
(2018) 05 MP CK 0192

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 4145, 5181, 5372, 5461, 5543, 5546, 5547, 5593, 5612, 5625, 5736, 5777, 5785, 5799, 5925, 5926, 6117, 6129, 6140, 6153, 6155, 6431, 6447, 6448, 2295 Of 2017, Writ Petition (Pil) No. 6004 Of 2017

Mohanlal Garg And Others

APPELLANT

Vs

State Of Madhya Pradesh And Another

RESPONDENT

Date of Decision : 04-05-2018

Acts Referred:

Constitution Of India, 1950 — Article 14, 19(1)(g), 300(A)
Madhya Pradesh Municipal Corporation Act, 1956 — Section 87, 87(1)
Madhya Pradesh Municipalities Act, 1961 — Section 100, 109, 355

Citation : (2018) 4 MPLJ 371

Hon'ble Judges : S.C. Sharma, J;S.K. Awasthi, J

Bench : Division Bench

Advocate : A.S. Garg, Sunil Jain, V.K. Jain

Final Decision : Dismissed

Judgement

S. C. Sharma, J

1. Regard being had to the similitude in the controversy involved in the present cases, the writ petitions were analogously heard and by a common order, they are being disposed of by this Court. Facts of Writ Petition No. 4145/2017 are narrated hereunder.

2. The petitioner before this Court has filed this present writ petition challenging constitutional validity of the "Settlement of Land Located Within the Cantonment Area under Municipal Council, Neemuch Rule, 2017"(hereinafter referred as "Rules"). A prayer has been made for declaring the Rules to be ultra-vires with a further prayer that no action shall be taken against the petitioner in compliance of the Rules under challenge.

3. The contention of the petitioner is that the petitioner is a registered owner of House situated at Bungalow No. 28, Neemuch Cantonment and the same was

purchased by the ancestors of the petitioner namely; Sedmal s/o Ompkarlalji Mahajan through a registered sale deed dated 21/1/1946. It was duly registered by the District Registrar, British Government (Neemuch Cantt.,). It has been further stated that after purchasing the suit property, Mr. Sedmal applied for mutation before the Secretary, Municipal Committee, Neemuch Cantonment on 22/2/1947. The said mutation was accepted and Mr. Sedmal was occupying the bungalow even prior to independence and after him his children namely; Shri Premsukh and Shri Rameshwar Prasad are paying property tax and are living over the property in question. The mutation dated 22/2/1947 is on record (Annexure P/3). It has been further stated that they are regularly paying property tax and the Municipal Council, Neemuch has also sanctioned the layout of Bungalow No.28 on 7/8/1969 and permission has also been granted for construction of godown of LPG cylinders. It has also been stated that the Neemuch Municipal Corporation has accepted ownership of the house of the petitioner. Petitioner's grievance is that his father has purchased the property in 1946 and they are the absolute owner of the property and now the Rules have been framed by the State Government directing all the occupiers to file applications to the Municipal Council for settlement of their cases and in case such an application is not preferred, the Municipal Council shall be taking action under the provisions of M. P. Lok Parisar (Bedakhali) Adhiniyam, 1974.

4. Mr. A. S. Garg, learned senior counsel for the petitioner has argued before this Court that "Rules" which have been framed by the State Government are contrary to the constitutional rights guaranteed to the petitioner under Article 300A of the Constitution of India and no person can be deprived of his legitimate right to hold the property. Another ground has been taken by the learned senior and he has argued that without taking opinion of the affected persons and without hearing them, a drastic decision has been taken by the State Government which is violative of the principles of natural justice and fair play. Another ground i.e., in ground No. 6.3 it has been stated that no enquiry has been conducted before framing of the Rules nor any proper committee has been established and Rules have been framed unilaterally. Another ground has been taken i.e., ground No. 6.4 that no proper time was granted to the owners to raise their grievance against the action in enacting the "Rules" and, therefore, the Rules are arbitrary. It has also been stated that the petitioners are in possession of the property prior to independence and they are being forced to obtain a lease deed from the Municipal Council in respect of the property and, therefore, Rules are violative of constitutional provisions. It has also been stated that the petitioners are registered owners of the property, they are paying property tax and, therefore, the Rules are arbitrary and unconstitutional and be declared as ultra vires.

