

(2013) 11 MP CK 0011
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6933 of 2013

Mahaveer Trust Indore

APPELLANT

Vs

The Additional Collector and Others

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2014) 1 J LJ 283

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

N.K. Mody, J.—This order shall also govern the disposal of Writ Petition No. 3802/13 as in both the petitions order under challenge is dated 21.12.2012 passed by Additional Collector, Indore in Case No. 3-A/39/11-12 whereby petitioner Trust is restrained from raising the construction. In Writ Petition No. 6933/13 the order is challenged by the petitioner and in Writ Petition No. 3802/13 the same order is challenged by respondent No. 4. Undisputed facts of the case are that petitioner is a trust which was constituted vide trust dated 31.5.1975. Upon the application filed by petitioner Trust it was registered as Public Trust vide order dated 27.5.1977 passed by Registrar, Public Trust, Indore. Upon the application filed by petitioner Trust a piece of land measuring 42536 sq.ft. bearing survey No. 403 situated just opposite to Regal Theater, Indore was allotted to the petitioner on lease on payment of rent of Re. 1/- per year for establishment of Research Institute and Child Development Centre. As per terms of lease the construction was to be completed within three years. After execution of lease deed dated 20.5.1986 no activities were started within the stipulated time mentioned in the lease agreement. Upon application, permission was given to the petitioner by Joint Director, Town and Country Planning, Indore in the year 1988, but no construction activities were started by the petitioner Trust. Vide order dated 27.1.1996 petitioner Trust was permitted to raise commercial arcade on a piece of land measuring 12117 sq.ft. out of 42536 sq.ft., which was also

approved by the Municipal Corporation, Indore vide order dated 26.2.1996. Thus, in spite of default for a period of long ten years, petitioner Trust was permitted to raise the shopping arcade on piece of land measuring 12117 sq.ft. of land upon depositing premium of Rs. 72,70,200/- and yearly lease rent of Rs. 5,45,265/-. By this order petitioner Trust was further directed as under:

1. Shops which will be constructed by the petitioner Trust shall be auctioned and the amount received in auction shall be deposited by the petitioner Trust in trust account.
2. The auction shall be conducted by the Collector, Indore or his representative and the property shall be given to the highest bidder.
3. The amount received in auction shall be used for the activities of the petitioner Trust and not otherwise.
4. If any part of the property is not being used for the purpose for which it was leased out, then State Government shall be entitled to take back possession of the land without any notice.

2. In compliance of order dated 4.9.1995 Registrar, Public Trusts, Indore also passed the order on 5.5.1997. An advertisement was published by the petitioner Trust for auction on 12.12.1997 and on 15.12.1997 property was auctioned in favour of M/s. Icon Builders on payment of an amount of Rs. 1,35,00,000/-. This amount was never deposited in full as it is only Rs. 1,19,00,000/-, which was deposited with the petitioner Trust. However, it appears that four shops on ground floor and basement were given to the petitioner Trust, for which permission was given by the State Government vide order dated 21.8.2000 to lease out the same in favour of Corporation Bank. Vide order dated 11.9.2000 Registrar Public Trusts, Indore permitted the petitioner Trust to lease out the premises to the Corporation Bank for a period of 10 years on rent. Presently the petitioner Trust was receiving rent @ Rs. 2,03,000/- per month. Since the construction was not raised by the petitioner Trust in time, therefore, proceedings were initiated u/s 182 of MPLRC. Upon furnishing a bond to the effect that the petitioner shall complete the construction in time, vide order dated 7.12.2006 petitioner Trust was permitted to complete the construction within a period of three years. In compliance of the order dated 7.12.2006 proceedings initiated against the petitioner Trust u/s 182 MPLRC were dropped vide order dated 20.8.2008. Vide order dated 27.8.2008 Nazool Officer directed the Municipal Corporation, Indore to sanction the permission to the petitioner for raising construction. In compliance of that Municipal Corporation granted the permission on 8.10.2009. Since the construction could not be raised, therefore, again vide order dated 28.6.2011 two years time was extended to the petitioner Trust for completing the construction which is also over. Vide notice dated 11.5.2012 petitioner Trust was asked why the lease granted in favour of petitioner should not be cancelled and the petitioner was also restrained by the Additional Collector, Indore to raise the construction. Writ petition filed by

petitioner which was numbered as Writ Petition No. 5140/12 and was disposed of vide order dated with a direction to pass final order within a period of three months. In compliance of that, after hearing both the parties order dated 21.12.2012 was passed, against which present petition has been filed. Petitioner Trust also approached to the State Government in compliance of order dated 21.12.2012 which is under challenge before this Court by moving appropriate application on 12.1.2013 and 17.5.2013.

