

W.P.No.7275/2010, Conc.No.913/2014,  
W.P.Nos.13607/2015, 15560/2015, 15983/2015,  
16298/2015, 16785/2015, 19823/2015 and 180/2016

4.3.2016

**W.P. No.7275/2010 :**

Shri Avinash Zargar, Advocate for the petitioner.

Shri Anshuman Singh, Advocate for the respondent  
No.2.

**I.A. No.1856/2016 for vacating stay :**

This application has been filed by the Corporation.

According to the Corporation, the structure in respect of which the writ petitioner claims right to use and occupy the same is coming within the road line. In the application, it is stated as under :

“4.It is submitted that the answering respondents and the district administration are taking a comprehensive exercise for removal of encroachment from various roads and streets in Jabalpur pursuant to orders issued by the Division Bench in CONC No.913/2014. A detailed plan has been submitted and work is being undertaken for removal of encroachment and unauthorized structures as per the said plan. It is submitted that the answering respondents have already demolished several shops that were immediately adjacent to the structure of the petitioner. However, on account of the interim orders dated 26.05.2010 and

22.08.2014 no action could be taken in respect of the structure of the petitioner and the land adjacent thereto. It is submitted that the road on which the structure of the petitioner is located is the major approach road to Railway Station Jabalpur. It bears very heavy load of traffic and the structure of the petitioner is causing a major bottleneck restricting free movement of traffic. The answering respondents intend to provide full width of the road and undertake construction of the same. However, even after demolition of several shops the work cannot be undertaken till the said structure is removed and the land adjacent thereto is also vacated.”

No doubt, the writ petitioner has filed reply to oppose this application. In the reply, the writ petitioner asserts that the petitioner has been put in possession of the subject structure after inviting public offers and the writ petitioner was highest bidder in the said tender process. According to the petitioner, after complying with all formalities including permission to put up the structure on the subject plot, the petitioner started occupying the structure. That, however, can be of no relevance in absence of any lease-deed executed in favour of the petitioner. Admittedly, no lease-deed has been executed in favour of the petitioner as is mandated by Section 80 of the Municipal Corporation

Act. Assuming that the petitioner has some propriety right in the said structure, even that cannot come to aid of the writ petitioner considering the fact that now it has been noticed that the structure is standing within the road line and obstructing the road, as is asserted by the Corporation on affidavit.

In Public Interest Litigation and Contempt Petition filed therein being CONC No.913/2014, this Court has issued direction to the Corporation and Collector to ensure that all structures obstructing the road falling within the road line must be removed with utmost dispatch. As per Section 323, even giving of notice to the occupants of such structures (obstructing the road), is not essential. It has also come on record in the compliance report filed before this Court by the Corporation that all other structures abutting (around 20 structures) have been demolished except the structure occupied by the present writ petitioner, which could not be removed because of the interim protection given to the petitioner in the present writ petition vide orders dated 26.5.2010 and 22.8.2014. It has, therefore, become necessary for the Corporation to approach this Court to get the said interim order vacated or modified so as to enable the Corporation to comply with the direction

given in the Public Interest Litigation, which action would be imperative in larger public interest. Notably the road in question is a major approach road to the Railway Station and, therefore, removal of the subject structure cannot brook any further delay.

Counsel for the petitioner has placed reliance on the decision of the Supreme Court in **Food Corporation of India and others vs. Babulal Agrawal**, reported in (2004) 2 SCC 712. There can be no debate about the legal position expounded in the said decision. In the fact situation of the present case, this decision has no application. It is admitted position that no lease-deed has been executed in favour of the writ petitioner. It is a different matter that the petitioner is in possession of the subject structure since year 1988, that, however, cannot give him vested right in the property and, moreso, any right whatsoever to obstruct the smooth traffic on the road, which must take preference to the right of the petitioner even if any.

As a result, we clarify the interim order granted by this Court in W.P. No.7275/2010 to mean that if the structure is obstructing the road, as has been stated in the application filed by the Corporation supported by affidavit,

it must be removed forthwith, as in the case of other 20 structures which were obstructing the same road and abutting to the structure occupied by the writ petitioner. After removing the said structure, compliance report be filed in CONC No.913/2014 on **9.3.2016**.