5. Mr. A. S. Garg, learned senior counsel has argued before this Court that the State of Madhya Pradesh has not filed reply in the matter and they have simply adopted the reply filed by the Neemuch Municipal Corporation and Affidavit enclosed along with the reply does not state that the State Government is

adopting the averments made in the reply filed by the Neemuch Municipal Corporation. He has placed reliance upon the judgment delivered by the apex Court in the case of *Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Coke & Chemicals Ltd.*, reported in (2007) 8 SCC 705 and the judgment delivered by this Court in the case of *Babulal Agrawal Vs. Jyoti Shrivastava and others* reported in [2000 (1) MPLJ 102]; *Smt. Snehlata Vs. State of MP* (W.P.No. 2154/2012 (O), decided on 4/8/2016); and, in the case of *Municipal Council, Mandsaur Vs. State of M.P.* reported in 1972 JLJ 966.

6. Mr. A. S. Garg, learned senior counsel has argued that the Rules of 2017 provides for submission of an application for regularising the possession of persons who are having land under the Cantonment Area and Rule No.16 provides that in case no application is preferred, the Municipal Council shall be having power to take action under the provisions of the M. P. Lok Parisar (Bedakhali) Adhiniyam, 1974. It has also been stated that by taking shelter of the aforesaid Rules, the respondents are dispossessing the petitioners who are the valid title holder of the property and, therefore, Rules are violative of the constitutional rights of the petitioner, guaranteed under the Constitution of India. It has also been argued by Mr. A. S. Garg, learned senior counsel that right to hold property is now a fundamental right keeping in view the judgment delivered in the case of *Chairman, Indore Vikas Pradhikaran* (supra). It has also been stated that by framing the Rules of 2017, the State Government and the Municipalities have made an attempt to over-reach the jurisdiction of the Civil Court.

7. In the connected matter, learned senior counsel Mr. Sunil Jain has raised additional grounds and his contention is that the State Government in exercise of the powers conferred under the Municipalities Act, 1956 and the Municipal Corporation Act, 1961 has framed Rules in respect of transfer of property known as M. P. Nagar Palika Transfer of Property Rules, 2016 and the Rules of 2016 provides a mechanism in respect of transfer of property which is under the ownership of a local body and the "Settlement of Land Located Within the Cantonment Area under Municipal Council, Neemuch Rule, 2017" are contrary to the M. P. Nagar Palika Transfer of Property Rules, 2016 and as there is a direct conflict between the Rules of 2016 and 2017, the Rules of 2017 are arbitrary and are also ultra vires. He has also argued before this Court that the State Government has exceeded its power in enacting the Rules of 2017 and the Rules of 2017 be declared as ultra vires. Some interlocutory application has also been filed in the matter, however, with the consent of the parties, the matter is being heard finally.

8. On the other hand, a reply has been filed on behalf of respondent No.2 - Municipal Council, Neemuch and it has been stated that the petitioners have stated in the Writ Petition that they are the title holder of the land and they are in possession of the land in question. It has been stated that the title of the land or immovable property is purely a disputed and complex question of facts

requiring elaborate / detailed evidence and the Civil Court is having jurisdiction to decide the title of an individual. The respondents have also stated that the petitioners have never acquired any right, title or interest in respect of the land situated in the Neemuch Cantonment area and the petition filed by them deserves to be dismissed.

9. Mr. V. K. Jain, learned senior counsel for the respondent No.2 has stated that the petitioners have taken a ground in the Writ Petition that the State Government cannot confer title of land upon the Neemuch Municipal Council, nor the State Government can extinguish the title of the petitioner or private persons. In this behalf it has been stated by learned counsel for the respondent No.2 that the entire land situated in the cantonment area is under the ownership of the Neemuch Municipal Council which vests in it under the law. It has also been stated that the petitioner nor any other private person has got any title or interest in the land stated to be occupied by the petitioner and any other person and the Rules have been framed in order to bring to an end the long drawn disputes and litigation in respect of the land situated in the cantonment area. The respondents have given a detailed history in respect of the land in question it has been stated by the respondents that the predecessor of the Municipal Council, Neemuch was constituted under the "Neemuch Cantonment Municipal Law, 1936" and thereafter governed by "Quanun Municipality Hai, Samvat 1993". Thereafter Municipal Council Neemuch was being governed by the provisions of Madhya Bharat Municipalities Act, 1954 and lastly by the provisions of the M. P. Municipalities Act, 1961.

