

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/WRIT PETITION (PIL) NO. 59 of 2021

FOR APPROVAL AND SIGNATURE:

**HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR
and
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

BANDHKAAM MAZDOOR SANGATHAN

Versus

STATE OF GUJARAT

Appearance:

MS HETVI PATEL ADVOCATE for MR PRATIKKUMAR B RUPALA(10230)
for the Applicant(s) No. 1

for the Opponent(s) No. 5

MS MANISHA LAVKUMAR SHAH GOVERNMENT PLEADER with MR KM
ANTANI ASSISTANT GOVERNMENT PLEADER for the Opponent(s) No. 1

MR RAMNANDAN SINGH(1126) for the Opponent(s) No. 3

MR SATYAM Y CHHAYA(3242) for the Opponent(s) No. 2

MS ARCHANA U AMIN(2462) for the Opponent(s) No. 4

**CORAM:HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR
and
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI**

Date : 01/02/2022

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI)

1. The petitioner by way of this petition under Article 226 of the Constitution of India in the name of Public Interest Litigation (PIL) has raised a grievance to the effect that until rehabilitation and resettlement takes place the respondent authorities be restrained from evicting the slum dwellers of J.P. Ni Chali/ Slum colony and not to undertake any fresh demolition and to be precise, the following reliefs are claimed in the present Writ Petition (PIL).

“a. Issue a writ of mandamus or any other appropriate writ, order or direction to the respondent no. 2 Municipal Corporation of Ahmedabad and respondent no. 3 Western Railway Department and Respondent No. 1 State of Gujarat to restrain from evicting slum dwellers of J.P. Ni Chali Slum colony until rehabilitation and direct them to not conduct any fresh demolition;

b. Issue a writ of mandamus or any other appropriate writ, order or direction to the Respondent no.2 Municipal Corporation of Ahmedabad and respondent no. 3 Railway Department and Respondent No. 1 State of Gujarat , to stay the physical possession of the slum dwellers from the J.P. Ni Chali Slum colony, even if their homes have already been demolished;

c. Issue a writ of mandamus or any other appropriate writ, order or direction to the respondent no. 2 Municipal Corporation of Ahmedabad and Respondent no. 3 Railway Department and Respondent No. 1 State of Gujarat to provide immediate relief including temporary shelter, food, water and sanitation facilities to the residents of J.P. Ni Chali slum;

d. Issue a writ of mandamus or any other appropriate writ, order or direction to the Respondent No. 1 State of Gujarat to rehabilitate all the residents of J.P. Ni Chali as per Pradhan Mantri Awaz Yojna (PMAY);

e. Issue a writ of mandamus or any other appropriate writ, order or directing the Respondents to modify the Rehabilitation Policy and extend the cut-off date fro 2010 to 2002 or as recent as the Hon'ble Court deems fit;

f. Pass an order directing Respondent No. 2 the Municipal

Corporation of Ahmedabad and Urban Local Bodies with appropriate authorities to conduct a survey and accordingly rehabilitate of all the residents of J.P. Ni Chali Slum colony;

g. Pass an order to provide compensation of Rs.1,00,000/- for each family whose houses were demolished in J.P. Ni Chali Slum colony'

h. Pass an order to provide Rs.50,000/- as the cost of this present litigation incurred by the petitioner;

i. Pass any other order deemed fit and proper in the circumstances of the present case."

2. Petitioner claims to be a Trade Union registered under the provisions of Indian Trade Unions Act, works for the protection of human rights, legal rights and socio-economic welfare of the workers engaged in the construction industry, brick manufacturing process etc. It has been asserted that by way of this petition, the petitioner - Union is espousing the cause of slum dwellers in question, who are mostly poor workers and are residing at J.P. Ni Chali slum for about three decades. The place at which the workers are stated to have been residing is at Jayantilal Pranlal ni Chali (for short J.P. Ni Chali) at Sabarmati area, near Railway Bridge in Ahmedabad. It has been asserted that this petition is filed for rehabilitation of more than 318 poor landless, shelter-less slum dwellers in the aforementioned Chali, popularly known as J.P. Ni Chali at Sabarmati who are not being provided any alternative accommodation as per various State Government Policies.

2.1. It has been further stated in the petition that in the year 1991, Slums/Chali of J.P. Ni Chali set up at Sabarmati area near Ahmedabad came in existence by intra-State migrants from different districts of State of Gujarat. Upto year 2021, said Chali is comprising of 68-70 houses having population of more than 350 slum dwellers

who are mainly daily rated employees or earning on daily basis. Since these slum dwellers are in possession they are entitled to have the benefit of the policy floated by the State of Gujarat known as 'Rehabilitation and Re-development of the Slums 2010' and detailed policy has been formulated in the name of 'Gujarat Slum Rehabilitation Policy 2013. One Mukhya Mantri GRUH (Gujarat Rural Urban Housing) Yojna as well as Mukhya Mantri GRUH Regulations' for aforesaid rehabilitation Policy of 2010 has been formulated and Gujarat Slum Rehabilitation Policy - PPP - 2013 shall apply to the Slums on lands or plots or part of the lands or plots irrespective of the ownership.

2.2. According to the petitioner, a Resolution also came to be passed by the respondent - State Government on 18.07.2013 and the list of beneficiaries was to be prepared by the implementing agency on the basis of any two of the four identity proofs namely, electricity bill, voter identity card, slum survey card or ration card. According to the petitioner, no such list was prepared by the respondent authorities for rehabilitating these persons who are residents of J.P. Ni Chali.

2.3. The petitioner has asserted that on 15.03.2021, demolition took place in J.P. Ni Chali at Sabarmati near Railway Bridge in Ahmedabad. For 30 years or more, some 318 persons of different classes have been living in the huts with their respective families. It is further the case of the petitioner itself that first illegal demolition took place in the year 2018 for the purpose of setting up Ahmedabad-Mumbai Bullet Train and slum dwellers were removed from the area and those who were inside the railway wall/coat towards where the bullet train work was to begin. These slum dwellers/Jhuggis were removed and the wall was built up by the authorities. It is further the

case of the petitioner that the residents of J.P. Ni Chali informed the petitioner Union that an agency of National High Speed Rail Corporation Limited i.e. respondent no. 4 herein, then surveyed the slum dwellers and Jhuggis and took necessary documents from the workers. Some photographs were also taken and it was conveyed that the houses would be allotted to them under the Pradhan Mantri Avas Yojna, but no action was finalized and the process rests as it is.

