

(1997) 10 MP CK 0043
In the Madhya Pradesh High Court
Case No : Writ Petition No. 343 of 1997

Madhusudan Khandelwal and Others	Vs	APPELLANT
State of M.P. and Others		RESPONDENT

Date of Decision : 21-10-1997

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 323

Citation : (1998) 1 MPLJ 687

Hon'ble Judges : Tejinder Singh Doabia, J

Bench : Single Bench

Advocate : Arun Mishra, for the Appellant; R.K. Vashistha, A.A.G. and K.N. Gupta, for the Respondent

Judgement

T.S. Doabia, J.

Shri Arun Mishra, counsel for the petitioner.

Shri R. K. Vashistha, Additional Advocate General for State.

Shri K. N. Gupta, Advocate, for respondents.

An order was passed by the Chief Municipal Officer, by which a piece of land measuring 8" x 9" on license fee Rs. 100/- was given to the present petitioner. The order was passed on 20-10-1995. The order, Annexure P-3, was stayed by the Collector and the matter has been referred to the State Government. This order has been passed on the ground that the allotment has been made of a piece of land, which is part of a public street. It is this order, which is being challenged by the learned counsel for the petitioner. According to the learned counsel for the petitioner, the Collector is not competent to pass any order in this regard. According to him, interference can be made only by the State Government.

The contention raised by the learned counsel for the petitioner that the Collector is not competent to pass any order with regard to the subject-matter in question,

is totally devoid of merits.

Section 322 of the Madhya Pradesh Municipalities Act, 1961 authorises the Divisional Commissioner as well as the Collector to call for and inspect any record or extract from the proceedings of any meeting of the Council or of any of its committees and any book or document in the possession of or under the control of a Council. u/s 323 of the Act power can be exercised by the Divisional Commissioner and the Collector and it can suspend the execution of any order or resolution of a Council, or of any of its Committee or any other authority or officer subordinate thereto, or prohibit the doing of any act which is about to be done or is being done by or on behalf of the Council, if it is not in conformity with law or with the rules. It is under the aforementioned provision the Collector has exercised the power. He has prima facie come to the conclusion that the land, which has been allotted to the petitioner, is part of public street. The allotment of land with a view to permit the petitioner to carry on the business in my opinion is not in conformity with the law. The public street is meant to be used as a street and cannot be permitted to be used for any other purpose. As such, prima facie, there is nothing wrong with the order. The petition is found to be without merit and is dismissed.

It is, however, directed that the State Government shall take appropriate decision in terms of the provisions contained in proviso to section 322(2) of the Madhya Pradesh Municipalities Act, 1961.

Let this decision be taken as early as possible preferably within a period of three months from today. If for any practical reason, it is not possible to take the decision, the State Government would be at liberty to seek extension of time. The period of three months would begin from the date copy of the order passed by this Court along with annexures is made available to the concerned Secretary.

Disposed of accordingly.