



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

1. D.B. Special Appeal Writ No. 341/2022

Prakash Chand Saini S/o Shri Shyam Lal Saini, Aged About 53 Years, R/o Near Govt. Sardar Senior Secondary School, Buchaheda, Ward No. 16, Kotputli, District Jaipur.

----Appellant

Versus

1. State Of Rajasthan, Through Principal Secretary, Department Of Local Self Government, Secretariat, Jaipur.

2. State Of Rajasthan, Through Principal Secretary, Urban Development And Housing Department, Secretariat, Jaipur.

3. Director And Joint Secretary, Department Of Local Self Government, Government Of Rajasthan, Jaipur.

4. Municipal Board, Kotputli, Through Chief Municipal Officer, Kotputli, District Jaipur.

5. Executive Officer, Municipal Board - Kotputli, Kotputli, District Jaipur.

----Respondents

Connected with

2. D.B. Special Appeal Writ No. 342/2022

Pushkarmal Saini S/o Shri Bhuramal Saini, Aged About 79 Years, R/o Govt. Sardar Senior Secondary School, Buchaheda, Ward No. 16, Kotputli, District Jaipur.

----Appellant

Versus

1. State Of Rajasthan, Through Principal Secretary, Department Of Local Self Government, Secretariat, Jaipur.

2. State Of Rajasthan, Through Principal Secretary, Urban Development And Housing Department, Secretariat, Jaipur.

3. Director And Joint Secretary, Department Of Local Self Government, Government Of Rajasthan, Jaipur.

4. Municipal Board, Kotputli, Through Chief Municipal



Officer, Kotputli, District Jaipur.

5. Executive Officer, Municipal Board - Kotputli, Kotputli, District Jaipur.

----Respondents

3. D.B. Special Appeal Writ No. 343/2022

Hari Prasad Sharma S/o Lt. Shri Badri Prasad Sharma, Aged About 55 Years, Resident Of Sarund, Tehsil Kotputli, District Jaipur.

----Appellant

Versus

1. State Of Rajasthan, Through Principal Secretary, Department Of Local Self Government, Secretariat, Jaipur.

2. State Of Rajasthan, Through Principal Secretary, Urban Development And Housing Department, Secretariat, Jaipur.

3. Director And Joint Secretary, Department Of Local Self Government, Government Of Rajasthan, Jaipur.

4. Municipal Board, Kotputli, Through Chief Municipal Officer, Kotputli, District Jaipur.

5. Executive Officer, Municipal Board - Kotputli, Kotputli, District Jaipur.

----Respondents

4. D.B. Special Appeal Writ No. 344/2022

Ratiram Saini S/o Shri Fatehchand Saini, Aged About 41 Years, R/o Amarpura Nayi Kothi, Tehsil Kotputli, District Jaipur.

----Appellant

Versus

1. State Of Rajasthan, Through Principal Secretary, Department Of Local Self Government, Secretariat, Jaipur.

2. State Of Rajasthan, Through Principal Secretary, Urban Development And Housing Department, Secretariat, Jaipur.

3. Director And Joint Secretary, Department Of Local Self



Government, Government Of Rajasthan, Jaipur.

4. Municipal Board, Kotputli, Through Chief Municipal Officer, Kotputli, District Jaipur.
5. Executive Officer, Municipal Board - Kotputli, Kotputli, District Jaipur.

----Respondents

For Appellant(s) : Mr. Kamlakar Sharma (Sr. Advocate) with Mr. Archit Bohra, Ms. Lipi Garg and Ms. Aastha Singhal

For Respondent(s) : Mr. Anil Mehta, AAG with Mr. Yashodhar Pandey



HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE SUDESH BANSAL

Order

25/02/2022

1. These appeals arise out of the common judgment of the learned Single Judge dated 07.01.2022. The appellants-original petitioners had challenged the action of the municipal authorities of Kotputli issuing notice dated 14/15.12.2021 and public notice dated 23.12.2021. By the impugned judgment the learned Single Judge allowed the petitioners to raise objections to the said notices upon which the Nagar Palika would decide the objections by a speaking order within a period of 30 days. Against this judgment the petitioners have filed these appeals.

2. Ordinarily since the order passed by the learned Single Judge does not take away any of the rights of the appellants-petitioners, we would not have examined these appeals any further. However learned counsel for the appellants vehemently contended that the Nagar Palika has issued eviction notices to the occupants of the area who are occupying these premises on lawful basis since long



and the notice threatens the occupants with demolition if occupation is not withdrawn voluntarily. On such basis we have issued notice to Nagar Palika. Mr. Anil Mehta, AAG appearing for the Nagar Palika stated that the Nagar Palika intends to widen the road. He submitted that some of the occupants have caused encroachments. Accordingly notices dated 14/15.12.2021 were issued. He further brought to our notice that under a general public notice dated 23.12.2021 the Nagar Palika asked all the occupants within the road land to remove their structures failing which there would be a demolition. He could not controvert the averments of the appellants-petitioners that no procedure for acquisition on private lands has been undertaken by Nagar Palika.

3. Under the circumstances we are of the opinion that those petitioners-occupants to whom the notice dated 14/15.12.2021 or such similar notices have been served, they must file their replies. If according to them they have not encroached on any part of the private land it would be open for them to point out the same to the authorities. However the public notice dated 23.12.2021 is bad in law and requires all and sundry to withdraw the occupation failing which there would be demolition of structures. This does not make a distinction between a person who has caused encroachment and why he was occupying the premises in unlawful terms. Counsel for the Nagar Palika agreed that no proceedings for acquiring such private properties either through private negotiations or compulsory acquisition has been undertaken. The municipality cannot demolish such structures.

4. Under these circumstances appeals are disposed of with following directions:-



1. Any of the appellants-original petitioners who may have received the said notice dated 14/15.12.2021 may file objections before the authorities. If no objection is raised, the same be done within a period of 30 days from today. The objection which have already been received or those may be received 30 days thereafter be disposed of by the authorities by a speaking order as desired by the learned Single Judge.

2. Public notice dated 23.12.2021 is quashed.

5. Learned counsel for the appellants submitted that subsequently the municipality has amended Rajasthan Municipality Act, 2009 and inserted Section 73B therein. Since these are developments which took place after the disposal of the writ petitions and since Section 73B of the Act is not under challenge, the course of these appeals would not change on account of these developments. It is always open for the appellants to take recourse of appropriate remedy if fresh cause of action has arisen.

(SUDESH BANSAL),J

(AKIL KURESHI),CJ

N. Gandhi/32-35

सत्यमेव जयते