
(2015) 02 MP CK 0082

In the Madhya Pradesh High Court

Case No : Writ Petition (PIL) No. 1879/2007

Jagdishchandra

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 12-02-2015

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 187(b)

Citation : (2015) 2 MPJR 211 : (2015) 2 MPLJ 518

Hon'ble Judges : D.K. Paliwal, J.; P.K. Jaiswal, J.

Bench : Division Bench

Advocate : Vinay Kumar Zelawat, learned Senior Counsel and Siddharth Jain, for the Appellant; Mini Ravindran, Deputy Government Advocate, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

P.K. Jaiswal, J.—This writ petition has been filed by Jagdishchandra s/o Late Nanalal Maheshwary and Umesh Joshi s/o Kanhaiyalal Joshi against respondents No. 1 to 3 for their inaction to take any steps against respondents No. 4 and 5, who are illegally constructing Shopping Complex and Hotel on the leased out land for the purpose of Cinema Hall. This writ petition has been preferred by the petitioners as Public Interest Litigation against the illegality and illegality committed by respondents No. 4 and 5 in converting land use allotted to them for the alleged wrongful gain and personal benefits contrary to the lease agreement and without any permission from the concerned departments. Therefore, the petitioners sought appropriate action for cancellation of the lease illegally renewed in 2003 in favour of respondents No. 4 and 5.

2. Brief facts of the case are that on 19.10.1946, lease-deed in respect of 95,200 sq. ft. of land was executed between the father of respondent No. 4 and representative of the then Crown for the period of thirty years. The lease was granted for the purpose of starting Cinema Hall and activities connected therewith. Conditions No. 5 and 6 of the lease-deed are relevant for the purpose

of the present controversy and it reads, as under: -

"5. Within three calendar years next after the date of these presents at his cost to erect and finish fit for habitation use on the premises hereby demised Cinema Hall and other necessary building together with all necessary outhouses sawer drains and other appurtenances in accordance with a plan or plans to be approved in writing by the Municipal Committee, under the provisions of the Neemuch Cantonment Municipal Law, 1986, and not to erect or suffer to be erected or any part of the premises hereby dismissed any building other than the Cinema Hall and other necessary building hereby converted to be erected without the previous consent in writing of the Municipal Committee.

6. Not to make any alterations in the plan or elevation of the said Cinema Hall and other necessary building without such consent as aforesaid nor to use the same or permit the same to be used for any purpose other than that stated above."

3. According to the petitioner, respondents No. 4 and 5, on 06.03.1984 filed a collusive suit for declaration in respect of 95,200 sq. ft. of Vijay Talkies against Fateh Singh Chordia (father of respondent No. 4), without impleading the Municipality as one of the defendant. The father of respondent No. 4 filed a formal written statement and thereafter the suit was decreed on 09.04.1984. On the basis of the judgment and decree dated 09.04.1984, respondents No. 4 and 5 applied for mutation of their names, as is evident from the proceedings of mutation (Annexure P/7).

4. On 04.07.1986, the lease granted to Fatehmal Chordia, father of respondent No. 4, in respect of the aforesaid land renewed further for a period of thirty years i.e. up to 19.10.2006 (Annexure P/8). It is alleged that after renewal of lease, respondents No. 4 and 5, without sanction and due permission and contrary to the Master Plan, started constructing Shopping Complex and Hotel in the leased premises.

5. On 05.08.2003, a show cause notice (Annexure P/9) was issued by the District Magistrate, Neemuch to the proprietor of Vijay Talkies for raising unauthorized construction in the premises. On 18.06.2004, the lease in respect of the aforesaid land was again renewed for a period of thirty years in favour of respondents No. 4 and 5.

6. On 02.05.2005, in the Meeting No. 12 of the Council, three Corporators placed a resolution in the meeting that Shri Raghuraj Raj Singh Chordia, President of the Municipal Council is illegally trying to transfer the names of the purchaser of the Shopping Complex situated at Vijay Talkies premises and these shops being illegally constructed, be demolished. To consider this, Resolution No. 115 was passed and a Committee was constituted.

7. It is also alleged that respondent No. 4, President, Municipal Council, Neemuch in collusion with some of the purchasers of the shops of his Shopping Complex,

filed a civil suit for declaration and mandatory injunction against respondents No. 2 and 3, prayed for declaring Resolution No. 115 null and void and also sought relief that the names of the plaintiffs therein be mutated.

