

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

JUSTICE SUJOY PAUL

&

JUSTICE ACHAL KUMAR PALIWAL

ON THE 3rd OF AUGUST, 2023

WRIT APPEAL No. 591 of 2022

BETWEEN :-

1. **VED PRAKASH GUPTA, S/O BIHARI LAL GUPTA, AGED ABOUT 54 YEARS, OCCUPATION: SHOPKEEPER SHOP NO.5 DISTRICT HOSPITAL COMPOUND (CHATRASHAL SQUARE) CHHTARPUR MADHYA PRADESH R/O PRATHIBHA BHAWAN, BEHIND OLD EMPLOYMENT OFFICE CHHATARPUR (M.P.)**
2. **RAJESH KUMAR GUPTA S/O SHRI JAMUNA PRASAD GUPTA, AGED ABOUT 55 YEARS, OCCUPATION: SHOPKEEPER SHOP NO. 12 DISTRICT HOSPITAL COMPOUND (CHATRASHAL SQUARE) CHHATARPUR MADHYA PRADESH R/O MAHARASHTRA MARG BENIGANJ MOHALLA CHHATARPUR (MADHYA PRADESH)**
3. **NASEER AHMED S/O HOSHIYAR AHMED, AGED ABOUT 55 YEARS, OCCUPATION: SHOPKEEPER SHOP NO. 11 DISTRICT HOSPITAL COMPOUND (CHATRASHAL SQUARE) CHHATARPUR MADHYA PRADESH R/O RANI KI BAGIYA CHHATARPUR M.P. (MADHYA PRADESH)**

4. **BRIJKISHORE KHARE (DEAD) THROUGH HIS LRS PANKAJ KHARE S/O BRIJKISHORE KHARE, AGED ABOUT 53 YEARS, OCCUPATION: SHOPKEEPER SHOP NO. 10 DISTRICT HOSPITAL COMPOUND (CHATRASHAL SQUARE) CHHATARPUR MADHYA PRADESH R/O CHOUBEY COLONY CHHATARPUR (M.P.)**
5. **KAMLA DEVI GUPTA W/O LATE RAM SEWAK GUPTA, AGED ABOUT 75 YEARS, OCCUPATION: SHOPKEEPER SHOP NO. 9 DISTRICT HOSPITAL COMPOUND (CHATRASHAL SQUARE) CHHATARPUR MADHYA PRADESH R/O BEHIND MODEL BASIC SCHOOL BENIGANJ CHHATARPUR (MADHYA PRADESH)**
6. **KISHORE KUMAR SAHU S/O PANNA LAL SAHU, AGED ABOUT 47 YEARS, OCCUPATION: SHOPKEEPER SHOP NO. 8 DISTRICT HOSPITAL COMPOUND (CHATRASHAL SQUARE) CHHATARPUR MADHYA PRADESH R/O DERI TIGADDA SAGAR ROAD CHHATARPUR (M.P.)**
7. **MOHD. RAFIQ S/O MOHD. IDDU, AGED ABOUT 48 YEARS, OCCUPATION: SHOPKEEPER SHOP NO. 6 DISTRICT HOSPITAL COMPOUND (CHATRASHAL SQUARE) CHHATARPUR MADHYA PRADESH R/O BADI KUNJREHTI CHHATARPUR (MADHYA PRADESH)**
8. **RAM SWAROOP TAMRAKAR S/O SHRI RAM KRISHNA TAMRAKAR, AGED ABOUT 50 YEARS, OCCUPATION: SHOPKEEPER SHOP NO. 4 DISTRICT HOSPITAL COMPOUND (CHATRASHAL SQUARE) CHHATARPUR MADHYA PRADESH R/O HOUSE NO. 186 PEPTECH CITY COLONY DERI ROAD CHHATARPUR (MADHYA PRADESH)**

9. **RAM NARAYAN TAMRAKAR S/O R.K. TAMRAKAR, AGED ABOUT 52 YEARS, OCCUPATION: SHOPKEEPER SHOP NO. 3 DISTRICT HOSPITAL COMPOUND (CHATRASHAL SQUARE) CHHATARPUR MADHYA PRADESH R/O TAMRAI MOHALLA WARD NO. 9 CHHATARPUR (M.P.)**

10. **RAKESH KUMAR SHRIVAS S/O AYODHYA PRASAD SHRIVAS, AGED ABOUT 52 YEARS, OCCUPATION: SHOPKEEPER SHOP NO. 2 DISTRICT HOSPITAL COMPOUND (CHATRASHAL SQUARE) CHHATARPUR MADHYA PRADESH R/O BEHIND MANIHARI MASZID KADAKIBARIYA CHHATARPUR (MADHYA PRADESH)**

.....APPELLANTS

(BY SHRI VIPIN YADAV - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH SECRETARY DEPARTMENT OF HEALTH VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**
2. **COLLECTOR / PRESIDENT RED CROSS SOCIETY CHHATARPUR (M.P.)**
3. **CHIEF MEDICAL AND HEALTH OFFICER / SECRETARY INDIAN RED CROSS SOCIETY CHHATARPUR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI ANKIT AGRAWAL - GOVERNMENT ADVOCATE)

This writ appeal coming on for hearing this day, JUSTICE SUJOY PAUL passed the following :

J U D G M E N T

This *Intra Court* appeal takes exception to the order of learned Single Judge dated 23rd May, 2022 passed in W.P. No. 12006/2022.

