
(2004) 04 MP CK 0068
In the Madhya Pradesh High Court
Case No : Civil Revision No. 307 of 2002

Aman Education Society

APPELLANT

Vs

Nagar Nigam

RESPONDENT

Date of Decision : 07-04-2004

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 295(3)

Citation : AIR 2005 MP 74 : (2005) 1 MPHT 421 : (2005) 2 MPJR 216 : (2005) 1 MPLJ 91

Hon'ble Judges : S.K. Pande, J

Bench : Single Bench

Advocate : N.K. Patel and S.L. Patel, for the Appellant; Ajay Mishra and Pushpendra Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Pande, J.

The revision u/s 115 of CPC is directed against the order dated 19-11-2001 passed by V ADJ, Bhopal in M.A. No. 3/2000.

On 18-10-99 the petitioner submitted application for permission to make construction on land khasra No. 26 area 2.83 acres situated at Kohefija, Bhopal. Since respondent Corporation did not refuse permission within 30 days and hence permission deemed to have been granted u/s 295(3) of the M.P. Municipal Corporation Act, 1956 (for short the "Act"), the petitioner in February, 2000 started construction work according to the map submitted vide application dated 18-10-99. On 7-6-2000 the Engineering Department of the respondent Corporation served a notice u/s 307 (2) of the Act requiring the petitioner to demolish the said construction. The notice was duly replied by the petitioner, but the respondent threatened to demolish the construction if the same has not been demolished by 13-6-2000. Against the said notice the petitioner filed an appeal before the I ADJ, Bhopal. In the aforesaid appeal the respondent filed documents

and from these the petitioner came to know by letter No. 44, dated 3-6-2000 that his application for permission to make construction was rejected by the respondent. Information about this letter was never given previously to the petitioner. On 21-8-2000 the petitioner applied for certified copy of the order dated 3-6-2000 by which the application for permission for construction was rejected, but no certified copy was given by the respondent. On the basis of certified copy of letter No. 44, dated 3-6-2000 the petitioner filed M.A. No. 3/2000 before V ADJ, Bhopal u/s 293 (3) of the Act. The respondent inter alia contended that the map of the petitioner can not be deemed to be sanctioned u/s 295 (3) and the order rejecting the application was passed after following the legal procedure. It has also been contended that the appeal filed by the petitioner is barred by time. V ADJ, Bhopal vide impugned order dated 19-11-2001 held the appeal being time barred and the map of petitioner can not be deemed to be sanctioned u/s 295 (3), dismissed the appeal.

It has been contended that on 18-10-99 application for permission to make construction on land khasra No. 26 area 2.83 acres Kohefija, Bhopal was filed by the petitioner. Xerox copy of this application dated 18-10-99 has been filed with the appeal M.A. No. 3/2000. As per list of the enclosure, only a notarized affidavit has been tagged. Memo dated 2-11-99 sent to the petitioner goes to show that NOC of Nazul has not been enclosed by the petitioner with his application dated 18-10-99. Accordingly, the petitioner was directed to furnish the aforesaid NOC of Nazul Department. It is contended that the petitioner did not appear before the respondent and considering the incomplete application vide order dated 3-6-2000 the application aforesaid was rejected for the reason of non-supply of NOC from Nazul and Town and Country Planning. After this the respondent issued the notices dated 2-6-2000 and 7-6-2000 informing the petitioner he is illegally carrying on the construction. Finally he was served with a notice dated 7-6-2000 by Engineering Department u/s 307 (2) requiring the petitioner to demolish the said construction.

Section 295 (3) lays down as under:-

(3) Notwithstanding anything contained in Sub-section (2) but subject to the provisions of Sub-section (10) of Section 291 if the Commissioner within thirty days of the receipt from any person of a valid notice of such person's intention to erect or re-erect a building, or within sixty days of such receipt if the notice relates to a building on the same or part of the same site on which sanction for the erection of a building has been refused within the previous twelve months, neglects or omits to pass orders sanctioning or refusing to sanction such erection or re-erection, shall, unless that land on which it is proposed to erect or re-erect such building belongs to or vests in the Corporation, be deemed to have been sanctioned, except in so far as it may contravene any (rule) or bye-law or any town-planning scheme sanctioned under this Act or any other enactment for the time being in force :

Thus for attracting the doctrine of deemed permission, petitioner was required to

file the application for sanctions enclosing all such documents as were required. Petitioner since has not enclosed the requisite documents, i.e., NOC of Nazul and Town and Country Planning he was directed to do so vide memo dated 2-11-99. The petitioner did not comply with the direction. Accordingly, the presumption of deemed permission has not been attracted in respect of application dated 18-10-99 filed by the petitioner.

With reference to *Rajkumar v. Commissioner, Municipal Corporation*, 1999(I) MPWN 24, it has been contended that the application of the petitioner should not have been refused without hearing. In *Rajkumar v. Commissioner, Municipal Corporation* (supra), it has been held :-

This Court in *Girishkumar* (1985 J LJ 582) has quoted the following observation on Hon"ble the Supreme Court made in *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*,) :-

"It is essential that Administrative Authorities and Tribunals should accord fair and proper hearing to the persons south to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone Administrative Authorities and Tribunals exercising quasi- judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process".

The contention of the respondent is that the petitioner himself has avoided hearing on his application dated 18-10-99. Since the requisite documents, i.e., NOC of Nazul and Town and Country Planning were not enclosed, the petitioner vide memo dated 2-11-99 was directed to produce the documents. Instead by not participating in the proceedings of his application dated 18-10-99, the petitioner kept mum. Thereafter the petitioner is stopped from challenging the proceedings on the ground that he has not been heard before rejection of application dated 18-10-99. It seems that petitioner wilfully avoided the hearing on his application dated 18-10-99 since he was not having requisite NOC of Nazul and Town and Country Planning. The Court below rightly held that on the facts principle of deemed permission u/s 295 (3) has not been attracted in the instant case of the petitioner.

The appeal u/s 293 (3) against the order dated 3-6-2000 passed by the respondent was filed on 8-9-2000 stating inter alia that the order aforesaid was passed by the respondent behind the back of the petitioner and the petitioner for the first time was served with notice dated 7-6-2000 u/s 307 (2) of the Act. Against this notice he has preferred an appeal before I ADJ, Bhopal and the respondent disclosed the fact that vide letter No. 44, dated 3-6-2000 application dated 18-8-2000 has been rejected. The Court below in Paras 8 and 9 of the impugned order has elaborately dealt that the petitioner having filed a suit C.S. No. 135-A/2000 on 13-6-2000 before the I ADJ was aware of the fact of rejection of application dated 18-8-99. The application under Order 39 Rules 1 and 2 of CPC in the aforesaid CS. No. 135-A/2000 has been dismissed. The petitioner

preferred an appeal against the said order dated 7-9-2000 against the dismissal of application under Order 39 Rules 1 and 2 of CPC and simultaneously on 8-9-2000 by way of alternative remedy preferred M.A. No. 3/2000 against memo dated 3-6-2000 rejecting the application dated 18-9-99. This itself speaks that the petitioner had knowledge of the order of rejection even on the date 13-6-2000 at the time of institution of C.S. No. 135-A/2000. As such the appeal u/s 293 (3) as has been filed by the petitioner was hopelessly time barred.

On aforesaid consideration the order impugned passed by the Court below does not suffer from any material irregularity. Accordingly, revision fails and is dismissed.

Petitioner shall bear his cost and pay the cost of the respondent. Counsel fee as per rules or certificate (whichever is less).