2.4. It is further the case of the petitioner that on 19.03.2021, after two years of waiting period to be rehabilitated, the railway employees verbally instructed the slum dwellers to vacate the huts without giving any proper notice and the slum dwellers in a fearful state of mind apprehended that they would be rendered homeless after verbal notice, wrote a letter to the Ahmedabad office of respondent no. 4 - General Manager on 22.02.2021 informing that when the survey was conducted as stated above, the surveyors at that time stated that rehabilitation measures would be taken under the RFCTLARR Act, 2013, instead, these slum dwellers were asked to vacate their houses verbally by the railway authorities and according to the petitioner when an inquiry was made from National High Speed Rail Corporation Limited, they have denied that they have not undertaken any survey. On 22.02.2021, a common notice was issued by the railway administration informing that if the huts are not removed and railway land is not vacated, latest by 28.02.2021, these occupants/slum dwellers would be removed with the help of JCB machine by the railway administration on 01.03.2021 and in a short time, it was not possible for these slum dwellers to find any shelter and further in the recent past on account of pandemic corona situation, the workers could not find any adequate work nor any shelter, as they could not be move from where they are and as such, petitioner submitted representations before the Ahmedabad

Municipal Corporation seeking rehabilitation who informed that the railway authorities have issued written notice to vacate the huts after a lapse of seven days, but no accommodation was given. By taking support of the decision delivered by the Hon'ble Apex Court as mentioned in para 4.13, that homeless families should be considered for a separate policy or separate category in Pradhan Mantri Awas Yojna Scheme (hereinafter referred to as the PMAY Scheme). On 24.02.2021 a further representation in writing was submitted to the Divisional, Railway Management as well as General Manager of National High Rail Speed Corporation Limited. A further communication in turn was forwarded by the Railway administration on 12.03.2021 indicating them that by 14.03.2021 if the huts are not being vacated, same would be removed with the help of JCB Machine by the railway administration. The grievance of the petitioner is that none of the representations submitted by them to the authorities were responded to by the authorities and on 15.03.2021 at 9:30 a.m., all Slums/huts were removed with the help of JCB machine by railway administration and on 17.02.2021, the railway administration according to the petitioner have started digging pits and have commenced construction work and in such a situation for the present, the workers left with no open space between the wires and the wall even after demolition on 15.03.2021 a further representation was submitted on 16.03.2021 to the District Collector, Ahmedabad in person demanding that their homeless families may be given immediate shelter and it was further highlighted that after demolition, the slum dwellers of J.P. Ni Chali are without any temporary or even permanent shelter, food, water and basic human needs and since none of the representations were responded to by any of the authorities, left with no other alternate, the present petition is brought before the Court under the banner of Public Interest Litigation which is numbered as WP(PIL) No. 59 of

2021.

3. From the record it appears that on 07.06.2021, the Court after hearing, called upon the respondents and then various orders have been passed and lastly upon pleadings having been completed, since a request was made by the learned advocates appearing for the respective parties to take up the matter for Final Hearing, in view of the aforesaid circumstances, we have heard the learned advocates appearing for the respective parties at length on 07.12.2021.

4. Learned advocate Ms. Hetvi Patel for Mr. Pratikkumar B Rupala, learned advocate appearing for the petitioner has vehemently contended that the persons who are residing in J.P. Ni Chali are sought to be evicted are the poor and landless slum dwellers and they also must have a right of having dwelling unit in a democratic country and cannot be chased away like animals. Right to live with dignity is guaranteed under Article 21 of the Constitution of India and as such, in view of the law laid down by the Hon'ble Apex Court in a decision reported in **1997 (11) SCC 121**, the reliefs sought in the petition deserves to be considered. It has further been submitted that respondents are duty bound under the constitutional norms to see that adequate living space may be provided before evicting the person from the existing place. The petitioner who is representing the families who are large in numbers are extremely poor people, most of them having their elderly parents, children in the family and if allowed to be thrown under the open sky, they would be out in open terrain and right to housing has been well recognized by catena of decisions and by proposition of law laid down on such issue. The learned counsel appearing for the petitioner has insisted that protection be given to the persons who are being represented by the petitioner and they cannot be deprived of their

shelter. It has been further contended that if the persons who are allowed to be evicted in the manner in which they were evicted in the past, such action is violative of not only fundamental right, but also would be unreasonable, arbitrary and inhumane. Hence, he prays for appropriate protection be provided to the persons as prayed for in the petition.

4.1. The learned counsel for the petitioner has submitted that the Pradhan Mantri Awas Yojna is formulated by the Ministry of Housing and Urban Affairs, Union of India, which mandates housing for the urban and informal settlement residents and the guidelines which postulate in the said Pradhan Mantri Yojna 2005 is basically to provide and promote even affordable housing for weaker section of the Society through the credit linked subsidy and other benevolent facilities, it has been asserted that even the State Government has also its own policies for Rehabilitation and Relocation Policy of 2017, and based upon that formulated by the Delhi Urban Shelter Improvement Board and the said policy was framed on the basis of the observations made by the decision delivered by the Hon'ble Apex Court and as such, he contends that in Gujarat, when persons are being uprooted for the benevolent of public project, then at least the bare minimum requirement of relocating the persons deserves to be considered by the authority instead of treating them as sheer encroachers. It has been contended that it is an obligation of either railway authorities or the State Government to implement the right to housing of citizen who are within their peripheral limits and to see that same policy is extended to accommodate the residents of J.P. Ni Chali who are sought to be evicted inhumanly. By referring to the series of decisions on right to shelter and projected from the constitutional perspective and constitutional guarantees and by referring to the said decisions a contention is raised that it is not

open for the respondent authorities to uproot the persons residing in J.P. Ni Chali under the banner of Public Interest and make them shelter-less. Such inhuman act may not be allowed to be precipitated in any form by the respondent authorities and for that purpose, the protection deserves to be granted and they may not be evicted till the State Government or the Central authority may come out with some concrete steps of rehabilitating the affected persons. The learned counsel for the petitioner then has provided synopsis of arguments and has brought to the notice two facts on the basis of which, the request is reiterated to extend appropriate protection to the these slum dwellers who are being represented by the petitioner. It has been reiterated that these slum dwellers around 318 in numbers are landless and are residing in the area since about 30 years by now with a valid address proof living in J.P. Ni Chali and as such, respondent authorities deserve to be prevented from evicting. It has been further contended that under the project of Bullet Train from the disputed land, these slum dwellers were evicted on more than two occasions under the promise of rehabilitation under various schemes sanctioned by the respondent authorities. First illegal demolition has taken place by the respondent authorities in the year 2018 and next demolition drive has been undertaken in March, 2021 and without giving prior notice and in the name of the the project of Ahmedabad - Mumbai Bullet Train these slum dwellers have been uprooted in the year 2021, i.e. in March, 2021 without arranging rehabilitation. Even though respondent no. 4 has got a detailed R & R policy even for non-title holders, at least this policy ought to have been extended to the persons who are being represented by the petitioner. Same having not been done, the impugned action of respondent is to be termed as absolutely unjust, arbitrary and violative of fundamental rights of the petitioner. It has further been contended that as per the facts which are prevailing, it is very clear

