

(2000) 01 MP CK 0044
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3274 of 1999

Mahadeo Prasad and Another

APPELLANT

Vs

Municipal Corporation and Others

RESPONDENT

Date of Decision : 17-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Municipal Corporation Act, 1956 — Section 293, 293(1), 300, 307, 308

Citation : AIR 2001 MP 109 : (2001) ILR (MP) 631 : (2000) 3 MPHT 210

Hon'ble Judges : C.K. Prasad, J

Bench : Single Bench

Advocate : A.K. Jain, for the Appellant; Sanjay K. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

C.K. Prasad, J.—By this writ petition, filed under Articles 226 and 227 of the Constitution of India, petitioners pray for issuance of a writ in the nature of Mandamus, directing the respondents not to obstruct the petitioners in any manner in their construction of building in the light of the sanctioned map dated 25-7-1997. Further prayer made by the petitioners is to pay to them a sum of Rs. 20,00,000/- as damages for what the petitioners term to be an arbitrary and illegal action of demolition of House No. 708 situated in nazul plot No. 5455 having an area of 2050 Sq. ft. in Madan Mohan Malviya Ward, Galgala in the town of Jabalpur.

2. Facts necessary for the decision of the present writ petition are that petitioners are sons of late Smt Veermati Bai, widow of late Kaluram. Late Smt. Veermati Bai along with the petitioners owned house No. 708 having a total area 2050 Sq. ft. built on nazul plot No. 5455 in Madan Mohan Malviya Ward, in the town of Jabalpur. Aforesaid house suffered extensive damage in the earthquake which ravaged this town on 22nd May, 1997. She applied for grant of loan for reconstruction of the house, to the Jabalpur Development Authority which

sanctioned a loan of Rs. 80,000/- by order dated 14-1-1998. Petitioner No. 1 Mahadev Prasad Vishwa-karama was also sanctioned a loan of Rs. 40,000/- by the Jabalpur Development Authority by order dt. 30-6-1998.

3. After sanction of a total loan of Rs. 1.20 lacs, Smt. Veermati Bai submitted a map for Us sanction by the Municipal Corporation to raise construction over the land on which her house No. 708 was earlier existing. Municipal Corporation, Jabalpur sanctioned the map of the proposed construction by order dated 25-9-1997. While communicating the grant of sanction, Smt. Veermati Bai was apprised of the terms and conditions of sanction and Clauses 5, 6 and 7 which are relevant for the purpose inter alia directed her to commence the construction within 1 year from the date of sanction of the map, complete the construction within 2 years from the date of sanction of the map and in case construction has not commenced or completed within the aforesaid period, submit an application for renewal of the map in the office. In the original map sanctioned, there is a note which states that construction be commenced before 25-9-1998 and be completed by 25-7-2000.

4. It is the stand of the petitioners that they commenced the construction of the building after obtaining loan from the Jabalpur Development Authority much before the expiry of the period of one year. In order to substantiate the aforesaid assertion, petitioners have placed on record the loan approval order dated 10-7-1998 (Annex. P/7) of petitioner No. 1 and loan approval order dated 28-10-1997 of Veermati Bai. A perusal of the order granting loan to Veermati Bai shows that the 1st, 2nd, 3rd, and 4th instalments were to be released on 1-11-1997, 13-11-1997, 9-12-1997 and 16-1-1998 respectively. As regards the order granting sanction of loan of petitioner No. 1 is concerned, it provided for the release of 1st and 2nd instalment of 20,000/- each on 29-4-1998 and 20-5-1998 respectively. It is the stand of the petitioners that financial institution releases loans at different stages of the construction and the instalments having been disbursed prior to 25-9-1998 clearly establish that infact the petitioners have commenced construction within 1 year from the date of sanction of the map.

