

**W.P. No.3162/2007, 5630/2009, 22095/2012, 232/2013, 2085/2013, 7009/2014, CONC No.913/2014, W.P. Nos.13607/2015, 13830/2015, 15367/2015, 15983/2015, 16298/2015, 16785/2015, 18123/2015, 21003/2015, 2537/2016, 3097/2016, 3979/2016, 4021/2016, 4065/2016, 4117/2016, 4159/2016, 4257/2016, 4428/2016, 4744/2016**

**18.03.2016**

**W.P. No.5630/2009**

Ms. Neelam Goel, Advocate for the petitioner.

Shri Samdarshi Tiwari, Dy. Advocate General for the respondents/State.

Shri Anshuman Singh, Advocate for the Municipal Corporation.

Heard counsel for the parties.

Only two reliefs have been claimed in this petition.

The same read thus:-

“7(1) That this Hon'ble Court may kindly issue a writ in nature of mandamus directing the respondents, restraining them from making any interference in the peaceful activities of the petitioner as per the registered lease deed and further not to raise any dispute in the same subject matter again and again, harassing the petitioner and depriving it from performing its functions smoothly.

7 (1.1) That, this Hon'ble Court may kindly issue a writ in nature of mandamus directing the respondents to re-mutate the

name of the petitioner in the revenue records on the land block no.85 plot no.1/2 area 24340 sq.ft. to situated at Madhatal District Jabalpur, it was prior to the passing of the order dated 30.04.2007.”

The prayer clause 7 (1.1) has been inserted by way of amendment carried out in terms of order dated 01.12.2015.

The indisputable facts, as can be discerned from the relevant documents would suggest that the lease was executed in favour of the District Scout Club and Guide, Marhatal vide lease dated dated 27.01.2006 and to end on the 31<sup>st</sup> day of March, 2029. However, this lease deed was canceled vide order dated 30.04.2007 passed by the Collector, Jabalpur. That order was later on set aside by this Court in W.P. No.2534/2007 and W.P. No.6962/2007 dated 09.07.2008. The learned Single Judge at the same time kept the option available to the Appropriate Authority intact to proceed further in respect of the leased property in accordance with law.

The present petition, however, has been filed on 02.06.2009. The only relief claimed at that time was prayer clause 7(1). That relief, to our mind, is in the nature of injunction and not for issuance of writ of mandamus or any other writ. More so, it may be a matter of disputed question

of fact regarding factum of possession and including about the manner of interference therewith. That cannot be resolved or addressed in writ jurisdiction. The petitioner may be well advised to resort to appropriate remedy for that purpose. That option is always open to the petitioner.

That takes us to the second relief, which has been inserted in terms of order dated 01.12.2015. The grievance of the petitioner, to the extent, that after the order passed by the Collector canceling the lease dated 30.04.2007 has been set aside by this Court on 09.07.2008, status quo ante ought to have been restored in the relevant records by the Appropriate Authorities and Revenue Authorities without doing anything more by the petitioner. However, no change has been effected in the mutation entry, as was recorded on the basis of order passed by the Collector dated 30.04.2007, for reasons best known to the concerned Authority. To this limited extent, we may direct the Revenue Authorities to ensure and to keep in mind that on account of setting aside of order passed by the Collector dated 30.04.2007 by this Court, that cannot be made the basis for effecting any entry in the revenue records; and, if such entry is made, the same cannot be given effect to. Besides this, nothing more is required to be said with

regard to prayer clause 7(1.1).

Counsel for the respondent-State submits that because of pendency of this petition and, in particular order of status quo, the Competent Authority has not been able to proceed in respect of the leased property even though valid grounds for that purpose have accrued and are available.

We fail to understand as to how the status quo order could have come in the way of the Revenue Authorities to proceed in accordance with law. The status quo order would only mean that the possession of the petitioner in respect of leased property was protected during the pendency of the writ petition and nothing more. That could never be a reason cited for not taking action in respect of breach of terms and conditions of lease and to exercise power of re-entry, if the situation so warranted and permissible in law. The concerned Authorities must act in that regard with utmost dispatch, if it is so necessary. Indeed, if the proposed action of Authority is adverse to the petitioner, it will always be open to the petitioner to take recourse to appropriate proceedings as may be permissible in law where the challenge would be considered on its own merits, in accordance with law.

