

(2018) 07 MP CK 0116

In the Madhya Pradesh High Court

Case No : Writ Petition No.4272 Of 2018

Chandrakala Upadhayay & Ors

APPELLANT

Vs

Indore Municipal Corporation & Anr

RESPONDENT

Date of Decision : 13-07-2018

Acts Referred:

Municipal Corporation Act, 1956 — Section 305

Madhya Pradesh Municipal Corporation Act, 1956 — Section 305, 306, 387, 387(5)

Constitution of India, 1950 — Article 226, 300A

Citation : (2018) 07 MP CK 0116

Hon'ble Judges : Pankaj Kumar Jaiswal, J; Sunil Kumar Awasthi, J

Bench : Division Bench

Advocate : Manohar Dalal, Manoj Munshi

Final Decision : Dismissed

Judgement

By filing this petition under Article 226 of the Constitution of India, the petitioners are praying for the following relief :-

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2. A preliminary objection has been raised by the Municipal Corporation that the present petitioners had earlier filed the Writ Petition No.6034 of 2016, on the ground of inadequacy of compensation on vesting of part of their land under Section 305 of Municipal Corporation Act, 1956 for road widening, which was dismissed by the writ court. Against the order of dismissal, the intra court appeal vide W.A.No.437 of 2016 was filed and the same was also dismissed by order dated 7.11.2016. He submitted that after dismissal of writ appeal, the same set of writ petitioners raised another dispute of center point of the road for measurement of the width of the 24 meters road.

3. It is submitted that this question was available at the time of consideration of the writ petitioner and writ appeal and the present petitioners have relinquished all those grounds and, therefore, in view of the law laid down by the Apex Court in the case of Indore Municipality Vs.

K.N. Palsikar, AIR 1969 SC 579, the Supreme Court while construing Section 305 of the Act has held that once the condition required by the said

Section are satisfied vesting is automatic. In the case of Suresh Singh Kushwaha Vs. Municipal Corporation Gwalior and another, 2006 (3) MPLJ 412

it has been held by this Court that once the Municipal Corporation has prepared a plan determining the regular line of public street any portion of the

building which is projected beyond this line automatically vests in the Corporation in view of Section 305 of the Act and, therefore, the Corporation has right to demolish the portion of said building and no proceedings under the Land Acquisition Act are required.

4. The Apex Court in the case of Ravindra Ramchandra Waghmare V/s. Indore Municipal Corporation reported as (2017) 1 SCC 667

has dealt with the similar controversy and after the judgment in the case of Ravindra Ramchandra Waghmare (supra), the Indore Municipal

Corporation had undertaken a plan for widening of one of the major city road to connect two major bus terminals and a Railway station known as

'Sarvate Bus Stand to Gangwal Bus Stand Road', which passes through the area of the petitioners therein.

Â 5. The Principal Seat at Jabalpur in W.A.No.437 of 2016 (Smt. Duraiya & OthersV/s. Indore Nagarpalika Nigam & Anr.) has also dealt with the

similar issue. Order dated 7.12.2016 passed in W.A.No.437 of 2016 reads as under :-

â??The appellants are the residents of Raoji Bazar, Indore. They are affected due to widening of the road, as certain portion of their houses are

required to be demolished; hence, they have approached the learned Writ Court, seeking directions to the respondents to follow the provisions of

Section 387 (5) of the Madhya Pradesh Municipal Corporation Act, 1956 (herein after referred to as the Act) to maintain the width of 24 meters of

the road and that measurement be done from the center point of the road.

2. On 31.08.2016, the houses of the appellants weremarkedfor construction of the proposed 24 meter wide road. Since the measurement was not done

from the center of the road, therefore, the appellants issued a legal notice and also lodged police complaint regarding the discriminatory attitude of the

respondent.

3. Earlier also, writ petitioner No.1 filed Writ PetitionNo.2079/2016 and Writ Petition No.4031/2016, challenging the action of the respondent regarding

removal of obstruction and widening of the road. Writ Petition No.4031/2016 was disposed of by granting three weeks time to remove the obstructing

construction of the writ petitioner, as the FAR has already been offered to him, therefore, learned Writ Court rightly dismissed the writ petition against

petitioner No.1.

4. In respect of scope of Section 387 of the Act, Division Bench of this Court in various writ appeals vide common judgment dated 09.05.2016 passed

in Writ Appeal No.23/2015 (Municipal Corporation, Bhopal v. Premnarayan Patidar) and disposed of the writ petition. The aforesaid judgment has

been challenged by certain landowners in SLP before the Apex Court. By interim order dated 23.05.2016, the Apex Court has observed that the

appellant may approach the Competent Authority, in the light of paragraph No.60 of the order passed by granting liberty to the appellants to approach

the Commissioner, Municipal Corporation, Indore. Paragraph No.60 of order dated 09.05.2016 passed in Writ Appeal No.23/2015, reads as under: -

â??60. The fact that the Court permitted the writ petitioners to pursue that option may not be construed as any direction given by the Court to the

Competent Authority to decide the proposed representation in favour of the writ petitioners. Instead, all aspects of the matter may be examined by the

Commissioners or any person authorized by the Commissioner competent to answer that grievance. All questions in that behalf are left open.â??

