
(2003) 09 MP CK 0070
In the Madhya Pradesh High Court
Case No : L.P.A. No. 263 of 2002

Indra Puri Jankalyan Samiti	Vs	APPELLANT
State of M.P. and Others		RESPONDENT

Date of Decision : 15-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Municipal Corporation (Transfer of Immovable Properties) Rules, 1994 — Rule 3, 3A
Madhya Pradesh Municipal Corporation Act, 1956 — Section 80
Madhya Pradesh Societies Registrikaran Adhiniyam, 1973 — Section 2, 21, 3, 4, 7

Citation : (2004) 1 JLJ 262

Hon'ble Judges : S.K. Seth, J;Deepak Verma, J

Bench : Division Bench

Advocate : C.L. Yadav, for the Appellant; D.D. Vyas, A.A.G. for Respondents No. 1 to 3, Z.A. Khan and G.M. Chaphekar, for the Respondent

Final Decision : Dismissed

Judgement

Deepak Verma, J.—Appellant is an unsuccessful Petitioner of the Writ Petition No. 1217 of 1998, having been decided by learned Single Judge vide order dated 24.6.2002. Present appeal has, thus, been preferred under Clause X of the Letters Patent.

2. The Appellant had filed the Writ Petition under Articles 226 and 227 of the Constitution of India, challenging order of allotment of land dated 20.1.1998, passed by Respondent No. 2 Municipal Corporation, Indore in favour of Respondent No. 4 and subsequent sanction accorded by State Government in favour of Respondent No. 2 vide its order dated 11.6.1998.

3. Learned Single Judge has dismissed the writ petition basically on the grounds that Appellant itself had never applied for allotment of land at any material time, or it was interested or was keen to apply for allotment of land but could not do so due to its allotment in favour of Respondent No. 4. Thus, it has no locus

standi to challenge the allotment of Respondent No. 4. It has also been held by learned Single Judge, that since land has been allotted by Respondent No. 2 in favour of Respondent No. 4 for a particular cause, which, has a sanction of the State also and, if, any terms and conditions of the allotment are violated, then, Respondent No. 1 to 3 have sufficient powers at their command to cancel the said allotment.

4. Thus, other questions projected in the writ petition were not dealt with by the Learned Single Judge. It also does not appear from the record, if the same were pressed into service, but learned Counsel for Appellant has vehemently contended, that all questions posed in the writ petition were argued but the same have neither been dealt with nor considered at all. In fact, learned Counsel for Appellant went on to argue that legal issues were indeed taken in the petition for arguing the same but not for keeping them dormant in the petition or during the course of hearing. However, without going into this controversy, we allowed learned Counsel for parties to project their respective case on merits and to cover all legal issues raised by them.

5. At one point of time, we also thought of remitting the matter to learned Single Judge for deciding it afresh on all questions, but, then, we decided to deal with all the questions ourselves in the appeal on merits. The learned Counsel appearing for parties also agreed to it so as to avoid unnecessary delay. Thus, we proceed to decide the same on merits.

6. Facts, shorn of unnecessary details are mentioned hereinbelow : Both Appellant and Respondent No. 4, are societies registered u/s 7 of the M.P. Society Registrickaran Adhinyam, 1973 [For short hereinafter shall be referred to as "Adhinyam"]. Respondents No. 1 and 3 are the State Government and arms of the State. Respondent No. 2 is the Municipal Corporation, Indore. According to pleading Appellant, Society has been formed with an intention to deal with the problems of the members of Society and to protect their rights.

7. u/s 80 of the M.P. Municipal Corporation Act, 1956 [Hereinafter shall be referred to as the "Act"], Corporation is vested with powers to deal with transfer or tease out Immovable properties belonging to it. In this matter, it is not disputed before us, that land in question admeasuring 4760 sq. mts. and 6100 sq. mts. situated within the said colony belong to Municipal Corporation, Indore and it had a right and competence to deal with it in any manner whatsoever, in accordance with law.

8. On 20.1.1988, vide resolution No. 1055 of Respondent No. 2, it was resolved to allot the aforesaid pieces of land to Respondent No. 4 for running a school. In the layout plan of Indrapuri colony, the said lands have been earmarked for educational activities only. Thus, there was no deviation as far as this aspect of the matter is concerned. The application for allotment of the land was made by Respondent No. 4 on 14.1.1988. It appears that against this allotment, objections were raised but nothing concrete was heard from the Respondents.

There was no progress in the matter between 1988 to 1993. On 13.12.1993, Director, Town and Country Planning, Bhopal, asked Municipal Corporation, Indore, to furnish details of lands sought to be allotted to Respondent No. 4. On 15.12.1993, Respondent No. 4 sent the reply to the Director, mentioning therein that the lands have already been vested in the Corporation and it was competent to allot the lands in favour of Respondent No. 4, subject to its approval by State Government.

