
(1992) 11 MP CK 0018
In the Madhya Pradesh High Court
Case No : C.R. No. 130/91

Malkhandas

APPELLANT

Vs

Om Prakash and Others

RESPONDENT

Date of Decision : 13-11-1992

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 307(5)

Citation : AIR 1993 MP 126 : (1993) 38 MPLJ 98 : (1993) MPLJ 98

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

Bench : Single Bench

Advocate : M.G. Upadhyaya, for the Appellant; Bajpai and S.J. Dhenji, for the Respondent

Final Decision : Allowed

Judgement

V.S. Kokje, J.

This order shall also govern the disposal of Civil Revision No. 291/91 (Admn. Municipal Corpn. v. Omprakash).

This revision application challenges the final order made by the District Court in a proceeding u/s 307(5) of the Municipal Corporations Act, 1956 (for short "the Act").

The non-applicants Nos. 1, 2 and 3 had moved an application u/s 307(5) of the Act praying for removal of the alleged illegal construction being put up by the applicant. The non-applicants Nos. 1, 2 and 3 contended in their application that previously permission sought for the same construction was refused by the Municipal Corporation, but later on the permission was granted. According to the original applicants (non-applicants 1, 2, 3), openings and projections on the southern side have been sanctioned which would obstruct the front elevation of original applicants house and would obstruct the light and air of the original applicants. It was also contended that the openings and projections have been allowed on the original applicants' private land. The applicant herein refuted the

allegations and also challenged maintainability of the application u/s 307(5) of the Act. It was also alleged that a regular suit is going on on the same subject matter between the parties.

After taking evidence of the parties, District Court held that the lane on which the projections open does not belong to the original applicants or the Municipal Corporation. However, the court has found that the openings and projections were without permission of the Municipal Corpn. The Court reached this conclusion on the basis of statement of Omprakash, applicant No. 1, who had deposed that the openings and projections were not sanctioned by the Municipal Corpn. and his statement had not been challenged in the cross-examination and the applicant herein Shri Malkhandas had also not contradicted the statement. The Court also held the application u/s 307(5) of the Act to be maintainable.

I have heard the learned counsel for parties and have perused the record. Let us first consider the maintainability of an application u/s 307(5) of the Act. The opening word of Section 307(5) of the Act contain non obstante clause and save the right of the Corporation or any other person to apply to the District Court for an injunction. It is clear from the plain language of the provision that no fresh right has been conferred by the section but only the rights which already existed and were available to a person, were saved from being extinguished. Thus, if the corporation or any other person had a right to approach the District Court seeking an injunction independently of Section 307(5) of the Act, that right was not taken away by the provision. Thus, Section 307(5) of the Act cannot be a basis for moving a separate application before the District Court which could be registered as Misc. Judicial Case and be entertained by the Court. All that is meant by the provision is that the right of a person to approach the Court for an injunction, in a manner in which normally he could have exercised it, was not extinguished and was saved by the provision. Thus, had the provision been not there, whatever the Corpn. or any other person could not do for claiming an injunction from the District Court can still be done by the Corporation or any other person. The normal way of seeking an injunction is to file a civil suit and claim a decree for injunction. Section 307(5) of the Act only saves this right of the corporation or any other person to approach the Dist. Court by filing a civil suit claiming an injunction therein. A separate Misc. Judl. Case cannot, therefore, be founded on the basis of Section 307(5) of the Act. In this view of the matter the entire action was without jurisdiction as the court could not have entertained an application u/s 307(5) of the Act simpliciter without there being a suit before it.

As regards the merits of the case, the Court has relied on the statement of Omprakash (P.W. 1) for holding that Municipal Corporation had not sanctioned the projection and openings complained of. The Court has lost sight of the fact that the original applicants themselves had come up with a plea that the openings and projections were sanctioned by the Corporation. In para 5 of the original application there is a clear averment that the Municipal Corpn. has given

permission to construct projections and openings on the southern side on the private land of the applicants. Evidence led by the original applicants was clearly beyond their pleadings and actually contradicted their pleadings and, therefore, could not have been accepted. Moreover no contravention of any specific provision of the Act or bye-laws has been alleged or proved. An application u/s 307(5) of the Act could only relate to an injunction for removal or alteration of any building on the ground that it contravenes any provisions of the Act or the bye-laws made thereunder. The Court has, therefore, clearly erred in granting relief in the case.

For the aforesaid reasons this application is allowed and the impugned order is set aside. The revision application of original applicants (C.R. No. 291/91) is dismissed. The application u/s 307(5) of the Act is dismissed as not maintainable as also on merit. The non-applicants Nos. 1, 2 and 3 shall pay the cost of these proceedings as also that of the proceedings before the lower court to the applicant herein. The cost of this revision application quantified at Rs. 500/-.