2. Draped in brevity, the admitted facts between the parties are that pursuant to advertisement issued by the then Town Improvement Trust (Trust), Chhatarpur in the year 1994, the appellants submitted their applications for allotment of shops and in turn, the shops in question were allotted to them.

3. As per the stand of appellants, they are in continuous possession of shops in question since the date of allotment and are regularly paying rent and charges as mentioned in the agreement / NIT. The rent was periodically increased and appellants continuously deposited the enhanced rent. The enhanced rent so deposited by the appellants was duly accepted by the authorities.

4. Shri Vipin Yadav, learned counsel for the appellants submits that order dated 17.05.2022 (Annexure P-4) issued by respondent No.3 was called in question before the learned Single Judge. By taking this Court to the impugned order Annexure P-4, Shri Yadav submits that although in the last paragraph it is termed as 'notice' and responses of appellants were expected, a careful reading of the document dated 17.05.2022 (Annexure P-4) shows that on the basis of five alleged violations of conditions of agreement on the part of appellants, the respondents came to hold that allotment of petitioners / appellants shop became null and void automatically. Thus for violations of conditions of agreement the appellants were directed to handover the possession of vacant

shops to the competent authority failing which ex-parte proceedings will be conducted against them for which appellants will be responsible.

5. The bone of contention of learned counsel for the appellant is that so far question of continuance and entitlement of appellants in the shops in question is concerned, the authorities without putting the appellants to notice already concluded that their allotments stood automatically cancelled.

6. The order dated 17.05.2022 (Annexure P-4) is termed as notice only for the purpose of evicting the shops within stipulated period. Thus, the order impugned is not a show-cause notice permitting the petitioners to putforth their defence as against five alleged violations of conditions mentioned in the order dated 17.05.2022.

7. The sheet anchor of the argument of the appellants before learned Single Judge was that impugned order dated 17.05.2022 (Annexure-P/4) is an adverse order and entails civil consequences and therefore, the principles of natural justice should have been followed. Shri Vipin Yadav, learned counsel for the appellants urged that in support of his submission, the appellants placed reliance on two judgments of Supreme Court which were mentioned by learned Single Judge in the impugned order.

8. By taking this Court to the findings given by learned Single Judge, learned counsel for the appellants submits that the learned Single Judge has not given any iota of finding as to why principles of natural justice are not applicable in a case of this nature. If opportunity

would have been granted before passing the impugned order dated 17.05.2022, the petitioners would have been in a position to satisfy the authorities on all the five points mentioned in the impugned order dated 17.05.2022. In absence thereof, an adverse order will operate to the detriment of the appellants which will hit Articles 14 and 21 of the Constitution of India. Article 21, because its question of the life and livelihood of the appellants whose bread and butter is dependent on the said shops. Thus, the order passed by learned Single Judge is liable to be interfered with.

9. Shri Ankit Agrawal leaned Government Advocate opposed the same by contending that the violation of conditions mentioned in item Nos. 1 to 5 of the impugned order dated 17.05.2022 clearly shows that Conditions of main agreement were not satisfied by the appellants and therefore they are defenseless as such. Thus, granting of opportunity would have been an empty formality.

10. The parties confined their arguments to the extent indicated above.

11. We have bestowed our anxious considerations on rival contentions and perused the record. We have also carefully gone through the alleged violation of conditions mentioned in impugned order dated 17.05.2022.

12. In our considered view, if opportunity to show-cause would have been granted to the appellants, they would have certainly been in a position to take a defence. The defence could be relating to continuous deposition of enhanced rate and its acceptance by the authorities, the

defence could also be regarding necessity of registration etc. The doctrine of useless formality, in our opinion, cannot be pressed into service in a case of this nature. The appellants remained in possession of shops for almost three decades (28 years). In the fitness of things, the respondents should have followed the principles of natural justice.

13. The principles of natural justice are definitely applicable in a case of this nature. The impugned order which cancels the second round of counselling and consequential admissions is unreasonable and unfair in nature. It is settled that fairness is an integral part of good administration. Since the impugned order is unfair and arbitrary, it cannot sustain judicial scrutiny. The Apex Court in **Neelima Mishra v. Harinder Kaur Paintala, (1990) 2 SCC 746** held as under:—

“Principles of natural justice are to some minds burdensome but this price — a small price indeed-has to be paid if we desire a society governed by the rule of law.”

This is also a very beautiful saying about the principle of natural justice that:—

“...even God himself did not pass [a] sentence upon Adam before he was called upon to make his defence. Adam (says God), where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat? ...”