10. It has been further stated that in the city of Neemuch the Military Headquarters was established by the British Government known as Neemuch Cantonment in terms of the provisions of Cantonment Land Administration Rules, 1925 and as per the aforesaid Rules, the entire area was divided into four broader categories : (i) troop area; (ii) bazar area; (iii) bungalow area; and (iv) garden / field / khet area. It has also been brought to this notice of this Court that the entire cantonment was established in the year 1817 by the then British Military Government and the area in question was given by the erstwhile Rulers of Scindia Dynasty. It has been stated that the Britishers' Bengal Presidency Army Headquarters governed the Neemuch Cantonment and various Circulars were issued from time to time in the year 1835, 1836, 1855, 1873, 1880 and 1897 for regulating affairs of the cantonment. It has been further stated that a Notification was published by the Foreign & Political Department of the British Government on 14/10/1936 in exercise of powers conferred by the Indian (Foreign Jurisdiction) Order-in-Council 1902 and a Law for the Administration of Neemuch Cantonment was promulgated which is known as "Neemuch Cantonment Municipal Law, 1936" and since then the Municipal Governance was statutorily made effective in the cantonment area. It has been further argued and stated in the reply by the learned senior counsel Mr. V. K. Jain, that the Britishers at the time they were living the country, quite close to the independence, issued a Notification published by the Resident of Central India in

its Political Department whereby the jurisdiction which was exercised by the Crown's Representative over Neemuch Cantonment area was restored to His Highness the Maharaja of Scindia w.e.f. 26/7/1947. Thereafter the Maharaja of Gwalior issued a Circular in its Department of Law and Justice that the Gwalior State has taken over the area. Circulars / Notification dated 30/7/1947 is also on record as (Annexure R/2). A third circular was issued ie., Circular No.3 of Samvat 1998 (published in the Gazette on 23/5/1942) conferring property rights on municipalities of all lands situated within the Municipal Area. It has been further stated that after the independence and merger of states into the Republic of India, the Madhya Bharat State was formed and the property belonging to the Gwalior State and the cantonment area of Neemuch were transferred to the Municipal Committee, Neemuch and independent legislation was enacted known as "Qanun Municipality Hai, Samvat 1993". It has replaced the earlier law ie., Neemuch Cantonment Municipal Law, 1936 by two Notifications dated 16/4/1952 and 30/6/1952 published in Gazette of Madhya Bharat on 24/4/1952 and 10/7/1952. It has been further stated that the ownership of land earlier comprised in the cantonment area was transferred to Municipal Council, Neemuch u/S. 87 of the Gwalior State Municipalities Act and according to Sec. 87(1) of the Act, the land was given in possession of the petitioner and the ownership vested with the Municipal Council, Neemuch. It has been further stated that at no point of time the land was transferred either to the predecessor in title of the petitioner or to the petitioner and the Neemuch Municipal Corporation always remained the owner of the said land. It has also been stated that there were numerous cases filed against the Municipal Council, Neemuch as well as against the State Government and in respect of ownership rights a need arose to regularise the cases of people who are in possession of the Municipal land. It has been further stated that a dispute arose in 1993 as the then Collector, Mandsaur illegally transferred eight hectares of land without consent and payment of compensation to the Municipal Council, Neemuch and the Municipal Council protested in the matter. Finally as nothing was being done, a Writ Petition was preferred before this Court ie., W.P.No. 699/1997 and the same was decided on 29/1/2004 with a direction to the State Government to decide the dispute and the State has decided the dispute and the Municipal Council, Neemuch was granted compensation in respect of 8 hectares land to the tune of Rs.72,00,000/-. It has been stated that in the year 1999, land admeasuring 18.15 hectares was again taken by the Collector for the purpose of construction of residential houses for Government employees etc., and again the Municipal Council, Neemuch protested in the matter and demanded payment of compensation. As nothing was being done in the matter, again the Municipality filed a Writ Petition ie., W.P.No. 1182/2009 and a statement was made on 9/3/2009 on behalf of the State Government that a High Power Committee is being constituted to look into the grievance of the Municipal Council, Neemuch for resolving the matter. This Court has directed the Chief Secretary to constitute a High Power Committee to consider and settle the grievance of the petitioner therein ie., Municipal Council, Neemuch. Thereafter High Power Committee was