3. Grievance of the petitioner Trust is that the petitioner Trust was serious right from beginning to raise the construction for charitable activities, but because of dispute and also because of delay in obtaining the sanction, construction could not be raised in time. It is submitted that in the facts and circumstances of the case there was no justification on the part of Additional Collector, Indore to restrain the petitioner Trust from raising construction which is contrary to the permission granted by the State Government. Learned counsel submits that in fact the land in question was gifted to the petitioner Trust. It is also submitted that land is in occupation of the petitioner as grant.

4. Learned counsel for the petitioner submits that the respondent No. 4 is having no locus standi. For this contention reliance is placed on a decision in the matter of Ayaubkhan Noorkhan Pathan Vs. The State of Maharashtra and Others, , wherein Hon''ble apex Court has held that only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a Court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is restored to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the Court. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. It is submitted that because of hurdles created by the respondent No. 4 along with other persons the petitioner Trust could not raise the construction in time. It is submitted that the petitioner Trust undertakes to complete the construction within the time provided petitioner Trust gets free hand. Learned counsel placed reliance on a decision in the matter of State of Orissa and Others Vs. Gopinath Dash and Others, , wherein Hon''ble apex Court has observed that while exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advice the executive in matter of policy or to

sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere. The correctness of the reasons which prompted the Government in decision making taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the property of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government. The Court should constantly remind itself of what the Supreme Court of the United State said in *Metropolis Theatre Company v. City of Chicago* [(1912)57 LED 730]. "The problems of Government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is the best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review. On the strength of aforesaid position of law, learned counsel submits that the petition be allowed and impugned order be quashed.

5. Respondent No. 4 who is present in person submits that the entire activities of the petitioner Trust is dubious. It is submitted that the petitioner Trust published the advertisement in a Newspaper Nav Bharat that too, in small letters, which had no wide circulation, with an intention to auction the property in favour of M/s. Icon Company, which was favorite to the petitioner Trust, so that it can be leased out on favorable terms. It is submitted that the land use was changed by the State Government on a piece of land measuring 12117, out of 42536 sq.ft. as per local norms. It is submitted that petitioner Trust was never interested to raise construction for the purpose for which lease was granted. It is submitted that the only object of the petitioner Trust was to earn money, for which commercial arcade was constructed and the same was leased out. It is submitted that out of original trustees there are only three trustees who are alive. No permission is sought by the petitioner Trust to include new trustees. It is submitted that Mr. Pradeep Kasliwal is not a trustee as his name is not declared as trustee in the record of the Registrar of Public Trusts. No resolution has been passed by the petitioner Trust whereby the alleged President is authorised to file the petition. It is submitted that in the facts and circumstances of the case

petition filed by the petitioner be dismissed and petition filed by respondent No. 4 be allowed and it be declared that petitioner Trust has already raise the construction on the commercial area and the petitioner Trust is not entitled to raise any further construction for commercial purpose.

6. Since there was a dispute relating to the area on which commercial construction is raised, therefore, vide order dated 11.11.2013 Mr. H.Y. Mehta, Advocate was appointed as Commissioner with a direction to inspect the premises and find out how much area is leased out to Corporation Bank on each floor and to other occupiers. Commissioner was also directed to take photographs of the premises and submit the report relating to construction which is being raised for other activities in the area of land measuring 30536 sq.ft. Commissioner was also directed to submit the report relating to charitable activities which is being performed in the area of land which is leased out.

