
(2004) 03 MP CK 0072
In the Madhya Pradesh High Court
Case No : F.A. No. 292 of 1995

Dilip Singh Wallia	Vs	APPELLANT
Municipal Corporation		RESPONDENT

Date of Decision : 22-03-2004

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 307, 69(4)

Citation : AIR 2004 MP 153 : (2005) 2 MPLJ 2

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Advocate : Ashok Lalwani, for the Appellant; Ajay Mishra Sr. Advocate with Wakil Khan, for the Respondent

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

The plaintiff, feeling aggrieved by the judgment, dismissing his suit passed by trial Court has preferred this appeal u/s 96 of the Code of Civil Procedure, 1908.

The facts necessary for the disposal of this appeal are that the plaintiff filed a suit for declaration and prohibitory injunction on the averments that the construction made by him was in accordance with the permission granted by respondent and the notice dated 24-4-1989 issued by respondent is illegal, null and void and without authority. It has been further prayed by him that the defendant be restrained by a decree of permanent and prohibitory injunction restraining the authorities of defendant from causing any demolition of plaintiffs building or any part of it existing on the Plot No. Z-14 in Zone-1 in Maharana Pratap Nagar, Habibganj Road, Bhopal. The plaintiff, in para 3 of his plaint pleaded that the notice is illegal, null and void and inoperative for the following reasons :

(a) The said notice does not bear the provision under which it has been served.

(b) The said notice does not show as to which provision empowers the City Planner to serve such notice.

(c) The said notice does not specify the construction work which is found against the permission.

(d) The said notice a proforma regarding consideration of grant of permission.

(e) That the City Planner has no authority to serve such notice.

(f) The said notice does not mention regarding any contravention of Town & Country Planning Schemes or bye-laws and does not give opportunity to show cause.

In the written statement, it has been pleaded by the defendants that by exercising powers u/s 69(4) of the M.P. Municipal Corporation Act, 1956 (hereinafter referred to as the Act), the powers have been vested and delegated to City Planner by the Commissioner and, therefore, the impugned notice Ex. P/5 which has been issued is in accordance with law.

The trial Court after framing issues and recording the evidence dismissed the suit of the plaintiff, hence this appeal.

In this appeal it has been contended by Shri Ashok Lalwani that the impugned notice Ex. P/5 does not bear the signature of Commissioner. According to him, u/s 307 of the Act, only the Commissioner is authorized to send that notice. Since the notice has not been sent by it and has been sent by City Planner no action could be taken in pursuance to the said notice.

Combating the aforesaid submission of learned counsel for the appellant, it has been contended by Shri Ajay Mishra Sr. Advocate that u/s 69(4) of the Act, the powers of the Commissioner has been vested in the City Planner, who has sent notice Ex, P/5 and, therefore, there is no infirmity in the notice and the suit has been rightly dismissed by the trial Court.

After having heard the learned counsel for the parties, I am of the view that this appeal deserves to be allowed.

In the plaint, as stated hereinabove the plaintiff challenged the notice to be null and void on several grounds. On bare perusal of the notice Ex. P/5 it is gathered that it has not been signed by the Commissioner and has been signed by City Planner. Apart from this, it has not been specified in the notice that which portion of the building is found to be constructed without permission. The notice Ex. P/5 has been sent on a proforma regarding the consideration of grant of permission to construct a building. That apart under which provision, the said notice has been sent has also not mentioned. If a building or any part of it is to be dismantled or it has to be removed being in contravention to the permission, specific notice is required u/s 307 of the Act. Admittedly, the notice has not been sent under the signature of the Municipal Commissioner and the same has been signed by City Planner. It has been contended by Shri Mishra learned Sr.

Advocate that in the written statement it has been pleaded that u/s 69(4) of the Act the City Planner has been empowered by the Commissioner to exercise its power, but, no such document has been placed on record to prove this plea. The City Planner has not been examined by the defendant in that regard. Thus, this fact has not been proved that powers were vested in City Planner and by exercising these powers, impugned notice was sent.

The plaintiff has specifically pleaded and proved by his evidence that in the notice, it has not been mentioned that which portion of the building is required to be dismantled nor it has been stated in the notice the under which provision the same has been sent to him.

To dismantle a building or part of it is a serious matter and it should not be taken lightly. A specific notice is required to be sent u/s 302 of the Act under proper seal and authority. The notice which has been sent is a proforma of obtaining permission to construct a building. Thus, according to me, the notice Ex. P/5 dated 24-4-89 is invalid null and void and on the basis of it, the defendant is not authorized to take any action. According to me, the trial Court incorrectly held the notice to be valid.

In the result, the appeal succeeds and is hereby allowed. The judgment and decree passed by the trial Court is hereby set aside and the suit of the plaintiff is hereby decreed. It is, however, made clear that respondent/defendant shall be free to send specific notice for demolition, if the building or any part of it, has been illegally constructed. Looking to the aforesaid facts and circumstance of the case the parties are directed to bear their own costs through out. Counsel fee as per schedule.