The Apex Court in catena of judgments has emphasized the importance of principles of natural justice, which are reproduced here as under:—

In *Lloyd v. McMahon* (AC pp.702 H-703 B), it was held as under:—

“My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well established that when a statute has conferred on any body the power to make decisions affecting individuals, the Courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.”

14. The Apex Court in *Radhy Shyam v. State of V.P.*, reported in 2011 MPLJ OnLine (S.C.) 56 : (2011) 5 SCC 553 held as under:—

“45. The amplitude, ambit and width of the rule of audi alteram partem was lucidly stated by the three-Judges Bench in Sayeedur Rehman v. State of Bihar, (1973) 3 SCC 333) in the following words:

“11..... This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. It draws the

attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties.”

46. In *Mohinder Singh Gill v. Chief Election Commr.*, (1978) 1 SCC 405), Krishna Iyer, J. speaking for himself Beg, C.J. And Bhagwati, J. highlighted the importance of the rule of hearing in the following words:

“43. Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes it, applies when people are affected by acts of authority. It is the hone of healthy Government, recognised from earliest times and not a mystic testament of Judge-made law. Indeed, from the legendary days of Adam and of Kautilyas Arthashastra the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system.

47. The Court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances. The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.”

15. At the cost of repetition, in our view, it is not such an open and shut case where it can be assumed that if opportunity would have been provided to the appellants before passing the impugned order, they would not have been in a position to putforth any defence. Whether defence is acceptable or not was primarily required to be decided by the administration. In *Principles of Administrative Law* Volume – 1 (8th Edition) by Justice D.M. Dharmadhikari, Former Judge, the Supreme Court of India (Lexis Nexis Publication) at page 697 it is recorded that :-

“Merits are not for the Court but for the authority to consider. ACKNER, J. has said that the ‘useless formality theory’ is a dangerous one and, however inconvenient, natural justice must be followed.”

At the same page, it was further recorded that :-

“A detailed and emphatic criticism of the ‘unless formality theory’ has been made much earlier in

‘Natural Justice, Substance or Shadow by Prof. D.H. Clark of Canada (see 1975 PL, pp. 27-63) contending that *Malloch* and *Glynn* were wrongly decided. Foulkes (*Administrative Law*, 8th Edn., 1996, p. 323). Craaig (*Administrative Law*, 3rd Edn., p.596) and others say that the Court cannot prejudge what is to be decided by the decision making authority. DE SMITH (5th Edn., 1994, paras 10.031 to 10.036) says Courts have not yet committed themselves to any one view though discretion is always with the Court. Wade (*Administrative Law*, 5th Edn., 1994 pp.526-30) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision.”

(Emphasis Supplied)

16. The Apex Court in the cases of **Aligarh Muslim University vs. Mansoor Ali Khan, (2000) 7 SCC 529; M.C. Mehta vs. Union of India, AIR 1999 SC 2583; S.L. Kapoor vs. Jagmohan, 1980 (4) SCC 379, Venkateshwara Rao vs. Government of Andhra Pradesh, AIR 1966 SC 828** opined that even in cases of ‘no notice’ or ‘no hearing’, the superior Courts may in the exercise of their discretion decline to interfere where on admitted or undisputed facts, the view taken by the impugned order is the only possible view and it would be futile to issue any writ to compel observance of natural justice. (See: *Principles of Statutory Interpretation*, 12th Edition, 2010, by Justice G.P. Singh, Former Chief Justice M.P. High Court (Lexis Nexis Butterworths Wadhwa) at page 461)

17. As analyzed above, if appellants would have been afforded opportunity to show cause, they would have been in a position to take

factual and legal grounds in their defence. Thus, *useless formality theory* cannot be pressed into service in the facts and circumstances of this case.

18. In view of foregoing analysis, in our opinion, the learned Single Judge was not right in dismissing the petition on the ground that since petitioners themselves have not fulfilled the conditions mentioned in the allotment letter (Clause No.5 and 7), mere deposition of rent will not create any right. The appellants, in our judgment, are entitled to put forth all possible defence i.e. factual and legal, when they are put to notice by the respondents. It is said that “sunlight is the best disinfectant”. It is equally settled that fairness is an integral part of good administration. The administration, which could have waited for 28 years, could have waited for some more time by giving adequate opportunity to the petitioner to show-cause and obtain their response and thereafter decide the matter in accordance with law.

19. In this view of the matter, the order of learned Single Judge dated 23.05.2022 is **set aside**. The order impugned before the writ Court dated 17.05.2022 (Annexure- P/4) is also **set aside** by reserving liberty to the respondents to issue show-cause notices, obtain response of the appellants and then take a decision in accordance with law.

20. With the aforesaid and without expressing any opinion on the merits of the case, the writ appeal is **allowed**.

(SUJOY PAUL)
JUDGE

(ACHAL KUMAR PALIWAL)
JUDGE