The application is **allowed** in the above terms.

**W.P. No.15560/2015** :

Counsel for the Corporation submits that there is some printing error in the Board notified by the Registry. Item No.7.3 relates to W.P. No.15550/2015 and not W.P. No.15560/2015.

**Principal Registrar (Judicial) to take notice of this error and list W.P.No.15550/2015 on the next date i.e. 9.3.2016.**

**W.P.No.15560/2015** be **delinked** as it is a service matter and not related to the group of cases listed today.

To proceed for admission.

Issue notice on admission. Returnable on **15.3.2016**.

*Dasti* notice, in addition, permitted.

**W.P. No.15983/2015** :

Shri A.M.Trivedi, Senior Counsel with Shri Ashish Trivedi, Advocate for the petitioner.

Shri Saurabh Sunder, Advocate for respondent no.2

Municipal Corporation.

Counsel for the Corporation submits that the structure, which is the subject matter of this writ petition is also obstructing the road.

Counsel for the petitioner disputes that position.

Counsel for the Corporation submits that he will take out a formal application and state the above position on affidavit of responsible officer of the Corporation.

To be listed on **9.3.2016**.

Advance copy of the application be served on the counsel for the petitioner.

**W.P. No.19823/2015** :

Shri R.K. Sanghi, Advocate for the petitioners No.21 to 25.

Shri K.S. Wadhwa, Addl. A.G., for the respondents/State.

Shri Saurabh Sunder, Advocate for the respondent No.3 Corporation.

The issue raised in this writ petition is more or less the same already considered in W.P. No.7275/2010. For the same reasons, we must hold that the petitioners cannot claim any right to remain in occupation of the structure which is obstructing the road and, moreso, when it is main

road towards the Railway Station. Notably, 20 other structures at the same place where the structure occupied by the petitioners No.21 to 25 is located, have already been demolished, but, in the interim order granted in the present writ petition on 20.11.2015, the reason recorded for granting interim protection clearly overlooks the mandate of Sections 80 and 323 of the Municipal Corporation Act. Moreover, the direction given in larger public interest in Contempt Petition – CONC No.913/2014 arising out of Public Interest Litigation – W.P. No.2214/2005 must prevail; and the Corporation is under obligation to remove all the structures obstructing the road much less main road such as at the junction of the Railway Station causing traffic jams and related problems.

Hence, the ad-interim order granted on 20.11.2015 is **vacated** and must read to mean that if the structures occupied by the petitioners No.21 to 25 or any other person, which have already been sealed by the Corporation or otherwise, and are falling within the road line and obstructing the road, must be removed by the Corporation in compliance with the direction given in the Public Interest Litigation and also because of the legal obligation to do so in terms of provisions of Municipal Corporation

Act. Compliance report in that behalf be filed on **9.3.2016**.

We make it clear that henceforth no other Court in the State of Madhya Pradesh shall entertain any proceedings challenging the action of the Corporation which is founded on the direction issued in Contempt Petition – CONC No.913/2014 arising out of Public Interest Litigation – W. P. No. 2214/2005, directing the Corporation to remove all obstructions on the public/ Corporation road throughout the city of Jabalpur.

**Principal Registrar (Judicial) must ensure that in matters of demolition of structures, declaration be obtained from the petitioner that the proposed demolition in the city of Jabalpur is not pursuant to the order passed by this Court in CONC No.913/2014 arising out of W.P. No.2214/2005. Otherwise, it must be listed before the Bench taking up assignment of contempt petition No.913/2014.**

**Conc. No.913/2014, W.P. Nos.13607/2015, 16298/2015, 16785/2015 & 180/2016 :**

Shri Satish Verma, petitioner in Conc.No.913/2014, present in person.

Parties through their respective counsel in other petitions.

List these matters on **9.3.2016**.

**W.P. No.4257/2016** be listed on **9.3.2016** before this  
Bench.

(A. M. Khanwilkar)  
Chief Justice

(Sanjay Yadav)  
Judge

*Khan\**