
(2014) 07 MP CK 0231
In the Madhya Pradesh High Court
Case No : W.P. No. 6065/2009

Dr. Swati Joshi

APPELLANT

Vs

Municipal Corporation

RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 307, 308-A, 308-B

Citation : (2014) 07 MP CK 0231

Hon'ble Judges : S.K. Palo, J;S.K. Gangele, J

Bench : Division Bench

Advocate : S.G. Chitnis, Advocate for the Appellant; P.D. Bidua, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Heard.

1. Petitioner has filed this petition against the show cause notice dt. 29.09.2009 (Annexure P/1) in regard to removal of encroachment.
2. Earlier, petitioner submitted an application u/s 308-B of the Municipal Corporation Act, 1956. That application was accepted by the Corporation with the conditions that the petitioner shall deposit an amount of Rs. 7,64,880/- as compounding fees.
3. The State Government issued a notification and added Section 308-B in M.P. Municipal Corporation Act, 1956. By the aforesaid amendment, power of compounding has been given to the Commissioner of Municipal Corporation for certain period. The petitioner submitted an application to the Municipal Corporation for compounding. The Municipal Corporation rejected the application of compounding.
4. Meanwhile, a Public Interest Litigation Petition was filed before this Court, which was registered as W.P. No. 3178/2006 (PIL) (Sardar Joginder Singh Vs.

State of M.P. & Ors.). This Court appointed the District Judge, Gwalior to enquire the cases of compounding. The District Judge in his report held that the order of compounding of the petitioner was not proper. On the basis of the report of the District Judge, the Municipal Corporation issued impugned notice to petitioner in regard to removal of construction, Annexure-P/1.

5. Thereafter the Division Bench of this Court vide order dated 4-8-2008, disposed of the aforesaid Public Interest Litigation petition with the following directions:-

4/8/2008

Applicant by Shri Padam Singh, Advocate.

Respondents No. 1, 2 and 4 by Shri Vivek Khedkar, Government Advocate.

Respondent No. 3 by Shri P.D. Bidua, Advocate.

Respondent No. 5 by Shri Sanjeev Jain, Advocate.

Heard.

This writ petition is filed as P.I.L. by the petitioner alleging that the respondent corporation is illegally compounding the matter of 308 buildings which were constructed contrary to the Municipal Corporation bye laws.

Counsel for the Municipal pointed out that there is amendment in Municipal Corporation Act dated 2nd August, 2005. Accordingly, the Corporation has examined the buildings and also examined the applications for compounding and compounded number of buildings and permission was cancelled in respect of other building.

This Court has also called for report of the District Judge about complaint with regard to compounding. The District Judge, Gwalior has given his report that the Corporation undertakes to comply with the defects pointed by the District Judge in his report and takes strong action against the persons who had constructed buildings contrary to bye laws and whose application for compounding is found untrustable by the District Judge.

The Corporation is free to compound the matters in regard to the buildings whose application for compounding are found proper and remove the construction where compounding applications are rejected.

Petitioner or any other person aggrieved is free to move appropriate applications u/s 307 if they feel that the constructions are wrongly compounded.

With this direction this petition is disposed of. Amount of security deposit be refunded to the petitioner after due verification.

6. It is clear from the direction issued by this Court that the Corporation was given a liberty to compound the matters in regard to buildings whose

applications were found proper.

7. The State of M.P. inserted Section 308-B by M.P. Act 29 of 2003. The aforesaid Section prescribes power to the Commissioner Municipal Corporation for compounding and gives relaxation in compounding the unauthorised construction. The relevant Section is as under:-

308-B. Relaxation in compounding the unauthorised construction.- (1) Notwithstanding anything contained in Section 308-A or any other provisions of this Act or any other law for the time being in force, the Commissioner may, on the application made in this behalf by order, compound the cases involving deviations from the approved plan or map, or construction made without permission by collecting compounding fee at such rate as may be determined by the State Government.

(2) The application under subsection (1) shall be made within 90 days from the date of the commencement of [the Madhya Pradesh Nagar Palik Vidhi (Sanshodan) Adhiniyam, 2005 and the Commissioner shall, after making such enquiry as he deems fit decide all applications received under sub-section (1) within six months from the date of receipt. If the Commissioner fails to decide the applications received under sub-section (1) within the aforesaid period he will be deemed to be guilty of dereliction of duty and liable for disciplinary action.

(3) Upon the issue of the order under sub-section (1), permission shall be deemed to have been granted under this Act and the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 and the rules and bye-laws made thereunder.

(4) Nothing contained in subsection (1) shall apply to any application by any person who does not have any right over the building or the land on which the construction has been made or to any application in respect of any building erected or constructed in any of the following areas:-

(i) area notified by the State Government as a hill station or a place of Tourist importance or as sensitive/fragile from the point of ecology;

(ii) area specified for parking of vehicles;

(iii) area coming within the Road or area affecting alignment of Public Roads;

(iv) area specified for tanks (Talab):

[Provided..... Omitted.]

(v) area of construction affecting regular building line.

(vi) area of construction coming within thirty metres or such further distance from the river bank as may be specified in the master plan of the concerned town;

(vii) area of any nallah and water stream.

8. Thereafter the Secretary Local Self Government issued a circular dated 21-9-2005 to authorize the Commissioner of Municipal Corporation in regard to compounding u/s 308-B of Municipal Corporation Act. As per the aforesaid circular the Commissioner is authorized to pass an order of compounding under certain circumstances, which are as under:-

9. Municipal Corporation, respondent, in its reply submitted that the State Government issued an order dated 19.07.2006 in respect of Section 308-B of the Municipal Corporation Act in regard to compounding. The petitioner submitted an application for compounding and that was accepted subject to compliance of certain terms and conditions and also depositing compounding fees of Rs. 7,64,880/-.

10. The learned counsel for the petitioner has submitted that the petitioner is willing to comply with the terms and conditions of compounding order and he is also willing to deposit the compounding fees.

11. In this view of the matter, the petition of the petitioner is disposed of with the direction that if petitioner deposit an amount of Rs. 7,64,880/-(Annexure R/1) as compounding fees within a period of two months and comply with the terms and conditions of compounding which shall be laid down by the Corporation, then the order of removal of encroachment be not given effect. The Corporation is at liberty to act in accordance with the notice, if petitioner would not comply the order within time.

No order as to costs.