
(2004) 11 MP CK 0002
In the Madhya Pradesh High Court
Case No : L.P.A. No. 297 of 2001

Indore Municipal Corporation and Another	APPELLANT
Vs	
Hemalata Patel and Others	RESPONDENT

Date of Decision : 22-11-2004

Acts Referred:

Letters Patent Act, 1865 — Clause 10
Madhya Pradesh Municipal Corporation Act, 1956 — Section 299
Madhya Pradesh Nagar Tatha Gramin Nivesh Adhiniyam, 1973 — Section 24(3)

Citation : (2005) 1 MPLJ 137

Hon'ble Judges : S.L. Kochar, J; Ashok Kumar Tiwari, J

Bench : Division Bench

Advocate : Shekhar Bhargava, assisted by Patwa, for the Appellant; A.K. Sethi, for the Respondent

Final Decision : Dismissed

Judgement

S.L. Kochar, J.

This Letters Patent Appeal under Clause X of the Letters Patent is directed against the impugned order dated 26-10-2001 passed by the learned Single Judge, thereby allowing the Writ Petition No. 919/2000 filed by the respondents, and quashing the show-cause notice (Annexure P/18) dated 13-4-1999 and the order passed by the appellants (Annexure P/24) annexed with the petition.

The dispute between the parties has a chequered history, but, for deciding this LPA, this Court does not require and feel to go into all previous details. The relevant factual matrix necessary for the disposal of this L.P.A. are that the respondents applied before the appellants and Town and Country Planning Department and they accorded sanction to construct a building on the land bearing Khasra No. 92/2 and Khasra No. 93 situated at Palasiya, Indore.

On 7-2-1995, Annexure P/1 sanction was granted by the Director, Town and Country Planning Department and the same was modified on 31-5-1997

(Annexure P/2) as per provisions of M.P. Nagar Tatha Gram Nivesh Adhiniyam (hereinafter referred to as the Adhiniyam). The appellant No. 1 Municipal Corporation, Indore also accorded sanction (Annexure P/3) on 21-2-1995. This was according to the provisions of Municipal Corporation Act (For brevity "the Act") read with Rules framed under the Bhumi Vikas Rules, 1984 (For short "the Rules"). The appellant No. 1 Indore Municipal Corporation again granted sanction dated 16-4-1998 (Annexure P/4) after incorporating certain conditions for construction of building. The appellant No. 1 Municipal Corporation, Indore again issued the revised sanction (Annexure P/5) dated 14-10-1998. Pursuant to the sanction accorded to the respondents, they started construction and sent intimation to this effect to the Municipal Authorities on 30-5-1997 (Annexures P/6 and P/7). The respondents were also directed by the Corporation to obtain NOC from the Indore Development Authority (I.D.A.) and the same was obtained on 30-5-1997 vide Annexure P/9. It was also submitted to the Corporation. During the course of construction of the building by the respondents, officials of the Corporation and Town and Country Planning Department made a joint spot-inspection of the construction on 12th and 13th November, 1998 (Annexure P/13) and they found that the building construction was going on in conformity with the sanctioned plans.

After about five months i.e. 13-4-1999 the appellant No. 2 Building Officer of Indore Municipal Corporation issued show-cause notice (impugned in the writ-petition) Annexure P/18 inter alia pointing out several breaches said to have been committed by the respondents while constructing the building in question. The show-cause notice (Annexure P/18) was replied to by the respondents on 19-4-1999 vide Annexure P/19. Thereafter, on 27-10-1999 to 30-10-1999, the authorities of Town and Country Planning Department and appellant No. 1 Indore Municipal Corporation again inspected the spot and the construction was found to be in the line of sanctioned plan. They issued Joint Inspection Report (Annexure P/20) followed by the order passed by the State Government of M.P. dated 4-2-2000 (Annexure P/23), finding the construction as per sanctioned plan and held that the show-cause notice dated 13-4-1999 issued by the then Building Officer was contrary to the sanction granted by former officials of the Corporation. The State Government also directed the Commissioner of the Corporation, Indore by the order Annexure-(P 23) for deciding the matter judiciously.

