
(2017) 03 MP CK 0084
In the Madhya Pradesh High Court
Case No : 118 of 2016

Imrat Singh Rajput

APPELLANT

Vs

State of M.P. & others

RESPONDENT

Date of Decision : 23-03-2017

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956, Section 5, Section 307, Section 307(5) -
Madhya Pradesh Bhumi Vikas Rules, 2012,, Rule 2 (38), Rule 7 (2)

Citation : (2017) 03 MP CK 0084

Hon'ble Judges : P.K. Jaiswal, Virender Singh

Bench : Single Bench

Advocate : Upendra Singh Chandrawat,Umesh Gajankush

Judgement

1. The present writ petition has been filed as pro bono publico by the petitioners, who claim themselves to be activists, against the inaction on the part of the official respondents in not taking action against respondent No.3 " Swastik Health Food Private Limited for allegedly constructing a hotel on the basis of building permission granted only for residential purposes by joining / clubbing three plots, which is not permissible under law.

2. According to the petitioners, respondent No.3 has been granted high rise permission with respect to building, contrary to the provisions of the Madhya Pradesh Bhumi Vikas Rules, 2012 and prayed for following relief in paragraph No.11 of the writ petition: -

"1. That, the unauthorized / illegal construction of building be stayed and removed with the orders of temporary and permanent injunction.

2. That, the unauthorized / illegal construction of building on residential land be demolished.

3. That, the proper action must be taken against respondents No.1, 2 and 4 for

failure in performing their duty after all those application of the petitioners.

4. That, the proper instructions must be issued to respondents No.1, 2, 3, 4 and 5 for preventing the unauthorized / illegal building construction without clubbing of plots on residential land.

5. That, permission issued for building construction be cancelled and declare as null and void.

6. That, the proper instruction must be given to respondents No.2 and 4 so that in future no as such act be repeated.

7. That, the unauthorized / illegal building construction on residential land be stayed till the disposal of the petition with the orders of temporary and permanent injunction.

8. That, the full cost of the petition would be granted to the petitioners.

9. Such other and further orders that to this Hon"ble Court may deem fit be passed."

3. Petitioner No.1 is a Press Reporter of "Prabhat Kiran Newspaper" and petitioner No.2 is a "RTI Activist". They are seeking relief of cancellation of building permission dated 27.02.2013 given by respondent No.2 and also alleged that respondent No.3 has raised illegal and unauthorized construction upon the plot owned by respondent No.3. Petitioner No.2 has alleged that he is RTI Activist and fights for the rights of the citizen. However, in the entire writ petition nothing has been stated that how the rights of the citizen of Indore or the public at large are going to be affected. It is not their case that respondent No.3 has made any encroachment upon any land owned either by Indore Municipal Cor-

poration or by the State Government of Madhya Pradesh. As per complaints dated 13.08.2015 (Annexure P/11), 14.09.2015 (Annexure P/12) and 11.12.2015 (Annexure P/13) made by the petitioners to Lok Ayukta and various Authorities, petitioner No.1 has shown himself to be a journalist of Prabhat Kiran Newspaper.

4. A preliminary objection has been raised by respondent No.2 " Indore Municipal Corporation and respondent No.3 " M/s Swastik Health Food (Private) Limited (private respondent) on the ground that present writ petition is not a case of encroachment or public nuisance and inconvenience. There is no violation of public or fundamental right caused to the petitioners or any other persons. The petitioners are not resident of the same locality where the land is situated and have no locus standi to file the present writ petition as public interest litigation. In the garb of Public Interest Litigation, they filed the present writ petition with a mala fide intention and to blackmail private respondent by misusing the process of the Court.

5. The second preliminary objection of respondent No.3 is that the petitioners are having an alternative efficacious remedy under Section 307 (5) of the Madhya

Pradesh Municipal Corporation Act, 1956 and looking to the relief of injunction, as prayed for in the writ petition, the grievance can be raised by the petitioners by invoking the aforesaid provisions of law.