This petition is accordingly disposed of. The order of

status quo does not survive for consideration, in the light of observations made hitherto.

The counsel for the Corporation was at pains to persuade us to issue direction to the Collector to expedite the process, as the subject property may be required by the Corporation for creating parking lot, which is urgently needed in the concerned area. The Corporation is free to pursue that matter with the concerned Authorities, which must examine all aspects of the matter before taking any decision. We are not expressing any opinion in that behalf. All questions in that behalf are left open.

Petition is **disposed of** accordingly.

**W.P. No.2085/2013**

Ms. Neelam Goel, Advocate for the petitioner.

Shri Samdarshi Tiwari, Dy. Advocate General for the respondents/State.

Shri Anshuman Singh, Advocate for the Municipal Corporation.

Heard counsel for the parties.

This is yet another writ petition filed by the same petitioner - District Scout Club. In this petition, following reliefs are claimed:-

“7(1) That this Hon'ble Court may kindly issue a writ in nature of mandamus

directing the respondents, restraining them from making any interference in the peaceful possession of the petitioner on the land of ownership of the petitioner, by themselves and by others.

(2) That this Hon'ble Court may kindly issue a writ in nature of mandamus directing the respondents to construct the office and the boundary wall of the petitioner's land which has been demolished by them.”

(3) That this Hon'ble Court may also kindly issue a writ in nature of mandamus directing the respondents to pay compensation to the petitioner of rupees 5 lacs for the damages caused to the petitioner.”

The reliefs, in our opinion, in particular, prayer clause 7.1 is no different than prayer clause 7.1 of W.P. No.5630/2009, in respect of which we have observed that if the petitioner is so advised, is free to resort to remedy of civil suit for appropriate relief.

As regards prayer clause 7.2 and 7.3, the same are linked and overlapping. In that, the question of awarding compensation to the petitioner is related to alleged demolition of office and boundary wall of the petitioner standing on the same leased property without authority of law. Whether it is a case of demolition done without authority of law or for that matter the amount of

compensation to be awarded because of the damage caused on account of such illegal act and including to direct the concerned Authorities to restore the structure to its original position, these are all matters, which may raise disputed questions of fact for which petitioner must resort to remedy of civil suit.

As a result, we **dispose of** even this petition with liberty to the petitioner to resort to remedy of civil suit for appropriate relief, as may be advised, which can be considered by the concerned Court, without being influenced by the disposal of this writ petition. All questions in that behalf are left open.

We are informed by the counsel for the Corporation that there is one more proceeding pending in respect of the same property being **CONC No.503/2013**. That be listed on **28.03.2016**.

**W.P. No.15983/2015 & W.P. No.16298/2015**

Shri Ashish Trivedi, Advocate for the petitioners.

Shri Saurabh Sunder, Advocate for the Municipal Corporation.

Shri Samdarshi Tiwari, Dy. Advocate General for the respondents/State.

Shri Naman Nagrath, Senior Advocate with Shri

Himanshu Mishra, Advocate for the respondent No.3.

Heard counsel for the parties.

By these writ petitions filed under Article 226 of the Constitution of India, direction is sought against the Corporation to refrain from demolishing the house of the petitioners, which is occupied by them as tenant of Pinjra Pol Goushala Cheritable Trust, Ranital Chowk, Jabalpur. According to the petitioners, they are staying with their family in the said structures for last 70 years. It may be so, but the Corporation is required to take action against the said structure as it is obstructing road line as finalized in the Master Plan 2008. The Master Plan has been duly notified and published. No petition has been filed to challenge the validity of that plan. The respondents on affidavit sworn by Additional Commissioner dated 08.03.2016, have unambiguously asserted that the structure occupied by the petitioners is coming within the road line and will have to be removed for road widening to bring the road length and width in conformity with the Master Plan. The petitioners, no doubt, have relied on photographs; but, there is no reason to doubt the correctness of plan submitted by the respondents along with the affidavit of the Additional Commissioner, Annexure R-2/2, and also

other documents, which justify the stand of the Corporation.

