
(1994) 10 MP CK 0005
In the Madhya Pradesh High Court
Case No : Civil Revision No. 159 of 1993

Hari Singh

APPELLANT

Vs

Sushila Devi and Another

RESPONDENT

Date of Decision : 03-10-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115
Madhya Pradesh Municipal Corporation Act, 1956 — Section 291, 293(1), 294, 300, 307

Citation : (1996) J LJ 624

Hon'ble Judges : S.K. Dubey, J; A.S. Tripathi, J

Bench : Division Bench

Advocate : V.K. Bhardwaj, for the Appellant; J.P. Sharma, for non-Petitioner No. 1 and R.K. Vashishtha, for non-Petitioner No. 2, for the Appearing Parties

Judgement

A.S. Tripathi, J.—This revision was preferred by the Petitioner u/s 115 of the CPC against the order dated 17.7.1993 in Misc. Case No. 15/89 passed by IVth Additional District Judge, Gwalior.

2. While hearing this revision, the learned Single Judge by his order dated 3rd Nov. 1993 found conflict between the two decisions of Single Judges of this Court in the case of Malkhandas Vs. Om Prakash and Others, and K.M. Shah alias Kantubhai Shah v. Smt. Kamla and Anr. reported in 1992 (2) MPJR SN 10 on the same subject. The learned Single Judge felt that the decision in the case of Malkhandas (supra) needs reconsideration and accordingly ordered that the records be placed before Hon"ble the Chief Justice for constituting a Division Bench to resolve the controversy. Hon"ble the Chief Justice vide order dated 24th March, 1994 directed that the records be placed before a Division Bench for hearing at Gwalior. That is how this case has come up for hearing before us.

3. We have heard Shri V.K. Bhardwaj, learned Counsel for the Petitioner, Shri J.P. Sharma, learned Counsel for non-Petitioner No. 1 and Shri R.K. Vashishtha, learned Counsel for non-Petitioner No. 2.

4. The cleavage of the opinions relates to the interpretation of the provisions of Sub-section (5) of Section 307 of the Madhya Pradesh Municipal Corporation Act, 1956 (hereinafter referred to as the "Act", which reads thus:

307. Power to require removal or alteration of work not in conformity with bye-laws or any scheme or any other requirement.-

If any building is erected or re-erected in contravention of any town planning scheme mentioned u/s 291 or of any building bye-laws made u/s 427 the Commissioner without prejudice to his right to take proceedings for a fine in respect of the contravention may by notice require the owner either to pull down or remove the work or, if he so elects, to effect such alteration therein as may be necessary to make it comply with the said scheme or bye-laws.

(2) If a building is erected or re-erected-

(a) without any sanction as required by Section 293(1), or

(b) when sanction has been refused, or

(c) in contravention of the terms of any sanction granted, or

(d) when sanction has lapsed u/s 300,

the Commissioner, unless he deems it necessary to take proceedings in respect of such building or work u/s 294, shall:

(a) by written notice, require the person who is erecting such building or executing such work or has erected such building or executed such work on or before such day as shall be specified in such notice, by a statement in writing subscribed by him or by an agent duly authorised by him in that behalf and addressed to the Commissioner, to show sufficient cause why such building or work shall not be removed, altered or pulled down, or

(b) shall require the said person on such day and at such time and place as shall be specified in such notice to attend personally or by an agent duly authorised by him in that behalf and show sufficient cause why such building or work shall not be removed, altered or pulled down.

(3) If such person shall fail to show sufficient cause, to the satisfaction of the Commissioner, why such building or work shall not be removed, altered or pulled down, the Commissioner may remove, alter or pull down the building or work and the expenses thereof shall be paid by the person.

(4) If the plans are (approved) by the Commissioner and the approval is communicated to the person intending to build the house or if the plans are rejected by the Commissioner but no notice of their rejection is given to person intending to build the house within the prescribed period, it shall not be open to the Commissioner to give a notice under Sub-section (1) and (2) on the ground that building is erected or re-erected in contravention of any scheme or bye-laws or any other requirements under this Chapter.