5. Stand of the respondents however is that the petitioners did not commence the construction within one year from the date of sanction of the map. According to the respondents; the site was inspected on 26-8-1998 by the Sub-Engineer who in his reported stated that construction has not commenced till the said date and the old building still exists in a dilapidated and dangerous condition. After the receipt of the aforesaid report of the Sub-Engineer, the City Engineer as also the Commissioner, Municipal Corporation inspected the site. The Commissioner inspected the site on 24-9-1998 and he also found that the construction has not commenced. By letter dated 7-11-1998, attention of Smt. Veermati Bai was drawn to the fact that according to the terms and conditions for sanction of the map, construction ought to have commenced with effect from 25-9-1998; which in fact has not commenced and the period has already expired. She was further informed that a portion of the old building has been demolished but some is still

standing in a dangerous condition. Accordingly, Smt. Veermati Bai was asked to submit her reply within 7 days as to why the dangerous portion of the building be not removed in exercise of the power u/s 310 of the M.P. Municipal Corporation Act. Reply to the aforesaid notice was filed by petitioner No. 1 on 10-12-1998 and on consideration of the relevant materials the Commissioner by order dated 21-1-1999 found that the existing building is unfit for human dwelling and accordingly directed that it may not be used for the said purpose.

6. It is the stand of the respondents that the petitioners started raising construction after the expiry of period of one year from the date of sanction of the map and accordingly a notice dated 26-4-1999 (Annex. R-3) was issued to petitioner No. 1 u/s 307 (2) of the Municipal Corporation Act, hereinafter referred to as the "Act", to show-cause as to why the unauthorised construction raised by him be not removed. Petitioners did not appear before the Assistant Engineer on 28-4-1999 i.e. the date fixed for their appearance nor any reply was filed. Accordingly, by order dt. 5-5-1999 petitioner No. 1 was asked to demolish the structure within 24 hours in exercise of the powers conferred u/s 307(3) of the Act, failing which he was informed that the same shall be removed by the Municipal Corporation itself. Aforesaid notice was received by the son of the petitioner No. 1 namely Sri Pawan Kumar Vishwakrama. Despite the said notice, petitioners neither appeared before the answering respondents nor removed the construction as directed vide notice dated 5-5-1999 and ultimately the respondent Corporation itself removed the construction on its own on 13-7-1999. It is the stand of the respondents that as the petitioners did not commence construction within one year from the date of sanction of the map, same has lapsed u/s 300 of the Act and accordingly in exercise of the power u/s 307 of the Act, petitioners were asked to remove the structured which they having not done, same was pulled down by the Municipal Corporation itself.

7. Mr. A.K. Jain appears on behalf of the petitioners Respondents No. 1 to 5 are represented by Sri S.K. Agrawal. No body appears on behalf of respondent No. 6.

8. Mr. Jain, appearing on behalf of the petitioners raises the following submissions :--

(i) He submits that the whole foundation on which the answering respondents have proceeded that the petitioners did not commence construction within one year from the date of the sanction of the map is unfounded on facts and hence the conclusion that the sanction of the map shall be deemed to have lapsed is erroneous;

(ii) Alternatively, his submission is that the construction put by the answering respondents of Section 300 of the Act, that in case construction is not commenced within a period of one year from the date of sanction of the map, same shall be deemed to have lapsed; is erroneous and according to him the map sanctioned shall lapse only when the construction is not completed within 2 years or such longer period, as has been allowed while sanctioning the map; and

(iii) In any view of the matter the answering respondents before removing the construction ought to have given the petitioners opportunity to file application for fresh sanction of the map as provided u/s 300 of the Act or could have exercised the power of compounding u/s 308-A of the Act and they having not done so, their action is illegal.

9. Refuting the aforesaid submissions, Mr. Sanjay K. Agrawal, appearing on behalf of respondents No. 1 to 5 submits as follows :--

(i) Petitioners did not commence construction within one years from the date of the sanction of the map and as such the respondent Corporation in exercise of the powers conferred u/s 307(2) (d) read with Section 307(3) of the Act, pulled down the structure.

(ii) Map sanctioned shall remain in force for one year only from the date of sanction and in case the construction is not commenced within one year the sanction shall be deemed to be lapsed u/s 300 of the Act and the word "and" between the words "building is not commenced within one year" and "completed within two years" has to be read as "or".