8. The main allegation is that respondents No. 4 and 5 are illegally constructing Shopping Complex and Hotel, contrary to the terms and conditions of the lease-deed and no statutory permission was granted to them; and therefore, the whole construction of the Shopping Complex is illegal, contrary to the Scheme of Master Plan. The petitioners also stated that the lease over the land in question was granted for specific purpose for construction of Cinema Hall only and the same cannot be changed without obtaining due permission from the District Magistrate. The construction of the Shopping Complex and Hotel in the leased premises is illegal, and therefore, prayed that respondents No. 1 to 3 and 6 be directed to cancel their lease, which was illegally renewed in favour of respondents No. 4 and 5 and demolish the illegal construction.

9. Respondent No. 3 - Municipal Council, Neemuch, in its reply has stated that the construction of the Cinema Hall or further construction of another portion of Cinema Hall was all got done under the valid permission of the State Government and the erst while Municipal Authority, as per the prevailing provision of law.

10. In para 6 of the reply, Municipal Council has very categorically admitted that the Municipal Council was not impleaded as a defendant in the civil suit where a decree of division of shares / portions of the lease land was drawn by the Civil Court in favour of respondents No. 4 and 5. After the decree dated 09.04.1984 passed by the Civil Court, the matter was processed at the Secretariat Level of Urban Administration and Development Department of the State Government and a sanction-cum-permission order was passed on 30.09.2003, permitting renewal of lease to both respondents No. 4 and 5; and as such, it cannot be said that the Municipal Council has executed the lease renewal on its own, as the same was done only upon receiving the specific order of the State Government. The construction on the lease land had been raised by respondents No. 4 and 5, after obtaining building permission of the Municipal Council, Neemuch. They also filed copies of the building permissions granted by the Municipal Council from time to time as Annexure R-3(1) to Annexure R/3 (8).

11. Respondent No. 2 - District Magistrate, Neemuch, in its reply has stated that as per Conditions No. 5 and 6 of the lease-deed, the land in question was granted on lease to run Cinema Hall in the leased premises. Earlier, two Cinema Halls were being run by respondent No. 4; out of which, one is still intact i.e. Raj Mandir and another has been demolished for the construction of a Shopping Complex i.e. Vijay Talkies. AS per the lease agreement, the lease holders should have continued to run a Cinema hall over the said piece of land. Para 4 of the reply reads, as under: -

"4. That the respondent herein-above further submits that the original lease was given to the father of the respondents for the purpose of starting Cinema Hall

and activities connected therewith. It is ALSO true that the Condition No. 5 and 6 of the lease-deed clearly shows that the father of the respondent No. 4 was granted permission to run a cinema hall in the leased premises. It is respectfully submitted that earlier, two cinema halls were being run by the respondent No. 4, out of which one is still intact [i.e. Raj Mandir] and another has been demolished for the construction of a shopping complex i.e. Vijay Talkies. As per the leased agreement, the lease holder should have continued to run a cinema hall over the said piece of land." 12. Respondent No. 2 also admitted that the petitioners have submitted an application under Section 187(b) of the Madhya Pradesh Municipality Act, 1961 before the Court of District Magistrate, Neemuch.

13. This Court while hearing the matter on 29.08.2007 and 14.11.2007 has observed, as under: -

"29.08.2007

Shri A.S. Garg, learned Sr. Counsel with Shri Sunil Jain, learned counsel for the petitioners.

Shri A.S. Kutumble, Additional Advocate General for respondents No. 1, 2 and 6.

On behalf of respondent No. 6 Shri S.V. Kohad, Deputy Director, is present.

Shri Piyush Mathur, learned counsel for the respondent No. 3.

Shri S.C. Bagadia, learned Sr. Counsel with Shri Vivek Dalal, learned counsel for the respondents No. 4 and 5.

Learned Additional Advocate General tried to demonstrate that for a portion of the land, on which the building is allegedly constructed, permission of Town and Country Planning Department has not been accorded.

Learned Sr. Counsel Shri Bagadia, submits that since the said statement has been made for the first time only today, the respondents be directed to file their return along with the documentary proof so that respondents No. 4 and 5 can file an appropriate reply in rebuttal thereof.

Shri A.S. Garg, Sr. counsel submits that on account of passage of time during the pendency of this petition, the building is nearing completion and respondents No. 4 and 5 are taking steps to create third party rights. It is made clear that if the respondents No. 4 and 5 desire to alienate property in any manner, the respondents shall duly apprise the person inducted of the fact that this writ petition is pending concerning the said land and building.

