
(2005) 02 MP CK 0064

In the Madhya Pradesh High Court

Case No : Second Appeal No. 93 of 1990

Indore Municipal Corporation and Another

APPELLANT

Vs

Kundanlal

RESPONDENT

Date of Decision : 21-02-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Municipal Corporation Act, 1956 — Section 307, 320, 321, 322, 323

Citation : (2005) 2 MPHT 435 : (2005) 2 MPLJ 390

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

Bench : Single Bench

Advocate : Anand Agrawal, for the Appellant; R.K. Bhadang, for the Respondent

Final Decision : Allowed

Judgement

S.K. Gangele, J.

This is defendant's second appeal against the judgment and decree dated 24-4-89 passed in C.A. No. 6/88 affirming the judgment and decree dated 21-1-88 passed in C.S. No. 325-A/83. The appeal was admitted for hearing on following substantial question of law vide order dated 28-3-90 :--

"Whether by permanent injunction to the respondent with regard to a piece of land to which he has no title, the statutory powers and direction conferred on the appellant Corporation under Sections 322, 323, 307 and 376 of the Municipal Corporation Act can be nullified ?"

The facts of the case are that the plaintiff filed a suit for permanent injunction mentioning that he had been doing his business for the last 20 years on a Gumti constructed by him measuring 7 ft. and 9 1/2 ft. situated at Ranipura, Jawahar Marg, Indore. He further pleaded that he had submitted an application in 1975 to the defendant for regularisation of his encroachment, but no orders were passed by the defendants and prayed for permanent injunction against the removal of his Gumti.

The defendants in their statements denied the claim of the plaintiff by submitting that plaintiff/respondent constructed Gumti 5-6 months back of filing of the suit. It causes obstruction in traffic because it was placed on a public road, it is illegal and defendants/appellants had tried to remove it as per the provisions of Municipal Corporation Act.

Plaintiff/respondent examined himself and two witnesses in support of his claim who deposed that he had been doing his business for the last 20 years over the place by constructing the Gumti. The defendants/appellant examined one inspector Ramakant who stated that plaintiff placed his Gumti over a public road and it causes obstruction for traffic.

The Trial Court decreed the suit by holding that plaintiff was doing his business on the said place for the last 20 years by constructing the Gumti, although it causes some obstruction in traffic. The defendant passed a resolution in the year 1980 to regularise the Gumti, hence, the plaintiff is entitled to regularise his Gumti. Although, there is no such resolution on record of the case. The Trial Court further held that the plaintiff had been doing his business of bag repairing for the last 20 years and he had no other means of livelihood and he would suffer irreparable loss. There is no question of any loss to the defendant.

Against the aforesaid judgment the plaintiff filed an appeal. The appeal Judge also dismissed the appeal by holding that plaintiff was in possession of the Gumti for the last 22 years and he was doing his business. There was no evidence that it causes obstruction in traffic, hence, it could not be removed and also held that there is irreparable injury to the plaintiff/respondent because he had no other means of his livelihood.

Learned Counsel for the appellant submitted that both the Courts have committed an error of law ignoring the fact that the plaintiff constructed Gumti on public place and the appellant/defendant has statutory right to remove obstruction. It is an admitted position that the Gumti was not regularised by the Corporation. The power with regard to regularisation of encroachment is vested with the Government or the Corporation. Hence, the judgment and decree is against the law. He also relied on a judgment of the Supreme Court in *Friend's C. P.S. Sathappan (dead) L.Rs. v. Andhra Bank Ltd. and Ors.*, reported in 2004 AIR SC 5923.

Learned Counsel for the respondent submitted that both the Courts have not committed any error of law and the appeal is liable to be dismissed. It is an admitted position in the present case that from the pleading of the plaintiff himself that he had constructed his Gumti on the public place and it was not regularised by the Municipal Corporation. Hence, admittedly he had no legal or statutory right to carry on his business in the aforesaid premises. The appellant had power to remove the aforesaid encroachment as per provisions of Municipal Corporation Act, 1956. Sections 307, 321 and 322 prescribes such powers to the Corporation.

In my opinion both the Courts have committed an error of law in granting permanent injunction in favour of the respondent ignoring the aforesaid statutory powers of the appellant. It is not for the Civil Court to decide whether there was obstruction in the traffic or not or whether it can be regularised or not. The power is with the Corporation/appellant.

The Supreme Court in a judgment reported in 2004 AIR SC 5923 (supra) has specifically held with regard to removal of unauthorised construction, as under :--

"Though the local authorities have the staff consisting of engineers and inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop, some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders. At the same time, in order to secure vigilant performance of duties, responsibility should be fixed on the officials whose duty it was to prevent unauthorized constructions, but who failed in doing so either by negligence or by connivance."

The Supreme Court in Hindustan Petroleum Corporation Ltd. Vs. Sri Sriman Narayan and Another, , has held with regard to grant of interlocutory injunction which can also be applied with regard to grant of permanent injunction. It is specifically clear from the above principle that with regard to grant of permanent injunction the Court has to see that whether plaintiff has a legal right asserted by him in his favour or by violation of his right he would suffer irreparable injury. In the present case admittedly the plaintiff had no legal right to place Gumti on a public place and the Corporation had a legal right to remove such encroachment.

In my opinion both the Courts have committed an error of law in granting decree of permanent injunction in favour of the plaintiff ignoring the said aspect of law. The Court has no power to permit the encroacher to continue his business on a public place on the basis that if he be removed, he has no other means of his livelihood in absence of any statutory powers to this effect.

The Supreme Court in Yadarao Dajiba Shrawane (dead) by Lrs. Vs. Nanilal Harakchand Shah (dead) and Others, , has held as under with regard to powers of the High Court u/s 100 of CPC :--

"The position is well settled that when the judgment of the final Court of fact is based on misinterpretation of documentary evidence or on consideration of inadmissible evidence or ignoring material evidence the High Court in second appeal is entitled to interfere with the judgment."

On the basis of above analysis of law, facts and evidence on record of the case, I

hold that statutory powers of the Municipal Corporation conferred on Corporation under Sections 320, 323, 307 and 376 of the Municipal Corporation can not be nullified by granting permanent injunction with regard to a piece of land on which a person has no title by the Civil Court. I answer the question of law accordingly. Consequently, the appeal filed by the appellant/defendant Municipal Corporation is hereby allowed with costs. The judgment and decree passed by both the Courts are hereby set aside. The suit filed by the plaintiff is dismissed. The plaintiff is directed to bear the cost of the litigation through out.