As a result, no relief can be granted to the petitioners. The Corporation on the other hand is obliged to take expeditious action to comply with the directions given by this Court in public interest litigation to remove all the unauthorised structures or structures obstructing the road or road line in the given area with utmost dispatch.

Notably, undertaking was given on behalf of the respondent-Trust in W.P. No.8753/2014 as recorded in the order dated 29.07.2015 that as and when demolition of structures occupied by the petitioners is required to be done for road widening purpose, the Trust would take necessary measures to surrender the relevant portion of the land owned and possessed by them.

According to the petitioners, there is vacant plot behind the structure on which the petitioners can be rehabilitated. It is for the petitioners to make representation to the Trust for such rehabilitation. It will be a matter between the Trust and the petitioners to work out possible solution, but, that cannot come in the way of action to be taken by the Corporation nor a justification to be offered by any one for removal of obstruction for the purpose of

road widening to be done expeditiously.

Accordingly, these petitions fail. The same are **dismissed**.

**W.P. No.15367/2015 & W.P. No.21003/2015**

Shri A. Rajeshwar Rao, Advocate for the petitioner in W.P. No.15367/2015.

Shri Surendra Verma, Advocate for the petitioner in W.P. No.21003/2015.

Shri Samdarshi Tiwari, Dy. Advocate General for the respondents/State.

Shri Anshuman Singh, Advocate for the Municipal Corporation.

Heard counsel for the parties.

In deference to the observations made by the Court, counsel for the petitioners submits that they will not press these petitions, but, they may be permitted to approach the concerned Authority in the Department to give them reasonable time to make alternative arrangement.

Accordingly, we **dismiss** these writ petitions as **withdrawn** with liberty to the petitioners to pursue representations to be made to the Appropriate Authority.

The matters, however, shall be notified under caption “**Directions**” on **28.03.2016** to report compliance by the

Commissioner, Municipal Corporation, Jabalpur. While giving any indulgence to the petitioners, we have no manner doubt that the Authorities will keep in mind the commitment made in the action plan for road widening within the specified time frame and no indulgence can be shown because of having given time to these petitioners and any other person(s) in the concerned Corporation property.

**W.P. No.4117/2016**

Shri Girish Shrivastava, Advocate for the petitioner.

Shri Anshuman Singh, Advocate for the Municipal Corporation.

The petitioner to state on affidavit that occupation certificate has already been issued in respect of the building constructed on plot, which is subject matter of this petition and to produce copy thereof.

To be filed on or before 21.03.2016.

We place on record the statement made by the Corporation on instructions of Additional Commissioner, who is present in Court, that, as of now, no occupation certificate has been issued to the said building . If occupation certificate is yet to be issued, then the Corporation must ensure that the same shall not be issued

without providing sufficient space for the road line and required space be set apart on the front set back. In case, occupation certificate has not been issued, the concerned officials must immediately visit the building and after taking inspection, initiate appropriate action as per law, if the building is already occupied without obtaining such occupation certificate. That position be reported on the next date of hearing.

To be listed on **28.03.2016** under caption “**Top of the List**”.

**W.P. No.18123/2015**

Shri Vijay Naidu, Advocate for the petitioner.

The relief claimed in this petition, to say the least, is academic. No specific case has been referred to in the petition in respect of which the Authorities have initiated action and proposed demolition thereof. As and when such occasion arises, it will be open to the petitioner to make representation to the concerned Authorities and invite their attention to the provisions of The Place of Worship (Special Provisions) Act, 1991, if applicable to such structure, which issue will have to be decided by the Appropriate Authority, in accordance with law. Besides this, nothing more is required to be said in this petition.

The question of application of the provisions of the said Act are left open to be considered by the Appropriate Authority, in accordance with law.

Petition **disposed of** accordingly. As a result, interim order is vacated.

Rest of the matters to be listed on **28<sup>th</sup> March, 2016** under caption "**Directions**".

**(A. M. Khanwilkar)**  
Chief Justice

**(Sanjay Yadav)**  
Judge

psm