

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT INDORE**

***BEFORE***

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 4<sup>th</sup> OF APRIL, 2024**

**WRIT PETITION No. 18370 of 2022**

**BETWEEN:-**

**VIJAY NAHAR S/O SHRI KANAKMAL NAHAR,  
AGED ABOUT 57 YEARS, OCCUPATION:  
BUSINESS NILI KOTHI PALACE, JAORA  
(MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI B.L. PAVECHA, SENIOR ADVOCATE WITH SHRI NITIN PHADKE,  
ADVOCATE)***

**AND**

- THE MUNICIPAL COUNCIL JAORA CHIEF**
- 1. MUNICIPAL OFFICER MUNICIPAL COUNCIL  
JAORA (MADHYA PRADESH)**
  - 2. THE ADMINISTRATOR MUNICIPAL  
CORPORATION MUNICIPAL COUNCIL,  
JAORA, (MADHYA PRADESH)**
  - 3. THE TEHSILDAR THE STATE OF MADHYA  
PRADESH TEHSIL OFFICE JAORA (MADHYA  
PRADESH)**

**.....RESPONDENTS**

***(SHRI RISHI SHRIVASTAVA, ADVOCATE FOR RESPONDENT NO.1 AND MS.  
HARSHLATA SONI, G.A. FOR THE STATE)***

*This petition coming on for admission this day, the court passed the following:*

**ORDER**

1] This writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeking the following reliefs:-

- “a. A writ in the nature of certiorari/mandamus or any other appropriate writ, order or direction in exercising of writ jurisdiction of this Hon’ble Court be issued for quashment of the order Annexure P/1 dated 27.07.2022, order Annexure P/2 dated 28.07.2022 and the notice Annexure P/3 dated 01.08.2022 issued by the respondents and for restraining the respondents from taking any coercive and highhanded action of demolition in respect of the building constructed by the petitioner.
- a-1 That, this Hon’ble Court be pleased to quash the order dated 24.08.2022 (Annexure P/21) as also the panchnama and possession receipt (Annexure P/23).
- b. A writ in the nature of certiorari/mandamus or any other appropriate writ, order or direction in exercising of writ jurisdiction of this Hon’ble Court be issued for directing the respondents for considering and taking a decision on the prayer made by the petitioner in the communications Annexure P/12.
- The notices Annexure P/3A and P/3B dated 08.08.2022 in the case No.8/A-68/2022-23 issued by respondent no.3 be also quashed by issuance of a writ in the nature of mandamus/certiorari or by any other appropriate writ, order or direction.
- c. Costs of the petition be awarded to the petitioner from the respondents; and
- d. Any other relief which this Hon’ble Court may deem fit in the facts of the present case may be granted to the petitioner.”

2] Initially, the petition was filed against the order dated 27/07/2022, 28/07/2022 and 01/08/2022, wherein, vide order dated 27/07/2022, the petitioner’s building permission which was granted to him on 09/10/2003, has been revoked, whereas vide order dated 28/07/2022, the petitioner’s representation submitted by him pursuant to an order passed by this Court in WP No.3886/2012, has been rejected, whereas vide order dated 01/08/2022, the petitioner has been directed to vacate the disputed premises. However, on 08/08/2022, when the interim order was passed by this Court in the

present petition staying the aforesaid impugned orders, soon thereafter on 08/08/2022 itself, the petitioner was also served a notice on 08/08/2022, issued by the Tehsildar initiating the proceedings under Section 248 of the M.P. Land Revenue Code against the petitioner directing him to /alleging unauthorised possession of land, thus, the petitioner has also challenged the said subsequent notice dated 08/08/2022 by way of amendment, order dated 24/08/2022 whereby an order u/s.248 of M.P.L.R.C. was passed against him, imposing a cost of Rs.1 Lakh and directing to remove the godown, as also the notice dated 01.09.2022 jointly with possession slip and Panchanama (Annexure-P/22).

3] In brief, the facts of the case are that in the year 1970-71, the respondent no.1 Municipal Council, Jaora allotted an area admeasuring 44567 sq. ft. to the petitioner's father Kanakmal Nahar, however, subsequently under an interim agreement dated 16/12/1987, only a portion of land admeasuring 13857 sq. ft. was retained by the petitioner's father while the remaining area admeasuring 30710 sq. ft. was handed over to respondent No.1. Subsequently, on the basis of the building permission which was granted to the petitioner in the year 2003, a go-down was constructed by the petitioner on the land allotted to it, but in the year 2005, the aforesaid godown was locked and sealed by the respondents on the allegation of contravention of the terms of the allotment, hence, a writ petition being WP No.1/2006 was filed by the petitioner against the aforesaid action, which was disposed of by this Court on 13/10/2006, directing the respondents to

remove the lock and seal with a further direction to decide the petitioner's representation. Against the aforesaid order dated 13/10/2006, a writ appeal No.492/2006 was also preferred by the Respondent no.1 Municipal Council, Jaora but the same was also rejected vide order dated 01/01/2007, affirming the order passed by the Single Bench.