The respondent No. 2 Building Officer, Indore Municipal Corporation, Indore passed an order on the show-cause notice (Annexure P/18) thereby issuing certain directions to the respondents regarding construction of the building i.e. the doors of the proposed shops shall not be put towards 56 shops road and the respondents may keep the gates on 56 shops-road and may construct the wall on the remaining part of the building. Certain other directions were also issued which were mentioned therein.

The respondents were aggrieved by the order (Annexure P/24) passed by the

appellant No. 2 Building Officer, Municipal Corporation, Indore and filed a writ petition before the High Court bearing W.P. No. 919/2000. The learned Single Judge noticed the appellants (Respondents in the writ petition), who in their turn, submitted a detailed return annexed with the documents and opposed the prayer of the respondents (petitioners in the writ petition). The learned Single Judge, after hearing both the parties at length, allowed the petition by the impugned order.

The learned counsel for the appellants has vehemently putforth that the learned Single Judge has wrongly relied upon the provisions of section 299 of the Act and the sanction was obtained by the respondents by fraud and misrepresentation. Therefore, the same can be revoked under Rule 25 read with Rule 31 of the "Rules" framed by the State Government in exercise of the powers conferred by section 85 read with sub-section (3) of section 24 of the "Adhiniyam, 1973". Learned counsel has submitted that the show-cause notice (Annexure P/18) was based on Rules 25 and 31 of the "Rules" and the said notice was issued by the Building Officer of the Municipal Corporation, Indore. According to him, under Rule 7 read with Rule 26, the Building Officer has been appointed who has issued the show-cause notice (Annexure P/18). Under Rule 8, the Powers and Duties of the Building Officers are specified and he is authorised to enforce the provision of these Rules and lawful orders and instructions issued pursuant thereof. He can act on any question related to the mode or manner of construction, additions, alterations, preparation, removal or demolition. Learned counsel has also pointed out the provisions of section 69 of the "Act" whereby the entire Executive Powers for the purposes of carrying out the provisions of the Act vests in the Commissioner and the Commissioner is empowered to delegate his powers to other Municipal Officer as per sub-section (4) of section 69 (ibid). It has also been submitted by the counsel for the appellants that even if the construction was legal, but the same was beyond the sanctioned area in the plan. His main plank of the argument is that the respondents have suppressed about involvement of the land in Scheme No. 117 and also raised construction on more area than the sanction-map and this was the issue raised by the Building Officer of the Municipal Corporation (Appellant No. 2) in the show-cause notice (Annexure P/18) based on Rules 25 and 31 of the "Rules" and that has not been considered by the learned Single Judge in the impugned order. Learned counsel, to bolster his submissions, placed reliance on the judgment rendered by the Supreme Court in Ram Preeti Yadav vs. U.P. Board of High School and Intermediate Education and others. 2003 SCC 311, M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others, and Pratibha Co-operative Housing Society Ltd. and another Vs. State of Maharashtra and others, . Shri Bhargava, learned counsel for the appellants also submitted that the learned Single Judge has misread the document Annexure P/23.

In contra, learned counsel for the respondents supported the impugned order passed by the learned Single Judge, relying on the provisions of section 299 of the Act, which empowers the Commissioner to direct modification of a sanctioned

plan, u/s 295, of a building before its commencement. In the case in hand, it is clear that the directions were given by Annexure P/24 after the completion of the building-work which commenced on 13-5-1997 and continued till 1999. Learned counsel has pointed out that before issuance of show-cause notice (Annexure P/18) dated 13-4-1999 and thereafter, passing of the order (Annexure P/24) by the Building Officer for issuing directions for modification in a sanctioned plan, the two spot-inspections were made jointly by the Town and Country Planning Department and the appellants on 12-11-1998, 13-11-1998 and again on 1-11-1999 vide Annexures P/13 and P/20 and in these two inspection-reports, nothing contrary or adverse was found in the construction by the officials of both the departments. This factual position was there even after issuance of show-cause notice by the appellant No. 2 (Annexure P/18) dated 13-4-1999. Both the inspection reports (Annexures P/13 and P/20) were approved by the State Government by order (Annexure P/23). Even thereafter, the appellant No. 2 Building Officer, has issued several directions for modification of the building plan by Annexure P/24. On comparison of show-cause notice (Annexure P/18) and the order (Annexure P/24) it is evident that so many objections in regard to construction were not raised and pointed out in the show-cause notice, but in the order (Annexure P/24), the Building Officer has also included extraneous matters alien to the show-cause notice. The learned counsel has emphasised on the powers and authority of the appellant No. 2 Building Officer who was not appointed under any of the provisions of the "Adhiniyam" or "Rules". As argued by the learned counsel for the appellants, no such appointment order is filed to establish this fact. Rule 7 is with regard to Deptt. Building Inspection and according to this Rule, the authority shall have a Department of Building Inspection and appointment of the Building Officer shall be subject to the approval of the Director Town and Country Planning Department of the State Government or such other officer as the Director may specify for this purpose.

