

HIGH COURT OF MADHYA PRADESH: JABALPUR

(DIVISION BENCH)

W. P. No. 8830/2017

Munawwar Ali & othersPetitioners

Versus

Union of India & othersRespondents

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Coram:

**DB: Hon'ble Shri Justice Hemant Gupta, Chief Justice
Hon'ble Shri Justice Vijay Kumar Shukla, J.**

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Shri Kishore Shrivastava, Senior Advocate with Shri Sushant Ranjan and Shri Bhanu Pratap Singh, Advocates for the petitioners.

Shri Sandeep Kumar Shukla, Advocate for the respondent No.1/ Union of India.

Shri Pushpendra Yadav, Deputy Advocate General for the respondent No.2/State.

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Whether Approved for Reporting: Yes

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Law Laid Down:

★ Merely because a person has a locus standi to file the writ petition, does not mean that he is entitled to any equitable or legal relief in writ jurisdiction.

★ Equitable relief on the ground of adverse possession against the State - Negated. Supreme Court judgments reported as (2000) 5 SCC 652 (**State of Rajasthan vs. Harphool Singh**); (2011) 10 SCC 404 (**State of Haryana vs. Mukesh Kumar**) and (2014) 1 SCC 669 (**Gurdwara Sahib vs. Gram Panchayat Village Sirthala and another**) – relied.

★ Being the owner of the land, the State does not have to acquire its own land. The unauthorised occupants over the public land cannot claim to be the persons interested in the event of acquisition of the land. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is not applicable in such cases.

Significant Paragraph Nos.: 14, 17 to 22, 24 and 25

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Reserved on: 06/11/2017
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ORDER
{ 13/11/2017 }

Per: Hemant Gupta, Chief Justice:

The petitioners, except the petitioner No.32, have invoked the writ jurisdiction of this Court on the assertion that they are in adverse possession of the land in question and the respondent Nos.2, 3 and 4 have carried out a massive demolition drive of the houses and shops of the petitioners and many others situate in the area of Krishna Nagar, Banganga Nagar, Tanya Tope Nagar (T.T. Nagar) and Ahata of Rustom Khan. The assertion is that the residents are in possession since many years and have perfected their title by virtue of long and uninterrupted possession. Their relevant assertions as contained in the writ petition are as follows:-

“5.15 THAT, the Respondent No.2, 3 and 4 carried out a massive demolition drive of houses and shops of Petitioners and many others situated in the areas of Krishna Nagar, Bainganga Nagar, TTI, and Ahata Rustom Khan. This action of the Respondent is arbitrary and illegal. The residents here in possessions since last so many years and had perfected their title by virtue of their long and uninterrupted possession. A copy of the Election Voter List of the year 1982 and 1994 showing the voters living in the areas of Rustom Khan ka Aahata and TTI areas are cumulatively filed herewith and marked as ANNEXURE P/11.

5.41 THAT, it is also important to mention here that the Petitioners herein and other similarly situated persons have been living in the said land occupied by them since long time and hence they cannot be disposed in the way intended by the Respondents. The Respondent State cannot commence any work on the land in

question without acquiring the same. Under the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* the emergency provision as provided under Section 17 of the old Land Acquisition Act has been given a go by and hence no work can be carried out unless the land is acquired by the Respondents.

5.43 THAT, the Petitioners have been living on the land in question since more than 30-40 years and have perfected their title against their true owners and hence they cannot be now dispossessed without acquiring the land in question. To demonstrate that the Petitioners have been living in the land in question since long time the Petitioners are filing herewith Election Voter List of the area where the land in question is situated. The said voter list for the year 1982 and 1994 are already filed as Annexure P/11. The residents of the land in question have been regularly paying Property Tax to the Respondent No.4 and also had the Property ID generated in the records of the Respondent No.4. The Petitioners have obtained a list of such persons paying Property tax on the land in question. A copy of such list is filed herewith and marked as ANNEXURE P/25. The Respondent No.4 Municipal Corporation has ceased the aforesaid Property ID and hence the Petitioners and other similarly situated persons have been deprived from paying their Property Tax now.

