

(2013) 11 MP CK 0151
In the Madhya Pradesh High Court
Case No : W.P. 1269 of 2013

Gangabai

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Citation : (2014) 3 MPLJ 451

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

N.K. Mody, J.—The prayer in the petition is that the notification No. f3-2005/32 dated 12-9-2005 regarding implementation of Maheshwar Development Plan be quashed and the application dated 22-6-2011 filed by petitioners for diversion along with layout plan attached to it be deemed to be allowed with a direction to the respondents to grant permission to the petitioners for development. Short facts of the case are that the petitioners filed the petition alleging that petitioners are owner of land bearing Survey Nos. 30/1/1/3/1 and 32/1 measuring 2.622 hectare of land situated at village Maheshwar. In the petition it is alleged that petitioners moved an application on 22-6-2011 u/s 172(1) of M.P. Land Revenue Code, 1959 for diversion. Upon the application filed by petitioners no order was passed by respondent No. 4. In the petition it is alleged that on 3-10-2011 petitioners moved an application wherein it was prayed that permission for diversion be granted. Vide application dated 7-11-2011 petitioners requested the respondent No. 4 that Patwari be directed not to create hurdle in raising boundary wall over the land of the petitioners. Further case of petitioners was that vide letter dated 23-12-2011 Secretary, Gram Panchayat, Kharadi, Tehsil Maheshwar, Distt. Khargone informed that there is no publication of Maheshwar Development Scheme in the Gazette. It was also informed that the Secretary of Gram Panchayat, Kharadi is having no knowledge about the land use or publication of any notification about the development plan. Vide letter dated

23-11-2012 Secretary, Gram Panchayat, Lawadi, Tehsil Maheshwari, Distt. Khargone informed the petitioners that since no information is published about the land use, therefore, copy of notification cannot be provided to the petitioners. Further case of petitioners is that respondent No. 2 thereafter supplied copy of development plan to the petitioners which is known as Maheshwar Development Plan alleging that the same was published in the official Gazette on 30-9-2005. In the petition it is alleged that since the publication of notification is not as per provisions of Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam (which shall be referred hereinafter as "Adhiniyam") and the application was not disposed of by the respondent No. 4 in time, therefore, petitioners are entitled for deemed permission. It is prayed that the petition be allowed and relief as prayed be granted.

2. In the reply filed by State it is alleged that it is not disputed that application was filed by the petitioners on 22-6-2011 for change of use land. It is alleged that since the notification of Maheshwar Development Plan has already been issued on 12-9-2005, for which no objection was filed by the petitioners, therefore, petitioners have no right to challenge Maheshwar Development Plan, which has already notified in the year 2005. It is submitted that the application dated 22-6-2011 filed by petitioners for change of land use was forwarded by the SDO, Mandleshwar to the Dy. Director, Town & Country Planning, Khandwa vide, letter dated 25-6-2011. It was alleged that in response to forwarded letter dated 25-6-2011 Dy. Director, Town & Country Planning, Khandwa considered the matter of the petitioners for change of land use and it was found that the application filed by the petitioners is contrary to the Rules and provisions of Maheshwar Development Plan, therefore, vide letter dated 30-7-2011 the same was rejected. It is submitted that since the development plan has been approved by the State Government as per section 19(1) of the Act and the same has been published in the Gazette on 30-9-2005, therefore, action taken by the answering respondents in the matter of petitioners-is just and proper. It is submitted that the petition be dismissed.

3. Heard the arguments of both the parties at length.

4. Development plan dated 12-9-2005 which was published on 30-9-2005 reads as under:--

Bhopal, the 12th September, 2005

No. F-3-20-2004-XXXII.--Notice is hereby given that the State Government proved the Development Plan for Maheshwar Planning Area under sub-section (1) of section 19 of Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (No. 23 of 1973), submitted by the Director, Town and Country Planning Madhya Pradesh under Sub-section (3) of section 18 of the said Adhiniyam, and copy of the approved Development plan may be inspected at the following offices:--

1. Commissioner, Indore Division, Indore (M.P.)

2. Collector, District Khargone.

3. Dy. Director, Town and Country Planning, District Officer, Khandwa (M.P.).

4. Chief Municipal Officer, Nagar Panchayat, Maheshwar, District Khargone (M.P.).

The Development Plan shall come into operation from the date of publication of the said notice in Madhya Pradesh Gazette as per the provisions of section 19(5) of Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973.

By order and in the name of the Governor of Madhya Pradesh.

