
(2008) 02 MP CK 0043
In the Madhya Pradesh High Court

Jeevan Singh

APPELLANT

Vs

State of M.P. and Others
 Rewa Prakashan Ltd. and
Others Vs Indore Development Authority

RESPONDENT

Date of Decision : 19-02-2008

Acts Referred:

Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 38

Citation : (2008) ILR (MP) 1650 : (2008) 2 MPHT 126

Hon'ble Judges : S.K. Kulshrestha, J;Manjusha Namjoshi, J

Bench : Division Bench

Judgement

S.K. Kulshrestha, J.—Apprehending the determination/termination of the leases granted to the petitioners Newspapers in view of judgment of this Court in Vijay Kumar Tiwari v. State of Madhya Pradesh, vide order dated 9-12-2005 directing that the leases granted by Development Authorities constituted u/s 38 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (hereinafter referred to as "the Adhiniyam of 1973") at concessional rates to the newspapers against Rules 19 and 20 are void and are quashed, the petitioners have rushed to this Court to seek a direction to the respondent (Indore Development Authority) not to proceed to determine the lease in the light of the said judgment of this Court.

2. These cases relate to the allotment of land to the Newspapers on the hypothesis that the Newspapers were entitled to such allotment being Educational Institution and the land was designated in the Master Plan for the educational purposes. One Vijay Kumar Tiwari filed the said petition (W.P. No. 3518/92) assailing the sanctity, validity, legality and propriety of the action of the Development Authority in yielding to the pressure of the State Government and making allotment contrary to the provisions of the Adhiniyam of 1973. It was particularly stressed that Newspapers were not "Charitable Institution" for which land could be allotted on concessional rates. It was in this background that this Court after considering the import, meaning and impact of Rules 19 and 20 of the Madhya Pradesh Nagar Tatha Gram Nivesh Vikasit Bhoomiyo, Griho, Bhavano

Tatha Anya Sanrachanao Ka Vyayan Niyam, 1975 (hereinafter referred to as "the Niyam") came to the conclusion that such allotments were totally outside the scope of the provisions contained in Rules 19 and 20 and directed that all such demise of plots being void quashed all such concessional leases which traversed outside the scope of Rules 19 and 20.

3. The contention of the learned Counsel for the parties is that firstly it is on the dictate of the State that the lands were allotted at concessional rates and even otherwise since the newspapers were rightly held to be subserving educational purposes as held by this Court in the judgment rendered on 30-4-1998 by a Division Bench in *Compac Printers Pvt. Limited and Ors. v. Indore Development Authority*, Misc. Petition No. 1197/1989, the matter did not remain *res integra* and, therefore, there was no impediment in allotment of land designated in the Master Plan as educational.

4. The short question that arises for consideration of this Court is as to whether in the light of the judgment rendered by a Division Bench in Misc. Petition No. 3518/92, on 9-12-2005, the allotments made in favour of the petitioners and the respondent in Public Interest Litigation, W.P. No. 4806/2007, can be sustained or the authority under the provisions of *Adhiniyam* and Rules can determine the lease and obtain the possession from the lessees.

5. Indore Development Authority is constituted under the provisions of Section 38 of the *Adhiniyam* for implementing the proposal in the development plan, preparing one or more town development schemes and acquisition and development of land for the purpose of expansion or improvement of the area specified in the notification under Sub-section (1), subject to the provision of the Act. Section 2 (u) defines the Town Development Scheme to be a Scheme prepared for the implementation of the provisions of a development plan by the Town and Country Development Authority and includes "Scheme". Section 49 enumerates the other purposes for which the Development Authority can take steps namely:

(i) acquisition, development and sale or leasing of land for the purpose of town expansion;

(ii) acquisition, relaying out of, rebuilding, or relocating areas which have been badly laid out or which has developed or degenerated into a slum;

(iii) acquisition and development of land for public purposes such as housing development, development of shopping centres, cultural centres, administrative centres;

(iv) acquisition and development of areas for commercial and industrial purposes;

(v) undertaking of such building or construction; (vi) acquisition of land and its development for the purpose of laying out or remodeling of road and street patterns;

(vii) acquisition and development of land for playground, parks, recreation centres and stadia;

(viii) reconstruction of plots for the purpose of buildings, roads, drains sewage lines and other similar amenities;

(ix) any other work of a nature such as would bring about environmental improvements which may be taken up by the authority with the prior approval of the State Government.

