(2020) 08 MP CK 0298

In the Madhya Pradesh High Court

Case No : Writ Petition No. 8740 Of 2020

Dhanraj Jethwani APPELLANT

Vs

Municipal Corporation Gwalior And Another RESPONDENT

Date of Decision : 28-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Madhya Pradesh Bhumi Vikas Niyam, 2012 — Rule 23(2)
Madhya Pradesh Municipal Corporation Act, 1956 — Section 292, 292A, 292B, 295(3), 421

Citation : (2020) 08 MP CK 0298

Hon'ble Judges : Vishal Mishra, J

Bench : Single Bench

Advocate : K.N. Gupta, Praveen Newaskar, Ankur Maheshwari

Final Decision : Dismissed

Judgement

In the wake of unprecedented and uncertain situation due to outbreak of the Novel Corona virus (COVID-19) and considering the advisories issued by the Government of India, this petition has been taken up through video conferencing to maintain social distancing. The parties are being represented by the respective counsel through video conferencing, following the norms of social distancing/ physical distancing in letter and spirit.

The present petition is being filed challenging the orders dated 15.5.2020, 21.5.2020 and 30.5.2020 passed by the respondent-Corporation, whereby the permission/sanction earlier granted for development of colony on 24.5.2018 has been recalled on the ground that the same was not issued in accordance with the Rules and as on date when the permission was granted validity of sanction granted by the Town and Country Planning Gwalior stood expired. It is argued that the aforesaid impugned orders and resolutions are absolutely contrary to the established law, contrary to section 295 (3) of the Municipal Corporation Act, 1956 (for brevity "Act of 1956") read (Dhanraj Jethwani Vs. Municipal

Corporation Gwalior and another) with Rule 23 (3) of Madhya Pradesh Bhumi Vikas Niyam, 2012. On the basis of the sanction granted by Town and Country Planning Gwalior as well as Municipal Corporation Gwalior the petitioner has developed more than 95% of the land in question and as per the final sanction lay out plan by the Town and Country Planning, 90 plots have already been allotted to the beneficiaries. In such circumstances, recalling the permission vide impugned orders are absolutely contrary to law. It is further submitted that Municipal Corporation itself is responsible for not granting permission within time as the matter was withheld with the Municipal Corporation for a period of three years from the date of sanction/permission granted by the T.N.C.P. Department on 19.5.2013 thereafter the petitioner has applied for the permission before the respondent-Corporation after depositing the requisite fees. Therefore, the reasons which are being given by the respondent-Corporation for recalling the aforesaid sanction does not exist. It is argued that a detailed representation was submitted before the respondent, but the same is still pending and not being decided till date and without deciding the representation by the petitioner the impugned orders have been passed. Counsel for the petitioner prayed for quashment of the impugned orders.

Per contra, counsel for the respondent has raised a preliminary objection regarding the maintainability of the writ petition for want of (Dhanraj Jethwani Vs. Municipal Corporation Gwalior and another) alternative remedy. It is submitted that the petitioner is having an alternative and efficacious remedy provided under the Act of 1956. It is contended that the remedy lies before the State Government under section 421 of the Act of 1956. The petitioner without availing such statutory remedy has directly approached this Court, and therefore, this petition in such facts and circumstances is not maintainable. It is argued that under section 292 of the Act of 1956 an appeal lies to the State Government against the order of the Commissioner regarding permission of the development of the colony. The petitioner has not availed the aforesaid remedy available to him and has directly filed the present petition before this Court. It is argued that there are several disputed questions of facts involved in the present petition, which cannot be adjudicated in the petition under Article 226 of the Constitution of India and he has prayed for dismissal of the writ petition.

Counsel for the petitioner, at this stage, has relied upon the judgment passed by the Hon'ble Supreme Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others, (1998) 8 SCC 1, and an order passed in the case of Satya Prakash (Prof.) Vs. Jiwaji University, Gwalior and another, 2013 (2) M.P.L.J. 359 and has argued that alternative remedy is not a bounty and petition directly before this Court is maintainable as no (Dhanraj Jethwani Vs. Municipal Corporation Gwalior and another) opportunity of hearing was granted to the petitioner. It is submitted that even the objections filed by the petitioner are not being decided till date. It is argued that a resolution is being passed by the respondents on the basis of which the impugned order has been passed and the resolution itself is not appealable as per the law laid down by this Court in the case of Dharmendra and another Vs. Indore Municipal Corporation and another, 1999 (1) JLJ 119. It is submitted that in view of the aforesaid law laid down by the Courts the writ petition directly before this Court is maintainable.

Heard the learned counsel for the parties on the question of maintainability of the petition for want of alternative remedy.

It is seen from the records that the Commissioner, Municipal Corporation vide its letter dated 15.5.2020 issued to the Secretary, Municipal Corporation, Gwalior has recommended for cancellation of the development sanctioned to the petitioner. From the perusal of the letter, it is seen that several irregularities were found at the time of issuing sanction to the petitioner. Even there was no development being carried out by the petitioner for a considerable period, therefore, after lapse of three years period from the date of sanction, the sanction granted was automatically elapsed.