7. In compliance of that report has been submitted by Mr. H.Y. Mehta, Commissioner on 14.11.2013 and 19.11.2013. From the report it is evident that no activity other than commercial is being carried out on any of the part of the property which is leased out to the petitioner Trust. The area of construction which has been raised by the petitioner in shopping arcade is as under:

8. From perusal of the record it is evident that initially when the lease was granted in the year 1986 it was leased out on token rent of Re. 1/- per year for establishment of Child Development Centre and Research Institute. The trustees of the petitioner Trust were of a particular community. The trustees were not only from Indore, but from all over Madhya Pradesh. Various activities which were required to be done from the land in question on the basis of funds which was required to be generated by the petitioner Trust and not by generating the funds from the property itself which is leased out to the petitioner Trust. Right from 1986 to 1995 petitioner Trust did no charitable activity on the land which was leased out to the petitioner Trust. First action which was taken by the petitioner Trust in the year 1995 to apply for permission to raise commercial arcade which was never the intention of the State when the property was leased out to the petitioner Trust on a lease rent of Re. 1/- per year which is nothing but a token rent. Right from 1996 to 2013 it is only commercial arcade which was constructed. For one reason or another for charitable purpose no construction is raised.

9. Vide lease agreement dated 4.7.1998 which was executed between the petitioner Trust and M/s. Icon Company the property on which petitioner Trust was permitted to raise the construction of commercial arcade was leased out to M/s. Icon Company for a period of 11 years on payment of lease rent of Rs. 2/- per sq.ft. per month. Immediately after giving the property in auction to M/s. Icon Company litigation started in the year 2000 for which Civil Suit No. 2-A/2000 was filed, in which compromise took place. According to said compromise an agreement was executed between the petitioner Trust and M/s. Icon Company which is dated 27.9.2003, in which M/s. Icon Company has agreed that as per

auction M/s. Icon Company was required to pay a sum of Rs. 1,35,00,000/-, but it is only Rs. 1, 19,674/- has been paid by M/s. Icon Company to the petitioner Trust. In this agreement lease rent was also fixed as Rs. 35,000/- per month. In this agreement it was also observed that shops No. 3, 4, 5 and 6 of the basement and shops No. 1 to 5 of the ground floor are handed over to the petitioner Trust and in turn petitioner Trust has leased out the same to Corporation Bank on lease w.e.f. 16.9.2002 for a period of 10 years. This lease which was executed between petitioner Trust and Corporation Bank was to expire on 15.9.2012. After expiry of lease agreement on 15.9.2012 petitioner Trust again entered into a lease agreement with Corporation vide lease agreement dated 12.12.2012 for a consideration of lease rent of Rs. 2,03,625/- per month for a period of five years. The lease is also having a renewal clause w.e.f. 16.9.2017 to 19.9.2022, according to which lease rent will be Rs. 2,44,350/- per month. There is nothing on record to demonstrate that before renewing the lease on 12.12.2012 any permission was sought by the petitioner Trust with the State Government specially when the matter was sub judice and the lease of the petitioner Trust is to expire on 19.5.2016. As per compromise dated 19.5.2003 M/s. Icon Company is required to pay the lease rent @ Rs. 35,000/- per month, but the amount which is being paid by M/s. Icon Company is Rs. 14,400/- per year. How the amount of Rs. 4,20,000/- per year as rent is reduced to Rs. 14,400/- per year is not clear.

10. During course of arguments certain queries were made by this Court from the counsel for petitioner Trust, which are as under:

1. Whether any advertisement was published when shop was leased out to the Corporation Bank?
2. Whether in the advertisement published on 12.12.1997 applications were invited on 15.12.1997 i.e. after two days? If so, then why sufficient time was not given for inviting the application?
3. Whether after receipt of sealed tenders, open auction was arranged between the persons who submitted their offers?
4. Whether President is duly elected President of petitioner Trust?
5. Whether budget of 2013-14 of the Trust is placed on record?
6. What is estimate of construction of Child Development Centre and Research Institute?
7. Whether any provision is made in the budget for expenditure for construction of Child Development Centre and Research Institute?
8. Whether funds are available with the petitioner Trust as per estimate?
11. None of the queries raised by the Court was satisfied by the counsel appearing on behalf of the petitioner Trust.

