

The High Court Of Madhya Pradesh**WP-11340-2021***(JITENDRA SHARMA Vs THE STATE OF MADHYA PRADESH AND OTHERS)***1****Gwalior, Dated : 01-07-2021****Heard through Video Conferencing.**

Shri J.P.Mishra, learned counsel for the petitioner.

Shri Ankur Mody, learned Additional Advocate General for the State.

Present PIL has been filed primarily raising alleged public cause of encroachment by certain persons over government land bearing survey No. 75 Harkotaka, Lashkar Gwalior.

It is common knowledge that this Court is flooded with petitions of this nature where individuals come to this Court alleging encroachment on government lands. The Court has to indulge in the process of seeking reply and deciding the matters despite the Apex court in the case of **Jagpal Singh and others Vs. State of Punjab and ors. (2011) 11 SCC 396** has directed thus:

"23. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility

on the land.

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24. Let a copy of this order be sent to all Chief Secretaries of all States and Union Territories in India who will ensure strict and prompt compliance of this order and submit compliance reports to this Court from time to time."

Recently Division Bench of this Court in **WP 7865/2021 (Gran Panchayat Dhooma Vs. State of M.P. and ors.)** vide order dated **09.06.2021** has held thus:-

"06. In order therefore to provide a State wide solution to this ever persisting problem, we deem it appropriate to direct the Chief Secretary of the State to devise a permanent mechanism, which should be functional in every district of the State where the concerned District Collector should be required to periodically notify for the information of the general public to lodge the complaints / representations with regard to such encroachments with a specially designated Public Land Protection Cell (for short PLPCTM) for rural areas. The PLPC should be headed by District Collector and function under his direction and supervision with an officer of the rank of Tehsildar as its Member Secretary and such other Officers as its Members as the Government may deem fit to nominate. The PLPC shall get such complaints / representations enquired into by deputing concerned Sub Divisional Officer / Tehsildar / Naib Tehsildar so as to verify whether or not such encroachments have actually taken place on public land. If the allegations are found to be substantiated, appropriate steps in accordance with law be immediately taken for removal of the encroachments and appropriate penal action be also taken against the trespassers. The complaints / representations received in the PLPC should be decided by passing speaking order, informing the respective complainant / representationist about the action taken. This would obviate the necessity of such complainants / representationists approaching this Court directly by way of public interest litigation. If this permanent mechanism is put in place, this Court would not be required to directly entertain such public interest litigation and would do so only in the event of inaction on the part of the concerned PLPC.

07. The PLPC aforementioned shall also keep in view the guidelines issued by the Supreme Court in **Jagpal Singh & Others Vs. State of Punjab & Others, (2011) 11 SCC 396** wherein all the State Governments of the country have been

*directed to prepare scheme for eviction of illegal / unauthorised occupants of the Gram Sabha / Gram Panchayat / Poramboke / Shamlat land which should then be restored to the Gram Sabha / Gram Panchayat for the common use of residents of the village. The said scheme should provide for the speedy eviction of such illegal occupants, after giving them a show cause notice and a brief hearing. The Supreme Court further held therein that long duration of the illegal encroachment / occupation of land or huge expenditure in making construction thereon or political connections of trespassers are no justification for regularising such illegal occupation. Regularisation should be permitted only in exceptional cases where lease has been granted under some government notification e.g. to landless labourers or members of Scheduled Castes / Scheduled Tribes or where there is already a school, hospital, dispensary, shamshan kabristan or other public utility of the like nature on the land. Observations of the Supreme Court in **Jagpal Singh (supra)** thus leaves no manner of doubt that removal of encroachment on all such land is a rule and regularisation an exception and that too in extremely limited number of cases, which only the Government can do by appropriate notification and no other authority.*

08. A copy of this order be forwarded to the Chief Secretary of the State of Madhya Pradesh, Bhopal for issuance of necessary notification for notifying the permanent body designated as Public Land Protection Cell (PLPC) in every District with the District Collector as its head and a Tehsildar as its Member Secretary, apart from other revenue officers as the Members. This should be given due publicity for information of all the citizens that complaint with regard to encroachment over public land in the rural areas can be made to such authorities which shall be responsible for causing an enquiry into such complaint to be made and taking expeditious action for removal of encroachments so as to protect the public land."

In view of above, this Court declines to entertain this petition on merits but issues notice to the State by expanding it's scope seeking explanation of the State and it's functionaries as to why committee nomenclatured as Public Land Protection Cell has not yet been constituted at every district level. The Committee was required to be headed by the Collector of concerned district which was vested with the powers and authority to scrutinize all such complaints of encroachment over government land and take remedial action.

Apart from above, it is also required to find out as to whether decision of Apex Court in ***Jagpal Singh & others (supra)*** and Division Bench decision in the case of ***Gram Panchayat Dhooma Vs. State of M.P. (supra) dated 9/6/2021*** at the Principal Seat at Jabalpur relates exclusively to the rural area or also covers encroachment in urban area.

Let an affidavit be filed in that respect before the next date of hearing.

Let the case be taken up alongwith W.P.11044/2021 in the same head.

(DEEPAK KUMAR AGARWAL)
JUDGE

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