The State is granted a week's time to file its return. The Deputy Director, Town and Country Planning Department, present today shall appear on all dates, unless otherwise directed.

List the case on 7th September of 2007.

14.11.2007

Shri A.S. Garg, Sr. Advocate with Shri Sunil Jain, learned counsel for the petitioner.

Shri A.S. Kutumble, learned Additional Advocate General with Shri Manish Joshi, counsel for the respondents No. 1, 2 and 6.

Shri Piyush Mathur, learned counsel for respondent No. 3.

Shri S.C. Bagadia, Sr. Advocate with Shri Vivek Dalal, counsel for respondents No. 4 and 5.

Though the Dy. Director, Town and Country Planning, Neemuch has filed reply, he is directed to file the sanctioned lay out for the area, if any, and to file a specific affidavit as to whether building constructed by respondents No. 4 and 5 is in conformity with the provisions of Nagar Tatha Gram Nivesh Adhiniyam and the Bhumi Vikas Niyam, 1984 and other provisions of law, respondent No. 3 Municipality, Neemuch is directed to examine whether the sanction for construction of building in question has been accorded by the Municipality and if so, whether the building has been constructed in accordance with the sanction so accorded. The respondent shall also place on record as to why and how the lease was renewed in the year 1986 for a period of 20 years despite its expiry in the year 1976 and the respondents No. 4 and 5 were continued to possess and hold the property despite efflux of the period.

Above information be submitted within two weeks."

14. In pursuance to the order dated 14.11.2007, Municipal Council, Neemuch filed its additional written submissions on 12.12.2007 and stated that originally the lease was granted for a period of thirty years i.e. up to 18.10.1986. On 09.09.1976, application for renewal was filed. On 08.11.1982, a resolution was passed by the then Administrator of the Municipal Council, Neemuch and as per the directions of the Deputy Director, the land was renewed for a period of thirty years at the revised rate of annual lease rent from Rs.952/- to Rs.1,428/- and the proposal of renewal of lease was sent to the State Government for its approval. It is also alleged that on the basis of the approval granted by the State Government, lease-deed was ordered to be executed on 04.07.1986. No document has been filed to show that the approval was granted by the State Government. In support of the other renewal, it is stated that in the year 2004, respondents No. 4 and 5 applied for renewal of the lease to the State Government and the State Government had been pleased to grant necessary permission / approval; and therefore, third renewal was ordered and accordingly executed by the Municipal Council on 18.06.2004 by dividing the entire leased premises of 95,200 sq. ft. into two parts of 58,675 sq. ft. and 36,525 sq. ft. and had determined and evaluated the total revised amount of lease from Rs.1,428/- to Rs.2,142/- per annum by dividing the lease rent accordingly in two parts.

15. In respect of construction of Shopping Complex, the Municipal Council has admitted following in paragraph No. 7, which reads as under: -

"7. That for ascertaining the legality or illegality of the entire Constructions upon the Leased Premises, the entire Sanctions and Permissions have been taken out from the Records and have been thoroughly examined, which reveals that the Private Respondents (4) and (5) (and their predecessor farther) had taken Lawful Permissions of the Municipal Council, before Concerning Construction and for making any kind of additions or alterations and they had Constructed the Buildings, as per the Sanctioned Building Plans. For demonstrating this aspect of the matter, copies of all the Building Permissions and the Lay Out Plans are submitted herewith marked as Annexure R/3 (12) to R/3 (24)." 16. The main question in this writ petition is - Whether respondents No. 4 and 5 have violated the terms and conditions of the lease in converting the land use of the premises leased out to them from the commercial / entertainment to commercial / general and the said activities are without any authority of law?

17. As per reply of respondent No. 6, permission for construction of the shop was given by order dated 03.12.2004 (Annexure R-6/1) for the development of the land only to the extent of outer boundaries "A" to "A" and no permission for the direction, which has been undertaken at present by respondents No. 4 and 5 has been given by respondent No. 6 - Deputy Director, Town and Country Planning Department, Neemuch.

18. As per Section 29 of the Nagar Tatha Gram Nivesh Adhiniyam, 1973 (herein after referred to as the Adhiniyam, 1973), person has to seek permission before development of the land from the Competent Authority and the said permission is given by the Competent Authority, as per the provision of Section 30 of the Adhiniyam, 1973. The permission for the said development over the existing Cinema Hall Raj Mandir and Vijay Talkies, which are represented and marked in the map as existing over Cinema Hall No. 1 and existing Cinema Hall No. 2 respectively, have not been taken.