12. An effort was made by this Court to call M/s. Icon Company. Notices sent could not be served as the registered office of the company is lying closed. Upon notice to Shri Yogesh Mittal, Advocate who is usually appearing for the said company in other matters, learned counsel showed his inability to assist the Court on the ground that the Director of the Company is out of station.

13. From perusal of the record it is evident that at the time when lease was granted in the year 1986 it was the trust who was to invest for development of Child Development Centre and Research Institute. In the application submitted by the petitioner Trust also it was not requested that the land be given on lease on token rent and after generating the money from the land petitioner Trust shall develop the Child Development Centre and Research Institute. In the year 1996 also why Government permitted the petitioner trust to raise shopping arcade which was against the lease deed, is not clear. Similarly it is also not clear that why the notice was not published in leading newspaper and why only two days time was given for submitting the tender. Similarly it is not clear why tenders were called in sealed cover and no auction was held between the tenderers after opening the tenders.

14. Submission made by the counsel for the petitioner that in fact the land was gifted to the petitioner trust or was given in grant is having no foundation. On the contrary the submissions made by the learned counsel shows the intention of the petitioner Trust are not bona fide as now the claim is being made relating to ownership of the petitioner Trust on the land in question. There is no justification on the part of petitioner Trust to renew the lease in the year 2012 when the matter was sub judice, that too, for a period of another 10 years in favour of Corporation Bank, while the lease of the petitioner Trust is going to expire in the year 2016. Upon notice, an Officer of the Bank appeared, but failed to explain how the title of petitioner Trust was examined by the Bank when the lease was renewed.

15. There is nothing on record to demonstrate that petitioner Trust was authorised to lease out the shopping arcade to M/s. Icon Company for a period of 10 years.

16. Again there is nothing to demonstrate how the rent which was fixed as Rs. 35,000/- per month was reduced to Rs. 14,400/- per year.

17. From perusal of record submitted by Mr. H.Y. Mehta, Advocate who was appointed as Commissioner except ground floor, all upper floors are almost lying vacant, for which no reason is shown. From perusal of accounts submitted by the petitioner Trust it appears that in last 28 years the total income received by the petitioner Trust is Rs. 3,96,79,063/-, out of which a sum of Rs. 2,77,51,389/- has been received from the Corporation Bank as rent and a sum of Rs. 1,19,27,674/- has been received from M/s. Icon Builders. Thus, the amount received from the shopping arcade excluding rent from Corporation Bank received by the petitioner Trust is negligible. Keeping in view the performance of

the petitioner Trust of last more than 28 years, this Court finds that valuable piece of land of the State was not being utilized by the petitioner Trust for the purpose for which it was given.

18. From perusal of the order impugned herein it is evident that Additional Collector, Indore restrained the petitioner Trust to raise any construction over the land in dispute and directed the petitioner to get the matter decided from the Government. This Court finds that there was no justification on the part of Additional Collector, Indore to direct the petitioner Trust to get the matter decided from the State Government. It was required to be decided by the authority who issued the show cause notice whether there was violation of terms of lease or not. In the facts and circumstances of the case petition filed by the petitioner and also petition filed by respondent No. 4 is disposed of with the following direction:

1. That part of the order whereby the learned Additional District Magistrate, Indore directed the petitioner Trust to approach the State Government stands quashed with a direction to the District Magistrate, Indore to decide the matter whether there is violation of terms of the agreement or not and if there is violation, then the District Magistrate shall pass the appropriate order in that regard.

2. District Magistrate, Indore is directed to take appropriate steps to recover the rent from the occupants including Corporation Bank which shall be deposited in the separate account to be opened with the Corporation Bank, Branch opposite Regal Theater, Indore in the name of District Judge, Indore where the matter relating to petitioner Trust is referred for directions. District Magistrate, Indore shall also take steps to generate funds from the shopping arcade till the matter is decided finally and shall deposit the same in the said account.

3. District Magistrate, Indore shall take appropriate steps to take possession of that part of the shopping arcade which is lying closed since lost in accordance with law and shall take appropriate steps to use the premises for the benefit for which the land was leased out.

19. Parties are directed to remain present before District Magistrate, Indore on 16.12.2013. With the aforesaid, petition stands disposed of. Copy of the order be placed in the record of Writ Petition No. 3802/13.