Learned counsel for the respondents further contended that if the appellant No. 2 was appointed as the Building Officer, under the provisions of the Rules, there was no necessity for having joint inspection by the officers of the Municipal Corporation, Indore and Town and Country Planning Department, Indore because, according to the arguments of the learned counsel for the appellants, the appellant No. 2 is the Building Officer, who can act under the provisions of the "Act" "Adhiniyam" and the "Rules" also. In the alternative, learned counsel has also argued that the provisions of the Act cannot override by Rules. The application and effect of the provisions enumerated in Chapter 24 of the Act regarding Building Control by the Corporation from section 293 to 308-A and whole construction was done in accordance with the sanctioned plan which was from time to time altered and modified by the appellants and finally they have approved the whole construction by giving joint inspection report vide Annexure P/13 and P/20.

He submitted that after commencement and completion of the Building Construction, the appellants cannot issue directions for any other change which

is specifically prohibited by section 299 of the "Act" and the learned Single Judge has rightly relied on this provisions in the impugned order. It has also been submitted that the map Annexure P/27 and other maps are available at pages No. 115 to 137 of the Paper-Book. All are commercial buildings having one plus three storeys though its area is shown in the Master Plan as Residential Zone, but the Corporation has sanctioned so many commercial constructions which is evident by all these maps and now it is also permissible by the Master Plan (Annexure P/25) available at Page 111. The respondents have not done anything contrary to the sanctioned map and now at subsequent stage after construction they cannot say that the map was incorrectly sanctioned in their notice and order. They have not pointed out any breach of the rules or provisions of the Act in their notice and/or order. After construction of the building, Service Certificate has also been issued on 30-5-2000 which is at Annexures P/27 and P/28, and the law of Promissory Estoppel will apply against the appellants who after joint-inspection by the officials of two authorities i.e. Municipal Corporation, Indore and Town and Country Planning Department gave joint reports Annexures P/13 and P/20 that the construction was in accordance with the sanctioned plan and the State Government has also approved the same by order Annexure P/23.

The learned counsel has placed reliance on the following judgments reported in:-

(1) Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., (2) Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, and (3) Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI), .

Learned counsel also invited our attention towards the provision of Rule 14 Proviso and according to this proviso, for the purpose of so many things as mentioned in this proviso, the permission is not required.

He lastly raised the question of scope of interference in the Letters Patent Appeal which is an intra court appeal. According to him, in the Letters Patent Appeal, powers are limited because, the Single Bench passing the order is not subordinate to the Division Bench of the High Court and, therefore, the scope in the Letters Patent Appeal is virtually like review petition. In support thereof, learned counsel has placed reliance on the judgments passed in Ku. Varsha Shrivastava, etc. Vs. State of M.P., , Mani Vs. Sub-Divisional Forest Officer-cum-Authorised Officer and Another, and Dr. Suneer Sharma Vs. Dr. Madhurlata Sharma, as also Siyaram and Others Vs. State of M.P. and Others, .

