

(1995) 07 MP CK 0019

In the Madhya Pradesh High Court

Case No : Writ Petition No. 546 of 1995

A.K. Varma

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 14-07-1995

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 328, 330

Madhya Pradesh Municipalities Transfer of Immovable Property Rules, 1963 — Rule 4, 5

Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 16

Citation : (1996) 41 MPLJ 29 : (1996) MPLJ 29

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : M.C. Jain, for the Appellant; K.B. Chaturvedi, G.A. and R.A. Roman, for the Respondent

Final Decision : Allowed

Judgement

T. S. Doabia, J.

This order shall govern the disposal of the present writ petition and the writ petitions indicated in the schedule to this order.

The petitioner is a permanent employee of Nagar Palika Parishad, Morena. Earlier, he was an employee of Town Improvement Trust, Morena. The Town Improvement Trust was taken over by way of merger by the Nagar Palika Parishad. This is how the petitioner came in the service of Nagar Palika Parishad. It is the case of the petitioner that the Government of Madhya Pradesh framed a policy with a view to provide housing accommodation to the employees of various Local Bodies. It issued a circular on 12th of July, 1988. Copy of this has been placed on record as annexure P/3. The policy, annexure P/3, as indicated above deals with the method and manner in which land could be allotted to the employees working in various institutions looked after by Local Self Department. According to the petitioner, the Nagar Palika Parishad, Morena showed its concern for the welfare of its employees and taking note of the guidelines

indicated in annexure P/3, passed a resolution on 16th of November, 1994. This resolution has been placed on the record as, annexure P/4. By this, the land measuring 30" x 50" was proposed to be allotted to the petitioner and other similarly placed employees. One employee was to get a plot measuring 40" x 60". About eight employees were to get plots measuring 20" x 40". The employees were to get land measuring 20" x 30". This allocation was made as per the status of the concerned employee. There were twenty employees in all. Rate was fixed at Rs. 10/- per sq. ft. It is a further case of the petitioners that in compliance with the resolution, annexure P/4, sale deeds were executed on 20th of January, 1995. Copy of the duly registered sale deed has been placed on the record as annexure P/5. This is dated 25th January, 1995. It is a further case of the petitioner that not only the sale deed was executed but possession was also handed over. It is further stated that full consideration has been paid. The factum of possession having been delivered to the petitioners is sought to be evidenced by placing reliance on annexure P/6. It is further stated that one more resolution, copy whereof is annexure P/7 was also passed. By this resolution, it was proposed to allot plots to some other employees also. The names of these employees have been indicated in annexure P/7. The above action with a view to make allotment of plot to the petitioner and his other colleagues was taken when the Nagar Palika Parishad was not having an elected body in the office. When the elected body came into existence it wanted to re-examine as to whether the allotment made vide resolution, annexure P/4 is good or bad. Special meeting was called. A notice regarding this was issued on 4th of April, 1995. Resolution has since been passed on 8th of April, 1995. Copy of this is, annexure P/1. By this resolution, annexure P/4 has been nullified. It is this action of the respondent Nagar Palika Parishad which is being impugned in these petitions.

The case of the respondents be noticed.

The State of Madhya Pradesh supports the action taken by Nagar Palika Parishad. According to it, the land in question was originally held by the Nagar Palika Parishad to be used as Mela ground. For this reliance is being placed on register of land records which was prepared in the year 1975. Copy of this is annexure R/1. It is further pleaded by the respondent State that the Nagar Palika Parishad passed a resolution, copy whereof is annexure R/3. Vide this resolution, it is said that the land was handed over by the Nagar Palika Parishad to the Government. This was done after valuable consideration passed from Government to the Municipality. Reliance is being placed for this purpose on annexure R/5. It is stated that a sum of Rs. 10 lacs was paid by the State Government to the Nagar Palika Parishad. Thereafter, the land came to be recorded as Government land. This is sought to be established by placing reliance on annexures R/6 and R/7. This is again a register pertaining to record of lands. The land is shown as land to be used for building the offices of Commissioner, Chambal Division. It is the further case of the Government that on 8th of October, 1988, on some misconception some Government officer handed over the land to the Improvement Trust. The purpose was to construct a stadium. It is, however,

stated that the land continued to be under the ownership of the State and for this reliance is being placed on annexure R/7. It is pleaded that on account of the provisions contained in Section 117 of the Madhya Pradesh Land Revenue Code, 1959, the land would continue to remain under the ownership of the State Government. It is further pleaded that at the relevant time when resolution was passed in favour of the petitioner, the Nagar Palika Parishad was under the control of an Administrator and the property could not be transferred without the approval of the Collector. For this, reliance is being placed on Section 328 of the Madhya Pradesh Municipalities Act, 1961 (hereinafter referred to as the Act of 1961). Rules known as Madhya Pradesh Municipality Transfer of Immovable Property Rules, 1963 have been referred to. Specific mention has been made of Rules 4 and 5 referred to above. It is further pleaded that circular, annexure P/3 has also not been observed and the land could be allotted to the employees after development and that too after charging development charges. The Nagar Palika Parishad has also supported the case projected by the State.