that disputed land is required by respondent no. 4 and in view of their own policy, popularly known as R & R policy, this project affected persons namely 18 slum dwellers family on alignment line at least are entitled to be rehabilitated by respondent no. 4 and for that purpose, he refers to page 376 of the case papers. According to the learned counsel appearing for the petitioner in compliance of this Court's order dated 30.06.2021, survey was undertaken by the authority, to find out as to how many such slum dwellers are eligible for R & R policy and out of the persons, 18 were found to be eligible of ROW. Even then, these persons are also not being rehabilitated. By mentioning and identifying the land in acquisition to the extent of 22 sq.mtrs., these slum dwellers are sought to be discriminated and as such, instead of allowing such survey to be implemented, and only few persons are at the whims of the authority to be made eligible, then the said action is absolutely arbitrary as remaining slum dwellers identified on railway land on the other side of the road who are required to be accommodated and rehabilitated either under the Pradhan Mantri Awas Yojna or under the Mukhya Mantri Awas Yojna policy and as such, by referring to the aforesaid two Yojnas, namely the schemes, insistence is made by the learned counsel that these persons may not be evicted and at least they must be provided with some rehabilitation. Hence a request is made to grant the reliefs as prayed for in the petition. No other submissions have been made.

5. As against this, learned advocate Mr. Ramnandan Singh appearing on behalf of the railway authority i.e., respondent no. 3 has submitted that these slum dwellers who are requesting to be protected are on the railway land have encroached in a systematic manner and method and after being uprooted they would again come on the very same place and try to make an attempt as if they are there since number of years. According to learned advocate Mr.

Singh these slum dwellers were once uprooted from the railway land in the year 2018 again they came inside and as such, the railway authorities took steps in the year March, 2021 and yet again they occupied the land, despite having been removed twice. This tendency itself is sufficient enough to oust the petitioner from invoking extraordinary jurisdiction of this Court. It is submitted this public interest litigation is *ex-facie* not maintainable in view of the fact that these slum dwellers of J.P. Ni Chali are not members of the petitioner Union and there is no material produced to establish these persons are authorized to be represented by the petitioner union and as such, at the instance of the petitioner, this PIL may need not be entertained. Apart from this, he would submit that chronology of events itself is suggesting that petition contains serious disputed questions of fact which may not be gone into in exercise of extraordinary jurisdiction and if these persons who are being represented by the petitioner and having some semblance of right they can agitate the same and get the declaration from the civil court by initiating appropriate civil dispute and in the absence of any legal or fundamental right, through Union cause cannot be espoused is the submission of learned advocate Mr. Singh. It has been also submitted that issue here is not the question of acquisition of land, it is merely a small portion of land which has been simply transferred for the benevolent project of Ahmedabad High Speed Rail Project which is popularly known as Ahmedabad - Mumbai Bullet Train Project. The said project was set up in the year 2016 and after resettlement action plan and if these persons are not allowed to be evicted from the land in question, entire project would be at peril and would create an irreversible situation and it results in huge financial escalation in respect of costs of project and as such, at the behest of the petitioner who is representing the persons who are sheer encroachers, such kind of project of public importance may not be

allowed to be adversely affected and thereto when there is no legal right of any nature in favour of them.

5.1. It has been submitted that this petition which has been brought is also with some oblique motive. In the month of March, 2021, demolition took place in Chali of Jayantilal Pranlal in the Sabarmati area and the said eviction is similar in nature even as per the say of petitioners was in the year 2018 as well and this fact is clearly indicating that time and again even after taking action against these persons, they are regaining the land without their being any lawful right over it. As a result of this, the action initiated is just and proper which may not be interfered with at the instance of the petitioner Union or at the instance of the persons who are being projected by the petitioner. It has been further asserted by the learned advocate Mr. Singh that under the provisions of Railway Act, precisely Section 147 (2) there is an absolute right in favour of the railway administration to evict and vacate such persons in occupation of the land owned by the railways. Considering this, there is hardly any justification for the petitioner to invoke extra ordinary jurisdiction of this Court. A detailed affidavit-in-reply has been filed by the railway administration to oppose the grant of any relief which has been prayed for. It has been clearly asserted in paragraph 4 of the affidavit- in-reply filed by respondent no. 4 reflecting on page 319 that so called members of the petitioner are not the residents of J.P. Ni Chali and they are merely encroachers over the railway land and further J.P. Ni Chali is situated outside the Sabarmati sub-station whereas the so called members of the petitioner union encroached upon the railway land which is situated across the Sabarmati sub station and the encroachment over the said railway land has been removed by the railways in accordance with law and railway administration has undertaken necessary steps for removal of

encroachments on the railway land, time and again since years and as such, there is a serious dispute on the version pleaded by the petitioner Union that the persons who are being represented by the petitioner Union are residents of J.P. Ni Chali and what has been removed as a part of encroachment is from the railway land. Accordingly, the Court may not consider the relief sought for.

5.2. In addition thereto, learned advocate Mr. Singh has also submitted that a serious dispute would arise as to how many persons are there. Initially what has been projected in the petition and later on what has been found after survey is distinct and as such the entire petition is suffering from disputed questions of fact. In view of settled proposition of law, same may not be examined in a writ jurisdiction and if individual persons who are being affected of the impugned action then they are well within their right to agitate before the competent forum to establish their right with cogent material if any.

