

(2014) 01 MP CK 0009
In the Madhya Pradesh High Court
Case No : W.A. No. 558 of 2013

Dhanwanti Prakashchandra Estate Pvt. Ltd. and Others	APPELLANT
Vs	
Chief Executive Officer Indore Development Authority and Another	RESPONDENT

Date of Decision : 16-01-2014

Acts Referred:

Citation : (2014) 01 MP CK 0009

Hon'ble Judges : Shantanu Kemkar, J; M.C. Garg, J

Bench : Division Bench

Advocate : A.S. Kutumbale and Mr. B.S. Gandhi, for the Appellant; Sudarshan Joshi, learned counsel for Respondent No. 1 and Shri Satish Tomar, learned counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. This writ appeal has been filed by the appellants aggrieved of the order dated 07.02.2013 passed by the learned Single Judge in W.P. No. 10424/2012 which was dismissed. The grievance made by the appellants in the writ petition was that the decision taken by the Indore Municipal Corporation to invite tenders for construction of multi level parking in Scheme No. 54 (PU4-B) opposite Satya Sai School. The basic issue which was raised in the writ petition was that the respondents were not entitled to construct the multi level parking at the place in question on account of the principles of promissory estoppel and legitimate expectation. Ground taken in para 5.10 of the writ petition is reproduced here under:-

In the present case, it is an admitted fact that the authority which sought the sanction from the Director, town and Country Planning was the Indore Development Authority. This Indore Development Authority if it wanted to change the sanctioned layout would have applied to the Director, Town and Country Planning to seek the permission for amendment and alteration of the sanctioned layout. It is further an admitted fact that the deed of lease executed

between the petitioners and the respondent No. 1 Indore Development Authority clearly stated that the land opposite the petitioners land shall be an "Open Parking Space" which shall facilitate the growth of business for the persons who are buying shop/show-room/office in the constructed building of the petitioners. It is this promise executed by the Indore Development Authority which made the petitioners go forward and act on the promise by purchasing the land in question and constructing a Multi-Store Building on it expecting and relying on the promise of the authority to let the land remain vacant as a Parking Space. The impugned action at the instance of the Municipal Corporation, therefore, violates the doctrine of "Promissory Estoppel" and also defeats the doctrine of "Legitimate Expectation". Copy of the official gazette/notification dated 30.05.2012 wherein the aforesaid amendment has been brought about is annexed and marked as Annexure P/11 to the petition.

2. The learned Single Judge after hearing both the sides and taking into consideration the reply of the respondents did not find favour with the submission made on behalf of the appellants. Some discussion made in the impugned order which throws light on the case appears in paragraph 6 which is reproduced hereunder:-

6. In the present case it is undisputed fact that the petitioners have submitted tenders for allotment of land in Scheme No. 54, Block No. B-3 (PU-3)/Commercial-04 and being the highest bidder, plot was allotted to the petitioners. Petitioners have constructed a building over the plot in question and a lease deed was executed by the Indore Development Authority. Lease deed enclosed as Annexure-P-9, which was executed on 28-04-2007 at page No. 54 provides the boundaries of the plot in question i.e. boundaries of block plot No. B-3, the same provides that on the eastern side there is a road, on the western side there is a road, on the southern side there is a road and on the northern side there is an open space/parking. Thus, the lease deed makes it very clear that there was an open space/parking available adjoining the petitioners' plot. Not only this, the sanctioned lay out of the entire scheme is also on record as Annexure-P-10 and once again the sanctioned lay out provides that the area is exclusively reserved for parking. Petitioners contention is that parking does not include multi-level parking. In the present case, keeping in view the population growth and number of vehicles which are multiplying every day, it has become a common practice for the residents of this township to park their vehicles on main road. The same is resulting in road accidents and lots of deaths on account of such accidents are taking place. An attempt is being made by the Corporation to construct the multi level parking in order to avoid congestion of vehicles and this petition is nothing but an attempt to frustrate the noble object of providing parking to the residents of Indore. The entire record of the case and the documents which have not been denied by the petitioners as well as the Municipal Corporation reflects that the area in question is exclusively reserved for parking and earlier also an attempt was made by the identically placed persons to restrain the Corporation from constructing the multi level parking.

