

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition (PIL) No. 17971/2022

1. Vijay Kumar Boyat S/o Raju Boyat, Aged About 31 Years, R/o C-39, Indra Nagar, Phase-2Nd, Jaipur.
2. Prakash S/o Sharwan Kumar, Aged About 30 Years, R/o 2/139 Aajad Nagar, Jaipur.
3. Yograj Boyat S/o Raju Boyat, Aged About 34 Years, R/o C-39, Indra Nagar, Phase-2Nd, Jaipur.
4. Vinod Dhanga S/o Jagdish Prasad Dhanga, Aged About 32 Years, R/o 137 Khadi Gram Udhog Road, Sanganer, Jaipur.
5. Kalu Ram Yadav S/o Balo Ram Yadav, Aged About 42 Years, House No. 78 B Ahiro Ki Dhani, Niwaru, Jhotwara, Jaipur.

-----Petitioners

Versus

1. State Of Rajasthan, Through Principal Secretary, Urban Development And Housing Department, Secretariat, Jaipur.
2. Additional Chief Secretary, Department Of Urban Development And Housing, Rajasthan Government, Jaipur
3. Commissioner, Jaipur Development Authority, Jaipur
4. Secretary Jaipur Development Authority, Jaipur.
5. Chief Enforcement Officer, Jaipur Development Authority, Jaipur
6. Dy. Commissioner, Zone-7, Jaipur Development Authority, Jaipur
7. Estate Officer Zone 7, Jaipur Development Authority, Jaipur.

-----Respondents

For Petitioner(s)	:	Mr. Kuldeep Sharma Mr. S.N. Bohra
For Respondent(s)	:	Mr. R.N. Mathur, Sr. Adv., assisted by Mr. Ashwine Jaiman Mr. Ajay Choudhary Mr. Nitesh rawat Mr. Amit Kuri with Mr. Dharma Ram

Mr. Harshvardhan Shekhawat
Ms. Nandini Mirdha

HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA

HON'BLE MR. JUSTICE UMA SHANKER VYAS

Order

29/11/2024

1. Pressing application (IA No.3/2024) for vacating stay order, submission of learned Senior Counsel for applicants-respondents is that without any notice and opportunity of hearing to occupants, PIL's are being filed to seek an order without adjudication on any of the issues which directly affect and impact the rights of individuals. It is submitted that the instant PIL was filed before this Court in which initially, writ petition was disposed of on 05.12.2022. However, as the observations which were made, were affecting the rights of occupants who were not heard, application for modification was filed, whereafter order dated 05.12.2022 was modified and an order was again passed on 27.01.2023 by this Court clarifying that the Court has not issued any command to Jaipur Development Authority (hereinafter referred to as 'JDA') or its authorities to remove the applicants by recording any finding of encroachment and it is for the authorities to draw appropriate proceedings and act in accordance with law.

2. The Court further clarified that order dated 05.12.2022 was passed without there being any decision on the merits of the case much less any finding on encroachment and only direction was to conclude the proceedings. It is the submission that order dated 27.01.2023 was not brought to the notice of the Court seeking

revival on the PIL with the result that the PIL was revived on 11.08.2023.

3. It is further submitted that without hearing the occupants, order has been passed on 21.11.2024 making it a case of admitted position with regard to the width of the road.

4. It is submitted that the averments made in the PIL and admission made by JDA, would not bind the occupants and they are entitled to appropriate opportunity to dispute the factual position as is being asserted by the petitioners and the JDA. It is also submitted that taking shelter of order dated 21.11.2024, now the JDA is proceeding to issue notice taking the admitted position as stated in the order dated 21.11.2024 and the result is foregone, therefore, the interim order be vacated and the newly added respondents be heard and then appropriate orders, as may be considered necessary, may be passed.