(5) Nothing in this section shall affect the right of the Corporation or any other person to apply to the District Court for an injunction for the removal or alteration of any building on the ground that it contravenes any provisions of this Act or the bye-laws made thereunder, but if the building is one in respect of which plans have been deposited and the plans have been passed by the Commissioner or notice that they have been rejected has not been given within the prescribed period after the deposit thereof, and if the work has been executed in accordance with the plans, the District Court on granting an injunction shall have power to order the Corporation to pay to the owner of the work such compensation as the District Court thinks just, but before making any such order the District Court cause the commissioner if not a party to be joined as a party to the proceedings.

5. The learned Counsel for the Petitioner submitted that u/s 307(5) the District Court cannot exercise its jurisdiction to issue an injunction, unless such an application is filed in a regularly instituted suit, and this is the view of this Court in case of Malkhan Das (*supra*).

6. In the case of Malkhan Das (*supra*), the view taken is that under the provisions of Section 307(5), the contemplated application for grant of injunction could be filed only in a civil suit. The District Court cannot issue an injunction merely on an application filed u/s 307(5), unless a regular civil suit is filed.

7. On the other hand, learned Counsel for the non-Petitioners had submitted that Section 307 is a self-contained Code, Sub-section (5) of which provides for issuance of an injunction by the District Court on an application being made. Sub-section confers the special jurisdiction on the District Court and the subsisting right of the Corporation or any other person aggrieved to move the District Court for issuance of an injunction by filing an application for directing removal or unauthorised construction without necessitating the filing of a regular civil suit. Learned Counsel also made a reference to the provisions of Sections 392 and 395 of the Act providing for procedure and inquires before the Court, the fees payable in the proceedings, the limitation for initiating proceedings, and for revision against the order of the District Court. It was argued that the provisions of Section 307 are independent provisions to that of a suit, for that a complete procedure is laid down in the Act and on that basis it could be construed that no regular civil suit is required in such a case. Learned Counsel also placed reliance on a decision of this Court in case of *Municipal Corporation Bhopal v. Devta Prakash* reported as 1976 J LJ SN 23 wherein the Court observed thus:

It is no doubt true that under Sub-section (4) of Section 307, it is not open to the Commissioner to give a notice under Sub-sections (1) and (2) on the ground that the construction is illegal. If the Commissioner has failed to take action within the time prescribed for either granting or refusing to grant the application for erection or re-erection within the specified time but that section only prohibits the Commissioner from acting on his own authority because of his previous failure. It is because of this that under Sub-section (5) a special right has been

conferred on the Corporation to seek injunction from the Court to get the improper construction demolished but in that case the Corporation is made liable to pay compensation to the owner of the building. There two sub-sections are independent of each other.

8. In the case of Laxmi Prasad Tamrakar v. Municipal Corporation, Raipur, reported as 1980 JLJ 646, it was held that,

Thus it is clear that this sub-section only prohibits the Commissioner to Municipal Corporation from acting on his own authority because of his failures. To cover-up this failure the Legislature intended by enacting Sub-section (5) to keep open the powers of the Municipal Corporation which is a superior body to act if the erections or re-erections of the building is in contravention of any scheme or bye-laws or any other requirements under Chapter XXIV which relates to building control and under which Section 307 also lies. It is on account of this aspect of the matter that in my opinion, under Sub-section (5) a special right has been conferred on the Municipal Corporation to seek injunction from the District Court to get the improper construction demolished.

9. Similar, in the case of Nand Kishore v. Nagar Palika Nigam reported as 1986 (I) MPWN 176, it was held that Section 307(5) contemplates a final relief to be given whereas any interim relief to be allowed in such proceedings was governed by the provisions of Order 39 Rules 1 and 2 of the Code of Civil Procedure.