3. It may be observed that in this case the learned Single Judge while disposing of the previous round of litigation against the issuance of public notice for constructing multi level parking filed by M/s. Deepak Colonizers in W.P. No. 1496/2008 has held as under:-

In the earlier round of litigation, a writ petition was filed by M/s. Deepak Colonizers, again a plot holder and proprietor of scheme No. 54 and this court in the earlier round of litigation i.e. in WP No. 1496/2008 (M/s. Deepak Colonizers Pvt. Ltd., Vs. The Indore Municipal Corporation) has passed an order on 20-03-2009 and the same reads as under:-

The petitioner-company has filed the present petition with a grievance that there was a parking space in front of the plot, which had been allotted on lease hold basis to the petitioner-company by the respondents, and as per the understanding at the time of the allotment of the said plot to the petitioner company, the aforesaid parking space was to be utilized for the purpose of providing parking for the building of the petitioner-company and the surrounding buildings. However, later on, Indore Municipal Corporation had proposed a scheme for constructing a multilevel parking at the said parking space, which according to the petitioner-company, was in clear violation of the terms and conditions of the understanding for allotment of the said plot, at the time of sale of the same to the petitioner company. A specific challenge has been raised to a tender notice issued by Indore Municipal Corporation, inviting the tenders for construction of the aforesaid multilevel parking. The present petition was admitted by this Court vide order dated March 19, 2008. Subsequently, on an application, IA 4377/2008, filed by the petitioner company for grant of interim relief, it was directed that till further orders, the respondents would stand restrained from giving effect to NIT (Annexure P-12) and/or allotting the parking space in question (site in dispute) for converting it into a multilevel parking on BOT basis.

Now an application, IA No. 862/2009, has been filed by Indore Municipal Corporation with the following averments.

1. That, in the above matter the advertisement issued by the answering respondent has been cancelled.
2. That, the Indore Municipal Corporation will consider the aspect raised by the petitioner if subsequent tender is required to be issued.
3. That, in the light of the above cancellation of the impugned tender this petition has been rendered infructuous.

A reply has been filed by the petitioner company on February 6, 2009 to the aforesaid IA. It has been maintained that Indore Municipal Corporation was trying to avoid the real controversy between the parties by making the aforesaid averments in the IA and therefore, the writ petition be decided on merits of the controversy, since the same had not been rendered infructuous.

After hearing learned senior counsel for the petitioner-company and learned counsel for the respondents, I am satisfied that as per the prayer made by the petitioner-company in the original writ petition, and as per the cause of action, which had arisen to the petitioner-company to file present writ petition, and looking to the averments made in the IA, now filed by Indore Municipal Corporation, I find that as a matter of fact, the aforesaid cause of action, in letter and spirit, stands extinguished to the petitioner-company, as of date. The respondent-Municipal Corporation has specifically stated that the tender notice, which had been issued for construction of multilevel parking and on the basis of which the petitioner-company had approached this Court, has been withdrawn. Concededly, no further tender has been floated by the Municipal Corporation for the purposes of construction of multilevel parking at the site in question.

In these circumstances, I deem it appropriate to dispose of the present petition as having been rendered infructuous.

However, with a view to protect the interest of all the concerned parties, I deem it appropriate to further direct that, if and when, at any stage, Indore Municipal Corporation, Indore Development Authority or the State Government i.e. the present respondents, wish and propose to utilise the site in question for the purposes of a multilevel parking, then before inviting tenders for the aforesaid project, a public notice shall be issued in the newspapers, and a notice in this regard shall be personally issued to the petitioner-company, inviting objections.