9. After completion of other requisite formalities, Standing Committee of Respondent No. 2 passed a resolution dated 5.3.1997 to allot 10,860 sq. mts. of land of the said colony to Respondent No. 4 for setting up school and hostel on a premium of Rs. 5,09,500/-. Said resolution was then forwarded to State Government for according its approval for the same. After making other enquiries, State Government accorded permission to Respondent No. 2 Municipal Corporation Indore for allotment of the aforesaid land in favour of Respondent No. 4 for starting a school and construction of a hostel.

10. Appellant, therefore, challenged aforesaid order of allotment made by Respondent No. 2 in favour of Respondent No. 4 on 20.11.1988 and subsequent order of State Government dated 11.6.1998 according its approval and sanction to resolution of Respondent No. 2 Municipal Corporation, Indore, allotting land in favour of Respondent No. 4 Society in Writ Petition before the Learned Single Judge.

11. On notices being issued to Respondents, they appeared and submitted their respective replies denying claim of the Appellant.

[i] Respondent No. 1 and 3 submitted, that no favour has been shown to Respondent No. 4 nor any discrimination was practised against Appellant or any one else. It has been contended, that they have a power to allot land under amended Rule 3 of M.P. Municipal Corporation [Transfer of Immovable Properties] Rules, 1994 [Hereinafter shall be referred to as "Rules"]. The allotment of land and price was on recommendation of the Corporation and establishment of school and hostel is in the public interest. The Appellant was not entitled to any relief as claimed by it. The petition being devoid of any merits and substance, deserves to be dismissed.

[ii] Respondent No. 2 also denied claim of Appellant and submitted, that allotment has been made strictly in accordance with provisions of the Act and Rules. In the lay out of the colony, land was specifically earmarked for educational purposes and ever since 1969, Appellant took no steps for the allotment of land in its favour and has woken up from its slumber only when land had been allotted to Respondent No. 4. It also contended, that petition being meritless, deserves dismissal.

[iii] Respondent No. 4, the beneficiary Society contended, that Appellant Society is not a representative body of residents of plot holders of Indrapuri Colony, thus, any action by such a Society would not be maintainable. Bye laws of Appellant

Society indicates, that imparting of education is not mentioned as one of its aims and objects. It had never applied for allotment of land for public purpose, nor it had preferred any objections before Municipal Corporation or State, disclosing reasons, why land could not be allotted to Respondent No. 4. Respondent No. 4 has already taken possession of land and has made some constructions also. On grounds of delay and laches also, it was contended that petition deserves dismissal. It was also contended that the Respondent No. 4 has sufficient funds to start a school and to construct a hostel. Ground of arbitrariness at the instance of Respondents No. 1 to 3 was also denied and it was submitted that Appellant had never applied for allotment of land, thus, no question of arbitrariness arise. It was, therefore, contended, that the petition being devoid of any merits and substance, thus, deserved dismissal, which was rightly done by the Learned Single Judge.

12. In the light of aforesaid contentions, raised by parties, we have heard Mr. C.L. Yadav for Appellant, Shri D.D. Vyas, learned Addl. Advocate General for Respondents No. 1 & 3; Shri Z.A. Khan, learned Sr. Advocate for Respondent No. 2 and Shri G.M. Chaphekar, learned Sr. counsel for Respondent No. 4 at length and perused the record.

13. Learned counsel for Appellant has raised following grounds of attack, namely :

[i] Grant of lease in favour of Respondent No. 4, was violative of the provisions of Section 80 of the Act, as also of Rule 3 of the Rules.

[ii] u/s 21 of the Adhiniyam, prior permission in writing of Registrar of Firms and Societies is required before any property is acquired by the Society.

[iii] Respondents No. 1 to 3 had neither fixed nor have charged adequate premium for the land granted to Respondent No. 4 vide the impugned lease.

[iv] Action of Respondents No. 1 to 3 in allotting the plot to Respondent No. 4 was wholly arbitrary.

14. Now we shall take up all the aforesaid grounds in same seriatim as have been mentioned hereinabove.

15. Taking up point No. 1, i.e. with regard to breach of provisions of Section 80 of the Act and Rule 3 of Rules, it is apposite to reproduce the relevant portions. The relevant part of Section 80 of the Act is reproduced hereinbelow :

80. Provisions governing the disposal of municipal property or property vesting in or under the management of Corporation ? [(i) no streets, lands, public places, drains or irrigation channels shall be sold, leased or otherwise alienated, save in accordance with such rules, as may be made in this behalf.]