4] It is further the case of the petitioner that although, the respondents were directed to decide the petitioner's representation/reply but no action was taken by them for many years, however, on 31/03/2012, respondents No.1 and 2 issued a notice proposing action under Section 223 of the Municipalities Act for removal of the construction raised by the petitioner. Against the aforesaid notice, another writ petition WP No.3886/2012 was filed by the petitioner which came to be disposed of on 20/04/2012, again directing the respondents to decide the petitioner's representation and again the respondents kept mum for around 10 years, and on 10/02/2022, a notice was again served by respondent No.1 on the petitioner demanding the lease rent, and in compliance with the said notice, the lease rent was also deposited by the petitioner. However, on 10/07/2022, another notice was issued by the respondent No.1, asking the petitioner to provide a copy of the representation which was earlier filed on 08/11/2006, as it was misplaced in their office, and accordingly, the petitioner supplied the copy of the representation, and finally, the said representation was rejected vide order dated 28/07/2022, without any notice of hearing to the

petitioner.

5] According to the petitioner, the aforesaid order dated 28/07/2022, was passed in complete defiance of the order passed by this Court in WP No.01/2006, which has also been affirmed by the Division Bench in WA No.492/2006.

6] Against the order dated 28/07/2022, the present petition has been passed in which the interim order was passed in favour of the petitioner on 08/08/2022, staying the impugned order dated 28/07/2022, as also the other ancillary orders.

7] The petitioner's further case is that soon after the aforesaid interim order was passed, immediately a notice was served to the petitioner on 08/08/2022 itself by the Tehsildar initiating the proceedings under Section 248 of the M.P. Land Revenue Code which relates to removal from the encroachment, and on 12/08/2022, the petitioner was again directed to remove the construction, whereas the final order has been passed by the Tehsildar on 24/08/2022. Thus, by way of amendment, orders dated 08/08/2022 and dated 12/08/2022 have also been assailed by the petitioner.

8] The contention of the petitioner is that in the aforesaid proceedings, the petitioner had informed the Tehsildar to the order dated 08/08/2022, passed by this Court in the present writ petition, however, the Tehsildar has proceeded to decide the matter finally, and it has been directed that the petitioner shall be removed from the premises.

9] Shri B.L. Pavecha, learned senior counsel assisted by Shri Nitin Phadke, learned counsel for the petitioner has vehemently argued before this Court that it is a clear case of over reaching the orders passed by this Court which is also reflected from the fact that when the interim order was passed by this Court on 08/08/2022, on the same day itself, the respondents have served the notice of 248 proceedings which was in-fact, affixed on the disputed property, and a notice to this effect was also published in the newspaper on 09/08/2022. Leaned sr. counsel has also submitted that when the matter was already pending before this Court, and the stay order was already granted, there was no occasion for the Tehsildar to serve the notice on 08/08/2022 itself which was actually only to bypass the order passed by this Court on 08/08/2022.

10] It is submitted that admittedly the petitioner has made the construction in the year 2003 after obtaining the due permission from the Municipality, and occupied the premises, and despite various orders passed by this Court, the respondents never decided the petitioner's representation even in 10 years' time, and there was no occasion for the Tehildar to proceed in a haphazard manner soon after the interim order was passed by this Court on 08/08/2022. Learned sr. counsel has also relied upon a decisions rendered by the Supreme Court in the case of **ACES, Hyderabad vs. Municipal Corporation of Hyderabad reported as AIR 1995 AP 17 Full Bench.** Thus, it is submitted that it is a clear case of judicial overreach and needs to be dealt with accordingly.

11] Learned senior counsel has also proposed that since the petitioner has legally occupied the part of the premises, which he is also ready to purchase on the guideline value, however, for that, the respondent No.1 can also take the consent of the State Government and in the alternative, if the State Government does not consent to the said proposal, the petitioner can be granted a reasonable time to remove the construction standing on the Municipal land.

