(2021) 06 MP CK 0154

In the Madhya Pradesh High Court

Case No : Writ Petition No. 10594 Of 2020

M/S Graphic Builtcon Pvt Ltd Thr. Its Authorized Representative Shri Ratan Singh And Others — APPELLANT

Vs

Indore Municipal Corporation And Others — RESPONDENT

Date of Decision : 22-06-2021

Acts Referred:
Madhya Pradesh Municipal Corporation Act, 1956 — Section 138, 143, 147, 148, 149, 150, 158, 297

Citation : (2021) 06 MP CK 0154

Hon'ble Judges : Rohit Arya, J

Bench : Single Bench

Advocate : V.K. Asudani

Final Decision : Disposed Of

Judgement

Rohit Arya, J

Petitioners; M.S Graphic Builtcon Pvt. Ltd. and Arrow Buildtech Pvt. Ltd are before this Court with the grievance that respondent No.1/ Indore

Municipal Corporation on the one hand is sitting tight over the detailed reply submitted on 26.03.2021 in response to notice dated 22.03.2021 and on the

other hand it has withheld the building permission. It is submitted that both companies hold colonizer license for development of residential and

commercial complexes. Due to withholding of building permission, petitioners are suffering recurring losses in terms of cost of construction delay in

completion of projects etc.

Shri Asudani, learned counsel for the petitioner submits that as per the scheme of the M.P. Municipal Corporation Act, 1956 (for short 'the Act'),

building permission is considered and granted under Section 297 of the Act r/w

M.P. Nagar Palika (Colonisers License Regulations & condition)

Rules, 1998. Process of such building permission is independent of proceedings contemplated under Chapter IV, Part II dealing with 'property tax'

whereunder if the party is aggrieved by assessment of annual valuation and duration of assessment determined under Section 143 of the Act may

raise objection through notice of objection of valuation under Section 147 of the Act. The investigation of objection by the Commissioner shall be

carried out under Section 148 of the Act. If assessee is aggrieved by the decision of the Commissioner, he has a right of appeal under Section 149 of

the Act to District Court. Though, every valuation made by the Commissioner under Section 143 of the Act subject to provisions of Section 148 and

149 of the Act, is final as contemplated under Section 150 of the Act, however, Section 158 of the Act provides that when an objection to valuation

has been made under Section 147 of the Act, the property tax pending final determination of the objection, shall be paid on the previous valuation.

Therefore, since the objection to the notice has been filed as far back on 26.03.2021, petitioners are not bound to pay the property tax in excess to

what they have been paying previously to the assessment year in question.

Â Learned counsel contends that the building permission cannot be withheld for non-payment of property tax in terms of the notice under challenge.

Â Upon hearing learned counsel for the petitioner and perusal of the provisions related to building permission and the assessment of property tax

(supra), in the opinion of this Court the argument advanced is dehors facts discernible from the impugned notice (Annxure P/14). By the impugned

notice, the Corporation has called upon the petitioners to pay property tax on the net planning area of 2031811 sq. feet residential and 423083 sq. feet

commercial area from the assessment year 2014-15 whereas petitioners have only paid property tax on 1217996 sq. feet residential area and 304934

sq. feet commercial area.

Â As such the impugned notice is not with reference to the valuation of the property or assessment of the property tax as contemplated under Section

138 of the Act (annual return value of land/building or assessment of annual value and duration of assessment under Section 143 of the Act). In other

words, there is no enhancement either of annual value of land or that of rate of assessment. Instead non-payment of property tax on difference of residential and commercial area under net planning. Therefore, the dispute sought to be raised in reply is in context of difference of area of land to pay

the tax. Therefore, the reliance on Section 158 of the Act, in the opinion of this Court is misplaced as not applicable to the facts in hand regard being

had to the scheme of the Act related to valuation, objection and appeal. Be that as it may, since the petitioners have filed reply to the notice on

22.03.2021 that requires to be considered and decided in accordance with law. It appears so far, the same has been unattended and period of three

month has passed away as averred in the writ petition.

At this stage, it is apposite to observe that non-payment of outstanding dues in the aforesaid context can always be a reason or justification for

withholding the building permission, as an assessee cannot seek building permission to raise construction without payment of property tax outstanding

to his credit.

In result this Court is of the considered view that following directions shall sub-serve ends of justice;

(i) the petitioners shall submit the certified copy of the order passed today within a period of one week to the office of Commissioner, Indore

Municipal Corporation/ respondent No.1 and seek indulgence in the matter of decision on his pending reply/ representation against the impugned notice

(supra) on the reasons/grounds raised in the reply.

(ii) respondent No.1 is hereby directed to address the contention based on facts and law so raised and take a well considered decision within a period

of four weeks from the date of submission of certified copy of the order passed today.

With the aforesaid, this writ petition stand disposed of.

It is made clear that this Court has not expressed any opinion on the merit of the case.