constituted and a report was obtained from the District Collector in respect of the value of the land and the State Government thereafter again took decision to resume the land u/S. 100 of the Municipalities Act, 1961. A notice was issued on 26/4/2011 informing Municipal Corporation that the State Government has taken decision to resume the land which was subject matter of Writ Petition No. 1182/2009. Being aggrieved by the Notice dated 26/4/2011 again Municipal Council, Neemuch preferred Writ Petition ie., W.P.No. 9370/2011, however, during the pendency of the Writ Petition consensus was arrived at between the Municipal Council, Neemuch and the State Government decided to resolve the dispute and consequently Writ Petition was withdrawn. Not only this, other cases also cropped in the past in respect of title and in the reply it has been stated that this Court while passing an order in S.A.No. 44/1996 has held that the entire land under the Municipal Council Neemuch Cantonment Area is under the title of Municipal Council, Neemuch. The respondents have stated that not a single document has been filed by the petitioner either in the present Writ Petition or in the connected Writ Petitions to establish that they are title holder of the property. It has also been argued that merely by purchasing the property from some private person, the successor does not become title holder and the predecessor in title, who does not have a title of the property, cannot transfer the title in absence of the title. It has also been argued by Mr. V. K. Jain, learned senior counsel that there is no document to establish that the predecessor is having any title and the predecessor in title was merely in possession of the property which is subject matter of the Writ Petitions. Mr. V. K. Jain, learned senior counsel has informed this Court that after issuance of the Notification dated 1/7/2017 by which the Rules have come into force, as many as 1000 persons have submitted applications under the Rules and their cases have been regularised, meaning thereby, lease deeds have been issued in their favour. It has also been stated that by the Rules of 2017, in fact, in order to ensure that the proper documentation is done in respect of occupier of cantonment area, the State Government has taken action, the State Government has framed Rules and only a few limited peoples are aggrieved in the matter. It has also been argued that the petitioner is also free to file appropriate application and the Rules does not provide for automatic dispossession from the property in question. Rules provides action under the M. P. Lok Parisar (Bedakhali) Adhiniyam, 1974 and in case any action is taken under the Adhiniyam, the petitioner will have a right to defend himself, in case he does have valid document in respect of the title. A prayer has been made for dismissal of the Writ Petition.

11. It has also been submitted by Mr. V. K. Jain, learned senior counsel that by the Rules the State Government is not deciding the title of any individual and a procedure has been provided to regularise all cases of occupiers who are in occupation of the land situated in the Cantonment area and the Rules - certainly provides for eviction under the Public Premises (Bedakhali) Adhiniyam and in case any person is having valid title document, he is certainly free to defend himself in case a case is filed for his eviction. He has also stated that the Rules

do not bar filing of a Civil Suit and any individual is free to file Civil Suit in case he is claiming title over the property in question. It has also been stated that there is specific Rule under the Rules which provides that in case any decree is passed by any Civil Court, the same shall be binding upon the parties.

12. Heard learned counsel for the parties and perused the record. The matter is being disposed of with the consent of the parties at motion stage itself.

13. The petitioners in the present case and other connected matters have challenged the constitutional validity of the rules framed by the State Government in exercise of powers conferred under section 109 read with section 355 of the Madhya Pradesh Municipalities Act, 1961 and the rules are known as "Settlement of Land Located Within the Cantonment Area Under Municipal Council, Neemuch Rules, 2017."

14. The necessity to frame the aforesaid rules arose as thousands and thousands of houses were having a dispute of title. There was a dispute in respect of ownership of the lands, building permissions were not being granted by the Municipal Council, Neemuch and in order to help the residents of Neemuch, the matter was placed before the State Cabinet and finally the said rules have been enacted. This Court has been informed that the rules were came into existence w.e.f 01.07.2017 and more than one thousand persons have submitted their applications for regularizing their land cases under the rules and the lease deeds have been issued in their favour in respect of the land which was under their occupation.

15. In order to deal with the constitutional validity of the rules, the history of the land has to be traced. The Neemuch town was under the Scindia State and the Neemuch Cantonment was established somewhere in the year 1817 on the basis of request made by the then British Military Govt. and the area was transferred by the rulers of Scindia dynasty to the British Military Govt. Since then the British Bengal Presidency Army Headquarters governed the Neemuch Cantonment and various Circulars were issued in the year 1835, 1836, 1855, 1873, 1880 and 1897 for regulating the affairs of the Cantonment. A military headquarter was established by the British Govt. in terms of the provisions of the Cantonment Land Administration Rules, 1925 and the entire area of Neemuch Cantonment was divided into four broader categories i.e. (1) Troop Area (2) Bazar Area (3) Bungalow Area (4) Garden/Khet or Field Area. The military area was reserved for army, the civil area (bungalow area) was reserved for families of army officers, the Bazar area was reserved for market (where the Indians were residing) and the Garden/Khet/Field area which was comprising large agricultural farms known as gardens, Khet, field or plots.

16. In the present petition the majority area which is in dispute is in the Military/Troop area, where several bungalows were constructed for providing accommodation to the British officers. 17. That a notification was published on 14.10.1936 in exercise of powers conferred by the Indian (Foreign Jurisdiction)

Order-In-Council, 1902 and a law for administration of Neemuch Cantonment was promulgated known as "Neemuch Cantonment Municipal Law, 1936." After enactment of the Cantonment law, the entire area including the area which is the subject matter of this petition was under the Act of 1936. The Britishers quite close to the date of granting independence to the Indians published a notification by the Resident for Central India in its Political Department whereby the jurisdiction exercised by the Crown's representative over Neemuch Cantonment area was restored to His Highness the Maharaja of Scindia with effect from 26.07.1947. The notification dated 23.07.1947 reads as under:

No.6876-C/248-C/47, dated Central India Agency Indore, the 5th Aug, 1947

A copy of the under mentioned paper is forwarded to the Judicial Officer, Neemuch Cantonment, Neemuch for information.