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5. The foregoing provisions of this section shall apply to every disposal of

property belonging to the Corporation made under or for the purpose of this Act:

Provided that -

[i] no property vesting in the Corporation in trust shall be leased, sold or otherwise conveyed in a manner that is likely to prejudicially affect the purpose of the trust subject to which such property is held;

[ii] no land [value of which may be prescribed] shall be sold or otherwise conveyed without the previous sanction of the Government and every sale, or other conveyance of property vesting in the Corporation shall be deemed to be subject to the conditions and limitations imposed by this Act or by any other enactment for the time being in force.

16. Similarly Rule 3 of Rules is also reproduced hereinbelow for ready reference :

3. No immovable property which yields or is capable of yielding an income shall be transferred by sale, or otherwise conveyed except to the highest bidder at a public auction or by inviting offer in a sealed cover;

Provided that if the Corporation is of the opinion that it is not desirable to hold a public auction or to invite offers in sealed covers the Corporation may, with the previous sanction of the State Government, effect such transfer without public auction or inviting offers in sealed covers;

Provided further that the Corporation may with the previous sanction of the State Government and for the reasons to be recorded in writing, transfer any immovable property to a bidder other than the highest bidder;

Provided also that for any such transfer by lease a reasonable premium shall be payable at the time of granting the lease and annual rent shall also be payable in addition during the total period of the lease.

17. Here it may also be pertinent to mention that Rule 3-A has been inserted in the Rule vide notification dated 22.1.1998. Since Rule 3-A is also required to be referred to for the purpose of deciding this petition, the same is also reproduced hereinbelow for ready reference:

3-A. Notwithstanding anything contained in Rule 3, the transfer of any immovable property to a public institution for the purpose of educational charitable, religious or general public shall be made with the prior sanction of the State Government in accordance with the terms and rates as determined in the Revenue Book Circulars IV(1).

18. After going through the aforesaid provisions of law, applicable to the facts of the case, it is clear, that the property belonging to the Corporation can be sold or otherwise conveyed only after previous sanction of the Government is obtained.

19. This right to transfer immovable property has further been relaxed after insertion of Rule 3-A in the Rules. This Rule 3-A clearly gives a right to transfer any immovable property to a public institution for the purposes of educational,

charitable or religious purposes.

20. It has not been disputed before us, that Respondent No. 4 has already started running a School since July, 1998 from a rented premises. I Thus, transfer of property in favour of Respondent No. 4 would be squarely covered under the amended provisions of Rule 3-A of Rules. This fact has also been fortified by an affidavit of Mr. Alok Khare filed on 24.3.2003 with details of educational activities conducted by this Respondent have been elaborately given. There was no rebuttal of these averments made by Appellant. Since, on the relevant date this Rule 3-A was already on the Statute Book, thus, the same was applicable to the facts of present case, as sanction by State Government was accorded on 11.6.1998. Thus, in the considered opinion of this Court, there was no violation of either the provisions of Section 80 of the Act, or, the Rules framed thereunder. Respondents No. 1 to 3 have acted within the framework of law. Thus, ground No. 1, as canvassed before us, is, negated against Appellant.

21. Coming to ground No. 2 with regard to Section 21 of Adhiniyam, it is to be seen that actual lease-deed in favour of Respondent No. 4 was executed on 11/14.7.1998. Respondent No. 3 Registrar had granted permission in this regard, as contemplated u/s 21 of the Adhiniyam to Respondent No. 4 on 16.9.1998. Section 21 of the Adhiniyam? which, would be relevant to be dealt with for deciding this question, is, reproduced hereinbelow :

21. Society not to acquire or sell or transfer immovable property without prior permission of Registrar: No immovable property shall be acquired or transferred by sale, gift or otherwise by the society without the prior permission of the Registrar in writing.

22. Vide Act No. 29 of 1998, which, had received the ascent of Governor on 31.8.1998, existing aforesaid Section 21 of the Adhiniyam was further amended and Sub-sections 2, 3 & 4 were added to the same. The amendments are also reproduced hereinbelow :

[2] The property acquired or transferred shall not be utilised for any object other than the object of the society unless permission from the Registrar have been obtained and in case of gift written consent of the donor has also been obtained.

[3] The application for permission under Sub-section [1] and [2] shall be in such form with such documents together with such fee as may be prescribed.

[4] Where the society violates the provisions of Sub-section [1] or [2], the society shall be liable to deposit such amount as may be prescribed within three months from the date of notice issued by the Registrar and if the society fails to deposit the amount within the aforesaid time, the society shall be treated as defunct u/s 34.

23. Prior to amendment in Section 21 of the Adhiniyam, there was no penal provisions. The penal provisions have been inserted only with effect from 31.8.1998, i.e. subsequent to the execution of their lease-deed in favour of

Respondent No. 4 on 11/14.7.1998.

24. Perusal of original Section 21 of the Adhiniyam would show that provision is directory in nature and not mandatory. Purpose of this provision is that society is required to invest money in property properly without there being any scope for investing money in properties unnecessarily and for making profit out of the same and not with an intention to speculate rise in price of property. The said provision further makes it clear that even, if, without permission of the Registrar any transaction has taken place, that shall not be affected in any manner, whatsoever.