Before we deal with the rival contentions of the parties, we would like to decide the application I.A. No. 2734/2002 filed by the appellants under Order XLI Rule 27 of the CPC for taking additional evidence on record and I. A. No. 3735/2002 for amendment in the memo of appeal. The application for taking additional documentary evidence on record was filed on 18-4-2003. Learned counsel has submitted that after passing of impugned order in the writ petition, some events have taken place. The Municipal Corporation requested the private expert from Shri G.S. Institute of Technology and Science, Indore (for short G.S.I.T.S.) to

carry out their own inspection and measurement. This Institution has given the report Annexure R/7, which shows that the construction has not been carried out in accordance with the sanctioned map. After receiving this report, the Committee appointed by the Mayor submitted an undated report pursuant to the Resolution dated 5-10-2001, which is Annexure R/8. Both these documents have come in existence during the pendency of the present appeal. Therefore, the same be considered as subsequent events relevant to the dispute. Learned counsel also submitted that Annexure P/3 Resolution No. 92 dated 28-5-1992 passed by the Indore Development Authority, Annexure P/6 Resolution No. 21 passed by the appellant No. 1 on 3-4-2002 and the letter Annexure P/5 sent to the appellant No. 1 by Collector, Indore dated 17-11-1999 could not be filed earlier in spite of the due diligence. Learned counsel has placed reliance in support of the application made under Order XLI Rule 27 of the CPC on the judgment passed in Billa Jagan Mohan Reddy and another vs. Billa Sanjeeva Reddy and others, (1994)4 SCC 639, Om Prakash Gupta Vs. Ranbir B. Goyal, and Gulabbai Vs. Nalin Narsi Vohra and others, .

The respondents have opposed the prayer of the appellants regarding taking of additional documentary evidence on record. They submitted that the Inspection Report (Annexure P/3) by the SGITS Private Institution, is a self created document. The appellants were not directed by the Court to get the inspection and obtain report and pursuance to this report, Resolution of the Municipal Corporation Annexure P/8 was passed. The subsequent event did not occur in natural course, but the same has been created to meet out the order passed by the learned Single Judge relying on the inspection reports Annexures P/13 and P/20 (supra). It has also been submitted that in the L.P.A. the provisions of Order XLI Rule 27 CPC are not applicable because, the appeal is not filed under any of the provisions of the CPC but, it is an intra Court appeal in which, this Court has to decide whether the impugned judgment passed by the learned Single Judge is legal and proper or not. The appellant cannot be permitted to enlarge the scope of appeal either by adding additional pleadings or filing additional documentary evidence.

Learned counsel has submitted that basically it is the function of the Civil Court to appreciate the evidence. The function of the Writ Court is to see that whether any authority is acting within the jurisdiction or without jurisdiction and since the learned Single Judge while exercising Powers under Article 226 of the Constitution of India has found that the appellants have acted illegally and without jurisdiction. Now in this appeal they cannot be permitted to justify their action by filing additional documentary evidence under Order XLI Rule 27 of Civil Procedure Code.

Having heard learned counsel for the parties on both the interlocutory applications (ibid) and perusal of applications and reply as well as the documents, we are of the opinion that the prayer of the appellants cannot be acceded to under Order XLI, Rule 27 of the Civil Procedure Code. Order XLI and

the Rules made thereunder deal with the appeals from original decree. The present L.P.A. is not an appeal against the original decree, but it is an intra court appeal. Therefore, we are of the opinion that Order XLI Rule 27 of the CPC is not applicable in the Letters Patent Appeal Juxtaposition. But, its principle would apply, and undisputed documents can be taken on record, if the same are necessary for the just decision of the case. In the present case Annexure R/7 is the Inspection Report got prepared by the appellants from a Private Institution (SGITS). The respondents were not noticed for inspection of the constructed building by the appellants and inspection was carried out behind their back. They have also not admitted the documents sought to be filed as Additional Documentary Evidence by the appellants. The Inspection report is a report prepared by a Private Institution, therefore, the same is not admissible in evidence like any other document and fact and for that purpose, the author/authors of the report would be required to be examined on oath in the Court and opportunity of cross-examination by the respondents would be essential. Therefore, such disputed question of fact cannot be entertained in the L.P.A. The judgments relied upon by the learned counsel for the appellants passed in the case of Billa Jagan Mohan, Om Prakash Gupta and Gulab Bai (supra) by the Apex Court are not helpful to the appellants, because all these judgments have been rendered in the matter went up before the Supreme Court against the judgment and decree passed by the Civil Courts as per provisions of the Code of Civil Procedure. Out of the aforementioned three cases, two cases namely Om Prakash Gupta and Gulab Bai pertained to the dispute between landlord and tenant and in the third case of Billa Jagan Mohan, the trial Court did not allow the application of the party to take the certified copy of the Revenue Records on the ground of delay. The same was also upheld by the High Court, but the Supreme Court has allowed the same in view of Order XLI, Rule 27(a)