6.6 BECAUSE, the Petitioners have perfected their title due to long uninterrupted and peaceful possession of more than 40 years and the same is also hostile against the true owner hence the Petitioners cannot be just thrown out of their land. Though the Respondents have demolished the structures of the Petitioners but their possession on land is still intact and the same deserves to be protected.”

2. The stand of the petitioners is that the respondent No.1 has launched a Smart City Mission project under which 100 cities were

shortlisted to be developed as “Smart Cities”. Shivaji Nagar, Bhopal was selected for Area Based Development (ABD), which includes redevelopment of 333 Acres of Government land at Shivaji Nagar situated between New Market and M.P. Nagar, Bhopal.

3. The petitioner No.32 has been impleaded in a representative capacity to represent the interest of other similarly situated persons being elected representative of local Municipal Corporation. The assertion is that the respondent Nos.2, 3 and 4 have entirely changed the Smart City Plan, which was to be executed in Shivaji Nagar to Tantya Tope Nagar (TT Nagar). The grievance of the petitioners is against the widening of road from Polytechnic Junction to Bharat Mata Square *inter alia* on the ground that the petitioners have perfected their title over the said land by adverse possession and that as per M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (in short “the Act of 1973”), the use and development of land is required to conform to the provisions of the development plan prepared under the aforesaid Act. It is also mentioned that the development, regional, zonal plans are to be published in terms of the provisions of the Act of 1973 and that such Act of 1973 occupies the field of land plan, land use and land development scheme. It is, thus, contended that Smart City Guidelines (Annexure P-1) cannot override the Act of 1973 and cannot be enforced in the State of Madhya Pradesh.

4. It is also contended that in Bhopal Development Plan-2005, the width of the road between Polytechnic Junction to Bharat Mata Square is

not specified whereas the project has commenced and massive demolition drive has already been carried out. The Smart City Plan is being carried out *de hors* the Master plan (Bhopal Development Plan-2005). The petitioners have attached Annexure P-16 i.e. a Lay Out Plan of Bhopal Development Plan-2005 whereas Annexure P-17, an information given under the Right to Information Act, 2005 is relied upon to contend that no width is mentioned of road from Polytechnic crossing to Bharat Mata crossing in Bhopal Development Plan-2005 but in respect of Capital development, the road is reflected as 24 meter (80 feet).

5. The respondent No.2 has filed compliance report; firstly on 19.07.2017 along with a Master Plan of Bhopal Development Plan-2005. Annexure R-2/I and R-2/II has been produced wherein road from Polytechnic Square to Bharat Mata Square is shown as “A to A”. It is further submitted that in the Master Plan, the width of the road is not mentioned. The same is mentioned in the lay out plan sanctioned by the Town & Country Planning Department as 24 meter motorable road and three meters of both sides is being used for drain-cum-duct under footpath, green verge and cycle track. In a subsequent reply dated 06.09.2017, it is averred that the road in question is not only part of Bhopal Development Plan-2005 but is also part of Bhopal Development Plan-1991 as proposed road, which was prepared in the year 1974-1975. The relevant assertions read as under:-

“5. M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 came into force in the year 1973 and prior to the same, a development plan for capital project township was finalized in 1959 on the basis of

which capital project township was developed and new development plan for the whole city was finalized in the year 1962-63. This was followed by land use survey, existing land use map and register was prepared and published in July, 1971 under the M.P. Town Planning (Amendment) Act, 1968. The lay out plan which was filed by the answering respondent as R/2-III was actually prepared under the capital project township on 8/8/1970, which was subsequently retraced on 14/8/1974 and was duly approved by the Director of Town & Country Planning.

6. Bhopal Development Plan 1991 was published in the M.P. Gazette Part II on 14/11/1975. The Bhopal Development Plan 1991 came into force in the year 1975 and road in question was also included and was duly mentioned as a sector road in the map prepared under the Bhopal Development Plan 1991. Copy of the Bhopal Development Plan 1991 is annexed herewith as ANNEXURE R/2-I, wherein road in question has been mentioned from 'A to A' in the map on page no.192(a). The road in question was proposed as a sector road in the Bhopal Development Plan 1991 and the width of said road was proposed between 35 to 40 Meters.