25. In absence of any such prior permission, it would neither make the transaction void ab initio nor non est, as at a later stage also, Registrar has power and competence to rectify the said transaction. But, in absence of any such prior permission, the transaction itself shall not become null and void.

26. When consequences of nullification on failure to comply with a prescribed requirement is provided by the statute itself, there can be no manner of doubt that such statutory requirement must be interpreted as mandatory. Thus, the general rule is, that non-compliance of mandatory requirements must result in nullification of the act done by the authority and if it is not so, then, the provision would be directory. In the case in hand, it is to be seen, that Registrar had granted permission to Respondent No. 2 with regard to execution of lease deed in favour of Respondent No. 4, may be after execution of lease deed, by that would not make the document non est or void ab initio.

27. Now coming to third point with regard to adequate premium for the land charged from Respondent No. 4. Respondent No. 2 has submitted a chart showing rates at which land could be allotted to society for educational purposes. It has been ordered by State Government that land in question be allotted to Respondent No. 4, as per provisions of Revenue Book Circulars Part IV [I] on concessional rate, as may be applicable to the facts of case. A Clarification in this regard was also issued by Government vide circular dated 17.7.1982. Vide this circular, it has been clarified as to at what rate premium and ground rent would be charged from societies which are engaged in educational or religious activities. The said clarification contains the clauses with regard to the rate of premium for the plots, which are admeasuring 10,000 sq. fts. and Ors. which are admeasuring more than 10,000 sq. fts. The chart showing the details of premium, charged from Respondent No. 4 by Respondent No. 2, fully establishes that premium charged from Respondent No. 4 for the land in question, was, even, higher than what was fixed by Government.

28. We have critically examined the provisions of Revenue Book Circulars; clarification of the Government, issued in this regard and the table filed by Respondent No. 2, showing the amount of premium and ground rent to be charged from such Educational Institutions. We are satisfied, that premium charged and ground rent fixed was, just and proper and no favour in this regard

has been shown to Respondent No. 4.

29. Nothing could be pointed out to us during course of arguments as to the amount charged towards premium or ground rent from Respondent No. 4, was, not in accordance with either provisions of Revenue Book Circulars, or, was against the circular issued by State Government. Thus, in this ground also, we find no merit and substance.

30. Now coming to the last ground. It is pertinent to mention here, that Appellant itself had never applied for allotment of plot in its favour. The cumulative effect of aforesaid discussion shows that no arbitrariness could be pointed out by Appellant with regard to action of Respondents No. 1 to 3 in executing lease deed in favour of Respondent No. 4. In any case, Appellant cannot be said to be affected adversely by the action of Respondents No. 1 to 3, as Appellant itself had never applied for allotment of plot, which, was subsequently allotted in favour of Respondent No. 4.

31. After going through the action and conduct of Respondents and examining the same critically, we find, that no case was made out on the ground of arbitrariness. Thus, this ground also fails and, is, hereby rejected.

32. Apart from above, it is pertinent to mention here that Appellant has neither challenged, nor has prayed for quashment of lease deed, executed in favour of Respondent No. 4 on 11/14.7.1998. Thus, assuming for a moment, even, if the two impugned orders, the quashment of which, Appellant is seeking, are quashed, the lease deed by which Respondent No. 4 is in possession of the disputed land, would, still stand as it is. Thus, on this ground also, we are of the opinion, no relief can be granted to the Appellant at this stage.

33. Before parting with the case, it may be necessary to mention with regard to the judgment of Supreme Court, reported in the matter of Vinoy Kumar Vs. State of U.P. and Others,], relied upon by learned Single Judge. While interpreting the words, "person aggrieved", Supreme Court has held, that third party shall have no locus standi to file writ petition, alleging legal ground or injury suffered by any individual, unless it was a writ of quo warranto or habeas corpus, or, a PIL. The reliefs sought in the aforesaid case did not reflect, that either it was in the nature of quo warranto, or, habeas corpus, or, PIL, whereas in the case in hand, Appellant is a society of residents of Indrapuri Colony and would certainly be interested to safeguard the interests of residents of the said Colony. Thus, it had a right and competence to file writ petition. The ratio decidendi of Vinoy Kumar (supra) was not applicable to the facts of present case. With utmost humility and with great respect to the Learned Single Judge, we are of the considered opinion, that the view expressed by Learned Single Judge appears to be little misconceived, while placing reliance on aforesaid judgment of the Supreme Court.

34. In view of aforesaid discussions, we find that this Letters Patent Appeal and Writ Petition, are devoid of any merit and substance, as such both are, hereby, dismissed, but, with no order as to costs.