In the case in hand, after delivery of judgment by the learned Single Judge, no subsequent events did occur in natural course which may be necessary to be taken into account in the Letters Patent Appeal. The Inspection Report (Annexure P/7) was got prepared by the appellants through private agency whereas their own reports (Annexures P/13 and P/20) were already on record and they have not denied the contents and existence of both the reports prepared by their own officials as well as the officials of Town and Country Planning Department. In the return also, they have not disputed the Inspection Reports (Annexures P/13 and P/20) The other documents Annexure R/5 Resolution No. 92 dated 28-5-1992, Annexure R/6 Resolution No. 21 dated 3-4-1992, Annexure R/7 a letter of Collector dated 17-11-1999 are all available to the appellants prior to the judgment passed by the learned Single Judge, but, the same were not filed by them and they have not assigned any valid reason for the same. The appellants have not been able to establish that they could not produce these documents before the Writ Court because, the same were not within their knowledge and they could not produce the same after exercise of due diligence.

On the analysis of factual and legal position, we do not find it just and proper to

allow the application I.A. No. 3734/2002 for taking additional documentary evidence on record. This application (I.A. No. 3734/2002) for taking additional documentary evidence on record is hereby dismissed. In consequence thereof, the prayer for amendment in the memo of appeal through I.A. No. 3635/2002 is also dismissed. The Joint Inspection Reports (Annexures P/13 and P/20) were also not denied by the Town and Country Planning Department and at least no document has been filed before the Writ Court by the appellants in this regard.

Now, we proceed to visualize the contention of the appellants assailing the impugned judgment/order passed by the learned Single Judge. According to the appellants, all sanctions for construction of building were obtained by fraud and by misrepresentation. Therefore, as per Rule 25 read with Rule 31 of the Rules, the appellants have power to revoke such permission. We do not find any substance in this ground. The appellants are unable to establish on the basis of the entire documents filed by the respondents and the appellants before the Writ Court that the permission was obtained on false statement or by misrepresentation of any material fact. Admittedly, the respondents are the owners of the land and the Joint Director, Town and Country Planning Department, Indore has sanctioned the site-plan on 7-2-1995 and 31-5-1997 vide Annexures P/1 and P/2. On the basis of this, the appellants have also granted permission for construction of building on 21-2-1995, 16-4-1998 and 14-10-1998. The permissions are Annexures P/3, P/4 and P/5. Thereafter, from time to time, the respondents informed the authorities about commencement and progress of the construction as per Rule 31(2)(e). (See: Annexures P/6 and P/7). After that, the notice was issued by the appellant No. 2 under Rule 25 of the Rules alleging that while obtaining permission from the Town and Country Planning Department, the respondents have concealed the fact with regard to release of the land from Scheme No. 117 of the Indore Development Authority and on the basis of this, the Town and Country Planning Department sanctioned the site-plan on 31-5-1997 and these letters by the Indore Development Authority (I.D. A.) and further sanction by the Town and Country Planning (Joint Director) indicated that there was no concealment of any fact by the respondents. These facts are clear from perusal of the documents Annexures P/8, P/9 and Annexure P/3 annexed with the writ-petition. In the return, the appellants have not denied the existence and contents of these documents. On the basis of further sanction by the Joint Director, Town and Country Planning Department dated 31-5-1997, the appellant No. 2 has revoked the show-cause notice dated 23-5-1997 and also cancelled the order of stopping the construction. This letter is dated 7-6-1997 (Annexure P/11). It is also clear from the record that the State Government has passed the order dated 20-8-1997 holding that the development and construction permission to the respondents was legal and the Scheme No. 117 of the Indore Development Authority was not final scheme, but it was a draft-scheme. The same was not in existence on the date of initial approval of the site plan i.e. 7-2-1995. Annexure P/12 is reflecting these facts. One more fact is noticeable that the Indore Development Authority

and Town and Country Planning Department have no such grievance against the respondents.