5. In view of the aforesaid, so also the fact that by interim order dated 23.05.2016 passed by the Supreme Court, we are of the view that the learned

Writ Court has not committed any legal error in dismissing the writ petition on 26.09.2016 with liberty to approach the Commissioner, Municipal

Corporation, Indore.

6. Accordingly, Writ Appeal No.437/2016 is dismissed.

6. Thereafter this court in the case of passed in W.P.No.1480 of 2018 decided the issue on 9.2.2018, which reads as under :-

â??1. The Municipal Corporation, Indore is implementing the Indore Development Plan, 2021 as per which road widening of the road from the

Sarwate Bus Stand to the Gangwal Bus Stand has been undertaken. Petitionersâ?? construction is situated in the Silawatpura to Gangwal bus stand

stretch of the aforementioned road proposed width of which is 24 meters. Section 305 of The M.P. Municipal Corporation Act, 1956 empowers the

Municipal Corporation to remove any portion of the building projecting beyond the regular line of a public street either as existing or as determined for

the future by issuing a notice.

2. In the case in hand, a notice under Section 305 of The Act and provisions of M.P. Bhumi Vikas Nigam, 2012 was issued on on 06.1.2018

(Annexure P/1) specifying the dimensions of the obstructing construction and 3 daysâ?? time was granted to submit the building permission

documents and reply, if any. Reply has been submitted by the petitioner and after considering the reply, a detailed order has been passed by the

Municipal Corporation, Indore. Thereafter, Municipal Corporation initiated action to demolish the part of the construction between 36.01 sq.mtr.

3. Learned counsel for the petitioner has submitted that measurement taken by the Municipal Corporation, Indore is not proper and prayed that

respondent no.2/Municipal Corporation, Indore be directed for fresh measurement and demarcation in presence of the petitioner and his

representative.

4. Learned counsel for the respondent has drawn our attention to Annexure R-3

and submit that except the petitioner no one have raised any objection with regard to the demolition and prays for rejecting the prayer of the petitioner. As per record and reply of respondents measurements have been taken from the centre line of the existing road, 12 meters on both the sides without any discrimination whatsoever. The alignment of the road and the building line is not straight and there are curves and deviations on both sides. In the present case centre of the existing road was taken and 12 meter margins were made on both sides of the road. There is no malafide against the petitioners, the authorities are simply performing their duty to implement the development plan.

5. On due considering of the aforesaid so also the measurement which has been recorded as Annexure R-3, we are not inclined to grant permission to the petitioner or to issue any order to the respondent/Corporation to take fresh measurement in presence of the petitioner. The present writ petition has no merit and is accordingly rejected.â??

7. The Principal Seat at Jabalpur, in W.A.No.23 of 2015 in the case of Municipal Corporation Bhopal V/s. Premnarayan Patidar has held the following

:-

â??40. The fact that the Corporation has been empowered to remove obstructions and encroachments within the street line without doing anything more in terms of Section 305, does not mean that the person affected by such action can be deprived of his property without payment of any compensation for the damage or loss to his property. That is required to be done in terms of proviso below sub-section (1) of section 305 read with and subject to Section 306 of the Act of 1956. This is the procedure established by law enacted by the State Legislature, who is competent to enact such a law with reference to Entry No.5 of List-II in Schedule-VII of the Constitution. If the procedure prescribed by the provisions of section 305 and 306 of the Act of 1956 for payment of compensation is followed, the person affected by such action cannot complain about deprivation of his property having been done without authority of law, within the meaning of Article 300-A of the Constitution of India.

41. The provisions, such as Sections 305 and 306 of the Act of 1956, are required to be invoked in larger public interest and for implementation of the final Scheme propounded under the Act of 1973. That is the obligation of the

Corporation. The purpose for enacting such provisions is to ensure that the streets which are the life line of the City are indispensable for holistic development of the area and including for free traffic movement. All that the Corporation is expected to do is to offer "reasonable compensation" for any damage or loss caused to the owner of the affected land or building, as per Section 306 of the Act of 1956. Further, if the affected person is not satisfied with the grant/non-grant of compensation or being insufficient, is free to resort to remedy of Arbitration under Section 387 of the Act of 1956.

8. The validity of the Master Plan, 2021 and also the vesting of land for the purpose of road widening under Section 305 of the Act, 1956 have been dealt in detail in favour of the respondent Corporation by the Apex Court in the case of Ravindra Waghmare V/s. Indore Municipal Corporation, 2017

(1) SCC 667.

9. The similar controversy has also been decided by this court in the case of Writ Petition No.23497/2017 (Kurband Hussain & Ors. V/s. Indore

Municipal corporation & Anr) decided on 7.5.2018.

10. On due consideration of the totality of the facts and circumstances of the case, so also to the fact that the demolition encroachment and illegal construction work carried by the respondents is for widening of the road and for public use, we are of the view that no case for issuance of any writ

of mandamus, as prayed by the petitioners is made out. W.P.No.4272 of 2018, has not merit and is accordingly, dismissed.