7. The answering respondents submit that the present road in question is already existing road which was included in the Bhopal Development Plan 1991 and width of the said road was mentioned in the Bhopal Development Plan as 35 to 40 M as a sector road. Subsequently Bhopal Development Plan 2005 has come into force and in the said Development Plan, road in question was included. Present road has been mentioned in the Bhopal Development Plan 2005 as an existing road in Chapter III, Table-VI of Bhopal Development Plan 2005. The contention of the petitioner that road in question is not part of Bhopal Development Plan 2005 is totally incorrect and is hereby denied. In the Bhopal Development Plan 2005 itself road in question has been mentioned as existing road. Contention of the petitioner in para 4, 5 & 6 relying on Chapter III of Bhopal Development Plan is concerned, the answering respondents submit that Chapter III is related with proposed road whereas present road is an existing road, that was proposed in

Bhopal Development Plan 1991.

8. Contention made by the petitioner in para-8 that lay out map has now been superseded by Bhopal Development Plan, the answering respondents submit that it is correct that lay out plan prepared by the capital project township was superseded by the Bhopal Development Plan 1991 and road has been developed as per width mentioned in the Bhopal Development Plan 1991. In the Bhopal Development Plan, 1991 width of the road is mentioned as 35-40 M but at present answering respondent is constructing road only upto 30 M including central verge/service duct.”
6. In the lay out plan, Bhopal Development Plan-1991 has been produced as Annexure R/2-I. Such development plan was approved by the State Government under Section 19 of the Act of 1973 on 25.08.1975 and published in M.P. Gazette on 14.11.1975.
7. Learned counsel for the petitioners has argued that the proposed width of road of Polytechnic to Bharat Mata Square was provided to be 30 meters in the Development Plan 1991 but the said road was not constructed and in the later Bhopal Development Plan-2005, the width of the said road has not been mentioned except it is asserted as the “existing road”. The existing road does not include the widening of road as the previous development plans are no longer valid and cannot be relied upon. Since the existing road is not 35 meter wide, therefore, there is no provision in the development plan 2005 for 30 meter wide road from Polytechnic to Bharat Mata Square. Thus, such road cannot be constructed in absence of development plan as approved under the Statute. It is also argued that the Smart City project was in respect of Shivaji Nagar but the same has been

changed to T.T. Nagar. It is further argued that such Smart City project is not under any Statute; therefore, in absence of support from any development plan under the Act of 1973, 30 meter wide road cannot be constructed. Learned counsel for the petitioners relies upon the judgments of the Supreme Court reported as **AIR 1974 SC 2177 (K. Ramadas Shenoy vs. The Chief Officers Town Municipal Council Udipi and others)**; **(2007) 8 SCC 705 (Chairman, Indore Vikas Pradhikaran vs. Pure Industrial Coke & Chemicals Ltd. and others)**; **(2011) 12 SCC 154 (Machavarapu Srinivasa Rao and another vs. Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority and others)**; **(2015) 10 SCC 400 (Rajendra Shankar Shukla and others vs. State of Chhattisgarh and others)**; and **(2017) 1 SCC 667 (Ravindra Ramchandra Waghmare vs. Indore Municipal Corporation and others)**, to contend that the local Authorities are bound by the development plans published under the Statute and that there cannot be any deviation from such development plans.

8. Learned counsel for the petitioners also argued that being a person in possession, the petitioners cannot be dispossessed in view of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, as no works on such land can be commenced without acquiring the same.

9. On the other hand, learned counsel for the respondents-State submitted that all the petitioners except the petitioner No.32 are the rank

encroachers on public land and have claimed adverse possession. It is contended that a person in adverse possession cannot take any action in affirmative. The plea of adverse possession is a plea of defence and action cannot be raised on the basis of plea of adverse possession. It is further contended that the petitioners have raised a vague plea of adverse possession as it is not asserted that the petitioners are in open, continuous and hostile possession and that too against the State. It is contended that mere possession however long, will not perfect the title of the petitioners on the public land. Reliance is placed upon the Supreme Court judgments reported as **(2014) 1 SCC 669 (Gurdwara Sahib vs. Gram Panchayat Village Sirthala and another)** and **(2000) 5 SCC 652 (State of Rajasthan vs. Harphool Singh (dead) Through His LRs)** wherein the Supreme Court examined as to when a plea of adverse possession can be raised against the State. Since the petitioners have come out with a dishonest plea of adverse possession, the petitioners are not entitled to any equitable relief from this Court.

