

(1978) 09 MP CK 0019

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 283 of 1976

Laxmi Prasad Tamrakar

APPELLANT

Vs

Municipal Corporation, Raipur

RESPONDENT

Date of Decision : 25-09-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Madhya Pradesh Municipal Corporation Act, 1956 — Section 291, 293(1), 294, 300, 307

Citation : (1981) ILR (MP) 68 : (1980) JLJ 456

Hon'ble Judges : Raj Krishna Tankha, J

Bench : Single Bench

Advocate : A.R. Choubey, for the Appellant; S.K. Dixit, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Tankha, J.—This revision u/s 115 of the CPC has been preferred by the petitioner Laxmi Prasad against the order dated 19-1-1976 passed by the District Judge, Raipur, in Misc. Judicial Case No. 2 of 1976.

2. According to the petitioner, he has constructed a house in Raipur " City after obtaining requisite sanction from the non-applicant, Municipal Corporation, Raipur. But on 9-1-1976, the petitioner was served with a notice from the non-applicant for the removal of the construction of some rooms and the balcony, which have been constructed beyond the sanction, further failure to do so, the non-applicant would demolish them. The petitioner moved an application u/s 307(5) of the M.P. Municipal Corporation Act, 1956 (hereinafter referred to as an Act) for an injunction restraining the non-applicant Municipal Corporation, Raipur, from demolishing them. The lower Court rejected that application as not maintainable. Hence, this revision by the petitioner challenging the said order.

3. According to the learned counsel for the petitioner, the lower Court wrongly held that a petition could not lie for an injunction by an applicant against Corporation u/s 307(5) of the Act for restraining the Corporation from removing

the construction as noticed to him and as such the said Court committed error in the exercise of its jurisdiction. On the other hand, learned counsel appearing for the Municipal Corporation submitted that section 307(5) is not available to one who is noticed by the Corporation but only to the Corporation or any other person except the one who is noticed.

4. To resolve the controversy it would be convenient first to reproduce section 307 of the Act hereunder:

Section 307. Power to require removal or alteration of work not in conformity with bye-laws or any scheme or any other requirement. (1) If any building erected or re-erected in contravention of any town planning scheme mentioned u/s 291 or of any building bye-laws made u/s 427 the Commissioner without prejudice to his right to take proceedings for a fine in respect of the contravention may by notice require the owner either to pull down or remove the work or, if he so elects, to effect such alteration therein as may be necessary to make it comply with the said scheme or bye-laws.

(2) If a building is erected or re-erected--

(a) without any sanction as required by section 293(1), or

(b) when sanction has been refused, or

(c) in contravention of the terms of any sanction granted, or

(d) when sanction has lapsed u/s 300,

the Commissioner, unless he deems it necessary to take proceedings in respect of such building or work u/s 294, shall--

(a) by written notice, require the person who is erecting such building or executing such work or has erected such building or executed such work on or before such day as shall be specified in such notice, by a statement in writing subscribed by him or by an agent duly authorised by him in that behalf and addressed to the Commissioner, to show sufficient cause why such building or work shall not be removed, altered or pulled down, or

(b) shall require the said person on such day and at such time and place as shall be specified in such notice to attend personally or by an agent duly authorised by him in that behalf and show sufficient cause why such building or work shall not be removed, altered or pulled down.

(3) If such person shall fail to show sufficient cause, to the satisfaction of the Commissioner, why such building or work shall not be removed, altered or pulled down, the Commissioner may remove, alter or pull down the building or work and the expenses thereof shall be paid by the person.

(4) If the plans are approved by the Commissioner and the approval is communicated to the person intending to build the house or if the plans are rejected by the Commissioner but no notice of their rejection is given to person

intending to build the house within the prescribed period, it shall not be open to the Commissioner to give a notice under sub-sections (1) and (2) on the ground that building is erected or re-erected in contravention of any scheme or bye-laws or any other requirements under this Chapter.

(5) Nothing in this section shall affect the right of the Commissioner or any other person to apply to the District Court for an injunction for the removal or alteration of any building on the ground that it contravenes any provisions of this Act or the bye-laws made thereunder, but if the building is one in respect of which plans have been deposited and the plans have been passed by the Commissioner or notice that they have been rejected has not been given within the prescribed period after the deposit thereof and if the work has been executed in accordance with the plans, the District Court on granting an injunction shall have power to order the Corporation to pay to the owner of the work such compensation as the District Court thinks just, but before making any such order the District Court cause the Commissioner, if not a party, to be joined as a party to the proceedings.