(iii) Petitioners ought to have filed application for fresh sanction of the map or for exercise of the power u/s 308-A of the Act and they having not done so, the action of the respondents cannot be said to be illegal.

10. In view of the rival submissions, the following question fall for determination :--

(i) Whether the petitioners, infact had commenced construction within one year from the date of sanction of the map?

(ii) Whether the legal fiction created by Section 300 of the Act that the sanction shall be deemed to have lapsed can be invoked only when the construction is not commenced within a period of one year or for invoking the legal fiction not only that the construction is not commenced but its completion within 2 years is necessary. In other words, whether, for application of legal fiction that the sanctioned map has lapsed, two conditions are required to be fulfilled i.e. the construction is not commenced within one year and not completed within two years ? and,

(iii) Whether it was for the petitioners to file subsequent application for fresh sanction u/s 300 of the Act or for compounding u/s 308-A of the Act and they having not done so, action of the respondents can be faulted on the ground that they have not given opportunity to the petitioners to file application for fresh sanction or for compounding?

11. Question No. 1 :-- It is common ground that respondent Municipal Corporation sanctioned the map on 25-9-1997. Petitioners were required to commence construction by 25-9-1998 and complete it by 25-9- 1999. It is the assertion of the petitioners that they commenced construction within a period of

one year from the date of sanction and in order to substantiate their case, reliance has been placed on the loan approval order dated 10-7-1998 (Annex. P/7) of the petitioner No. 1 and loan approval order dated 28-10-1997 of Smt. Veermati Bai. Order granting loan to Veermati Bai shows that the 1st, 2nd, 3rd and 4th instalments were to be released on 1-11-1997, 13-11-1997, 9-12-1997 and 16-1-1998 respectively. Order granting sanction of loan of petitioner No. 1 shows that the release of 1st and 2nd instalments of Rs. 20,000/- each on 29-4-1998 and 20-5-1998 respectively. It is emphasised that financial institutions release loan in instalments at different stages of the construction and instalments having been disbursed prior to 29-5-1998 clearly establish that in fact the petitioners had commenced construction within one year from the date of sanction of the map. On the basis of the aforesaid assertion, petitioners ask this Court to draw an inference that construction has commenced within one year. It is relevant here to state that petitioners were not given loan for construction of new building. From the perusal of the orders (Annex. P/6 and P/7), it is apparent that the loan has been granted for repair and reconstruction. The condition that certain percentage of the loan shall be disbursed after construction at certain level, has been scored out and specific dates for disbursement of the loan have been specified.

12. In view of aforesaid, it cannot be inferred that the petitioners have commenced construction within one year from the date of sanction of the map. Further, respondents have clearly stated that the site was inspected by the Sub-Engineer on 26-8-1998 and in his report he has stated that the construction has not commenced. Site was also inspected by the Commissioner on 24-9-1998 and he has also found that the construction has not commenced. By letter dated 7-11-1993 attention of Smt. Veermati Bai was drawn to the fact that the construction had not commenced within one year from the date of sanction of the map and the said period has expired. In the reply filed by the petitioner No. 1, he did not aver that in fact the construction has commenced. In the face of the materials placed before me, it is difficult to accept the petitioners' case that they; in fact, commenced construction of the building within one year from the date of sanction of the map. I negative this submission of the petitioners.

13. Question No. 2 :-- In order to appreciate and adjudicate this question, it is apt to reproduce Section 300 of the Act, same reads as follows :--

"300. Lapse of sanction after one year from the date of such sanction -- Every sanction for the erection or re-erection of any building shall remain in force for one year only from the date of such sanction, or for such longer period as the Commissioner may have allowed when conveying sanction u/s 293. If the erection or re-erection of the building is not commenced within one year and completed within two years or such longer period as may have been allowed by the Commissioner the sanction shall be deemed to have lapsed; but such lapse shall not bar any subsequent application for fresh sanction under the foregoing provision of this Act."