10. Learned counsel for the State also contended that width of the road between Polytechnic Junction to Bharat Mata Square was proposed between 35-40 meters in Bhopal Development Plan-1991. There is existing road but not of width proposed in the said plan. Such road finds mention in Bhopal Development Plan-2005, which has been attached by the petitioners along with the rejoinder as Document-A. At page 50-51 of the said document while discussing the density of traffic in the old city, against

serial No.9 it has been found that the width of the road from Polytechnic Junction to Banganga is 30 meters. Banganga is a place said to be beyond Bharat Mata Square. Thus, though the exact width of road of Polytechnic to Bharat Mata Square has not been mentioned in Development Plan-2005 but the fact that such road is described as existing road, means the road, which is proposed in Development Plan-1991. Such road is in existence but not of width of 30 meters though proposed to be 35-40 meters in Development Plan-1991. Therefore, construction of 30 meter wide road is in accordance with development plans published. The land over which the road is to be constructed is land of the State Government; therefore, construction of road on a land owned by the State is being disputed by encroachers on public Land.

11. It is also argued that strategy of Smart City project (Annexure P-1) is about city improvement (retrofitting), city renewal (redevelopment) and city extension (greenfield development) plus a Pan-city initiative, in which, smart solutions are applied covering larger parts of the city. Pan-city development is application of selected smart solutions to the existing city-wide infrastructure. It will involve the use of technology, information and data to make infrastructure and services better. It is denied that the Smart City project was only meant for development of Shivaji Nagar. It was only meant for Pan-city development. It is pointed out that Polytechnic to Bharat Mata Square road is neither part of Shivaji Nagar nor part of T.T. Nagar but is a road between the two localities and that such road is mentioned clearly

in Development Plan-1991 and as existing road in Development Plan-2005.

12. Learned counsel for the respondents has also argued that in respect of the same land, a civil suit forming subject matter of Civil Suit No.43-A/1997 (*Khursheed Ahamad vs. State of M.P. and others*) was filed before the 5th Additional District Judge, Bhopal claiming title over Khasra No.1413 having area ad-measuring 103.40 Acres. The civil suit was dismissed on 13.05.1997. Against the said judgment and decree dated 13.05.1997, an appeal has been filed bearing First Appeal No.395/1997 (*Khursheed Ahamad (since dead) now by LRs Nahid Bano w/o Late Shri Khursheed Ahmed and others vs. State of M.P. and others*), wherein this Court granted ad-interim injunction on 11.11.1998. On the application of the State, ad-interim injunction has been vacated on 15.05.2017 when the following finding was recorded:-

“8. It is indicated in the present applications that about 103.83 acres of suit land and a small portion of the same adjoining to a public road, is presently required for widening of the road in order to achieve the objects of Smart City. A fund of Rs.300 crores has been provided by the Governments for carrying out various project, including construction and development of four lane smart road from Polytechnic Junction to Bharat Mata Square, having total length of 2.250 km. Prior to 11.11.1998 position of suit land is shown in Chart Annexure-A/4.

9. The respondents have also endeavored to verify the status of occupation by taking aid of satellite maps. The satellite maps Annexure-A/5 showing the position as on 01.05.2003, which clearly reflects no construction not even road. But in the subsequent satellite map dated 26.02.2016 different position of the land which shows various structures alongwith the road. It clearly

indicates that all these structures have been raised after 11.11.1998. It is contended by the respondents that the appellant is trying to mislead the Court. It is settled principle of law that the interim injunction may not be continued to frustrate the public projects.