6. In support of said submissions learned advocate Ms. Archana Amin, has also vehemently opposed the petition by submitting that there are serious disputed questions of facts raised and further the original stand is gradually being improved by the petitioner and in substance they have changed their stand after filing of the affidavit-in-reply and by referring to prayer clause to paragraph 1 of the petition. It has been contended that version is drastically getting changed and on the contrary this PIL is utilized by the petitioner to thwart the project of significant public interest and as such, under no circumstances, reliefs prayed should not to be granted and by referring to page 44(A) of the petition, it has been submitted that residents of J.P. Ni Chali appears to have extended authorization to the General Secretary of Bhandkam Mazdoor Sangathan namely the present petitioner whereas, on 08.03.2007 what has been indicated

is that this J.P. Ni Chali property is not belonging to the railway land as such, the railway authorities having removed shelter from the J.P. Ni Chali to which of these persons is not clear. According to a specific stand reflecting on page 308, it has been clearly asserted that the concerned persons who are being represented by the petitioner are on the contrary not residing in J.P. Ni Chali which is situated outside opposite to railway sub-station and petitioner is attempting to mislead the Court and seek relief in favour of persons who are sheer encroachers on the Government land under the banner of J.P. Ni Chali authorization. He would submit this reason itself is sufficient enough to reject the relief prayed for in the petition. Yet another affidavit as stated above is brought to the notice by learned advocate Ms. Amin where under it is contended that it would be always open for the respondent railway administration to evict any encroachers from the railway land and the power as stated above is absolute in favour of the railways which has been exercised by respondent no. 4. Learned advocate Ms. Amin has further submitted that even these persons who are tried to be represented by the petitioner are not fulfilling any kind of criteria either to be considered in Pradhan Mantri Awas Yojna or Mukhya Mantri Awas Yojna floated by the respondent - State authorities. In fact the entire version has drastically changed by the petitioner after clarification made by the railway administration in its affidavit-in-reply and petitioner is now trying to bank upon the policy framed by the State authorities. After filing of the affidavit by the railway authorities to the effect that J.P. Ni Chali is a land belonging to railway on page 329, the petitioner has then altered the submission by referring to para 6 in the rejoinder affidavit-in-reply filed by the petitioner. Learned advocate Ms. Amin has submitted that now the petitioner is attempting to improve their case by asserting that as per the address proof of the concerned slum dwellers they are residents of

J.P. Ni. Chali and the land on which they first used to reside from 1990 to 2008 was a railway land and they had moved to the current place since demolition undertaken by respondent no. 3 and then has improved the case by asserting further that after the demolition of 2018 carried out by the respondent no. 3, these slum dwellers moved from center land to outside area of railway land which is now required for High Speed Bullet Train project and as such, just with a view to secure undue benefit have been altered by changing the basic stand in the petition. This attempt would clearly non-suit the petitioner and would not be entitled to invoke extra ordinary jurisdiction of this Court. On the contrary, petitioner by filing this Public Interest Litigation has made an attempt to canvass the interest of few encroachers who have neither any fundamental right nor any legal right over the land in question and as such, equitable jurisdiction should not be exercised in their favour. Accordingly, the Public Interest Litigation being devoid of merit, be dismissed with an exemplary costs upon the petitioner - Sangathan.

7. In respect of aforesaid stand being taken by the petitioner as well as the railway administration, Ms. Manisha Lavkumar Shah, learned Government Pleader assisted by Mr. K.M Antani, learned Assistant Government Pleader appearing for the respondent - State authorities has vehemently opposed the petition by contending that Public Interest Litigation is absolutely devoid of merits and same is an attempt to thwart the project of the Government which is of public importance. Ms. Shah, learned Government Pleader has submitted that petitioner is a trade Union and nowhere, it has been stated that persons whose cause being espoused are its members or not and as such, it may not have any authority to represent the case of these persons since the authority letter indicates that residents of J.P. Ni Chali appears to have authorized Mr. Vipul Pandya and no other

person as can be seen from the authority letters which are placed at page 44 and 44A. Further, it has been asserted in the detailed affidavit-in-reply that for the purpose of Mumbai-Ahmedabad High Speed Rail project, the State Government decided to acquire the land in 10 villages in the District of Ahmedabad including the subject land for the said purposes and the slum dwellers from said land have been evicted which falls within Village Acher of Sabarmati Taluka. With respect to this land to be acquired of village, a proposal was sent by respondent no. 4 - Corporation to the land acquisition officer on 21.04.2018, and after following the prescribed procedure, under the Act, 2013, a Notification under Section 10(A) (Exemption from Social Impact Assessment Study) was issued by the State Government on 11.12.2018, whereby the details of land sought to be acquired were also notified. A perusal of such notification would indicate that land admeasuring 351 sq.mtrs., of Survey No. 208 located in Village Acher was sought to be acquired for the said project. A preliminary inquiry under Section 11(1) of the Act, 2013 was published by the State Government on 18.06.2019 in respect of Survey No 208 located in Village Acher whereby, land acquisition officer was also appointed as the Administrator under Section 43 of the Act of 2013

7.1. Ms. Shah, learned Government Pleader has further pointed out that vide notification dated 11.02.2020 under Section 19 it was declared that land (351 sq.mtrs., of Survey No. 208 of Village Acher:) was required for the purpose of Speed Rail Project and vide Notification dated 12.10.2020 land sought to be acquired in Village Acher was reduced from 351 sq.mtrs., to 22 sq.mtr., only and as such, under the provisions of the Act, the authorities have to undertake necessary exercise of rehabilitation and resettlement of award published for the families affected due to acquisition of said

22 sq.mtrs., of land bearing Survey No. 208 at Village Acher and necessary compensation for each affected family in terms of entitlement, provided under second schedule of Act, 2013 has also been awarded and for that purpose and in view of Section 43 of the Act, Administrator was appointed for the purpose of determining entitlement of families affected residing on and are primarily dependent on the land being acquired. These powers vested by the Statute are limited only to the extent of land being acquired under the Act by the deponent.

7.2. Ms. Shah, learned Government Pleader has further submitted that the present petition has been filed by the Bhandkam Mazdoor Sangathan on behalf of the above persons claiming to be slum dwellers residing in J.P. Ni Chali in Village Acher, Ahmedabad by contending that without providing any alternative accommodation in view of various policies by the State Government they were sought to be displaced. However, in the past few years, various demolition drives had been undertaken by respondent no. 3 even as per the assertion of petitioner itself. Pursuant to the order dated 30.06.2021 passed by the Hon'ble Court, the predecessor of deponent started the process of ascertaining whether such slum dwellers were entitled to any benefit under the Act, 2013 and for which a specific meeting was scheduled on 07.07.2021 with the representatives of the Ahmedabad Municipal Corporation i.e. respondent no. 2, the Western Railways i.e. respondent no. 3 and National High Speed Railway Corporation Limited - respondent no. 4 and during such meeting, the authorities were asked to submit all details including the photographs, videography and other related documents even pertaining to the demolition exercise carried out in past, within a span of two years. The documents which were made available by respondent no. 3 i.e. railways on 09.07.2021 reflected that the J.P.Ni