6. The third objection is that the writ petition suffers from delay and latches; building permission was granted on

27.02.2013, whereas the present writ petition has been filed on 04.01.2016 i.e. after expiry of about three years and prayed for dismissal of the writ petition on the above mentioned grounds.

7. Facts of the case are that respondent No.3 " Swastik Health Food Private Limited was the owner of Plots No.1, 2 and 3, Jai Nagar, Indore, who purchased Plot No.1, Jai Nagar, Indore from Himanshu Sharma (HUF) by registered sale-deed dated 03.10.2011; Plot No.2, Jai Nagar, Indore was also earlier purchased by registered sale deed dated 03.10.2011 from Gyandeep Avas (P) Limited; and Plot No.3, Jai Nagar, Indore was also purchased by respondent No.3 on 03.10.2011. Thereafter, on 06.12.2014, respondent No.3 has sold Plots No.1, 2 and 3, Jai Nagar, Indore to M/s. Samaroh Hospitality vide Annexure R-3/1, Annexure R-3/2 and Annexure R-3/3.

8. Name of respondent No.3 " M/s. Swastik Health Food (P) Limited has been changed as "The Panache Hotel & Club (P) Limited" and a certificate to that effect has been issued by the Registrar of Companies, Gwalior on 17.04.2012 vide Annexure R-3/4. The petitioners have not impleaded M/s. Samaroh Hospitality, who are at present the owner of Plots No.1, 2 and 3, Jai Nagar, Indore. On 05.05.1990 vide Entry No.336 (Annexure R/3-5), respondent No.2 granted Building Permission over Plots No.1, 2 and 3, Jai Nagar, Indore, jointly and there is no provision that all the three plots cannot be clubbed.

9. The grievance of the petitioners that as per Master Plan, in the residential area, use of commercial purpose is not permissible. As per Indore Development Plan, 2021, which is effective from 01.01.2008, Clause No.6.20.1 and it's table attached to it, the commercial purpose (lodging houses) are permissible in residential area, which is further clear from Serial No.53 of the Table; which reads, as under: -

"6.20 "VERNACULAR MATTER OMITTED" 6-22

S.No.

Residential General commercial Mandi Whole sale Specialized Commercial
Industrial Recreation Agricultural Transportation PSP

1 2 3 4 5 6 7 8 9 10

53 Lodging Houses P P C C NP NP NP P

"VERNACULAR MATTER OMITTED"

10. From the aforesaid provision lodging is permissible in the residential area. In

respect of grant of permission for high rise building, stand of respondent No.2 " Indore Municipal Corporation and private respondent No.3 " M/s Swastik Health Food Private Limited is that according to provisions of Rule 2 (38) of the Madhya Pradesh Bhumi Vikas Rules, 2012, "High Rise Building" means building which consists of ten stories building or height of building up to 30 meters. As per Building Permission of respondent No.3, height of building permission is 12 meters. No permission with respect to High Rise Building has been granted by respondent No.2 " IMC nor respondent No.3 - Swastik Health Food Private Limited is constructing High Rise Building over Plots No.1, 2 and 3, Jai Nagar, Indore, as Building Permission was granted only for basement and G + 3 and total height of the building is 12 Meters.

11. Site inspection was made by respondent No.2 " IMC and during inspection it is found that respondent No.3 " Swastik Health Food Private Limited was making some construction contrary to the sanctioned map and Building Permission by covering area reserved for Marginal Open

Space (MOS) on the north and south side and is also making construction to join the structures on his plots by using RCC Slabs, which is contrary to the Sanctioned Map, whereas these buildings have been shown as separate. Show cause notices were issued to respondent No.3 " Swastik Health Food Private Limited under Rule 7 (2) of the Madhya Pradesh Bhumi Vikas Rules, 2012 with a direction to remove the said construction or submit his explanation / objection. No action or step was taken for removal of illegal construction by Respondent No.3 " Swastik Health Food Private Limited in response to the show cause notices, and therefore, removal notice dated 24.09.2015 was served (Annexure R/1). Thereafter, Removal Team demolished certain structures as mentioned in the notice and also imposed removal charges on respondent No.3 " Swastik Health Food Private Limited (Annexure R/2).