6. Section 50 lays down the procedure to be adopted in preparation of the Scheme. The authority has first to declare its intention to prepare a scheme and invite objections; prepare the draft scheme and by conveying intention to prepare a Scheme inviting objections and prepare the draft scheme and finalise the scheme under Sub-section (7) of Section 50. Since the Scheme is required to adhere to the designated use of the land in the Master Plan, it is in keeping with the provisions contained in the Master Plan that the Scheme is prepared consistent with the designated use contained therein. It is not disputed that in the Scheme as prevailed at the time these allotments were made to petitioners and respondent No. 4 in W.P. No. 4806/2007, filed as a PIL, the designated use of the land allotted was educational. It, therefore, becomes necessary to elicit whether the Indore Development Authority has deviated or digressed from the purpose stated in the Scheme on the Master Plan in making allotment to them. The question, however, cannot be said to have been left open or concluded by the judgment in *Vijay Kumar Tiwari* (supra), as way back in the year 1998, this question was agitated and decided in favour of the Newspapers by a Division Bench of this Court.

7. The controversy before the Division Bench in Misc. Petition No. 1197/89, decided on 30-4-98 was whether Newspapers impart education by publishing various political and economical news, which is available even to ordinary persons. It was held that the newspapers not only impart education by publishing information, for the benefit of public at large, but also increase awareness, which is very important for creating public opinion, and for keeping the people vigilant. It was also observed in Paragraph 5 of the decision that the newspapers do impart education to the people at large and create awareness. Education imparted by newspapers may not be taken as academic education, but can definitely be accepted to be an institution which imparts knowledge and education to the public at large. It is, however, not disputed that this decision was not brought to the notice of the subsequent Division Bench in *Vijay Kumar Tiwari* (supra), and the learned Judges proceeding on their own interpretation of Rules 19 and 20, came to the conclusion that the allotment amounted to distribution of largess.

8. Before advertng to the other facts and the provisions of law, we think it apt to reproduce Rules 19 and 20 of the said Rules for a proper understanding of the controversy. The said Rules read as follows:

Rule 19. The Authority may with the previous approval of the State Government lease out on concessional terms any Authority land to any public institution or body registered under any law for the time being in force.

fu;e 19- izkf/kdkjh] jkT; ljdkj ds iwoZ vuqeksnu ls] fdLh izkf/kdkjh Hkwfe dks rRle; ize`Rr fdLh fof/k ds v/khu jftLV?hd`r fdLh lkoZtfud laLFkk ;k fudk; dks fj;k;rh fuca/kuks ij iV~Vs ij ns ldsxk A

Rule 20. Ordinarily, no lease or sale of land on concessional terms shall be allowed for the purposes of other than charitable purposes such as for hospital, educational institutions and orphanages.

fu;e 20- lk/kkj.kr;k Hkwfe dk fj;k;rh fucU/kuksa ij dksbZ iV~Vk ;k fodz; iwoZ iz;kstuks tSlS vLirky "kS{kf.kd laLFkkvks rFkk vukFkky;ks ls fHkUu iz;kstuxsa ds fy, vuqKku ugh fd;k tk;sxk A

9. Rule 20 has not been happily worded and it appears that "of between "purposes" and "other" is redundant for interpreting the said Rule. The Hindi version, however, gives the correct picture. However, the exercise of interpretation has become superfluous as the said Rule has already been taken into consideration by the Supreme Court in K.K. Bhalla Vs. State of M.P. and Others, . In Paragraph 36 of the judgment, Their Lordships have referred to the Rules and stated that approval of the State Government is required for transfer of the land on concessional terms and no lease on concessional terms shall be allowed for purposes other than charitable purposes such as hospital, educational institutions and orphanages. Thus, earlier judgment of this Bench to the effect that newspapers are for educational purposes within the expression contained in Rule 20, is fortified by the judgment of Supreme Court in K.K. Bhalla (supra).