Chali and the area encroached by the slum dwellers were two separate locations and it was further clarified by respondent no. 3 railway authorities that the land which was encroached upon by the dwellers was of the ownership of respondent no. 3 i.e. of railways. The details with regard to the various demolition exercise undertaken for the period commencing from 2002 to 15.03.2021 were also provided and from perusal of said details it has been indicated that some 65 encroachments were removed on 15.03.2021. Ms. Shah, learned Government Pleader has further asserted that in order to provide an opportunity to the General Secretary of the petitioner Sangathan, as per the directions given by the Hon'ble Court on 07.07.2021 it was communicated to the General Secretary of the petitioner to remain present before the predecessor of deponent on 12.07.2021 with all necessary details pertaining to slum dwellers with their identity proofs and out of 73 persons whose names are registered in land at Annexure-A, the General Secretary provided details of only 68 persons in staggered manner on various dates starting from 12.07.2021 to 23.07.2021 and out of such 68 persons only 37 persons could be identified as forming part of the 65 encroachment removed by railways i.e. respondent no.3 on 15.03.2021.

7.3. In addition to it, Ms. Shah, learned Government Pleader has further pointed out that on 17.07.2021 the predecessor of deponent along with the General Secretary of the petitioner Sangathan conducted site visit of the location where the slum dwellers were allegedly evicted and detailed process of verification was also carried out on the basis of the photographs, submitted by the respondents no. 3 and 4 and on such verification, the deponent was able to identified 53 persons out of 65 persons whose encroachments were removed by respondent no. 3 on 15.03.2021 and remaining 12

persons were found to be duplicated and out of such 53 persons, only 37 persons have approached this Court in the present proceedings. In addition to this, Ms. Shah, learned Government Pleader has further pointed out that on 19.07.2021, another site visit was also conducted and it was ascertained that out of 18 slum dwellers that was existing on the alignment line i.e. ROW of the project whereas hutment of 10 persons were between the eastern side of road and the sub-station and remaining 25 persons had huts within the fencing of the railways. A map as such is also attached to the affidavit-in-reply as Annexure-R4. By giving details in the map by marking Yellow portion, Red portion and Purple portion. It is further pointed out that on 29.07.2021, notices came to be issued to 35 slum dwellers, to those hutments which did not exist on the ROW line at the relevant point of time asking them to make representations on 02.08.2021 stating that their huts situated on railway land is within the railway fencing had already been removed by the railway authorities on 15.03.2021. It was further stated by them that they had once again put up their hutments in the same location from where they had been evicted. So again and again, an attempt is made to occupy the land by sheer encroaching just to get the benefit of the scheme. Meanwhile, further notices have also been issued on 31.07.2021 to 18 slum dwellers whose huts were existing on ROW line prior to demolition, they were called upon and out of 18 hutsmen, 14 slum dwellers were possible to be identified finally as residing of the ROW line prior to demolition exercise and on ascertaining 3 were duplicated and 1 slum dweller had left the site and even meeting was also undertaken with the representatives as stated above on 22.07.2021 and every efforts were made, and a report was also submitted by Ahmedabad Municipal Corporation i.e. respondent no. 2 that those slum dwellers who were UCD card holders can be provided benefits under the National Urban Livelihood Mission, Self

employment Programme and could also avail employment through Skills Training and Placement (EST &P) and other benevolent scheme. Several information were highlighted but the Corporation has submitted that there was no scheme for providing accommodation to UCD card holders and after furnishing detailed process which had been carried out pursuant to the order of this Court and examination of the plight of the slum dwellers it was found by the State authorities that the land in question from where the slum dwellers were allegedly evicted is of the ownership of respondent no. 3 - Railways.

7.4. It appears that the said land was acquired from the British regime in the year 1908 when the Sabarmati Railway Station was established by detailing out the area. It has been further asserted by Ms. Shah, learned Government Pleader that powers vested with the Administrator enables him to extend benefit only to such families affected by the acquisition of the land and by referring to Section 43 of the Act, it has been stated that condition precedent for availing the entitlements under the Act of 2013 is that the family should have been residing or their livelihoods should have been dependent upon the land which is being acquired by the State whereas, according to Ms. Shah, learned Government Pleader, in the present case, the land in question where the slum dwellers claimed to have been evicted has not been acquired by the State Government for the project, as a matter of fact, the said land is of the ownership of respondent no. 3 - Railway and has been internally allotted by respondent no. 3 to respondent no. 4 for the purpose of implementation of the project.

7.5. Ms. Shah, learned Government Pleader has further submitted that there is a serious dispute with regard to existence of the persons who are being projected by the petitioner Sangathan with regard to

their claim and as to whether the lands for the project on which they are existed or not is also in dispute since substantial exercise has been undertaken as stated and detailed out in the affidavit-in-reply and after pointing out this, Ms. Shah, learned Government Pleader has summarized the facts that these slum dwellers which are being projected by the petitioner Sangathan were not residents of J.P. Ni Chali at the time demolition exercise carried out by respondent no.3 - Railways. The slum dwellers have been finally identified as residing on the land belonging to respondent no. 3 - railways when the demolition exercise was carried out by the railway authorities. Further, no acquisition proceedings have been carried out for the project by the State authorities in respect of land from which the slum dwellers claimed to have been evicted. It has been clearly ascertained that these slum dwellers who are being projected by the petitioner claimed to have shifted back to a portion of land belonging to respondent no. 3 railways. As a result of this, Ms. Shah, learned Government Pleader has submitted that present Public Interest Litigation be disposed of without any further orders.

7.6. At this stage, Mr. Singh, learned advocate has intervened and has pointed out from the documents at page 315 and submitted that whenever the commencement of project is in motion, these slum dwellers are even after removing such hutments are coming back so as to secure the benefit and this tendency may not be encouraged by granting any equitable relief and no undue sympathy deserves to be extended in the present peculiar background of fact. By referring to page 72 at this stage, learned advocate Ms. Amin has pointed out that rehabilitation policy which is sought to be claimed by the petitioner is not available to the encroachers who are being represented by the petitioner Sangathan and as such, has submitted that since the petition is suffering from a seriously disputed

questions on various issues and, is also lacking *bona fides* and is espousing the case of sheer encroachers who are time and again are encroaching upon the railway property, the present Public Interest Litigation appears to be not *bona fide*. Hence, they have prayed for dismissing the same.