12. In respect of allegation of construction of hotel, respondent No.2 " IMC, on inspection, has not found any such activity or sign on the property, whereas the site is still under construction. There being no proof of operation of any commercial activities or hotel on the premises. An undertaking has been given by respondent No.3 at the time of grant of Building Permission and if he violates any of the terms and conditions of the Building Permission, then appropriate action will be taken by respondent No.2 " IMC for occupancy violation, as per the provisions of Madhya Pradesh Municipal Corporation Act, 1956 and Madhya Pradesh Bhumi Vikas Rules, 2012.

13. On 13.05.2016, an affidavit of Building Officer, Indore Municipal Corporation, Indore has been filed. As per paragraph No.3 of the affidavit, on 27.04.2016, building inspection over Plots No.1, 2 and 3, Jai Nagar, Indore of respondent No.3 " Swastik Health Food Private Limited was carried out. As per spot inspection report, it was found that previously an attempt was made by respondent No.3 " Swastik Health Food Private Limited to join three separate structures / buildings by using RCC Slabs, which was removed by respondent

No.2 " IMC. Thereafter, now on the top floor of the buildings, respondent No.3 " Swastik Health Food Private Limited is again constructing temporary structures by using girders, slabs etc. and all three structures are being joined and all three buildings are connected. On being asked, respondent No.3 " Swastik Health Food Private Limited informed that he has applied before the appropriate authority for permission of constructing a sky ridge, which is being done by him right now, but no copy of any such application or details were given by him.

14. Relevant part of Spot Inspection Report dated 23.04.2016 (Annexure R/4) reads, as under: -

"VERNACULAR MATTER OMITTED"

15. On 01.08.2016, Shri Rajesh Nagal, Joint Director, Town & Country Planning, Indore has filed his affidavit. It is stated in the affidavit that he along with Building Officer, Zone No.13 of Indore Municipal Corporation inspected the property of respondent No.3 " Swastik Health Food Private Limited and on 27.07.2016 inspection was carried out jointly by them. As per affidavit, sanctions vide No.650, 651 and 652 dated 27.02.2013 have been granted under Madhya Pradesh Bhumi Vikas Rules, 2012 by the Indore Municipal Corporation in favour of respondent No.3 " Swastik Health Food Private Limited for construction of building for residential purpose in the name of Randeep Singh. It is further stated in the affidavit that three separate construction permissions for three different plots for the purpose of residential construction were granted by the Building Officer on 27.02.2013 in the name of Randeep Singh. At the time of inspection on the spot, approximately 90% civil construction work has been completed and the construction was done in such a manner that the side MOS, as shown and sanctioned in the map are not open and included in the construction. It is a case of joining of three plots for construction purpose

and no such permission was granted or issued from the Office of Joint Director, Town & Country Planning, Indore.

16. Relevant part of Spot Inspector Report dated 27.07.2016 (Annexure A/1) reads, as under: -

"VERNACULAR MATTER OMITTED"

17. As per brochure and documents filed by the petitioners on 24.06.2016, respondent No.3 " Randeep Saluja is constructing a hotel, which includes Swimming Pool, Tennis, Table Tennis, Gymnasium. As per details of the registration of the company "The Panache Hotel and Club Private Limited", respondent No.3 " Randeep Saluja is one of the Director of the said company and thus, the objection of the respondent No.3 that no proper / necessary party was made, has no force.

18. As per rejoinder, on the basis of complaint dated 14.9.2015 (Annexure P/12) the Lokayukt registered the case

as preliminary enquiry No.31/2016 in the matter of illegal construction against the Government officer and issued notice to the petitioner No.2 Dheeraj Mohaniya, on 20th June, 2016.