A reading of the aforementioned section makes it clear that so far as sub-sections (1), (2) and (3) are concerned they relate to the competence of the Commissioner of the Municipal Corporation for taking action with regard to the construction for the reasons mentioned therein and the procedure to be adopted in that regard. Sub-section (4) restricts the powers of the Municipal Commissioner for serving notice under sub-sections (1) and (2) on the ground that the construction is illegal, if he has failed to take action within specified time for either granting or refusing to grant the application for erection or re-erection. Thus it is clear that this sub-section only prohibits the Commissioner of Municipal Corporation from acting on his own authority because of his previous failure. To cover-up this failure the Legislature intended by enacting sub-section (5) to keep open the powers of the Municipal Corporation which is a superior body to act if the erection or re-erection of the building is in contravention of any scheme or bye-laws or any other requirements under Chapter XXIV which relates to building control and under which section 307 also lies. It is on account of this aspect of the matter that, in my opinion, under sub-section (5) a special right has been conferred on the Municipal Corporation to seek injunction from the District Court to get the improper construction demolished. No doubt the later paragraph of the section enjoins the Municipal Corporation to compensate the owner of the building in that case. The reason for payment of compensation is understandable for the reason that if the building was erected or re-erected in contravention of any scheme or bye-laws or any other requirements under Chapter XXIV on account of failure on the part of the Commissioner to take action within the prescribed time for either granting or refusing to grant the application in that regard, the owner of the construction must be compensated, the Commissioner being an officer of the Municipal Corporation.

5. The learned counsel appearing tried to contend before me that the wording

"or any other person" occurring under sub-section (5) would include even the person who is noticed, that is to say, the owner of the construction and further the wording "injunction" occurring in that sub-section should be given a meaning it is available under the CPC and thereby intended to contend that if the words "or any other person" and "injunction" are understood for the proper perspective, that would mean that even the owner of the construction was included in "any other person" who could secure an injunction from the district Court restraining the Municipal Corporation from interfering with the construction of the building. In my opinion the construction which is being tried to put by the learned counsel so as to enlarge the scope of that sub-section by including such person would be contrary to the intended purpose for which sub-section (5) was enacted.

6. Words any other person has to be given a meaning which the sub-section connotes in the ordinary common sense. They would mean the persons who might be affected by such a construction excluding the one who has made the construction otherwise there was no meaning of inserting sub-section (5). It is on that count the later part of that sub-section postulates compensation for the owner of the work. By reading the entire sub-section it is clear that the provisions of said sub-section can only be invoked by Corporation or any other person except the owner of the building. In this connection I may refer to the heading prefixed to section 307 of which sub-section (5) is a part. Heading given to section 307 can certainly be referred to clear if there is any ambiguity, as has been settled by the Supreme Court in the case of Bhinka and Others Vs. Charan Singh, . Therefore, while interpreting the words in sub-section (5) the heading clearly helps in resolving the doubt, if any, though, in fact, I find none. The heading reads thus:

Power to require removal or alteration of work not in conformity with bye-laws or any scheme or any other requirements.

That shows that the power conferred on the District Court u/s 307(5) in relation to the removal or alteration of any building on the ground that it contravenes any provisions of the Act or the bye-laws made thereunder, can only be invoked by the Corporation or any other person other than the person who has done the construction. If another meaning is attributed to the words "any other person", as tried to be contended on behalf of the petitioner, it would mean giving authority to the District Court to protect any improper demolition of the building when such implied authority, as it appears, was not intended to be conferred by the plain words used in the sub-section. The word "injunction" has to be read in the context of Corporation and any other person alone and not in favour of the owner of the work. I am supported in my view also by a decision of this Court in the case of Municipal Corporation, Bhopal v. Devta Prakash Civil Revision No. 16 of 1974, decided on 22nd Dec. 1975 (1976 J L J 23.). In this view of the matter, I am of opinion that the order of the lower Court that the petitioner has no right to move "the District Court" u/s 307(5) of the Act is correct and requires no

interference.

7. For the reasons stated above the revision fails and is hereby dismissed with costs. Counsel's fee Rs. 50, if certified.