8. In reply, learned advocate Ms. Patel on behalf of the petitioner, has submitted J.P. Ni. Chali, is existing since number of years and all these slum dwellers are residing therein and have no alternative accommodation provided and an attempt has been made to persuade the Court with google map, particularly orange portion which indicates the existence of these slum dwellers, much prior to cut-off date. A reference is made to few photographs attached to the pleadings, and precisely to page 644 and 645 to contend that petitioners were originally residing in the railway wall after demolition of wall, they are residing in the nearby area and, hence entitled to the benefit of the scheme. It has been contended that prior to demolition, no notice was extended, no opportunity was extended, no alternative accommodation was provided and most of these persons are the daily rated employees and, therefore, when survey was conducted, probably majority of them may not be present also and as such, the survey conducted by the authorities may not be genuine yardstick to be relied upon for the purpose of extending the benefit. By pointing out that there is no legal bar for the petitioner Sangathan to file PIL and the present PIL is filed with an authority from those persons whose cause is being espoused in the present proceedings. By contending that various decisions delivered by the Hon'ble Apex Court has propounded that without satisfying the grievance and resolving the same, project so developed may not be allowed to be proceeded with at the peril of these persons and as such, it is contended there are sufficient material on record to

indicate that petitioner Sangathan is entitled to the relief and as such, has prayed for grant of the relief as prayed for in the petition.

9. Having heard the learned advocates appearing for the respective parties and having gone through the material which has been pointed out to the Court, the following circumstances which are visible on record are not possible to be ignored by the Court.

10. The present petition styled as Public Interest Litigation/PIL has been filed for the purposes of seeking relief for issuance of writ of mandamus or any other appropriate writ directing the respondent authorities to restrain them from evicting the slum dwellers of J.P. Ni Chali as slum colony until rehabilitation and to direct them not to conduct any fresh demolition and consequently further reliefs have also been sought which details are provided herein-before in the prayer clause as mentioned in the present order. It appears that undisputedly, according to the assertion of the petitioner itself, the first demolition was undertaken way back in the year 2018 during the outset of Ahmedabad - Mumbai Bullet Train project and the slum dwellers were removed from the area inside the railway wall for the bullet train work which was to begin. It has further been asserted that on 15.03.2021, demolition took place in the Chali of Jayantilal Pranalal at Sabarmati area near railway bridge in Ahmedabad and according to the petitioner, some 318 scheduled tribes and other backward class people had been living therein in the huts. Thus, even as per the assertions made in the petition on oath there are as many as 318 schedule tribes and other backward class people had been living and demolition took place on 15.03.2021. Now what has been asserted by the respondent authority is that these figures is not only exaggerated, but not accurate figures since detail survey has been undertaken and out of which very few persons have been found as

can be seen from the detailed affidavit-in-reply filed by the State authorities. So there appears to be a serious disputed question of fact which has been stated in the petition, as well as the pointed from the subsequent pleadings.

10.1. The affidavit-in-reply which has been filed by respondent no. 3 i.e. Divisional Engineer of Western Railway Management Officer, Ahmedabad it has been asserted that railways as such has no policy of rehabilitation for encroachments and it has been clearly pointed out that so far as J.P. Ni Chali is concerned it is not situated on the railway line. Hence, the railway authorities have not removed any hutments from the J.P.Ni. Chali, much less the persons represented by the petitioner Sangathan who are not actually residing in J.P. Ni Chali since J.P. Ni Chali is situated outside the railway sub-station whereas some persons have encroached upon the railway line facing sub-station and as such, serious dispute is raised with regard existence of the persons whom are being represented by the petitioner Sangathan. The affidavit of the State authority coupled with the affidavit filed by the railway administration if to be looked into, the existence of the persons being represented by the petitioner Sangathan is seriously in dispute over the land in question.

10.2. A further assertion clearly has been made by the railway administration which is not in dispute that in the past also, the railway administration had undertaken demolition drive since the encroachers who are being represented by the petitioner had on earlier occasions encroached on the railway land by entering into center of the land from inside, however, the railway authorities had evicted them in the past by following due process of law and this stand is also well supported from the pleadings of the petitioner namely it is admitted in the Writ Petition that in the year 2018 itself

some demolition drive had been undertaken and these persons had again encroached upon outside the area of land abutting the road constructed over the railway land and, therefore, were to be removed. It has been contended by Railways that railway authorities have not taken any arbitrary action, and have on earlier occasion orally persuaded the encroachers to remove their hutments from the railway land, then on 22.02.2021 as well as 12.03.2021, notices have also been served clearly indicating that they have to remove their temporary huts on or before 15.03.2021 and same having not been complied with eviction had to be undertaken since the project of bullet train is of national importance would not get delayed. When that be so, there is hardly any justification for the petitioner to claim any equitable relief. In fact, this is the case where time and again the persons have to be removed from the land in question and as such, no undue sympathy to be given. This assertion of railway administration appears to be justified to some extent looking to the material on record.

10.3. At this stage the Court is of the opinion that it is not out of place to mention that under provisions of Railway Act, a specific power is available with the railway administration to initiate action for evicting the encroachers of the land belonging to the railways. By virtue of Section 147 of the Railways Act, the railway administration has absolute right to remove the encroachment or illegal activity on the land belonging to the railways and as such, it is not possible to construe that even if the railway administration might have undertaken and have exercised the power to remove, it be either an unreasonable or arbitrary. On the contrary, we are of the considered opinion that railway administration is having exclusive domain over its own property to protect and as such,, the issue which is tried to be raised is not possible to be accepted.

11. A contention is raised that these slum dwellers or the occupants of the land in question would be homeless or shelter-less and as such, they may be provided the benefits of the scheme as claimed. A close perusal of the scheme which is brought to our notice by the petitioner is popularly known as R & R policy named as Resettlement and Rehabilitation (R& R) Framework Policy which indicates the eligibility for such benefit. In clause 5, the fundamentals of resettlement and rehabilitation principle is enumerated and it indicates that the project affected persons should improve their social and economic conditions after the implementation of the project and also share the benefits of the project and with this object in mind, the eligibility criteria is also framed in clause 5.2.. In the said clause, definitions of "affected area" as well as "affected family" has also been provided which the Court deems it proper to reproduce hereunder :-

"5.2. Definitions:

Following definitions that will be applicable unless otherwise stated specifically.