19. Now we will decide the objection raised by the respondent / IDA about the maintainability of the writ petition. It is trite that except cogent reasons, this court in public interest litigation, would not interfere with the due process of law. It is held by the Full Bench that generally no public interest litigation can be filed on the basis of news paper report. However, if a person is unable to have access in the court for any reason and the right of life and liberty is involved public interest litigation can be entertained. In the case of Gajendra Singh V/s. State of M.P., 2008 (2) MPHT 197, the Division Bench has held that since various question were required to be enquired, the order of removal of encroachment cannot be passed and direction of demolition of extended portion of shops cannot be given.

20. In respect of locus standi, the Apex Court held that public interest litigation can be filed (member of public acting bonafide and having social interest in instituting action; (ii) he must not be middle some interpoller; (iii) it can be filed by a class of person who cannot approach the court due to poverty; (iv) the person must come with clean hands, heart and clean objectives. The present writ petition is not a case of the encroachment or public nuisance or inconvenience nor any violation of public or fundamental right. The petitioner No.1 is a press reporter. At his instance the news

paper article has been published in Prakash Kiran news paper. He being journalist of Prabhat Kiran news paper and purposely published the news item (Annexure P/10) about the construction in question at his own instance, which is cleared from the representation (Annexure P/11 to Annexure P/13).

21. As per affidavit dated 1.8.2016, filed by the Joint Director of Town and Country Planning, Indore, vide numbers 560, 651 and 652 dated 27.2.2013, have been granted for residential purposes under M.P. Bhumi Vikas Niyam, 2012, by the Municipal Corporation, Indore, in the name of Ranjit Singh Saluja. For three storied construction on three different plots for residential purpose. On 27.7.2016, he along with building officer inspected the premises in question and found that approximate 90% civil construction have been constructed and the construction was made in such a manner that side marginal open space are not open and included in the construction. In respect of clubbing of three plots he in para 5 of affidavit very categorically stated that no such permission was granted or issued from the office of the Joint Director, Town Country Planning, Indore.

22. As per provisions of Madhya Pradesh Bhumi Vikas Rules, 2012, no deviation shall be permitted by the Authority relating to front and MOS building hight and public utility space. From the affidavit of the Joint Director, Town & Country Planning Department side Marginal Open Space is included in the construction. Clubbing of three plots was made without any permission from the Office of

the Joint Director, Town & Country Planning Department, Indore.

23. Full Bench of Madhya Pradesh High Court in the case of Dilip Kaushal & another v. State of Madhya Pradesh and others reported in 2008 (3) JLJ 171 has held that locus standi under sub-section (5) of Section 307 of the Madhya Pradesh Municipal Corporation Act, 1956 is restricted to a person affected by the violation complained of or encompasses all persons resident within the area to which the Madhya Pradesh Municipal Corporation Act, 1956 applies. It is also held that provisions of Specific Relief Act, 1963 do not apply to right conferred on Corporation or any other person under Section 307 (5) of the Madhya Pradesh Municipal Corporation Act, 1956. Remedy under Section 307 (5) is independent of and different from remedies under Specific Relief Act, 1956.

24. Considering the aforesaid, we direct respondents No.2 and 5 to take appropriate steps in the matter and if it is found that construction was made contrary to the sanctioned map and Madhya Pradesh Bhumi Vikas Rules, 2012, without taking any permission for clubbing of three plots, then joint inspection shall be made along with the owner of the buildings and plot holder and thereafter, after giving an opportunity of hearing to them, appropriate action be taken in accordance with the Madhya Pradesh Municipal Corporation Act, 1956 and Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973. The whole exercise be

completed within a period of three months from the date of receipt of certified copy of this order.

25. With the aforesaid direction, Writ Petition (PIL) No.118/2016 is disposed of, without any order as to costs.

26. The Office is directed to list the matter after three months in separate head of "Compliance" in daily cause list.