19. The Deputy Director has very categorically admitted that construction in the place of Cinema Hall No. 2 (Vijay Talkies) has been made without due permission from respondent No. 6; in respect of Cinema Hall No. 1 i.e. Raj Mandir, which is still in existence and being run as a Cinema Hall.

20. AS per Master Plan (Annexure R-6/2), the land under construction and for existing Cinema is now earmarked for commercial / general. Earlier, it was commercial / entertainment, which has now been converted since 2000, but after enforcement of the Master Plan, no person can change the land use and cannot undertake land development without prior permission of the Director or Deputy Director, as the case may be, as per Section 26 of the Adhiniyam, 1973.

21. The land use for commercial development has already been given in the year 1999 (27.10.1999) and 1993 (22.01.1993) respectively. Para No. 4 of the reply dated 06.09.2007 of the Deputy Director, Town and Country Planning Department, Neemuch is relevant, which reads, as under: -

"4. It is further submitted by the answering respondents that as per Section 29

of the Nagar Tatha Gram Nivesh Adhiniyam, 1973 [herein after referred to as Adhiniyam, 1973, for the sake of brevity], the person has to seek permission before development of the land from the competent authority and the said permission is given by the said competent authority as per the provisions of Section 30 of the Adhiniyam, 1973. The permission for the said development over the existing Cinema Hall Raj Mandir and Vijay Talkies, which are represented and marked in the map as existing over Cinema Hall No. 1 and existing Cinema Hall No. 2 respectively, have not been taken. Therefore, construction in place of Cinema Hall No. 2 (Vijay Talkies) has been made without due permission from the respondent No. 6." 22. From the documents filed by respondents No. 4 and 5 along with IA No. 212/2011, no separate permission was taken by them for demolishing the talkies, as required under Rule 94 of Cinema (Regulation) Rules, 1972.

23. In the disputed premises, respondents No. 4 and 5 were running talkies and now they have demolished the talkies and have constructed the commercial complex. As per affidavit of the Deputy Director, Town and Country Planning dated 28.11.2007, in the Master Plan, the said area in question has been shown as commercial. The Deputy Director in paragraph No. 2 of his affidavit very categorically admitted that no sanction was obtained by respondents No. 4 and 5 for construction of Commercial Complex in the disputed premises, and therefore, as per Bhumi Vikas Rules, 1984, it was obligatory on them to obtain permission for changing the land use.

24. Rule 2 (5) (a) and (b) (i) of the Madhya Pradesh Bhumi Vikas Rules, 1984 reads, as under: -

"2. Definitions - In these rules, unless the context otherwise requires-

(1)

(2)

(3)

(4)

(5) "Authority having jurisdiction" (hereinafter referred to in these rules as "Authority") in relation to development and building activities means -

25. Chapter VI of Cinema (Regulation) Rules, 1972 (for short, Rules, 1972) deals with permission for building a Cinema. Rule 87 bears the head-note "Permission for building", which provides "No existing premises for being used as a cinema except with the previous permission in writing of the Licensing Authority". As per Rule 94, no additions and alterations shall be made to a cinema except with the written permission of the Licensing Authority. In the present case, the respondents No. 4 and 5 without written permission of the Licensing Authority, demolished "Vijay Talkies" and constructing Shopping Complex therein, in violation to Rule 94 of the Rules, 1972.

26. From the aforesaid, it is evident that no sanction was obtained / granted for construction of commercial complex from the Town and Country Planning Department, as required under law, stated above, and there is a change of use of land from cinema to commercial complex, which is in breach of the terms of lease. In view of the clear violation of law and breach of terms of the lease, the relevant authorities of Respondents No. 1 to 3 and 6 to take necessary action as laid down under the relevant provisions of law within a period of three months, after due notice and hearing to the lessee. The respondent - State Government is directed to take necessary action as per terms of lease for changing the purpose for lease granted, which is in breach of the terms of lease within a period of three months, after due notice and hearing to the lessee. The District Magistrate is also directed to take appropriate action against the lessee for constructing Shopping Complex in violation to Rule 94 of Rules, 1972 within a period of three months, after due notice and hearing to the lessee. The respondent - District Magistrate as well as respondents No. 3 to 5 are directed to submit compliance report before the Principal Registrar of this Court supported with their affidavit within a period of four months from today.

27. The petition is accordingly partly allowed only in terms stated herein before. No costs.