On receipt of the aforesaid objections, if filed, the Competent Authority, proposing the aforesaid multilevel parking, would consider the said objections, by passing a detailed and speaking order, in accordance with law. If the objections, for any reason, whatsoever, are liable to be rejected, then the adverse order against the objector, shall not be implemented, and the tenders, in that situation, would not be floated for a period of three weeks from the date of the aforesaid order, to enable the aggrieved party to seek its/his appropriate remedies, in accordance with law.

IA No. 862/2009, as well as main writ petition, are disposed of accordingly.

C.c. as per rules.

4. It is a matter of record that no appeal was filed against this order which clearly permits issuance of a tender notice for the purpose of constructing multi level parking. The learned Single Judge further observed that:-

7. No statutory provisions of law has been brought to the notice of this court which provides for inviting objections before inviting tenders in respect of project meant for providing parking facility, which is exclusively meant to provide civic amenities/parking to the residents of Indore. However, the respondent Corporation as there was an order of this court has issued a public notice on 21-04-2009 and the present land over which the multi level parking is being constructed also finds place at Sr. No. 3 of the public notice i.e. near Satya Sai

School. Five areas were identified in the public notice and after issuing a public notice on 21-04-2009 and after considering the objections received from the public at large, finally the Corporation has resolved on 30-03-2010 to construct a multi level parking. The petitioner at that relevant point of time has not filed any objection in response to the public notice issued by the Corporation and merely because the petitioner was not an objector, the Corporation cannot be forced again to issue a public notice that too in absence of any statutory provision, which provides for issuance of such a public notice. In fact there is no statutory provisions of law, which requires such an issuance of a public notice. Respondent Corporation has later on floated tender for construction of five multilevel parking included in the public notice as well as one additional near the zoo, which is a different area altogether on 29-02-2012 and after scrutinizing the offers, final work order was allotted to the contractors on 29-02-2012 and the contractor has also started work over the site and only because an interim order has been passed by this court, the work has come to a standstill.

8. This court has carefully gone through the sanctioned lay out, which has been filed by the petitioners as well as the respondent Corporation and same establishes that the area in question was 13 exclusively earmarked for parking by the Indore Development Authority and, therefore, this court is of the considered opinion that there is no deviation from the sanctioned lay out as sanctioned by the Indore Development Authority, which is on record as Annexure-R-2. Agreement executed between the Indore Development Authority and the Municipal Corporation on 22-07-1999 permits the Indore Municipal Corporation to construct the multi level parking and as per the clause 4 of the agreement dated 22-07-1999, the Corporation is entitled to construct the multi level parking and infact the Corporation as well as the Indore Development Authority in order to provide parking to the residents of the Indore are constructing multi level parking at six places and it is certainly in consonance with the sanctioned lay out.

9. Resultantly, this court is of the considered opinion that the action of the respondent Corporation as well as Indore Development Authority for constructing multi level parkings in the township of Indore is certainly in consonance with the sanctioned lay out as sanctioned by the Town and Country Planning Department as well as in consonance with the scheme of the development framed by the Indore Development Authority as they are being constructed only over the plots, which are exclusively reserved for the purpose of parking only. Writ petition is accordingly dismissed.

No order as to costs.

5. We have heard the learned counsel for the appellant who fairly concedes that in his own house he has raised multi storied building. Considering the period which has elapsed at the time with the lease was granted to the appellant with respect to the plot in question and rise in population and the need for a multilevel parking as must have been felt by the respondents and the very fact that the plot in question was kept for the purpose of parking only. The objection

raised on behalf of the appellant in the absence of any stipulation that multilevel parking will not be constructed in the adjacent plot which was reserved for parking is not sustainable.

6. Even otherwise we have gone through the judgment of the learned Single Judge and other facts which have been taken into consideration by the learned Single Judge including the previous round of litigation. As such we find no reason to interfere in this writ appeal.

7. Accordingly, the same is dismissed. C.C. as per rules.