On 12-8-1998, in presence of the representatives of the respondents and the officers of the appellant No. 1, the appellant No. 2 Building Officer and other officers of the Town and Country Planning Department have inspected the entire construction and found the same to be in accordance with the sanctioned plan. The Joint Director of the Town and Country Planning Department has also sent the report to this effect to the appellant No. 1 by its letter dated 28-11-1998 (Annexure P/13 and P/14). The Appellant No. 1, thereafter also sent the report to the State Government by letter dated 14-12-1998 (Annexure P/15) saying that the construction was found to be in accordance with the sanctioned plan. All these factual position and the documents filed by the respondents have not been denied in reply by the appellants. After construction the respondents, as per Rule 97 of the Rules sought for issuance of Service Certificate by Appellant No. 2, but the appellants did not pay any heed to this letter dated 5-3-1999 (Annexure P/16). According to Rule 97, if the Service Certificate is not issued within 15 days from the date of receipt of the application, then, it would be deemed to have been granted.

Again, the appellant No. 2 raised all other issues for obtaining sanction from the Town and Country Planning Department and construction on more than permissible area according to site plan by issuing notice Annexure P/18 to the respondents. Thereafter, again, the Joint Inspection was made by the appellants and the Joint Director, Town and Country Planning Department's Assistant Director, City Engineer Shri Jagdish Dagaonkar (the then Building Officer/Zonal) Officer of Zone 11 Architect and other officers and Joint Director, Town and Country Planning Department, Indore and all of them have given joint report vide Annexure P/20 to the effect that the construction was in accordance with legally sanctioned plan. Thereafter, the State Government has further issued letter dated 4-2-2000 (Annexure P/23) after perusal of the entire record in regard to construction of the building and held that the construction was carried out by the respondents in accordance with the sanctioned site-plan by the Appellants and the notice issued by the Appellant No. 2 dated 13-4-1999 (Annexure P/18) was contrary to the permission granted by the former Building Officer and other officials of the Appellant No. 1 and directed the Appellant No. 1 to decide the issue without any discrimination.

The petitioners (Respondents herein) have also contended in their petition at para (6.10) that the directions issued by the appellant No. 2 in the letter/order dated 11-4-2000 (Annexure P/24) regarding residential use of second floor was illegal and was without jurisdiction because, the same was not raised in the show-cause notice dated 13-4-1999.

We have perused all these documents and find substance in the contention of the learned Counsel for the respondents. In the reply also, the appellants have submitted this position. But, they have stated that at the time of passing of the

order, this factual position was found by the appellant No. 2. Therefore, he has also included the same in the order (Annexure P/24). This factual position is clearly indicative of the fact that without giving opportunity of hearing on this issue, the order has been passed by the Appellant No. 2/Building Officer of Indore Municipal Corporation. The appellants have committed a clear breach of law of natural justice. The respondents in the same para of the writ petition have pointed out that in the same site, several buildings were permitted to be constructed for commercial use only though according to Indore Master Plan, they came within the periphery of Residential Zone. In this para, the details are given by the respondents about grant of permission to the concerned persons for constructing the building only for commercial use and this averment has not been specifically denied by the appellants. In their reply (para 6.7), the appellants have also mentioned that if by mistake permission was granted to the respondents, even then, the respondents are not entitled for taking benefit of the same and, therefore, the construction could be allowed only in accordance with the orders dated 11-4-2000 (Annexure P/24). This reply of the petitioners itself is establishing the fact that the site plan was sanctioned by the concerned authority and from time to time, the modification was also done. The respondents have also carried out the construction according to the sanctioned plan and now at a belated stage when new incumbent (Appellant No. 2) took charge, he also raised several objections and those objections and directions for modification in a constructed building were found contrary to the provisions of section 299 of the Act by the learned Single Judge. Section 299 of the Act says that the Commissioner/appellant No. 1 has power to direct modification of a sanction-plan of the building before its completion.

In the present case, first of all the directions were not given by the appellants for any modification before completion of the construction of the building. The appellant No. 2 who is the Building Officer of appellant No. 1 has also not issued any direction before completion of the building. The direction as per order (Annexure P/24) has been given by the appellant No. 2 after almost all completion of the construction of the building. Therefore, the same is contrary to the provisions of section 299 of the Act and the learned Single Judge has rightly held so.

