
(2022) 12 MP CK 0128

In the Madhya Pradesh High Court

Case No : Writ Petition No. 29516 Of 2022

Damodar Singh Yadav And Others

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 20-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 12 MP CK 0128

Hon'ble Judges : Gurpal Singh Ahluwalia, J

Bench : Single Bench

Advocate : K.S. Tomar, Atul Kumar Gupta, Jitesh Sharma

Final Decision : Dismissed

Judgement

Gurpal Singh Ahluwalia, J

This petition under Article 226 of the Constitution of India has been filed seeking following reliefs:-

- (i) That, the present petition filed by the petitioners may kindly be allowed;
- (ii) That, the writ of mandamus may kindly be issued against the respondents no.1 and 2 directing and commanding the respondents no.1 and 2 to remove the unlawful construction as made by the respondent no.3 considering the complaint as made by the petitioners vide Annexure P/2 to P/6.
- (iii) That, further respondents no.1 and 2 may kindly be directed and commanded to stop the unlawful construction as is going to be made by the respondent no.3 in contravention of the permission vide Annexure P/1.
- (iv) That, any other writ order or direction in the nature of writ may kindly be issued directing, observing and commanding the respondents no.1 and 2 to take action strictly where unlawful construction is going to be made by the respondent no.3.

(v) That, any other just, suitable and proper relief, which this Hon'ble Court deems fit, may also kindly be granted to the petitioners. Costs be also awarded in favour of the petitioners.

It is submitted by the counsel for the petitioners that contrary to the building permission granted to the respondent No.3, he is carrying construction. Various complaints have been made to the authorities but no action has been taken.

Heard the learned counsel for the parties.

Section 307 (5) of M.P. Municipal Corporation Act reads as under:-

307. Power to require, removal or alteration of work not in conformity with bye-laws or any scheme or any other requirement.- (1) If any building is erected or re-erected in contravention of any town planning scheme mentioned under section 291 or of any building byelaws made under section 427, the Commissioner without prejudice to his right to take proceedings for a fine in respect of the contravention, may by notice require the owner either to pull down or remove the work or, if he so elects, to effect such alterations therein as may be necessary to make it comply with the said scheme or byelaws.

(2) If a building is erected or re-erected-

(a) without any sanction as required by section 293(1) or

(b) when sanction has been refused, or

(c) in contravention of the terms of any sanction granted, or

(d) when sanction has lapsed under section 300, the Commissioner, unless he deems it necessary to take proceedings in respect of such building or work under section 294, shall-

(a) by written notice, require the person who is erecting such building or executing such work or has erected such building or executed such work on or before such day as shall be specified in such notice, by a statement in writing subscribed by him or by an agent duly authorised by him in that behalf and addressed to the Commissioner, to show sufficient cause why such building or work shall not be removed, altered or pulled down, or;

(b) shall require the said person on such day and at such time and place as shall be specified in such notice to attend personally or by an agent duly authorized by him in that behalf, and show sufficient cause why such building or work shall not be removed, altered or pulled down.

(3) If such person shall fail to show sufficient cause, to the satisfaction of the Commissioner, why such building or work shall not be removed, altered or pulled down, the Commissioner may remove, alter or pull down the building or work and the expenses thereof shall be paid by the person.

(4) If the plans are [approved] by the Commissioner and the approval is

communicated to the person intending to build the house or if the plans are rejected by the Commissioner but no notice of their rejection is given to person intending to build the house within the prescribed period, it shall not be open to the Commissioner to give a notice under sub-sections (1) and (2) on the ground that the building is erected or re-erected in contravention of any scheme or byelaws or any other requirements under the chapter.

(5) Nothing in this section shall affect the right of the Corporation or any other person to apply to the District Court for an injunction or the removal or alteration of any building on the ground that it contravenes any provisions of this Act or the bye-laws made thereunder, but if the building is one in respect of which plans have been deposited and the plans have been passed by the Commissioner, or notice that they have been rejected has not been given within the prescribed period after the deposit thereof, and if the work has been executed in accordance with the plans, the District Court on granting an injunction shall have power to order the Corporation to pay to the owner of the work such compensation as the District Court thinks just, but before making any such order the District Court cause the Commissioner if not a party to be joined as a party to the proceeding.

Thus, if any construction is being done contrary to the building permission, then the petitioners have efficacious remedy of approaching the District Court under Section 307 (5) of Municipal Corporation Act. In view of availability of alternative and efficacious remedy, no case is made out for interfering in the matter. Accordingly, this petition is dismissed with liberty to the petitioners to approach the District Court under Section 307(5) of Municipal Corporation Act.