.....

Political Department Notification No.185-P, dated the 23rd July, 1947.

Copy of Political Department Notification No.185-P dated the 23rd July, 1947.

.....

Whereas the jurisdiction heretofore exercised by the Crown Representative in the area known as the Cantonment of Neemuch will with effect from the 26th day of July, 1947 be restored to His Highness the Maharaja of Gwalior.

NOW, THEREFORE, in exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1937, and of all other powers enabling him in that behalf, the Crown Representative is pleased to direct that with effect from the said 26th day of July, 1947, all notifications issued under the India (Foreign Jurisdiction) Order in Council, 1902, or under the Indian (Foreign Jurisdiction) Order in Council, 1937, whereby specific provision was made for the said area, whether by the making of laws or the application of laws to the said area, or for the administration of justice therein or otherwise, shall be cancelled.

No.5475/47 Dated Neemuch Cantt: the 5th August, 1947

Copy forwarded to the Secretary, Municipal Committee, Neemuch

Cantt: for information

Judicial Officer

Neemuch Cantonment

18. Pursuant to the notification dated 23.07.1947, the erstwhile Maharaja of Gwalior issued a Circular in its Department of Law and Justice notifying that the Gwalior State has taken over the entire area and a copy of the notification issued by the Royal Govt. dated 30.07.1947 is reproduced as under:

संवत् 2004 के विधान

डिपार्टमेंट ऑफ लॉ एंड जस्टिस

संवत् 2004,

सरक्यूलर क्रमांक 1,

तारीख 30 जौलाई सन 1947 ई.

इस कारण से कि तारीख 26 जौलाई सन 1947 ई. से नीमच छावनी क्षेत्र जिस पर सम्राट प्रतिनिधि (Crown Representative) का अधिकार क्षेत्र था, ग्वालियर दरबार को वापिस किया गया है, अतएव समस्त संबंधित व्यक्तियों को सुचनार्थ तथा पालनार्थ श्रीमंत सरकार महाराज की आज्ञानुसार निम्नलिखित आदेश जारी किये जाते हैं:-

1. ग्वालियर राज्य के समस्त महनमों को वे सब अधिकार, जो उन्हें नीमच नगर पर प्राप्त है, तारीख 26 जौलाई सन 1947 ई. से नीमच छावनी क्षेत्र पर भी पूर्णतया प्राप्त होनेकिन्तु प्रतिबंध यह है कि नीमच छावनी क्षेत्र में जो सम्राट प्रतिनिधि की पुलिस सैन्य है वे आगे अन्य संबंध होने तक अस्थाई रूप से स्थित रहेंगी, इस आन्तरिक काल में इस सैन्य का अनुशासन स्थित रखने के आशय के लिये Crown Representative पुलिस फोर्स लॉ, सन 1936 ई. के आधीन कमान्डेंट तथा उसके पदाधिकारी द्वारा की गई समस्त फरियादे वैध होगी।
2. जो दीवानी व फौजदारी अधिकार नीमच नगर पर जिन न्यायालयों को प्राप्त है वह समस्त अधिकार नीमच छावनी क्षेत्र पर उक्त दिनांक से उन न्यायालयों को प्राप्त होंगे.
3. सब जज नीमच या अन्य कोई पदाधिकारी, जो इसके लिये लॉ मिनिस्टर द्वारा विशेषरूप से अभियुक्त किया गया हो, नीमच छावनी न्यायालय में समस्त विचाराधीन मुकदमों में उसी प्रकार से कार्यवाही करेंगे मानो वे मुकदमे नीमच नगर के न्यायालय में ही प्रस्तुत हुए हो।
4. ऐसे मुकदमे से बस Crown Representative जैसे इन्डियन कोर्ट फीस एक्ट, इन्डियन स्क्वायर एक्ट, इन्डियन लिमिटेशन एक्ट, इन्डियन रजिस्ट्रेशन एक्ट आदि, के आदेश लागू होंगे, जिनके आधीन वह नीमच छावनी न्यायालय में प्रस्तुत किये गये हैं.
5. ऐसे मुकदमों के संबंध में अपील, पुनरावलोकन या पुनर्विचार ग्वालियर सिविल एन्ड क्रिमिनल कोर्ट रेग्युलेशन, संवत् 1949 के आधीन या ग्वालियर राज्य के अन्य विधान के आधीन संबंधित न्यायालयों में होगा.
6. छह डिक्रियां व दण्ड आज्ञायें जो नीमच छावनी न्यायालय या अपील की न्यायालय द्वारा प्रदान की गई हो उनका प्रवर्तन नीमच नगर न्यायालय द्वारा उसी प्रकार किया जायेगा मानों वह उसी न्यायालय द्वारा प्रदान की गई हो.
7. आगे के पद में उल्लेखित प्रतिबन्धों के पालन में साथ कोई अभियुक्त व्यवसायी, जो नीमच छावनी क्षेत्र का निवासी हो और जिसको नीमच छावनी न्यायालय में अभिभाषण व्यवसाय करने का प्रमाणपत्र प्राप्त हो, यह प्रमाण पत्र कथित तौर के लिये ग्वालियर राज्य द्वारा प्रदत्त प्रमाणपत्र ही समझे जायेंगे। ऐसे प्रमाणपत्र के रखने वाले किसी अभिभाषण व्यवसायी को प्रचलित होने के एक मास के भीतर, अभिभाषण व्यवसायी विधान, ग्वालियर राज्य, संवत् 2003, के अनुसार न्याय विभाग से प्रमाणपत्र प्राप्त करने के लिये आवेदन करना अनिवार्य है ऐसे प्रमाणपत्र के लिये कोई शुल्क नहीं दिया जायेगा।