So far as the question of application of Rule 25 read with Rule 31 of the Rules is concerned, the appellants are not able to establish that the permission was obtained by the respondents by making a false statement or on any misrepresentation. Rule 25 is with regard to revocation of permission. The appellant No. 2 by issuing the order (Annexure P/24), has not revoked the permission granted by them to the respondents for construction of building, but the appellant No. 2 only suggested some modification which does not fall within the purview of Rule 25 of the Rules. This is the subject matter of section 299 of the Act. This section also says that the Commissioner has power to revoke the permission before commencement of the work in pursuance of any permission granted by him and grant another permission in lieu thereof. Such is not the

situation here in this case.

Learned counsel for the appellants placed reliance on the Supreme Court judgment reported in *Ram Preeti Yadav (supra)* in which it is held that once fraud is proved, it would deprive the person of all advantages or benefits obtained thereby. Such is not the factual situation in the instant case. The appellants have not been able to prove not only the fraud but even false statement and misrepresentation of fact for obtaining permission by the respondents also. On the contrary, the documents are showing that the lands are owned by the respondents and from time to time, permissions were accorded and the conditions were modified by the appellants, Indore Development Authority and the Joint Director of Town and Country Planning Department. The same were also approved by the State Government.

Another judgment relied upon by the appellants passed in the case of *M.I. Builders vs. Radheyshyam Sahu (supra)* by the Supreme Court. In this judgment, the dispute was with regard to Distribution of State Largesse i.e. disposal of Municipal Property by agreement with private builder and the said distribution was done contrary to the public interest. The property was a part of historical importance and located in congested-residential-cum-commercial area and the same was handed over by the Corporation to a Private Builder under an agreement for construction of an air conditioned underground shopping complex on the pretext of decongesting the area without inviting tender and without obtaining any project report.

In this case, the Supreme Court has held the action of the Corporation unreasonable, arbitrary, unfair and against the public policy, public interest and public trust doctrine. The grant was held to be illegal and, therefore, the construction was also illegal. This is not the factual position in the case on hand. The land is owned by the respondents. The same was not in the Development Plan of the Indore Development Authority, which is clear from the letter issued by the State Government (*supra*) and the sanction was granted by all the concerned authorities and they also found the construction in accordance with the sanctioned site plan which is clear from their own documents Ex. P/13, P/20 and P/23.

Learned counsel further relied on the judgment passed by the Supreme Court in the case of *Pratibha Co-operative Housing Society Ltd and another (supra)*. In this case, the Housing Society constructed more than 24,000 sq.ft. illegal construction contrary to the site plan and the Municipal Commissioner ordered for its demolition and the order for demolition of eight floors was substantially carried out. In this case, the illegal construction was an admitted position, whereas in the present case, according to the Inspection Reports made from time to time, during the course of construction of building by the appellants and the officials of Town and Country Planning Department, the construction was done in accordance with the sanctioned site plan. Therefore, the law laid down by the Supreme Court in this case is also not helpful to the appellants.

The Supreme Court, this Court as also various other High Courts of the country have discussed about the scope of interference in the Letters Patent Appeal and now it is well established that the L.P.A. is an intra Court appeal wherein the Division Bench corrects its own orders in exercise of same jurisdiction as is vested in the Single Bench. It is not an appeal against a judgment/order of a subordinate Court. The Division Bench should not be scanning out the order passed by the Single Bench from all corners See: Ku. Varsha Shrivastava, etc. Vs. State of M.P., . The scope of the L.P. A. is limited as held in the judgments referred to above. Even then, we have given our anxious consideration to the arguments advanced by the learned Counsel for the appellants and the grounds enumerated in the memo of appeal, and are of considered view that in the facts and circumstances of the present case Rules 25 and 31 of the Rules shall not apply. The learned Single Judge has rightly considered the provision of section 299 of the Act. The learned Single Judge has also taken into consideration the future eventualities when the Master Plan for the City of Indore will be implemented to safe-guard the interest of public at large, relying on the Supreme Court decision passed in the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , for modification or alteration.

Having regard to the aforementioned facts and features of the case, we do not feel it necessary to discuss the question of application of law on the issue of promissory estoppel as raised by the learned counsel for the respondents.

As a result of the discussion as aforesaid, this appeal fails and is hereby dismissed.