12. On 27.3.2017 the learned counsel for the appellant submits that now about 70 shops and 20 residential properties were established there. The amendment application alleged that, there are about 3,000 Jhuggies over the suit land. They claimed Rs.2.70 crores as compensation which indicates that this appeal take a long time to be finalised. It shows the ulterior motive of the appellants. They are now the encroachers of government land. They create obstructions in the legal machinery and the works undertaken for the public interest such as widening of road. The Hon'ble Supreme Court in the case of **Ravindra Ramchandra Waghmare** (2017) 1 SCC 667 has held that “Power of Corporation and statutory mandate to remove building projecting beyond regular line of public street under Section 305. Action on part of Corporation for “removal” or projecting part, not interfered with by High Court upheld.”

It is thus argued that soon after the vacation of stay, present writ petition has been filed wherein there is mention of the said civil suit. Thus, it is sought to be inferred that the present proceedings are to circumvent the order passed by this Court in the first appeal.

13. We have heard learned counsel for the parties and find no merit in the present petition.

14. Though the learned counsel for the petitioners has referred to the decisions of the Supreme Court reported as **AIR 1966 SC 828 (Gadde Venkateshwara Rao vs. Government of Andhra Pradesh and others); (1976) 1 SCC 671 (Jasbhai Motibhai Desai vs. Roshan Kumar Haji**

Bashir Ahmed and others); and (1991) 4 SCC 54 (Bangalore Medical Trust vs. B.S. Muddappa and others) to assert that the petitioners have a right to invoke the writ jurisdiction of this Court but we find that though any citizen of country has a right to invoke the writ jurisdiction of this Court but whether such person would be entitled to any indulgence, is a matter which requires to be examined. In **Bangalore Medical Trust's** case, the Supreme Court held as under:-

“35. Locus standi to approach by way of writ petition and refusal to grant relief in equity jurisdiction are two different aspects, may be with same result. One relates to maintainability of the petition and other to exercise of discretion. Law on the former has marched much ahead. Many milestones have been covered. The restricted meaning of aggrieved person and narrow outlook of specific injury has yielded in favour of broad and wide construction in wake of public interest litigation. Even in private challenge to executive or administrative action having extensive fall out the dividing line between personal injury or loss and injury of a public nature is fast vanishing. Law has veered round from genuine grievance against order affecting prejudicially to sufficient interest in the matter. The rise in exercise of power by the executive and comparative decline in proper and effective administrative guidance is forcing citizens to espouse challenges with public interest flavour. It is too late in the day, therefore, to claim that petition filed by inhabitants of a locality whose park was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact public spirited citizens having faith in rule of law are rendering great social and legal service by espousing cause of public nature. They cannot be ignored or overlooked on technical or conservative yardstick of the rule of locus standi or absence of personal loss or injury. Present day development of this branch of jurisprudence is towards freer movement both in nature of litigation and approach of the courts. Residents of locality seeking protection and

maintenance of environment of their locality cannot be said to be busy bodies or interlopers [*S.P. Gupta v. Union of India*, 1981 Supp SCC 87:(1982) 2 SCR 365:AIR 1982 SC 149; *Akhil Bhartiya Soshit Kararnchari Sangh (Rly.) v. Union of India*, (1981) 1 SCC 246: 1981 SCC (L&S)50; AIR 1981 SC 298; *Fertilizer Corporation Kamgar Union v. Union of India*, (1981) 1 SCC 568: AIR 1981 SC 344]. Even otherwise physical or personal or economic injury may give rise to civil or criminal action but violation of rule of law either by ignoring or affronting individual or action of the executive in disregard of the provisions of law raises substantial issue of accountability of those entrusted with responsibility of the administration. It furnishes enough cause of action either for individual or community in general to approach by way of writ petition and the authorities cannot be permitted to seek shelter under cover of technicalities of locus standi nor they can be heard to plead for restraint in exercise of discretion as grave issues of public concern outweigh such considerations.”

[*Emphasis Supplied*]

15. In view of the above, though the petitioners have a *locus standi* to file the writ petition but that does not mean that the petitioners are entitled to any equitable or legal relief in writ jurisdiction.

