

(1992) 11 MP CK 0015

In the Madhya Pradesh High Court

Case No : Civil Revision No. 315 of 1990

Kaushal Kumar and Others

APPELLANT

Vs

Indore Municipal Corporation and Others

RESPONDENT

Date of Decision : 13-11-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 2

Madhya Pradesh Municipal Corporation Act, 1956 — Section 302, 303, 304, 305, 307

Citation : (1992) 2 MPJR 437 : (1993) 38 MPLJ 228 : (1993) MPLJ 228

Hon'ble Judges : V.S. Kokje, J

Bench : Single Bench

Advocate : M.G. Upadhyay, for the Appellant; Fazal Hussain, for Respondent
Nos. 3 to 17, for the Respondent

Judgement

V.S. Kokje, J.

This is a revision application challenging the order dated 9th July, 1990 passed by the Xth Addl. Judge to the Court of District Judge, Indore in M. J. C. No. 19 of 1990. The case arises out of proceedings initiated on an application u/s 307(5) of the M. P. Municipal Corporations Act, 1956 (hereinafter referred to as "the Corporation Act").

The applicant before this Court had filed the aforesaid application u/s 30 before the Trial Court complaining that non-applicants Nos. 3 to 17 had commenced construction of Gumties adjacent to the applicant's house No. 69, Sitlamata Bazar, Indore. It was alleged that the Municipal Corporation had sanctioned plans for construction of Gumties on 4-10-1986 but on 7-11-1986 the said sanction was withdrawn by the Municipal Corporation. The non-applicants Nos. 3 to 17 went to civil Court and obtained an injunction restraining the Corporation from dismantling the construction. Thus, the Gumties were standing on the land under the cover of an injunction. The applicants complained that the said construction was beyond even the sanctioned plan. The matter went before the Appeal Committee of the Corporation. On 20-3-1987, the Appeal Committee allowed

compounding of the breach committed by the non-applicants Nos. 3 to 17 on payment of Rs. 7,500/- as compounding fees, which was deposited on 25-7-1987. Applicants thereafter filed an application u/s 307(5) of the Corporation Act initiating the proceedings out of which the present revision application arises. In these proceedings an application under Order 7, Rule 11, CPC was filed by the non-applicants Nos. 3 to 17 on 1-7-1989 which has been allowed by the trial Court and the application u/s 307(5) of the Corporation Act has been rejected. Against this, the present revision petition is directed.

Shri M.G. Upadhyaya, the learned counsel for the applicants submitted that firstly, application under Order 7, Rule 11, CPC filed on 1-7-1989 deserves to be dismissed by the trial Court on the short ground that the same application had already been dismissed on 12-10-1989 by the trial Court. Shri Upadhyaya submits that even as long back as in 1987, the application u/s 307(5) of the Corporation Act, was held to be maintainable and, therefore, the impugned order is clearly without jurisdiction. Shri Upadhyaya further submitted that in the face of earlier dismissal of the application, the Court did not have any inherent powers to suo motu reject the application as not maintainable applying Order 7, Rule 11, CPC or Section 151 of the Code. Shri Upadhyaya further submitted that since the application under Order 7, Rule U, CPC filed on 1-7-1989 had already been decided, the applicants had no notice that the Court will suo motu act under Order 7, Rule 11, CPC and reject the application and, therefore, the applicants have not been provided adequate and proper opportunity of hearing against suo motu exercise of its powers by the Court. On merits Shri Upadhyaya submitted that Appeal Committee had no power to compound and, therefore, the compounding order by the Appeal Committee is without jurisdiction and illegal. He further submitted that compounding of the offence does not give the non-applicants Nos. 3 to 17 a licence to retain illegal construction.

On the contrary, on behalf of non-applicants Nos. 3 to 17 Shri Fazal Hussain submitted that the Appeal Committee had recommended compounding and had not compounded the offence itself. According to him, the appeal was conditionally allowed and in compliance with that condition the Commissioner compounded the offences. Shri Fazal Hussain further raised an objection that an independent application u/s 307(5) of the Corporation Act was not maintainable because this section is only an enabling provision which enables the District Court to pass an injunction but it does not mean that without a suit being filed an injunction could be passed on an application. As regards the opportunity of hearing on the application under Order 7, Rule 11, CPC Shri Fazal Hussain submitted that in fact arguments were advanced on merits on behalf of the applicants before the trial Court and it could not be said that they were not heard or did not have the opportunity to meet the challenge under Order 7, Rule 11, Civil Procedure Code. Shri Fazal Hussain invited my attention to the decisions of the Supreme Court reported in AIR 1988 SC 1341 and AIR 1983 SC 76 as also a decision of the Allahabad High Court reported in AIR 1988 All 50.