Considering the aforesaid, the resolution was passed by the Municipal Corporation on 21.5.2020, whereby the permissions granted to the petitioner for development of the land in question were cancelled and the final order dated 30.5.2020 was passed under the signatures of the Additional Commissioner, Municipal Corporation.

In terms of section 292-B of the Municipal Corporation Act is relevant, which reads as under:

"292-B. Development of colonies.- (1) The permission of the development of colonies shall be given by the Commissioner and appeal shall lie to the State Government against the order of the Commissioner.

(2) (a) While developing the colony under the provisions of this Act and the rules made in this behalf a colonizer, who has been issued the registration certificate under section 292-A, shall provide fully developed plots or constructed residential houses for the persons belonging to economically weaker section and low income group.

(b) The size, number and location of such plots or houses shall be such as may be prescribed by the State Government.

(3) The cost of such plots or houses mentioned in sub-section (2) and the process of selection of the persons to whom they may be sold by the colonizer shall be such as may be prescribed by the State Government.

(4) In respect of the land on which the Urban Land (Ceiling and Regulation) Act, 1976 (No.33 of 1976) was applicable, the colonizer shall have to reserve developed plots of the prescribed size in the prescribed area for the persons belonging to economically weaker sections.

(5) Notwithstanding anything contained in this Act, in addition to or in lieu of the plots or houses mentioned in sub-section (2), the State Government may, in such cases as it may consider appropriate, impose a shelter fee to be determined

in such manner as may be prescribed.

(6) The shelter fee shall be collected and utilised in such manner as may be prescribed."

From bare reading of the aforesaid section it is apparently clear that any order passed by the Commissioner with respect to development of Colony is appealable before the State Government.

The order impugned are passed by the Commissioner, whereby the earlier permissions/sanctions granted for the development of the land in question were subsequently cancelled owing to the fact that they were not in accordance with law and also the sanction granted elapsed due to the expiry of three years statutory period as no development has taken place.

Further section 421 of the Act of 1956 is important and reads as under:

"421. Power of Government to suspend any resolution or order.- (1) If, the Government is of opinion that the execution of any resolution or order of the Corporation or of any other authority or officer subordinate there to or the doing of any act which is about to be done or is being done by or on behalf of the Corporation, is not in conformity with law or with the rules or byelaws made thereunder, or is likely to lead to a breach of the peace or to cause injury or annoyance to the public or to any class or body or persons or is likely to cause waste of or damage to Municipal funds, the Government may, by order in writing, suspend the execution of such resolution or order or prohibit the doing of any such act.

(2) A copy of the order of the Government shall be sent to the Corporation by the Government.

(3) On receipt of copy of the Order as aforesaid, the Corporation may, if it is of opinion that the resolution, order or act is not in contravention or excess of the powers conferred by any law for the time being in force, or the execution of the resolution or the doing of the act is not likely to cause waste of or damage to Municipal funds, make a representation to the Government against the said order.

(4) The Government may, after considering the said representation, either cancel, modify or confirm the order passed by it under sub-section (1) or take such other action in respect of the matter as may in the opinion of the Government be just or expedient having regard to all the circumstances of the case.

From bare reading of the aforesaid provisions, it is apparently clear that the State Government is having powers to suspend any resolution or order. The resolution passed by the Municipal Corporation on the basis of which the consequential order has been passed by the Commissioner can be put to challenge before the State Government and the State Government is having the right to check the validity of the aforesaid order.

In the present petition, the petitioner has specifically raised a ground that for seeking permission for development of the land, the petitioner has applied to the Municipal Corporation well within a period of three years, but the aforesaid matter was kept pending before the Municipal Corporation and it is only after the sanction being granted by them, they have deposited the huge amount as demanded by the Municipal Corporation, thereafter the sanction was issued. Now at the subsequent stage the Corporation is coming up with the case that the sanction granted on earlier occasion is in-violation of the Rules and has directed for cancellation of the sanction against which the objections were submitted by the petitioner which have not been considered and decided by the authorities and directly the impugned orders have been passed. It is argued that the principle of natural justice were not followed in the matter. As far as principle of natural justice are concerned, a show cause notice has also been issued to the petitioner by the respondent-Corporation and the same has been served also, but there is no response from the petitioner. Thus, taking into consideration the overall facts and circumstances of the case, it appears that several disputed questions of facts are involved in the present writ petition, the same cannot be adjudicated under Article 226 of the Constitution of India. The petitioner is already having a statutory remedy available in terms of section 292 of the Act of 1956 as well as under section 421 of Act of 1956, the State Government is having powers to check the validity of the order/resolution passed by the Commissioner. In such circumstances, this Court does not deem it fit to entertain the writ petition.

Accordingly, the petition is dismissed for want of alternative remedy. No order as to costs.

The petitioner may avail the remedy available to him under the Municipal Corporation Act, 1956 before the State Government.