** Affected area : Means such areas as may be notified by the appropriate government for the purposes of land acquisition;*

** Affected family : Includes*

(i) a family whose land or other immovable property has been acquired;

(ii) a family which does not own any land, but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding right, share-croppers or artisans or who may be working in the affected area prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land;

(iii) the Scheduled Tribes and other traditional forest

dweller who have lost any of their forest rights recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Right) Act, 2006 (2 of 2007) due to the acquisition of land;

(iv) a family whose primary source of livelihood for prior to the acquisition of the land is dependent on forests or water bodies and include gatherers of forest produce, hunters, fisher folk, and boatmen and such livelihood are affected due to the acquisition of land;

(v) a member of the family who has been assigned land by the State Government or the central Government under any of its schemes and such land is under acquisition;

(vi) a family residing on any land in the urban areas prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land."

12. A perusal of the aforesaid clauses would disclose that affected family includes a family whose land or other immovable properties have been acquired which is not the case here undisputedly, nor from the assertion or from the pleadings it is clearly curled out that they are on the land which can be said to be an affected area. Apart from that, a clause related to cut-off date is also prescribed in this policy which indicates that cut-off date for titleholders will be date of publication of the notification under Section 10A of the (Gujarat Amendment) Act, 2016 and for non titleholders (who do not have legal rights mainly encroachers and squatters of government land and likes) will be the starting date of this census survey and what has been found on the census survey is already indicated in the pleadings wherein these persons who have been tried to be projected are not falling within the same and as such, it is difficult for this Court to out-rightly arrive at a conclusion that persons being represented by the petitioner Union are entitled for benefit of this Scheme and this is more so in view of the fact that clause 5.2.2. relates to eligibility

and guidelines for compensation and R & R Assistance reflecting on page 486 of the petition compilation as indicated in item no. 2 under the head "Eligibility" as with persons initially moved in the project area after the cut-off date will not be entitled to any compensation or assistance under the scheme. Here, undisputedly, according to the pleadings of the petitioner itself, though they were demolished and removed in the year 2018 and then mostly has moved again in the land in question and as such, also this attempt is not possible to encourage even by showing some undue sympathy. Be that as it may. In view of the clear assertion in the affidavit-in-reply filed by the respondent no. 1, Second Additional Special Land Acquisition Officer, Ahmedabad, that these slum dwellers claim to have shifted back to a portion of land belonging to respondent no. 3 railways and no acquisition proceedings have been carried out for the project in respect of land from which the slum dwellers sought to be removed. According to this deponent, in paragraph 13 it has been clearly asserted that these slum dwellers were residing in J.P. Ni Chali at the time of demolition carried out by respondent no. 3 - railways and according to this deponent, they have been found and identified on the railway land. So the existence of the persons who are being represented is clearly in suspicion and as such, in this peculiar background, it is not possible for this Court to issue any writ.

12.1. That apart from identification of survey has also been carried out which does not indicate that documents of only 21 persons could be identified and said 21 persons are those names which are reflected in the list at Annexure-A to the petition, but do not form a part of the 65 encroachments removed by respondent no. 3 - railways on 15.03.2021 and those 21 persons have been issued notice on 25.08.2021 asking them to make their representatives and resultantly, a joint representation dated 27.08.2021 was made which

again is stated to be on railway land within the railway fencing. The pleadings on the record would not indicate clearly that petitioner has at least made out some case to get any relief. A perusal of the affidavit of respondent no. 4 dated 16.06.2021 as well as reading of R & R policy criteria coupled with the affidavit of respondent no. 1 dated 13.09.2021 is not inspiring any confidence out-rightly to consider and grant any equitable relief in any form. On the contrary, an impression is being generated from the record that once having been removed in the year 2018, again an attempt is made to grab the land by encroaching once again and by this conduct petitioner is trying to take shelter, which cannot be encouraged by this Court. Undue sympathy cannot be extended to the petitioner Union in the backdrop of the aforementioned peculiar circumstances. Hence, we are of the considered view that no case is made out to call for any interference.

12.2. Learned counsel for the petitioner though has narrated in the petition several decisions of the Hon'ble Apex Court to substantiate her submissions, but same have not been canvassed so stoutly, in the background of present case. We have considered the same and are unable to apply the same as a straight-jacket formula, more particularly, in view of the fact that the co-ordinate Bench of this Court just in the recent past viz., in February, 2021 has propounded the proposition on encroachment issue on the public property and the said decision of Division Bench is also on consideration of several past decisions of the Hon'ble Supreme Court. Further, having perused the facts on hand, the very existence of the persons who are being projected before us in respect of subject land and their eligibility being in serious doubt their claim cannot be entertained. In addition to this, we notice that the State authorities have taken a definite stand that survey had been conducted and few families have

been identified, but majority of them are not found to be eligible and as such, the claim put-forth by the petitioner being disputed questions of facts, we are unable to apply the ratio laid down by the series of decisions to the facts on hand. According to petitioner itself, these persons have been removed time and again and as per the say of the railway authorities, they have re-occupied portions of land and as such, also we are unable to extend any sympathy in extraordinary jurisdiction more particularly, when their rights can still be adjudicated before the appropriate fact finding forum which is available to the petitioner and as such, having perused the decisions relied upon which we are in respectful agreement that the ratio laid down therein would be inapplicable to the facts on hand.

13. Apart from that, we have also perused the decision of the coordinate Bench recently delivered on 20.02.2021 in the case of group of Letters Patent Appeal headed by Letters Patent Appeal No. 661 of 2021, wherein, in terms, on the basis of several decisions delivered by the Hon'ble Apex Court including the High courts, it is held that no person has got right to encroach and erect structures on any public places and mere continuous possession and possessing of documents like voter card, ration card, electricity bill etc., is sufficient to contend that they would not be liable to be evicted since right to shelter is a constitutional right. On the contrary, the encroachers in the case on hand have attempted to retain the land by repeatedly encroaching. As a result of this, no case is made out. Coordinate Bench of this Court in somewhat similar circumstances has held :