12] The prayer is opposed by Shri Rishi Shrivastava, learned counsel appearing for respondent No.1, and it is submitted that no case for interference is made out. It is submitted that initially the interim agreement dated 16/12/1987 executed between the parties itself was contrary to law as the concerned councillors acting on behalf of the Municipal Council were not authorized to enter into such an agreement as there was no resolution passed in this behalf and thus, there is no question of selling the property on which the petitioner has occupied since last more than two decades, as even if the respondents intends to sale the property it has to be through legal process only as the other persons cannot be deprived of claiming the aforesaid property in an open auction.

13] In rebuttal, Shri Pavecha, learned senior counsel for the petitioner has referred to the Municipalities (Achal Sampatti Antaran) Rules, 2016 to submit that the Municipality is empowered to transfer the immovable property even without inviting tender as provided under Sub-rule (1) and (2) of Rule 3 of the Rules of 2016, as sub Rule (1) provides that no immovable property, except when its

transfer is in the interest of local body concerned or in the public interest, shall be leased out or sold on conversion or otherwise transferred by the Municipal Corporation/Municipal Council/Nagar Parishad as the case may be, except to a person who has proposed the highest rate in the tender invited for such purpose, whereas, sub Rule (2) provides for transfer of immovable property without inviting tender. It is submitted that the aforesaid decision is required to be taken by the competent authority as provided under Rule 5 of the Rules and it cannot be opposed by the counsel for the respondents in this petition without even before the respondents have gone through the aforesaid procedure as prescribed under the Rules of 2016 to deny the petitioner's request to transfer of the property to him.

14] Heard learned counsel for the parties and perused the documents filed on record.

15] From the record, it is found that this Court had passed the interim order on 08/08/2022, in the following manner:-

“Shri Nitin Phadke, learned counsel for the petitioner.

Heard on the question of admission.

Let notices be issued to the respondent (s) on payment of Process Fee (PF) within a period of one week, returnable within a further period of four weeks. Also heard on the question of grant of interim relief.

Considering the fact that the impugned order (s) dated 27.07.2022 (Annexure P/1) and dated 28.07.2022 (Annexure P/2) have been passed by the respondent / Municipal Council, Jaora, District Ratlam (MP) in a cryptic manner; and vide notice dated 01.08.2022 (Annexure P/3), the petitioner is directed to remove his construction within twenty four (24) hours, which according to the petitioner, was constructed in the year 2003, after obtaining all the requisite permissions, it is directed that till the next date of hearing, the operation of the impugned order (s) Annexure P/1, Annexure P/2



and Annexure P/3 shall remain stayed.  
C. c. as per rules, today.”

16] It is also apparent that soon after the aforesaid interim order was passed on 08/08/2022, respondent No.3 Tehsildar issued the notice on 08/08/2022 itself, observing that the petitioner has encroached upon the land of the Municipality and thereafter, on 12/08/2022, again, another notice was issued to the petitioner to produce the legal documents regarding the disputed land. It is also found that prior to that, on 01/08/2022, the Chief Municipal Officer has also written to the Sub Divisional Officer for removal of the alleged encroachment made by the petitioner and for vacating the compound. It is also found that the notice dated 01/09/2022 was served on the petitioner at 10:00 O'clock in the night of 03/09/2022, for removal of the alleged encroachment within 3 day's time, despite the fact that the notice itself was served on at 10:00 O'clock in the night, thus not even 24 hours time was not granted to the petitioner. And thereafter, the possession has also been taken by the Tehsildar of the property, and it has been locked and possession receipt was also obtained from the present petitioner on 04.09.2022 (P/22), wherein he has agreed to certain condition under coercion.

17] Be that as it may, in such circumstances, instead of quashing the impugned orders and again open the gates for further litigation, this Court is of the considered opinion that the petition can be disposed of with certain directions. Since the petitioner is also ready to purchase the property at the market rate, if he prefers the

appropriate application in this regard in accordance with the rules, within a week's time from the date of receipt of certified copy of this order, the same shall be decided by the respondents positively within a further period of three months, and if the respondents decide that the petitioner is not entitled to purchase the property or get the property transferred in his favour, he may be given further two months' time from the date of such rejection, to remove the construction in respect of the disputed property which is lying on the Municipalities' land.

18] At this juncture, it would also be fruitful to refer to the decision rendered by the Division Bench of this Court in the case of *Tejraj Gandhi* (supra), paras 20, 21 and 22 of the same read as under:-

“20. I am unable to appreciate the contention that any writ or direction issued by this Court for the removal of the Shivling and for allowing the petitioners to enter the temple for worship would be futile and not capable of performance. It is incomprehensible to me as to how a direction which this Court may issue would be futile when the temple is in existence, when the Shivlinga is there and when the petitions are still prevented from entering the temple for worship.