10. In the case of K.M. Shah (supra), it was held that:

The Legislature in its wisdom has used the word "apply" for moving the Court of District Judge for seeking the relief provided in the aforesaid sub-section. Therefore, in view of the settled position of law that the intention of the Legislature should be ascertained from the language used in the Statute itself, a bare reading of the aforesaid sub-section would show that a provision for moving the District Court through an application has been made in the aforesaid sub-section. The language used by the Legislature is Sub-section (5) of Section 307 of the Act is not so ambiguous so as to lead one of embark upon the task of a interpreting the word "apply with the other aids provided for interpreting the statutes....

xxx xxx xxx

...This section also speaks of applications, appeal or reference and does not speak of a civil suit. Therefore, the aforesaid provisions throw a light on the intention of the legislature in using the word "apply" in Section 307(5) of the Act. Thus, reading the above provisions together in respect of the proceedings before the District Court it becomes clear that the intention of the Legislature while using the word "apply" was to empower any person or the Corporation to move the District Court through an application and not a civil suit.

11. A bare reading of Sub-section (5) of Section 307 clearly indicates the intention of the Legislature that the provisions of Section 307(5) are independent

of the suit, whereby either the Municipal Corporation or any person aggrieved may apply to the District Court by filing an application to obtain an injunction, and that is the view taken in cases of K.M. Shah and Laxmi Prasad Tamrakar (supra). Municipal Corporation, Bhopal v. Devta Prakash (supra) also takes the same view that to invoke the provisions of Section 307 (5), filing of a regular civil suit is not necessary, the District Court could be moved by merely filing a misc. application for the purpose.

12. The intention of the Legislature would further be clear from the scheme and the effect of the various provisions of Section 307 and other sections of the Act like Sections 392, 393 and 395 and the rules framed that the provision is independent and self-contained in the Act. For moving the District Court by filing an application u/s 307 was an independent provision and the Legislature never intended that for invoking the provisions of Section 307 (5) at any stage, filing of a regular civil suit was necessary. Had the Legislature intended a regular civil suit to be filed, the provisions of CPC were there and in that view, the procedure for moving an application, Court-fees, etc. should not have been provided in the Act itself Under Sections 392 and 395.

13. To make the point further clear, the provisions of Section 392 clearly indicate that the special jurisdiction has been conferred on the District Court to receive the application and to dispose of the same in accordance with the provisions of this Act. The decision given by the District Court shall be final, subject to revision in the High Court. This clearly indicates that the application as contemplated u/s 307 (5) was not in the nature of a regular suit, but it was an application under the special provisions to invoke the special jurisdiction of the District Court either by the Municipal Corporation or any person aggrieved.

14. Section 393 provides for inquiry before the District Court. The District Court may exercise all powers as conferred on the civil Court under the Code of Civil Procedure.

15. Similarly, in Section 394, the special provision for fixing Court-fees was made which could be notified by the Government in the Gazette. The provisions of Court-fees Act are not made applicable in this section which further indicates that these provisions were special in nature and did not make any reference to filing of a regular civil suit.

16. u/s 395, the limitation prescribed was also special in nature. It was further provided that if it was an application-for revision in High Court, the limitation shall be 60 days.

17. All these provisions clearly indicate that they are self-contained provisions of the Act. In this view of the matter, we find that the application as contemplated u/s 307(5) did not call for institution of a regular civil suit as a condition precedent to move the District Court for obtaining injunction. The District Court could be moved merely filing an application as provided under the Act either by the Municipal Corporation or any person aggrieved.

18. Therefore, we are of the opinion that the law, laid down in the case of KM. Shah (supra) is in consonance with the provisions of the Act, which takes the correct view.

19. As a result of the above discussion, we respectfully are unable to subscribe the view expressed in the case of Malkhan Das (supra), hence, it is overruled.

20. Let the records of the case be placed before the learned Single Judge with the opinion expressed by us.