10. The learned Counsel for the petitioners have submitted that notwithstanding that the judgment in Vijay Kumar Tiwari's case (supra) and in the case of K.K. Bhalla (supra) did not save concessional allotment in favour of the newspapers, in the wake of the fact that the newspapers have spent substantial amount for making construction decades ago, termination shall cause unavoidable hardship to them. In Vijay Kumar Tiwari's case (supra), it was stated that the private respondents will be at liberty to negotiate with the Development Authority in terms of the order dated 24-9-92, passed by the Indore Bench of the High Court in Kranti Kumar Shukla v. State of M.P. and Anr. W.P. No. 1873/91.

11. We may now advert to the judgment of the Supreme Court in K.K. Bhalla's case (supra). In the said judgment, the land was earmarked for commercial purposes in the master plan but it was allotted for industrial use for printing newspapers, thus, it was not a case where the land ear marked for charitable purposes, had been allotted to a newspaper as is the case in hand. Despite having come to the conclusion that the allotment suffered from a basic flaw and illegality, the Supreme Court in the said report in Paragraph 75 expressed opinion that the interest of justice would be subserved if the question as regards allotment of land is left open to the Development Authority (in that case Jabalpur

Development Authority), and it was directed that the Authority may consider the matter afresh for grant of such allotment in favour of the Private respondent (newspapers) treating the applications filed by them either before it or before the State Government, as fresh applications.

12. We, therefore, do not perceive any ground to differ from what has been directed by Their Lordships in K.K. Bhalla (supra). For convenience, we reproduce Paragraph 75 of the report hereunder:

For the reasons aforementioned, the impugned judgments of the High Court cannot be sustained, but, having regard to the facts and circumstances of this case, we are of the opinion that the interest of justice would be subserved if the question as regards allotment of land is left to the Jabalpur Development Authority. The Authority may consider the matter afresh for grant of such allotment in favour of the Private respondents herein treating the applications filed by them either before it or before the State Government as fresh applications. Such applications must be processed strictly in terms of the provisions of the 1973 Act and the Rules framed thereunder as also keeping in view the Master Plan. Such a decision should be taken by the Competent Authority of the JDA at an early date preferably within a period of two months from the date of receipt of the copy of this order. The JDA shall return the amount deposited by the Private respondents, if any, within four weeks from date.

13. From the narration of the facts above, it is luculent that insofar as charitable purpose was concerned, Chogelal Yadav's case, clearly concluded the issue by holding that newspapers also served an educational purpose and were, therefore, entitled to be considered for allotment in accordance with Rules. This position became further manifest in the judgment of K.K. Bhalla (supra), wherein Their Lordships held that no lease on concessional terms shall be allowed for purposes other than charitable purposes such as hospital, educational institutions and orphanages. It appears that this judgment was not brought to the notice of the learned Judges in Vijay Kumar Tiwari (supra). It was also not brought to the notice of the Court that the designated use of the land in the Development Plan was "Educational".

13.1 Under these circumstances, we are of the view that the course suggested by the Supreme Court in K.K. Bhalla (supra), and by this Court in Vijay Kumar Tiwari's case (supra), for treating the applications as fresh applications and decision thereon, on the merits of each case should be adopted in the present case also. We make it clear, that Development Authority shall proceed to decide the application consistent with the law laid down as hereinabove referred to.

14. The petition W.P. No. 4806/2007, Jeevan Singh v. State of M.P. and Ors. is accordingly, dismissed and the other petitions are disposed of with the direction to Indore Development Authority to treat the applications filed by these newspapers as fresh applications and consider the matter afresh for grant of such allotment in favour of the applicants consistent with the provisions of law as

referred to above. The Indore Development Authority shall endeavour to decide these cases as expeditiously as possible, preferably within a period of four months. There shall be no order as to costs.