In the backdrop of above factual position, various arguments raised on behalf of the petitioners be noticed. These arguments are :

- (i) that, vide resolution, annexure P/1, earlier resolution, annexure P/4 has been annulled. This has been done without affording opportunity to the petitioners and, therefore, it is null and void;
- (ii) that, each and every resolution is required to be sent to the Collector and as the Collector did not object to the same it should be assumed to have attained finality;
- (iii) that, no specific agenda was there before the Nagar Palika Parishad and, therefore, the meeting in which resolution, annexure P/1 was passed cannot be sustained;
- (iv) that, the resolution could be passed only in an ordinary meeting. A special meeting called for this purpose is not a proper meeting. Reference has been made to Sections 56(4), 62(4) and 65 of the Act of 1961;
- (v) that, sale deed having been duly executed, the sale cannot be set at naught by simply passing a resolution; unilateral cancellation of the sale deed is not permissible under the law; and
- (vi) that, the plea of promissory estoppel has also been projected and it is argued that the resolution in question cannot be cancelled.

The above arguments are sought to be countered by contending that the resolution, annexure P/1 has been validly passed and the earlier resolution, annexures P/4 and P/5 were passed in utter violation of the provisions of the Act of 1961 and the rules framed thereunder. It is also argued that provisions of Section 16 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 has not been taken note of. A plea has also been taken that Section 24 of the Madhya Pradesh Vinirdisth Bhrashta Acharan Nivaran Adhiniyam, 1982, are

equally attracted. It is projected that annexures P/4 and P/5 have been passed ignoring the public interest. The land was meant for construction of a stadium which would not be used for residential purposes. The earlier resolutions having been passed without making any reference to the Collector is bad. As a matter of fact, the plea taken is that the Resolution P/4 is void ab initio.

A plea has also been taken that the petitioners have an alternate remedy under the Act and the petitioners can seek intervention of State u/s 330 of the Act.

Prima facie, it appears that when resolutions, annexures P/4 and P/5 were passed the various statutory provisions were not given due regard. This conclusion is being specifically mentioned as prima facie because I am of the view that all these are disputed questions of facts and it would be appropriate for the petitioner and his colleagues to approach the State Government u/s 330 of the Act of 1961 or any other remedy which may be available to them. For reaching this prima facie conclusion, following facts have been taken note of.

It be seen that at the relevant time the Nagar Palika Parishad was under supersession. There was no elected body. On account of the provisions contained in Section 328(3)(iii)(c) all properties of the Council came to vest in the Administrator and the management and disposal of the property was subjected to the control of the Collector. There is nothing on the record to indicate that the Collector was ever taken into confidence. The decision given by the Supreme Court in the case of Hitkarini Sabha, Jabalpur Vs. The Corporation of the City of Jabalpur and Others, would squarely be attracted to the facts of the case. In the above case, a lease was administered by the Administrator and no reference was made to the State Government. The lease was held to be void. In the present case, reference was required to be made to the Collector. This has not been done. Therefore, the above decision of the Supreme Court would apply to the facts and circumstances of the case. An argument was raised in this regard that all resolutions which have been passed by the Nagar Palika Parishad are sent to the Collector and as no objection was taken by the Collector, therefore, there should be a deemed approval. The resolutions are sent to the Collector u/s 328 of the Act. I am of the view that merely because a resolution passed by the Nagar Palika Parishad is sent to the office of the Collector and there is no objection raised is not a ground to infer that his approval is there. This is more so, when there is an express provision thereunder that the disposal of the property is subjected to the control of the Collector. Had the Nagar Palika Parishad made a specific reference in this regard and had his consent been taken, the position would have been different.

The other objection which has been taken is that this was a resolution which should have been passed in an ordinary meeting and a special meeting called for this purpose is not in accordance with law. It be seen that this objection is again without merit. The special meeting with a view to discuss a special subject would give more sanctity to the resolution passed by the Nagar Palika Parishad. All the Members were aware of the matter which was going to be discussed and nobody

was taken by surprise. Thus merely because something which was required to be discussed in an Ordinary Meeting was discussed in a Special Meeting or a decision was taken in a special meeting would not nullify the effect of the resolution. The resolution P/1 cannot be faulted on this ground.