16. As mentioned above, the petitioners have pleaded adverse possession. The petitioners have relied upon the judgment of the Supreme Court reported as **AIR 1968 SC 1165 (Nair Service Society Ltd. vs. K.C. Alexander & Others)**. We do not find that the said judgment is of any assistance to the argument raised by the learned counsel for the petitioners. In the aforesaid case, the Supreme Court has held that a person in possession of land in assumed character of owner and exercising peacefully the ordinary rights of ownership has a perfectly good title against all the

world but the rightful owner. It was further held that if the rightful owner does not come forward and assert his title by the process of law, his right is extinguished and the possessory owner acquires an absolute title. In the aforesaid case, the State, against whom the plaintiff was claiming adverse possession was not impleaded, therefore, the suit was found to be of recovery of possession from one, who had trespassed against him. Thus, the said judgment is not applicable to the facts of the present case. The first ingredient of claiming adverse possession is open, continuous and hostile possession to the knowledge of the true owner. The petitioners have not stated as to who the true owner is.

17. The hostile possession against the State as an owner cannot be simplicitor on account of long possession. Such question has been examined in **Harphool Singh's** case (*supra*). In the said case, the plaintiffs claimed adverse possession of the property as it was asserted that they have constructed house in the year 1955. The Supreme Court examined the question of perfection of title by adverse possession and that too in respect of public property. The Court held as under:-

“12. So far as the question of perfection of title by adverse possession and that too in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involves destruction of right/title of the State to immovable property and conferring upon a third party encroacher title where he had none. The decision in *P. Lakshmi Reddy vs L. Lakshmi Reddy* [AIR 1957 SC 314] adverted to the ordinary classical requirement – that it should be *nec vi, nec clam, nec precario* – that is the possession required must be adequate in continuity, in publicity and in extent to show that it is possession

adverse to the competitor. It was also observed therein that whatever may be the animus or intention of a person wanting to acquire title by adverse possession, his adverse possession cannot commence until he obtains actual possession with the required animus. In the decision reported in *Secy. of State for India in Council vs Debendra Lal Khan (1933) LR (LXI) I.A. 78 (PC)*, strongly relied on for the respondents, the Court laid down further that it is sufficient that the possession be overt and without any attempt at concealment so that the person against whom time is running, ought if he exercises due vigilance, to be aware of what is happening and if the rights of the Crown have been openly usurped it cannot be heard to plead that the fact was not brought to its notice. In *Annasaheb Bapusaheb Patil & Others vs Balwant alias Balasaheb Babusaheb Patil (dead) by LRs etc. [1995] 2 SCC 543*, it was observed that a claim of adverse possession being a hostile assertion involving expressly or impliedly in denial of title of the true owner, the burden is always on the person who asserts such a claim to prove by clear and unequivocal evidence that his possession was hostile to the real owner and in deciding such claim, the Courts must have regard to the animus of the person doing those acts.”

18. In a converse proposition, in a judgment reported as **(2011) 10 SCC 404 (State of Haryana vs. Mukesh Kumar and others)**, the Supreme Court was seized of a matter where the State claimed adverse possession. The Court negated it. The Supreme Court held as under:-

“**31.** A person pleading adverse possession has no equities in his favour since he is trying to defeat the rights of the true owner. It is for him to clearly plead and establish all facts necessary to establish adverse possession. Though we got this law of adverse possession from the British, it is important to note that these days the English courts are taking a very negative view towards the law of adverse possession. The English law was amended and changed substantially to reflect these changes, particularly in light of the view that property is a human right adopted by the European

Commission.

36. In *Hemaji Waghaji Jat vs. Bhikhabhai Khengarbhai Harijan (2009) 16 SCC 517*, this Court ultimately observed as under (SCC p. 529, paras 32-33:

"32. Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.

33. We fail to comprehend why the law should place premium on dishonesty by legitimising possession of a rank trespasser and compelling the owner to lose his possession only because of his inaction in taking back the possession within limitation."

44. Adverse possession allows a trespasser - a person guilty of a tort, or even a crime, in the eyes of law - to gain legal title to land which he has illegally possessed for 12 years. How 12 years of illegality can suddenly be converted to legal title is, logically and morally speaking, baffling. This outmoded law essentially asks the judiciary to place its stamp of approval upon conduct that the ordinary Indian citizen would find reprehensible. The doctrine of adverse possession has troubled a great many legal minds. We are clearly of the opinion that time has come for change."