उपर उल्लेखित अभिभाषण व्यवसायियों के अतिरिक्त अन्य अभिभाषण व्यवसायी, जो नीमच छावनी न्यायालय के कथित विचाराधीन मुकदमों में उपस्थित हो रहे हैं, कार्यवाही कर रहे हैं या पेरवी कर रहे हैं, उन्हें उन मुकदमों में उपस्थित होने, कार्यवाही करने या पेरवी करने का स्वत्वाधिकार होगा, सोसाइटी रजिस्ट्री (संशोधन) विधान, ग्वालियर राज्य

(विधान क्रमांक 2 संवत् 2004)

1. यह विधान 'सोसाइटी रजिस्ट्री (संशोधन) विधान, ग्वालियर राज्य, संवत् 2004' नाम तथा प्रारम्भ कहलायेगा।

2. यह ग्वालियर गवर्नमेन्ट गजट में प्रकाशित होते ही प्रभावशाली होगा.

3. कानुर मुताबिक रजिस्ट्री सोसायटी ग्वालियर, निरस्त किया जाता है

19. Thereafter, the Gwalior State issued another notification No.3 of Samvat 1998 published in the official gazette of Gwalior State on 23.05.1942 by which the the proprietary rights were conferred on Municipalities in respect of all lands situated within the Municipal area. The aforesaid facts reflect that the predecessor of the Municipal Council, Neemuch was constituted under the Neemuch Cantonment Municipal Law, 1936 and thereafter governed by Qanun Municipality Hai, Samvat 1993. Thereafter, the Municipal Council, Neemuch has been governed by the provisions of the Madhya Bharat Municipalities Act, 1954 and lastly by the provisions of the Madhya Pradesh Municipalities Act, 1961. After independence and after the State of Madhya Bharat came into existence and on account of merger of the Gwalior State with the Union of India, the land and property in the Neemuch township including the Cantonment area, Neemuch were transferred to the Municipal Committee, Neemuch and again an independent legislation was enacted which was known as "Qanun Municipality Hai, Samvat, 1993 which had replaced the earlier Neemuch Cantonment Municipal Law, 1936 by two notifications dated 16.04.1952 and 30.06.1952 published in the gazette of Madhya Bharat State on 24.04.1952 and 10.07.1952. The aforesaid facts establish that the ownership of the land comprising of the Cantonment area was transferred to the Municipal Council, Neemuch under section 87 of the Gwalior State Municipalities Act. As per section 87(1) of the Gwalior State Municipalities Act, persons like the petitioners or from whom the petitioners have purchased the property were given possession of the land and there is no document on record to show that the then British Govt., the then Scindia dynasty or any other title holders had transferred the title of the land at any point of time to the predecessor-in-title of the petitioners, to the petitioners or to any other person. The other important aspect of the case is that in the year 1993, the Collector, Mandsaur allotted eight hectares of land without the consent of the Municipal Council, Neemuch and without payment of compensation and a protest in this regard was lodged by the Municipal Council, Neemuch in the matter as no compensation was paid to the Municipal Council, Neemuch. The correspondence in this regard was held between the Municipal Council, Neemuch and the State and ultimately the Municipal Council, Neemuch preferred a Writ Petition No.699/1997 which was disposed of vide order dated 29.01.2004 with the direction to the State Govt. to decide the dispute between the State Govt. and the Municipal Council, Neemuch. The State Govt. finally granted a sum of Rs.72 lacs to the Municipal Council, Neemuch towards the price of 8 hectares of land. Again in the year 1999 an area admeasuring 18.15 hectares was taken over by the Collector, Neemuch without the consent of the Municipal Council, Neemuch for construction of residential buildings for government employees, construction of Collectorate, Panchayat office and Police line. Hence, a demand was made for payment of compensation/premium/lease rent. A protest was