(Underlined word under consideration)

A plain reading of Section 300 of the Act makes it clear that every sanction of map shall remain in force for one year from the date of sanction or for such longer period as the Commissioner may have allowed when conveying sanction u/s 293 of the Act. It is relevant here to state that while conveying the sanction respondent Corporation has asked the petitioners to commence construction within one year and complete the same within 2 years. Later part of Section 300 of the Act creates a legal fiction and it provides that in case construction has not commenced within one year and completed within two years, or such longer period as may have been allowed by the Commissioner, sanction shall be deemed to have lapsed. Therefore, for applying the legal fiction, on a plain reading of the provisions of the Act, two conditions are required to be fulfilled i.e. the construction has not commenced within one year and completed within two years or such longer period, which has been allowed. The question is as to whether the word "and" used between the words "within one year" and "completed within two years" can be read as "or".

14. Mr. Agrawal contends that giving effect to the manifest intention of the Legislature as disclosed from the context, the word "and" may be read as "or" whereas, Sri Jain submits that there is no compelling reason for reading the word "and" as "or". Mr. Jain emphasises that an interpretation which is beneficial to the subject is required to be resorted to as the provision of Section 300 of the Act raising a legal fiction that the sanction has lapsed is penal in nature. He emphasises that when two views are possible, a construction which is favourable to subject is to be resorted to. In support of his submission, he has placed reliance on a Judgment of the Supreme Court in the case of *Tolaram Relumal and Another Vs. The State of Bombay*, . He draws my attention to the following paragraph of the said Judgment:-- (at Page 498; of AIR)

"8. It may be here observed that the provisions of Section 18(1) are penal in nature and it is well settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the Court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature,"

Mr. Jain further contends that while construing the provisions involving property right same should be construed liberally so as to up-hold the right of the citizens.

15. It is well settled that the words of a Statute has to be read as it is and the word "and" does not generally mean "or" or the vice-versa. The word "and" is normally conjunctive but to give effect to the manifest intention of the Legislature as disclosed from the context, it can be read as "or". At the same time if the literal reading of the words produces an unintelligible or absurd result "and" may be read for "or". Further, if the reading of the word "and" as "or"

leads to avoiding a mischief which the Legislature intended, the Court may in order to give manifest intention of the Legislature can read the same.

16. Bearing in mind the aforesaid legal position I proceed to consider as to whether word "and" used in Section 300 of the Act raising a legal fiction be read as "or". Section 293 (1) (i) (b) provides that no person shall erect or re-erect any building after the expiry of one year from the date of the permission or such longer period as the Commissioner may allow or from the end of the prescribed period as the case may be. The first part of Section 300 of the Act also provides that sanction for erection or re-erection of any building shall remain in force for one year only from the date of such sanction or for such longer period as the Commissioner may have allowed when conveying sanction u/s 293 of the Act. In the present case, while conveying sanction, one year time was given to the petitioners to commence construction. Section 293 (1) (i) (b) restrains a person to erect or re-erect the building after the expiry of one year from the date of permission and the first part of Section 300 provides that the sanction map shall remain in force for one year from the date of sanction. In my opinion, when a person commences construction after expiry of the period of one year, the Municipal Corporation may ask him not to proceed with the construction.

17. But certainly it cannot take recourse to the legal fiction of deemed lapse of the map as provided under the second part of Section 300 of the Act. I am of the opinion that not only the construction has not commenced within 1 year but is not completed within 2 years or such longer period are required to be satisfied before legal fiction can be invoked. I do not find any manifest intention of the Legislature disclosed from the context to read the word "and" as "or". Reading the word of the Statute as it is i.e. "and", it does not produce unintelligible or absurd result. Reading the word as it is further protects the citizen. On pointedly being asked, Mr. Agrawal could not explain the mischief which may result by reading the word and as it is. In view of aforesaid, I do not have any hesitation in holding; that the condition precedent for application of the legal fiction u/s 300 of the Act of deemed lapse of the sanction are not only that the construction of the building has not commenced within one year but also completed within two years or such longer period as may have been allowed. It is only in a case when the building is not completed within two years or such longer period, the legal fiction can be raised. Second question is thus answered in the aforesaid terms.