5. Learned counsel for the JDA would submit that JDA has only acted under the directions of this Court. It is submitted that JDA has not removed anyone without following the due procedure of law. He submits that the notices are issued to every person who upon survey has been found to be encroacher. Learned counsel for the JDA asserts that the width of the road is 48 metres and the persons to whom notices are being issued including the present applicants-respondents are those who have been found to be encroachers and after receipt of the reply, the matter would be decided and then only orders would be passed in the matter.

6. Learned counsel appearing on behalf of the PIL petitioners would submit that while seeking revival of the PIL, order dated 27.01.2023 was not within petitioners' notice and knowledge. He

would further submit that in any case the allegation of encroachment is required to be duly enquired into and in substance, the direction issued by this Court on 21.11.2024, only orders enquiry, therefore, the application for vacating the stay is liable to be rejected.

7. We have heard learned counsel for the parties.

8. This PIL has been filed by the petitioners making allegations with regard to encroachment on public road.

9. Vide order dated 05.12.2022, this PIL was disposed of. This Court noticed that the JDA Tribunal had passed an order on 31.05.2017 and in fact JDA had issued notice to all those persons who have been alleged to be encroachers. The grievance raised in the PIL was that even though five years elapsed, but the proceedings have not been brought to their logical conclusion. This Court noticed that even after the order passed by the JDA Tribunal giving opportunity of hearing to the encroachers, issuing directions to JDA to take necessary proceedings, proceedings have not been brought to its logical conclusion and the matter cannot be kept pending indefinitely for several years. It was pertinently observed that it is high time that JDA should pass orders and take appropriate action, in case, upon enquiry it is found that encroachment has taken place.

10. However, later on, some of the occupants moved an application seeking modification of the order by submitting that without consideration of the individual case, the order has been passed which is being taken as a command to remove them without holding proper enquiry as directed by the JDA Tribunal way back on 31.05.2017. On such submission, order dated

05.12.2022 was modified by this Court vide its order dated 27.01.2023.

11. This Court observed that PIL was disposed of without there being any decision on the merits of the case much less any finding of the encroachment and the Court had not decided any issue. The grievance raised before this Court was inaction, therefore, the Court only directed authorities to conclude the proceedings. If the case of the applicants-respondents is that notices were not issued to them and without that the JDA is initiating proceedings, their remedy lies in challenging the action of the JDA on such grounds as may be available to them under the law in separately constituted proceedings. This Court further clarified that we have not issued any command to JDA or its authorities to remove the applicants by recording any finding of encroachment. It is for the JDA authorities to draw appropriate proceedings and act in accordance with law.

12. It, however, appears that the PIL-petitioners filed an application for revival of the petition on the grievance that order dated 05.12.2022 has not been complied with. While seeking revival, the order dated 27.01.2023, which modified earlier order dated 05.12.2022 was not placed before the Court.

13. After revival when the case was listed, an order had been passed on 21.11.2024 treating width of the road as the admitted position of the record. Moreover, the order says that the proceedings are required to be drawn to remove illegal constructions or other encroachments by giving notice to those who are owner/tenant.

14. This Court has also directed objections to be decided.

15. We are of the view that after order dated 05.12.2022 was modified on 27.01.2023, except issuing a direction to conclude the proceedings at the earliest, no other finding was required to be recorded much less any finding with regard to the width of the road. Such decision directly affects those who are occupants of the land. What is the width of the road, whether the occupants are encroachers or not, or they are having any valid authority of possession, are all matters which are to be left to be decided by the JDA and not by this Court. That precisely was done by this Court vide order dated 27.01.2023.

16. Interim order dated 21.11.2024 is accordingly vacated. Application (IA No.3/2024) stands disposed of.

17. We are of the view that this PIL need not be kept pending. We have already issued directions and clarifications time and again. The JDA is free as directed earlier to conclude the proceedings in the manner permissible under the law. If any person is aggrieved by the order of the JDA, it will be open for him to challenge the orders.

18. The PIL is also closed.

(UMA SHANKER VYAS),J

(MANINDRA MOHAN SHRIVASTAVA),CJ