lodged by the Municipal Council in the matter and after repeated request finally vide letters dated 12.08.1999, 15.09.1999 and 16.08.2002, the Principal Secretary, Urban Administration Department directed the Collector to determine the premium/lease rent and to pay the same to the Municipal Council, Neemuch. However, the compensation was not paid and, therefore, again a writ petition was filed which was registered as Writ Petition No.1182/2009 and on 09.03.2009 a statement was made by the State Govt. to constitute a High Power Committee in the matter to resolve the dispute and thereafter the High Power Committee was constituted and the State Govt. took a decision to resume the land under section 100 of the Municipalities Act, 1961. The petitioner was granted time to file objection in the matter and a writ petition was also preferred in the matter challenging the action of the State Govt. i.e. W.P.No.9370/2011. During the pendency of the aforesaid writ petition, the parties arrived at a consensus i.e. the Municipal Council, Neemuch and the State Govt. would resolve the dispute including the private litigation and the writ petition was withdrawn. Thereafter, the State Govt. has enacted the impugned rules.

20. The another important aspect of the case is that in respect of the land which is undisputedly part of the Cantonment area a dispute arose with regard to title of Municipal Council, Neemuch and the matter traveled up to this court in Second Appeal No.44/1966. The order passed in Second Appeal No.44/1966 reads as under:

S.A.No.44/1966 State of Madhya Pradesh vs. Shri Niwas Mandloi s/o Yeshwantrao r/o Neemuch & another

This appeal has been preferred by the State of M.P.

2. The only question involved in this appeal is whether the open land situated in Neemuch Cantonment area would be the municipal land or the Nazul land I.e whether the land is vested in the municipality or is the land of the State?

3. As has been held in the following cases Ramcharanlal vs. Municipal Council Bijapur- 1988 W.N Note No.114, Municipal Council Mandsaur vs. State of M.P Bhopal and others - 1972 M.P.L.J 911, Sind Mahajan Exchange Ltd., Lashkar vs. State of M.P and another- 1980 J.L.J 581 and Nagar Palika Sheopur vs. Yasin Mohammad), the land has vested in the Municipality and the judgment and decree of the courts below are according to law.

4. This appeal, therefore, fails and is hereby dismissed. There shall be no order as to costs of this appeal.

S.Awasthy Judge

29.7.88

21. In the aforesaid order, learned Single Judge while deciding the second appeal has held that the land in the Cantonment area, Neemuch is vested in the municipality. The petitioners as already stated earlier have raised various

grounds for declaring the rules to be ultra vires.

22. The Apex Court while dealing with the Cellular Operators Association of India and others vs. Telecom Regulatory Authority of India and others reported in (2016) 7 SCC 703 has held that there is a presumption in favour of constitutionality or validity of subordinate legislation and the burden is upon him who attacks it to show that it is invalid. The Apex Court in the aforesaid case has summarized various grounds on which subordinate legislation can be challenged which reads as under:

There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognized that a subordinate legislation can be challenged under any of the following grounds:

- (a) Lack of legislative competence to make the subordinate legislation.
- (b) Violation of fundamental rights guaranteed under the Constitution of India.
- (c) Violation of any provision of the Constitution of India. (d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.
- (e) Repugnancy to the laws of the land, that is, any enactment.
- (f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).

In the present case, the appellants have raised pleas under paras (b), (d) and (f). (Para 34).

One of the tests for challenging the constitutionality of subordinate legislation is that subordinate legislation should not be manifestly arbitrary. Also, it is settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution.

(State of T.N v. P.Krishnamurthy, (2006) 4 SCC 517; Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India (1985) 1 SCC 641; 1985 SCC (Tax) 121; Khoday Distilleries Ltd. vs. State of Karnataka, (1996) 10 SCC 304; Sharma Transport v. State of A.P, (2002) 2 SCC 188, relied on.