"25. Deciding a litigation of the present nature is quite painful. The weaker sections of the society like the writ applicants in the present case, no doubt, have the basic human and constitutional right to shelter and it becomes the paramount duty of the State to fulfill those. However, it gives

no person the right to encroach and erect structures or otherwise on footpaths, pavements or public space or at any place reserved or earmarked for a public utility. This is exactly what seems to have happened in the case on hand. It may be true that the writ applicants were residing at the place in question past couple of years, but, still, as a Court of Law, we should not be oblivious of the fact that it was nothing, but encroachment over the government land over a period of time. **We are not impressed with the submission canvassed on behalf of the writ applicants that the writ applicants cannot be said to be encroachers as they have a right to shelter being both a fundamental as well as a human right. The debate as regards the rights of encroachers over public land vis a vis the right to shelter should come to an end. This debate should not go on for a indefinite period of time. Mere long possession, over public land by way of encroachment by itself, is not sufficient to say that the encroachers are not liable to be evicted as they have a right to shelter. The right to shelter and encroachment are two different facet. An encroacher may save himself from being forcibly evicted only if during his period of stay over the encroached public land any enforceable legal right has crystallized in his favour. Otherwise, merely by asserting the Right to Shelter , an encroacher, over public land, cannot say that he cannot be evicted. There is no way that an encroacher can enforce the Right to Shelter for the purpose of protecting his unlawful possession. The right to shelter, which the writ applicants are talking about, is an obligation of the State. It is the State which has to discharge its obligation in this regard. The documents like voter card, ration card, electricity bill, etc. do not confer upon encroachers any vested legal right in their favour to hold the possession. Such document, at the most, may evidence of only one thing and that is possession. We may reiterate that the right to shelter does not mean right to retain the government land encroached upon. The right to shelter may be a fundamental right under the Constitution, but, certainly, no person has any right to retain the land encroached upon under the purported right to shelter. It is to be enforced under the provisions of the Constitution. It is extremely difficult for us to accept the South African Jurisprudence or the Kenyan Jurisprudence, as discussed above. Having realized this serious problem, the State**

Government issued a Government Resolution dated 3rd July 2003 laying down a policy by prescribing the eligibility criteria for the allotment of alternative land to various hutsmen dwellers in the various sectors of the city of Gandhinagar. It appears that a cut off date fixed i.e 30th November 1999. The Government Resolution dated 3rd July 2003 referred to above enumerates 15 conditions for the grant of alternative accommodation. It is the case of the respondents that the writ applicants failed to fulfill such eligibility criteria and were declared not eligible for the alternative accommodation. It is the case of the respondents that mere possession of an identity card or voter card or the registration of the name in the survey list by itself is not sufficient to avail the benefits of the Government Resolution dated 3rd July 2003. We take notice of the fact that after detailed verification around 128 hutment dwellers were identified and recognized as eligible for alternative accommodation in terms of the Government Resolution dated 3rd July 2003. We also take notice of the fact that a Coordinate Bench of this Court in the case of Arunaben Amratbhai Rohit and others vs. State of Gujarat rendered in the Letters Patent Appeal No.630 of 2018 in Special Civil Application No.7352 of 2018 took the view that the Government Resolution dated 18th July 2013 has been issued by the Urban Development and Urban Housing Department, the same would be applicable to the areas covered under the Gujarat Slums (Improvement, Abolition and Rehabilitation) Act, 1973 only. The subject land has not been declared as slum in accordance with the Act, 1973. We also take notice of the fact that the subject land is situated within the radius of the Gandhinagar Railway Station. The State Government wants to develop the land for a public project. The project is being executed by the Gandhinagar Railway and Urban Development Corporation (GARUD), a joint venture company of the Government of Gujarat and the Ministry of Railways represented by the Indian Railways Station Development Corporation.

26. It is also necessary to refer to paragraph 9 of the Apex Court s judgment in the case of Ahmedabad Municipal Corporation vs. Nawabkhan Gulabkhan and others [AIR 1977 SC 152], which reads as under: The Constitution does not put an absolute embargo on the deprivation of life or personal liberty but such a deprivation must be according to the procedure, in the given circumstances, fair and reasonable. No

inflexible rule of hearing and due application of mind can be insisted upon in every or all cases. Each case depends upon its own backdrop. The removal of encroachment needs urgent action. .. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for passing or re passing of the pedestrians on the pavements or foot paths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment. If the encroachment is of a recent origin the need to follow the procedure of principle of natural justice could be obviated in that no one has a right to encroach upon the public property and claim the procedure of opportunity of hearing which would be a tardious and time consuming process leading to putting a premium for high handed and unauthorised acts of encroachment and unlawful squatting. On the other hand, if the Corporation allows settlement of encroachers for a long time for reasons best known to them, and reasons are not far to see, then necessarily a modicum of reasonable notice for removal, say two weeks or 10 days, and personal service on the encroachers or substituted service by fixing notice on the property is necessary. If the encroachment is not removed within the specified time, the competent authority would be at liberty to have it removed. That would meet the fairness of procedure and principle of giving opportunity to remove the encroachment voluntarily by the encroachers. On their resistance, necessarily appropriate and reasonable force can be used to have the encroachment removed. Thus considered, we hold that the action taken by the appellant Corporation is not violative of the principal of natural justice. Before expressing opinion in paragraph 9, the Apex Court pointed out in paragraph 7 as under:

7. It is for the Court to decide in exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty in a give case is by procedure which is reasonable, fair and just or it is otherwise. Footpath, street or pavement are public property which are intended to serve the convenience of general public. They are not laid for private use indeed, their use for a private purpose frustrates the very object for which they carved out

from portions of public roads. No one has a right to make use of a public property for the private purpose without the requisite authorisation from the competent authority. It would, therefore, be but the duty of the competent authority to remove encroachments on the pavement or footpath of the public street obstructing free flow of traffic or passing or re passing by the pedestrians. Thus, it is clear that no one has a right to make use of public property for private purposes.”

14. A conjoint reading of the aforesaid circumstances unfolded in the said case and the facts involved in the instant matter, we would have considered the case of the persons represented by the petitioner to ascertain R & R policy would be extended to them or any other policy of the State Government can be extended. Having found from the assertion of the State authorities in its reply affidavit dated 13.09.2021 vide paragraph 4.4 that pursuant to the final declaration vide notification dated 12.10.2020 the land sought to be acquired in Village Acher was reduced from 351 sq.mtrs., only to 22 sq.mtrs., and such persons being represented by the petitioner not residing in such land, we cannot compel the State authorities to apply the scheme. We are of the view that petition is meritless and in the peculiar background of facts, the decisions which are sought to be relied upon by petitioners would not come for their rescue as they are quite distinct and same cannot be applied as a straight-jacket formula to the facts on hand.

15. However, while parting with the present order, we may make it clear that it would be open for the petitioner to avail any other remedy to ventilate their grievance by making specific representations, in which case the State authorities with sympathetic approach consider their claim and find out if it fits in any other policy, and if the answer is in the affirmative, the authorities would

be at liberty to pass such orders as they deem fit. We make it clear that we have not expressed any opinion on merits and present petition is being dismissed as devoid of merits.

15. Accordingly, the present petition stands dismissed. Notice stands discharged with no order as to costs.

(ARAVIND KUMAR,CJ)

(ASHUTOSH J. SHASTRI, J)

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