatives of the traders were asked to furnish documents regarding their ownership as also details of the pending cases before the revenue authorities. In the said meeting, list of affected shopkeepers was also requisitioned for the purposes of their rehabilitation and meeting was adjourned for the next date. However, representatives of the traders stopped participating in the subsequent meetings and in these circumstances, in a meeting dated 22.5.2008, on the basis of report of the Sub Divisional Magistrate that eleven shopkeepers have not produced any document about their title and on further report of the Tehsildar, Raipur that there is encroachment over land bearing Khasra No. 241 which is recorded in the records as the land meant for road, it was decided to remove the encroachments in the larger public interest for free thoroughfare in the railway station area.

iv. The Halka Patwari concerned vide his report dated 23.5.2008 submitted the list of encroachers of the public road detailing the area of encroachment.

v. Writ petition filed by five inhabitant of the locality in question was disposed of by this Court on 9.2.2009, after recording the statement made on behalf of the respondent Corporation that no steps shall be taken against the petitioners and they shall not be dispossessed without following the due process of law.

vi. The Additional Tehsildar, Raipur on the basis of encroachment report of Halka Patwari concerned that 64 persons have encroached on a public road situated on Khasra No. 241, registered proceeding u/s 133 of the Code, 1959 for removal of the encroachment against petitioner- Purshottam Sareen and Ors. and they were noticed. However, on the objection of some of the noticees, the proceedings were dropped on 11.2.2009 with an observation that disputed land is situated in the Municipal Corporation limits, whereas, powers u/s 133 of the Code, 1959 can be exercised for removing encroachments from the road, streets or public land from rural area and the provisions for removing the encroachments over the roads in the town area are available under the Act, 1956.

vii. On 13.2.2009 notice under Sections 322 & 323 of the Act, 1956 was issued to the encroachers including the petitioners herein directing them to remove the encroachments within two days and on their failure the encroachments were removed by the Corporation on 15.2.2009 on Sunday.

34. The petitioners are claiming declaration that they are in lawful possession of the Nazul land in question and the respondents be restrained from undertaking demolition of the structure erected by the petitioners. Whereas, the respondents have averred that the petitioners have no legal right over the disputed land and they are encroachers of the public road. This Court has already held that the petitioners have not filed any record of right with respect to the disputed land on

the basis of which it can be inferred that they have any semblance of legal right over the disputed land. Their contention that they are in permissive possession from decades is highly disputed question of fact and the same cannot be gone into in a proceeding of this nature, as the same requires recording of evidence.

35. Mr. B.P. Sharma has vociferously argued that the shops/ buildings of 64 shopkeepers including that of the petitioners were demolished by respondent No. 4 at the instance of respondent No. 5 mala fide, without issuing any show cause notice and without affording any opportunity of hearing in contravention of the earlier undertaking given in a writ petition filed by other inhabitants of the locality. To substantiate his contention, he has referred to the notice u/s 322 of the Act, 1956, which was admittedly issued on Friday evening whereby the petitioners were directed to remove the encroachments within two days and ultimately, after two days the encroachments were removed by the Corporation on Sunday.

36. The question for consideration of this Court is whether the above action of the respondent Corporation was actuated by malice or whether it is a procedural irregularity committed by the overzealous Corporation in the broader public interest? The question is that even if it is held that notice u/s 322 of the Act, 1956 does not conform to the established principles of natural justice and Doctrine of Audi Altare Partem, whether the respondents can be directed to restore the construction, which was demolished by them, and further to quantify the damages for which the petitioners are entitled?

37. The Yozna, 2021 was conceived, prepared and notified as per provisions of Act, 1973 keeping in view the rapid expansion of the city of Raipur after the same became capital city of newly formed State of Chhattisgarh. Width of Subhash Marg, as per Yozna 2021, is 25 meter. The road is adjacent to Raipur Railway Station. Keeping in view the heavy traffic in the area, the District Administration and the Corporation, to amicably resolve the problem, convened meetings with the traders as back as in the month of May, 2008. Suggestions were invited from the traders, they were also apprised about the persons who are likely to be affected because of widening of road. Proposal for rehabilitation of the affected traders was also made. The petitioners and other, total 64 in numbers are affected by the widening of road. The administration has acted in the larger public interest with a view to implement Yozna, 2021. Respondent No. 5 in his counter affidavit has categorically denied the allegation of personal malafides against the petitioners. Even otherwise, taking into consideration the totality of circumstances, this Court is not inclined to accept the argument of the petitioners that the respondent Corporation acted malafidely. If the prayer of the petitioners for direction to the respondent Corporation to restore the construction, as it exist prior to demolition, is acceded to, in that case the larger public interest shall be adversely affected and width of the road would be reduced as before.

38. The petitioners have also claimed that suitable compensation against the

respondents on account of their acts of omission and commission in illegally demolishing their shops/dwelling houses. Since this Court has already held that the legal right claimed by the petitioners is a disputed question of fact and the same cannot be decided in a proceeding under Article 226 of the Constitution of India in the absence of any material on record, it is not possible to quantify the damages/compensation, if any, the petitioners are entitled for and the petitioners may claim the reliefs, which they have claimed in these petitions, by filing appropriate civil suit in the court of competent jurisdiction.

39. For the aforesaid reasons, no relief, as claimed by the petitioners in these petitions, can be granted in the instant proceeding. The petitions are liable to be dismissed and accordingly, the same are dismissed. No order as to costs.