B.N. Tripathi, Dy. Secretary

5. Section 172 of MPLRC, 1959 deals with Diversion of Land, according to which if a Bhumi Swami of land held for the purpose wishes to divert his holding or any part thereof to any other purpose except agriculture, he shall apply for permission to the Sub-Divisional Officer who may, subject to the provisions of this section and to rules made under this Code, refuse permission or grant it on such conditions as he may think fit.

6. As per First Proviso of section 172 of MPLRC if Sub-Divisional Officer neglect or omit for three months after the receipt of an application under Sub-section (1) to make and deliver to the applicant an order of permission or refusal in respect thereof and the applicant has by written communication called the attention of the Sub-Divisional Officer to the omission or neglect, and such omission or neglect continues for a further period of one month, the Sub-Divisional Officer shall be deemed to have granted the permission without any condition.

7. As per section 14 of the Act the Director is required to prepare the existing land use map and to prepare a development plan. As per section 15 of the Act the Director is required to survey and prepare the existing land use map and has to publish the same in the same manner together with "public notice" of the preparation of map and of place or places where the copies may be inspected, inviting objections and suggestions in writing from any person, within 30 days from the date of publication of such notice.

8. In exercise of powers conferred by the Act, Rules has been prepared in the year 1975. Rule 8 of the Rules deals with the procedure for publication of the existing land use map prepared u/s 15 of the Act, according to which the map is required to be published in the Official Gazette as well as in local news papers inviting objections within a period of 30 days regarding existing land use of the said land. After hearing the objections if any final draft scheme is required to be published. Final draft is also required to be published in the official Gazette as well as in the news paper stating therein that a development scheme has been prepared u/s 17 of the Act, which has to be published u/s 18(c) of the Act, which empowers the persons to submit objections with the Commissioner/Collector and other officers of the Town & Country Planning Department. Final draft is required to be published under Rule 10 of the Rules.

9. Undisputedly the application for diversion was filed by the petitioners on 22-6-2011. The reminder was made by the petitioner for grant of permission on 3-10-2011 and 7-11-2011, which has not been responded by respondent No. 4 at any point of time. From perusal of the document annexed with the reply it is evident that upon the application filed by the petitioners, respondent No. 4 vide letter dated 25-6-2011 asked the respondent No. 3 to give his opinion. Vide letter dated 30-7-2011 respondent No. 3 has informed the respondent No. 4 that to give permission for diversion is not proper. There is nothing on record to demonstrate that after receipt of application dated 22-6-2011 and also after submission of reminder dated 3-10-2011 petitioner was ever informed by the order of refusal by respondent No. 4. On the contrary after receipt of reply from Deputy Director, Town and Country Planning, Khandwa dated 30-7-2011 respondent No. 4 remained silent.

10. In the matter of Bhopal Citizen's Forum Vs. State of M.P. and Others, wherein State Government issued Notification dated 24-3-2008 by which the land use of the land measuring 10.5 acre situated adjacent to Minto Hall was changed from public/semi public to commercial "whereupon the State Government intends to construct "mega commercial complex" a 200 roomed Five Star Hotel and vide Notification dated 5-9-2001 the land use of land situated around 15 acres of land in South T.T. Nagar has been changed in order to facilitate construction of "Central Business District". This Court had an occasion to consider the relevant provisions of Nagar Tatha Gram Nivesh Adhiniyam, 1973 and after examining sections 17, 18, 10 and 23-A of the Act this Court observed that since detailed provision prescribed by the Act, therefore, it is required to be followed. It was also observed that the draft of plan not published in the manner prescribed, then the action taken in breach is invalid. It was also held that section 23-A(2) of the Act is mandatory in nature and since the notice with regard to draft modified plan has not been published in accordance with provisions of sub-section (2) of section 23 of the Act, all subsequent actions have to be held to be invalid and no sanctity can be attached to the same as it is well settled in law that any action taken in breach of a mandatory provision would be invalid. It was also held that if the statute prescribed a mode of doing a particular act in a particular manner, that act has to be done in that manner alone and all other modes of its performance are necessarily forbidden. In this case it was found that notifications were not issued by following the process of law, therefore, the same were quashed.

11. Keeping in view the aforesaid position of law and also the fact that concerned Gram Panchayat has given in writing that they have no knowledge about the development plan and also the fact that the application filed by petitioners was never disposed of by the respondent No. 4 in time and also the fact before publication of Notification dated 12-9-2005 in the Gazette dated 30-9-2005 procedure laid down under the Act and Rules was followed, the petition filed by the petitioners is allowed and Notification dated 12-9-2005 stands quashed so far as it relates to the petitioners and the application filed by the petitioners for

diversion u/s 172 of MPLRC stands allowed under deeming clause of First Proviso of section 172 of MPLRC. With the aforesaid, petition stands disposed of.