19. Thus, the cases where the adverse possession is sought against

the State and where the State has sought adverse possession, have been examined in the above mentioned two judgments i.e. **Harphool Singh (supra)** and **Mukesh Kumar (supra)**. In view of the law laid down in aforesaid judgments, we find that the claim of the petitioners to protect their possession is wholly untenable and cannot be sustained in law.

20. Still further, no person is entitled to take plea of adverse possession as an affirmative action – it has been so held by the Supreme Court in **Gurdwara Sahib (supra)**. It has been further held that a Plaintiff cannot seek a declaration to the effect that such adverse possession has matured into ownership. The relevant extract read as under:-

“8. There cannot be any quarrel to this extent that the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings are filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.”

Thus, we find that the petitioners have approached this Court with a wholly untenable plea, thus they are not entitled to equitable relief on this ground alone.

21. We have examined the other argument in respect of existing road in Development Plan-2005. The sole issue is that in Development Plan-2005, the road is shown as existing road and as per the petitioners; the width of the road cannot be extended than what actually exists on the spot on the date of publication of Development Plan-2005. On the other hand, stand of

the State is that in Bhopal Development Plan-1991, published on 14.11.1975, the road of 35-40 meter width as sector road was planned and whereas in Bhopal Development Plan-2005, the proposed width of the roads has been mentioned at para 3.15 in Chapter-3. Clause 3.18 thereof pertains to second level artery road, which measures from 30-45 meters. In the new urban areas the same was proposed to be 45 meters whereas in the existing urban areas the width of the road was mentioned as 30-40 meters. It is the said road, which was mentioned in development plan "as existing road". May be; the actual width of the road was not increased to 35-40 meters but it is a road, planned in Development Plan-1991. Therefore, the width of the road is not a new width, which is being carved out but the width, which was planned and published way back in 1975.

22. A perusal of Bhopal Development Plan-2005 at page Nos.73 and 74 of the response filed by the petitioners to the compliance report filed by respondent No.2 shows the traffic density on the existing roads. Column No.6 is existing width of the road. At Serial No.9 is the road from Polytechnic junction to Banganga. The existing width is mentioned as 30 meters. It is the said width of the road which the respondents are wanting to construct road. Therefore, it cannot be said that Bhopal Development Plan-2005 does not relate to the width of the road as 30 meters. It is so mentioned at pages 73 and 74 of the development plan produced by the petitioners themselves.

23. Still further, the Smart City project has its components

including the Pan-city development, therefore, the development of a road to the width of 30 meters is part of the Development Plan-2005, therefore, it cannot be said that Smart City project is at variance with the development plan published under the Act applicable to the area.

24. The Act of 2013 has no applicability to the present case as the State is the owner of the land in question and as an owner, the State will not acquire its own land. The petitioners are unauthorised occupants over such land and therefore, they cannot claim to be the persons interested in the event of acquisition of the land. Thus, the submission of the learned counsel for the petitioners that they cannot be dispossessed as they are in possession of the land and the same has not been acquired in terms of the Act of 2013, is misconceived and is rejected.

25. So far as the judgments of the Supreme Court rendered in **K. Ramadas Shenoy (supra); Chairman, Indore Vikas Pradhikaran (supra); Machavarapu Srinivasa Rao (supra); Rajendra Shankar Shukla (supra);** and **Ravindra Ramchandra Waghmare (supra)** referred to by the learned counsel for the petitioners to contend that there cannot be any variation in the development plan unless such modifications and/or variations are approved in the manner contemplated by law. There is no dispute with the proposition raised but Bhopal Development Plan-2005 itself has given width of the road as 30 meters, therefore, the respondents are well within the jurisdiction to construct road upto the width of 30 meters. Such construction of road upto the width of 30 meters is not

contrary to Bhopal Development Plan-2005 but in accordance therewith.

26. In view of the foregoing, we do not find any merit in the present writ petition. The same is **dismissed**.

(HEMANT GUPTA)
Chief Justice

(VIJAY KUMAR SHUKLA)
Judge

S/