18. Question No. 3 :-- Section 300 of the Act permits filing of subsequent application for fresh sanction, notwithstanding the fact that the earlier sanction had lapsed on account of application of legal fiction. Section 308-A provides for compounding of offence of construction of building without permission. It is common ground that the petitioners never approached the respondent Corporation for fresh sanction or for compounding of offence u/s 308-A of the Act. It is contended by the petitioners that before taking recourse to Section 307(2) and (3) of the Act, it was obligatory on part of the respondent Corporation to advise the petitioners to apply for fresh sanction as provided u/s

300 of the Act or for compounding u/s 308-A of the Act. It is not in dispute that before exercising the power u/s 307(2) and (3) and pulling down the structure of the petitioner no such opportunity was given to the petitioners. Section 300 of the Act gave discretion to the petitioners to file fresh sanction and Section 308-A entitled them to file application for compounding of offence of construction of building without permission. To invoke the power under the aforesaid-provisions, it was obligatory on part of the petitioners to approach the Corporation and as such action of the respondent Corporation in pulling down the structure cannot be said to be illegal on this count. However, I would like to emphasise that corporation is created for the welfare of its citizens and notwithstanding, failure on its part to communicate to the petitioners their right to file application for fresh sanction or for compounding, shall invalidate its action but it is expected from the Corporation that before pulling down the structure, citizens are apprised of their right. This will build public confidence and create credibility for the institution.

19. Having answered the aforesaid questions, now I proceed to consider the reliefs sought for by the petitioners. Section 307 (2) (d) of the Act provides that if a building is erected when sanction has lapsed u/s 300 of the Act, the Commissioner shall give written notice to show-cause as to why such building be not removed, altered or pulled down. After such a notice the respondent Corporation asked the petitioners to pull down the structure which they did not do and ultimately, it was pulled down by the Corporation itself. Corporation has exercised its power on the assumption that sanction has lapsed u/s 300 of the Act, as the petitioners did not commence construction within one year of the sanction. As held earlier, for applying the legal fiction, respondent Corporation was under an obligation to consider as to whether the building has been completed with two years; allowed to the petitioners. In view of my conclusion aforesaid, the Corporation erred in raising the legal fiction that the sanction has lapsed. Corporation has exercised its power u/s 307(2) and (3) of the Act asking the petitioners to remove the structure and pulling down the same on the assumption that the sanction has lapsed, which as held earlier, is erroneous. Action of the respondents in pulling down the structure thus is held to be illegal.

20. Mr. Jain submits that as the act of the respondents in pulling down the structure is illegal, petitioners may be paid interim compensation and may be relegated to the remedy under Civil law for working out and claiming due compensation. Mr. Agrawal however, appearing on behalf of the answering respondents submits, that this Court in exercise of the powers under Articles 226 and 227 of the Constitution of India, grants interim compensation when violation of any fundamental right is established. He submits that in the present case, the action of the respondents, even if it be held to be erroneous, cannot be said to be mala fide, hence it is not a fit case of grant of compensation under writ jurisdiction.

21. Having appreciated the rival submissions, I do not find it a fit case for grant

of interim compensation in exercise of the discretionary power under Articles 226 and 227 of the Constitution of India. To me, it seems on an erroneous understanding of the provisions of Section 300 of the Act, the respondents have proceeded to take action asking the petitioners to remove their structure and its pulling down u/s 307 of the Act. Petitioners if so advised, may take recourse to the remedy under the Civil law for the same and any observation made in this writ petition shall have no bearing on the same.

22. The construction which I have put, renders the map sanctioned valid till 25-9-1999. The construction was pulled down by the respondent Corporation on 13-7-1999. In my opinion, petitioners could have completed the construction before 25-9-1999, had it not been pulled down by the respondent Corporation. In such circumstance, I deem it expedient that the respondent Corporation allow the petitioners to complete the construction within one year from today.

23. In the result, writ petition is allowed in the aforesaid terms. In the facts and circumstances of the case, there shall be no order as to cost.