It be further seen that the case of the respondents is that the land was meant to be used for stadium and by making this allotment that purpose is likely to be frustrated. Again, the view of the Supreme Court on these matters is clear. If a land is earmarked for a particular purpose then it is to be used for that purpose only. See: Bangalore Medical Trust Vs. B.S. Muddappa and others, and K.R. Shenoy v. Municipal Committee, Udipi AIR 1974 SC 2174. In both the decisions, the" Supreme Court categorically held that the municipal authorities arc in the position of a trustee and they are supposed to see that the land which is earmarked for a particular purpose is not permitted to be deviated. It is the case of the respondents that the land was meant for stadium and its user cannot be converted.

With regard to the argument based on promissory estoppel, it be seen that the decision on which reliance is being placed namely; Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, would not be attracted. There, a building had been constructed. Instead of sticking to the design, there were some deviations made in the matter of covering the covered area. The building had been in existence for a sufficient long time. It was under these circumstances, it was held that the Government is debarred from taking any action against the Newspaper referred to above. In the present case, no such event has taken place. After the passing of the resolution, annexure P/4, sale deeds have been executed. Constructions have not been raised and the Nagar Palika Parishad was vigilant enough to nullify the resolution which had passed earlier.

A perusal of annexure P/1 by which the earlier resolution has been nullified gives cogent reasons. These reasons are as under :

- (i) that, the valuable land of Mela ground has been given without obtaining permission/approval by the Collector;
- (ii) that, the land was valuable and it has been given on lower rates; and
- (iii) that, the Chief Municipal Officer has not put his signatures and one Assistant Engineer has been asked to take part in the sale proceedings;

All these are cogent reasons. As a matter of fact, the petitioner has not been able to point out that any of the reasons given in annexure P/1 is factually incorrect.

Coming to the argument with regard to the execution of sale deeds and that these cannot be cancelled unilaterally it be seen that the Nagar Palika Parishad has sold something which apparently does not belong to it. As such, these sale deeds cannot have the effect of transfer of property because the land did not

belong to the Nagar Palika Parishad. Again, this is a prima facie conclusion and the petitioner and his colleagues would be at liberty to establish that the ownership had in fact come to vest in the Nagar Palika Parishad and the resolution was passed properly.

14A. In view of the above discussion, I am of the view that apparently -

- (i) the resolution, annexure P/1 has been properly passed;
- (ii) the resolution, annexure P/4 was passed without obtaining prior approval of the Collector;
- (iii) the land which was not meant to be used for residential purpose is sought to be used for that purpose;
- (iv) the mere rendering of the resolution to the Collector would confer no sanctity on the resolution annexure P/4 and the Nagar Palika Parishad could reexamine the same;
- (v) merely because a resolution has been passed in a special meeting is no reason to infer that this was not validly passed; and
- (vi) prima facie the contention of the State that it is the owner of the property and valuable consideration was paid for this also appears to be correct.

As indicated above, all these are prima facie conclusions and, therefore, it would be apt for the petitioners to avail of alternate remedy. They may approach the State Government u/s 330 of the Act of 1961. Even otherwise nothing prevents the State Government to reexamine the entire matter at its own level. It can taken suo motu action in the matter. No doubt, civil rights of the petitioners have been affected by passing resolution, annexure P/1 but that cannot be made a ground to set aside the same. This is because by setting aside the same a situation may arise which again may not be in consonance with law. By quashing, annexure P/1, on the ground of non-grant of hearing, other resolution, annexure P/4 would stand revived which as concluded above - though prima facie - has not been passed in accordance with law. In *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, the Supreme Court upheld the view of High Court refusing to issue a writ in such circumstances by observing :

"In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government dated April 18, 1963? If the High Court had quashed the said order, it would have restored an illegal order - it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case."

The above principle would apply to this case as well .

The State Government would take cognizance of the matter and decide all these

issues which have been raised by the petitioner in this writ petition. The petitioners would be at liberty to approach the State Government or file civil suit, if so advised. It is made clear that nothing said in this order shall be taken as conclusive and the authority passing the order would be not influenced by any observations made in this order in any manner.

Till the matter is decided one way or the other, the petitioner and his colleagues shall not change the nature of the land or raise any construction on the land in dispute.

These petitions are disposed of accordingly.