A writ or a direction issued by this Court would be effective in the case and has to be enforced. Any suggestion that for certain reasons it may be difficult and even impossible for the opponents to carry out the orders of this Court can only be viewed with dismay and cannot but impel us to say that it would be the end of the rule of law when the State and its authorities find themselves in a position where they cannot enforce the orders of this Court and secure obedience to them.

21. For all these reasons, I am of the opinion that the action of the Collector of Ratlam and the Tehsildar of Ratlam in placing a Shivling in the sanctum sanctorum of the temple and in preventing the petitioners and other members of the Jain community from

entering the temple for worship except on certain conditions is indefensible, without any sanction and in utter violation of the fundamental rights under [Articles 25\(1\)](#) and [26\(b\)](#) of the petitioners as members of the Jain community.

It is somewhat surprising that the Collector and the Tehsildar easily persuaded themselves in believing that they had the power to do what they did. The Executive will do well to remember the observations of Lord Atkin in AIR 1931 PC 248 (C), which have been quoted with approval by Das C.J. in Bidi Supply Co. v. Union of India, (S) AIR 1956 SC 479 (H). The observations are that "the executive can only act in pursuance of the powers given to it by law and it cannot interfere with the liberty, property and rights of the subject except on the [condition that it can support the legality of its action before the Court."

The petitioners have said that the Collector and the Tehsildar did not act bona fide and surrendered themselves to "elements bent upon committing breaches of law and peace". We are not, however, concerned with the motives of either side. It may be that the Collector and the Tehsildar acted with the best of motives feeling sympathy for the efforts of a section of the Hindu community of Ratlam to rise to a high form of worship of Shiva for gaining strength, inspiration, consolation and proper guidance.

It may be that the Collector and the Tehsildar were satisfied about the existence of a Shivling in the temple and about the justness of the claim of the Hindus to worship in the temple. But the action taken by them to keep a Shivlinga for worship in the temple was wholly unjustified by law. Whether a Shivling did or did not exist in the temple, or whether the claim of the Hindus was just and well founded or whether it was an unreasonable and unfounded pretension, the right course for the Collector was to direct the Hindu community to have their claim to the temple and their rights, to worship a Shivling in the temple established in a Court of law.

If the Collector found that on account of the alleged theft of a Shivling from the temple the situation in the city was tense threatening a breach of peace, he should have made an order under the appropriate law for the maintenance of law and order. If he had done that, instead of placing the Shivlinga in the temple with the aid and advice of the Tehsildar with reprehensible haste, anticipating the interim prohibitory order of the Madhya Bharat High Court and invading the fundamental rights of the petitioners, he would not have placed himself in a situation where he has neither the sympathy of the right minded men nor the protection of the Court.

22. In my judgment, the petitioners are entitled to the relief they seek. There is no question here of the issue of a writ of certiorari or a writ of prohibition or a writ of mandamus to enforce a statutory duty. But it is too late in the day to suggest that the power of the High Court under [Article 226](#) is confined to the issue of writs mentioned therein and is not wide enough to give redress to the petitioners against the wholly illegal action of the opponents infringing their fundamental rights as Jains under [Articles 25\(1\)](#) and [26\(b\)](#) of the Constitution.”

(emphasis supplied)

19] On due consideration of the aforesaid decision, as also the chronology of the case at hand, this Court is of the considered opinion that the aforesaid action of the respondents no.3 in obtaining the possession of the disputed property, despite the fact that this Court, vide order dated 08/08/2022, had already directed that the order Annx.P/1, P/2 and P/3 which referred to the removal of construction within 24 hours, shall remain stayed, is nothing but an attempt to circumvent and undermine the authority of the order passed by this Court.

20] Having said so, this Court is also of the considered opinion that the Tehsildar Mr. Mrigendra Sisodiya, Tehsil Jaora who is responsible for overreaching the order passed by this court, cannot be let off without any consequences. In such circumstances, for the wilful disobedience of the order passed this court on 08.08.2022, a separate contempt proceedings is required to be initiated against the said Tehsildar who was posted as Tehsildar at Jaora, and was responsible for locking the premises of the petitioner despite this Court's order. Office of the Advocate General is directed to serve a copy of this order to Shri Mrigendra Sisodiya, Tehsildar, Jaora within

a period of three weeks, who shall submit his reply as to why the contempt proceedings be not initiated against him within a further period of four weeks.

21] A separate contempt petition be also registered against the Tehsildar Mr. Mrigendra Sisodiya and be listed accordingly.

With the aforesaid direction, the petition stands *disposed of*.

Sd/-

**(SUBODH ABHYANKAR)**  
**JUDGE**

krjoshi