23. The Apex Court in the Cellular Operators Association of India (supra) has held in paras-34, 42, 43 & 44 as under:

34. In State of Tamil Nadu v. P. Krishnamoorthy, (2006) 4 SCC 517, this Court after adverting to the relevant case law on the subject, laid down the parameters of judicial review of subordinate legislation generally thus:(SCC pp. 528-29,

paras 15-16)

"15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:

- (a) Lack of legislative competence to make the subordinate legislation.
- (b) Violation of fundamental rights guaranteed under the Constitution of India.
- (c) Violation of any provision of the Constitution of India.
- (d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.
- (e) Repugnancy to the laws of the land, that is, any enactment.
- (f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).

16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity."

xxx xxx xxx

42. We have already seen that one of the tests for challenging the constitutionality of subordinate legislation is that subordinate legislation should not be manifestly arbitrary. Also, it is settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation - [See: *Indian Express Newspapers v. Union of India*, (1985) 1 SCC 641 at Para 75].

43. The test of "manifest arbitrariness" is well explained in two judgments of this Court. In *Khoday Distilleries Ltd. v. State of Karnataka*, (1996) 10 SCC 304, this Court held: (SCC p.314 para 13).

"13. It is next submitted before us that the amended Rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19(1) (g) may not be available to the appellants, the rules must, undoubtedly, satisfy the test of Article 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. The tests of arbitrary action which apply to executive

actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the lawmaking power. In the case of *Indian Express Newspapers (Bombay) Pvt. Ltd. and Ors. v. Union of India and Ors.* [(1985) 1 SCC 641 : 1985 SCC (Tax) 121 : (1985) 2 SCR 287], this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; "unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary". Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say, "Parliament never intended the authority to make such Rules; they are unreasonable and ultra vires". In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution. "

[emphasis supplied]

44. Also, in *Sharma Transport v. Government of Andhra Pradesh* , (2002) 2 SCC 188, this Court held:

"25 ... The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression "arbitrarily" means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone."

24. The Apex Court in the aforesaid case has taken into account almost each and every judgment on the subject right from the judgment delivered in the year 1910 till date and the ground raised by the petitioners do not fall within the parameters framed by the Apex Court while dealing with the case of Cellular Operators Association of India.

25. Learned Senior Counsel appearing for the petitioners has placed heavy reliance upon the judgment delivered in the case of *Chairman, Indore Vikas Pradhikaran vs. Pure Industrial Coke & Chemicals Ltd.* reported in (2007) 8 SCC 705 and it has been argued that right to property is a human right and a legally enforceable right and no authority can deprive the valuable right to property without following due process of law.

26. This Court has carefully gone through the aforesaid judgments. The present case is not a case where the title holder is being deprived of legitimate right of

title and, in fact, the State Govt. has enacted the rules to regulate the cases of persons occupying the Cantonment property. The rules also provide that in case no application is submitted under the Rules of 2017 the Municipal Council, Neemuch shall be free to take appropriate action for eviction of the occupant by taking shelter of the provisions of the Madhya Pradesh Lok Parisar (Bedakhali) Adhiniyam, 1974 and in case in future such an action is taken against any individual, the occupant shall certainly defend himself by placing relevant documents in support of his claim. It is not a case where Municipal Council, Neemuch or any agency of the State Govt. can evict someone without following due process of law. Resultantly, the judgment cited by the petitioners are of no avail to the petitioners.

27. A heavy reliance has also been placed upon the judgment dated 04.08.2016 delivered by this Court in the case of Smt.Snehlata vs. State of M.P in Writ Petition No.2154/2012 which was also arising out of an area under the Neemuch township. The facts of the case in the case of Smt.Snehlata (supra) are quite distinguishable. In the aforesaid case the erstwhile Maharaja of Udaipur was the owner of the property and after amalgamation of the State of Rajasthan with the Union of India, the properties of Maharaja Udaipur became the properties of the State of Rajasthan though the property was situated in Neemuch. The State of Rajasthan conducted a public auction and the petitioner viz. Smt.Snehlata purchased the property being the highest bidder. The sale deed was executed by the State of Rajasthan on 22.02.1956 and the Municipal Council, Neemuch started claiming the property and in those circumstances this Court allowed the writ petition preferred by Smt.Snehlata and the order passed by the Sub-Divisional Officer was quashed. Undisputedly, in the present case the property in question was the property of Scindia dynasty and it was in the municipal area and finally after the independence, the property was transferred to the Municipal Council, Neemuch, hence the reliance placed upon the judgment passed in the case of Smt.Snehlata (supra) is of no avail to the petitioners.

28. In the light of the aforesaid discussion, this Court is of the considered opinion that the petitioners have not been able to make out a case enabling this Court to declare the Rules of 2017 to be ultra vires. Resultantly, this writ petition along with all other connected writ petitions are hereby dismissed.

No order as to costs.