



**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE G. S. AHLUWALIA  
ON THE 4<sup>th</sup> OF SEPTEMBER, 2024  
WRIT PETITION No. 25309 of 2024  
**PREM NARAYAN SONI AND OTHERS**  
*Versus*  
**THE STATE OF MADHYA PRADESH AND OTHERS****

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**Appearance:**

*Shri Neeraj Jain- Advocate for petitioners.*

*Shri Abhishek Singh- Government Advocate for respondent/State.*

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**ORDER**

This petition under Article 226 of Constitution of India has been filed seeking the following reliefs:-

“I. To call for the entire records pertaining to the petitioner for kind perusal of this Hon’ble court.

II. To this Hon’ble court may kindly be pleased to issued writ in the nature of Mandamus and direct to the respondents to give time of 3 months to vacate the shops, in the interest of justice.

III. To this Hon’ble court may kindly be pleased to direct to the respondents to re-allot the shop after renewal as per the decision taken in meeting with the respondent no. 3, in the interest of justice.

IV. Any other reliefs which this Hon’ble court may deem fit and proper in the facts and circumstances of the case including cost of the litigation may kindly be awarded in favour of the petitioner.”



2. It is submitted by counsel for petitioners that they are running their business in 22 shops constructed by the respondent-authority in Janpad Panchayat, Shahgarh. The above shops were allotted to the petitioners by the respondent-authority in an auction and the agreements were executed. Agreements have been placed on record. The livelihood of petitioners is depended upon the shops which were allotted to them. On 31.07.2024, the impugned notice was issued directing the petitioners to vacate all 22 shops because all the shops are in dilapidated condition and it may get demolished at any point of time.

3. A meeting was held on 16.07.2024 and the petitioners gave their consent for reconstruction of shops and they also requested for allotment of shops on preference basis. They also requested for grant of appropriate time to vacate the shop so that they may be able to run and manage their business. Thereafter, on 09.08.2024 and 14.08.2024, fresh notices have been issued to petitioners to vacate the shops. Although petitioners have made the representations for grant of time but respondents are not ready to give any time. It is submitted that the impugned show cause notice has been issued because of the fact that one wall which was in a dilapidated condition had fallen down on account of which 6 children had died and now the respondents want to demolish the shops which according to them are in dilapidated conditions.

4. *Per contra*, the petition is vehemently opposed by counsel for State. It is submitted that the impugned notices have been issued in order to avoid any untoward incident which may cause loss to the life and property of the victim. It is further submitted that it is clear from the



agreements which have been filed by the petitioners that the shops were rented out to the petitioners and the tenancy was for one year, therefore, the shops were never sold to petitioners.

5. Heard learned counsel for petitioners.

6. It is the case of petitioners that they were inducted as tenants. Impugned notices have been issued to vacate the shops because the shops are in dilapidated condition. It was also mentioned in the impugned show cause notices that in case if the shops are not vacated, then steps would be taken to demolish the same or otherwise the petitioners shall be liable to bear all the responsibilities in case of some untoward incident.

7. Accordingly, during the course of arguments, the counsel for petitioners was directed to make a statement as to whether the petitioners are ready to bear the civil as well as criminal liabilities in case if untoward incident takes place on account of fall of the building but it was submitted by counsel for petitioners that the petitioners are not ready to take any such responsibility.

8. However, it was submitted by counsel for petitioners that some time may be granted to vacate the shops and petitioners may be granted preference in re-allotment of shops.

9. Heard learned counsel for the parties.

10. The Madhya Pradesh Panchayat (Transfer of Immovable Property) Rules, 1994 deals with the disposal of the immovable property. Rules 3, 4, 5, 7 and 8 of Rules, 1994 reads as under:-

**3. Resolution for the transfer of immovable property.-**A Panchayat may pass a resolution that any immovable property vested in or belonging to it is not likely to be required by it in



the near future and it may be transferred by sale, gift, mortgage or exchange or by lease.

**4. Sanction of competent authority.**-If the said property is to be transferred by sale, gift, mortgage, exchange or by lease for a period exceeding three years or otherwise the Panchayat shall send a copy of the resolution alongwith full justification for such transfer, to the State Government or the officer authorised by it, as the case may be, for obtaining its/his sanction. On receipt of the sanction of the State Government or he authorised officer the said property shall be transferred according to procedure, hereinafter laid down.

**5. Transfer by public auction.**-(1) No transfer of immovable property by sale or lease shall be made except by public auction:

Provided that if the Panchayat is of the opinion that it is not desirable to transfer such property by public auction, it may with the previous sanction of the State Government or the officer authorised by it under Section 65, effect such transfer without public auction for a consideration which shall not be less than the prevalent market value of such property.

(2) The Immovable properties or out of the shops constructed by the panchayats which are to transfer on sale or by lease the reservation shall be made as follows:-

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| (1) For Scheduled Castes/Scheduled Tribes                                  | In proportion of their population in the total population of Gram Panchayat area. |
| (ii) For Other Backward Classes  | Fifteen percent.  |
| (iii) For Women (including widows and abandoned)                           | Ten per cent.   |
| (iv) For handicapped persons (blind handicapped shall be given.preference) | Two per cent.   |
| (v) For retired members of defence service                                 | Two per cent.   |
| (vi) For Freedom fighters  | Two per cent.   |
| (vii) For educated unemployed  | Five per cent.  |



(3) The allotment of reserved shops or property shall be made by holding auction between the relevant reserve category.

(4) The reserved category shops or property shall neither be transferred nor given on rent if happened so, the allotment shall be cancelled).

**7. Annual rent to be payable in advance.** Every lease of immovable property shall be subject to the condition of payment of annual rent payable in advance every year during the term of the lease.

**8. Publication of notice of auction and the conditions of lease or sale.**-A notice specifying the conditions of lease or sale, the date, time and place of auction shall be published not less than fifteen days prior to the date fixed for the auction by pasting a copy of the notice containing the said information on the notice board of the Panchayat and Tahsil office concerned and by beat of drums in the local area in which the property is situated. Where the off-set price of the immovable property is more than ten thousand rupees, the said notice shall also be published in local newspapers.

**11.** It is not the case of the petitioners that earlier shops were let out to them in a public auction.

**12.** Be that whatever it may be.

**13.** The public auction can be avoided by the Janpad Panchayat only if the sanction is granted by the State Government as per Rule 5 of Rules, 1994. Therefore, by bypassing the statutory provision of Rules, 1994, no direction can be given to the Janpad Panchayat to give preference to petitioners for allotment of the shops.

**14.** The petitioners are not ready to take responsibility of any untoward incident which may take place. Even during the course of arguments it was not argued that the shops are not in dilapidated conditions and there is no likelihood of their fall.



**15.** It appears that after the unfortunate incident of death of 6 children on account of fall of a wall, the local administration is not taking any further risk to put the life and liberty of the residence in *jeopardy*.

**16.** Since the petitioners are not ready to take up the responsibility of any untoward incident, further it is not the case of petitioners that the shops in question were sold to them, this Court is of considered opinion that no direction can be given to give preference to petitioners in the auction proceedings.

**17.** However, liberty is granted to the Janpad Panchayat, Shahgarh that in case if they so decide, then they can seek sanction from the State Government as per the provisions of Rule 5 of Rules, 1994.

**18.** Accordingly, no case is made out warranting interference.

**19.** Petition fails and is hereby **dismissed**.

**(G.S. AHLUWALIA)**  
**JUDGE**

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