Having heard the learned counsel, I am of the opinion that this revision application deserves to be allowed. Firstly, a perusal of proceedings dated 12-10-1989 clearly shows that the same application dated 1-7-1989 which has been decided by the trial Court on 9-7-1990 by the impugned order was decided by it on 12-10-1989. There is no doubt about it because the proceedings dated 12-10-1989 clearly state that the objection that independent proceedings u/s 307(5) of the Corporation Act were not maintainable were raised by filing an application under Order 7, Rule 11, CPC filed on 1-7-1989 and after hearing arguments on that it was held that such an application was not barred by any law and, therefore, application under Order 7, Rule 11, CPC was rejected. It is true that the point relating to compounding of the offence and consequently the construction having been legalised was not referred to in that order. Actually, the point relating to the compounding has not been taken in the application dated 1-7-1989 also. The point raised was relating to the maintainability of an independent application u/s 307(5) of the Corporation Act without filing a suit. The Court decided that point on 12-10-1989 and since no further action to challenge that order in appropriate proceedings has been taken, so far the present case is concerned, that order has become final. The trial Court had no jurisdiction to decide the same application which had been disposed of earlier at any subsequent stage of the proceedings and, therefore, the impugned order is clearly without jurisdiction.

So far as the merits of the case are concerned, the impugned order is mainly based on compounding of the offence. It is contended that once an offence is compounded no action for the demolition of structure in respect of which the offence related, even if the structure is illegal or against the bye-laws, can be taken. This is also the burden of the impugned order. In para 6 of the impugned order the learned Additional District Judge has observed that where an unauthorised construction is compounded and the compounding fees is charged then the Corporation would not be entitled to take any action u/s 307 of the Corporation Act. The Court has taken a view that once compounding takes place construction in respect of which it takes place cannot be termed illegal or without sanction and, therefore, provisions of Section 307(5) of Corporation Act are not attracted. It has further been observed by the Court that by compounding of the breach, Corporation has closed the Chapter for availing remedy u/s 307(5) and the cause of action did not survive. For this very reason the lower Court has rejected the application under Order 7, Rule 11, Civil Procedure Code.

It must be said, with respect, that the lower Court has compounding gives power to Commissioner to compound in the following words:

"(1) The Commissioner may on behalf of the Corporation

(a) (b) Compound any offence under this Act or under any rule or bye-law made thereunder and charge such fees for compounding of offence as may be prescribed (by bye-laws) by the Corporation;

(c) (d)

It is clear from the plain language of the section that compounding has to be of an offence. It cannot be of any other illegal act. The term "offence" has not been defined by the Corporation Act. The Code of Criminal Procedure defines the term as under:

"Offence. Offence" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made u/s 20 of Cattle Trespass Act, 1871."

Thus, any act or omission punishable by law can only be termed as an offence and what can be compounded is only such act or omission which is punishable by any law.

In the present case, the complaint is about an illegal construction having been put against sanctioned plans. The persons putting up construction were never prosecuted for any offence and, therefore, question of compounding of any offence does not arise. In any case, compounding will relate only to an offence and unless specifically provided by the Act it would not result in absolving the offender from all other consequences of his illegal act. The Supreme Court has observed in *Biswabahan Das Vs. Gopen Chandra Hazarika and Others*, as follows:

"If a person is charged with an offence, however, trivial it may be, then unless there is some provision for composition of it the law must take its recourse and the charge enquired into resulting either in conviction or acquittal. If composition of an offence was permissible under the law, the effect of such composition would depend on what the law provided for."

In that case the question before the Court was whether at the time of considering the case of a person for grant of a contract, an earlier case in which an offence committed by him, even though, subsequently compounded, could be taken into consideration as stigma or bad record. The Court held overruling the decision of High Court of Assam that composition did not wash out the stigma and did not vindicate the person charged with offence. The case in hand is stronger on facts. Here the same facts lead to different consequences. The facts and allegations may amount to an offence for which the offender may be punished. On the same facts and allegations action for removal of illegal construction may be taken. Only because the Commissioner has compounded the offence it does not follow that the offender is absolved of liability of his illegal construction being removed. These are two independent things and exercise of powers u/s 400(1)(b) by the Commissioner does not result in abrogation of his powers u/s 302, 303, 304, 305, 307 and 308 of the Corporation Act. Any other interpretation would lead to absurd results. If it is held that the Commissioner has power to compound erection and continuance of illegal construction, the very purpose of the provisions in the Act, Rules and Bye-laws regarding building control would be defeated. It would be a total sell out of building control bye-laws and regulations and would amount to licensing and legalising of illegal

construction at a price euphemistically called compounding fees. This was never, and would never have been, the intention of the legislature. The impugned order is set aside and the trial Court is directed to proceed further with the case and dispose it of as expeditiously as possible. In the circumstances of the case, especially in view of the fact that the applicants could have, but did not, point out to the lower Court that the application which was being considered by it had already been disposed of, there shall be no order as to cost. Parties shall appear before lower Court on 14-12-1992, for further proceedings.