
(2007) 09 MP CK 0062
In the Madhya Pradesh High Court

Municipal Corporation

APPELLANT

Vs

Arvind Jain and Others

RESPONDENT

Date of Decision : 18-09-2007

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2007) ILR (MP) 1132 : (2007) 3 JLJ 414 : (2007) 4 MPHT 173 :
(2007) 4 MPLJ 402

Hon'ble Judges : A.K. Patnaik, C.J;S.S. Jha, J;A.M. Sapre, J

Bench : Full Bench

Judgement

A.K. Patnaik, C.J.

This is a reference made to this Bench pursuant to an order passed by a learned Single Judge of this Court on 24.1.2006 in W.P. No.269/1995.

The facts leading to the reference are that the respondents received a notice dated 22.10.1991 from the petitioner requiring them to produce the map of their building after making provision in F.A.R. 1:2, coverage 70% and the height upto 40 ft. The respondents filed an appeal against the said notice u/s 293(3) of the Madhya Pradesh Municipal Corporation Act, 1956 (for short "the Act") before the District Judge, Bhopal. The appeal was entertained and allowed by the Vth Additional Sessions Judge, Bhopal. Aggrieved by the order that was passed by the Vth Addl. District Judge, Bhopal, the petitioner filed a petition under Article 227 of the Constitution of India. When the writ petition was heard by the learned Single Judge of this Court, the petitioner contended before the learned Single Judge that the learned Additional District Judge did not have jurisdiction to entertain the appeal u/s 293(3) of the Act.

The learned Single Judge found that there were two Division Bench decisions of this Court Moolchand and Anr. v. Indore Municipal Corporation and Anr. 1973 MPLJ 596 and Sardarbi Noor Mohammad v. Municipal Corporation, Indore and Ors. 1984 MPLJ 617, in which conflicting opinions had been expressed with

regard to the forum in which an appeal could be filed against the orders passed by the Commissioner of the Municipal Corporation refusing to grant permission for construction or reconstruction of a building. The learned Single Judge noticed that in *Moolchand and Anr. v. Indore Municipal Corporation and Anr.* (supra), a Division Bench of this Court had taken a view that the order of the Commissioner refusing sanction for the galleries was apparently passed u/s 295 of the Act and was thus appealable to the Corporation under Sub-section (2)(a) of Section 403 of the Act and under Sub-section (3) of Section 403 of the Act, the Appeal Committee of the Corporation had jurisdiction to hear the appeal. The learned single Judge however noticed a later decision in *Sardarbi Noor Mohammad v. Municipal Corporation, Indore and Ors.* (supra), in which a Division Bench of this Court had come to the conclusion that Section 293(3) of the Act provides for an appeal to the District Court by a person aggrieved by the order of the Commissioner regarding permission to construct or reconstruct a building.

Confronted with two conflicting decisions of the Division Benches of this Court, the learned Single Judge in his order dated 24.1.2006 has referred to the Full Bench for consideration of following two questions:

(1) Whether the appeal provided under Sub-section (3) of Section 293 is confined only to the order of Commissioner when it determines that a particular proposed alternation is material or not under Sub-section (2) ?

(2) Whether the conclusion of the Division Bench decision in *Sardarbi Noor Mohammad's* case (supra) that Section 293(3) of the Act clearly provides for an appeal to the District Court for a person being aggrieved by the order of the Commissioner regarding permission to construct or reconstruct is not a good law in view of the scope of the various provisions of the Municipal Corporation Act, 1956 and specially on account of having been rendered ignoring the earlier Division Bench decision in *Moolchand's* case ?

While Mr. Shekhar Sharma, learned Counsel appeared for the petitioner, no one has appeared for the respondents despite notice having been served on the respondents. Mr. Shekhar Sharma took us through the provision of the Chapter XXIV of the Act and particularly Sections 293, 294, 295 and 305 of the Act. He also referred to the provisions of Section 403 of the Act which provides for appeals against the orders of the Commissioner and Subordinate Officers.

For answering the two questions referred to us by the learned single Judge, Sections 293 and Sub-sections (2) and (3) of Section 403 of the Act are relevant and are extracted hereinbelow:

293. Prohibition of erection or re-erection of buildings without permission.-(1) No person shall -

(i) erect or re-erect any building; or

(ii) commence to erect or re-erect any building; or

- (iii) make any material external alteration to any building; or
- (iv) construct or re-construct any projecting portion of a building which the Commissioner is empowered by Section 305 to require to be set back or is empowered to give permission to construct or re-construct,
- (a) unless the Commissioner has either by an order in writing granted permission or has failed to intimate within the prescribed period his refusal of permission for the erection or re-erection of the building or for the construction or re-construction of the projecting part of the building; or
- (b) after the expiry of one year from the date of the said permission or such longer period as the Commissioner may allow or from the end of the prescribed period, as the case may be:

Provided that nothing in this section shall apply to any work, addition or alteration which the Corporation may by byelaw declare to be exempt.

(2) If a question arises whether a particular alteration in or addition to an existing building is or is not a material alteration the matter will be determined by the Commissioner.

(3) Any person aggrieved by the order of the Commissioner in this behalf may appeal to the district court within thirty days of such order in the manner prescribed therefore and the decision of the district court shall be final.

Appeal against the order of the Commissioner and subordinate officers.

(1) x x x x x x x x

(2) Any person aggrieved by

(a) any notice or order issued or other action taken by the Commissioner under Sections 174, 193, 195, 196, 197, 198, 199, 202, 204, 206, 207, 208, 209, 210, 237, 241, 243, 246, 248, 249, 295, 296, 299, 301, 302, 310, 311, 312, 313, 315, 322, 323 or 393 of this Act or any rule or byelaw made thereunder;

(b) any order of the Commissioner regarding granting or refusing a licence or permission; or (c) any other order of the Commissioner that may be made appealable by byelaws u/s 427, may appeal to the Corporation within 30 days from the date of such order.

(3) Such appeal shall be heard and disposed of by a committee to be called the "Appeal Committee" appointed by the Corporation.

(4) x x x x x x x

(5) x x x x x x x

(6) x x x x x x x

(7) x x x x x x x

(8) x x x x x x x

(9) x x x x x x x

The marginal title of Section 293 quoted above would show that the provision deals with prohibition of erection or re-erection of buildings without permission. Sub-section (1) of Section 293 inter alia provides that no person shall erect or re-erect any building or commence to erect or re-erect any building unless the Commissioner has either by an order in writing granted permission or has failed to intimate within the prescribed period his refusal of permission for the erection or re-erection of the building. Section 294 of the Act is titled as "Notice of buildings". Sub-section (1) of Section 294 provides that every person who intends to erect or re-erect a building shall submit to the Commissioner an application in writing for approval of the site plan and an application in writing for permission to build together with a ground plan, elevation and section of the building and a specification of work to be done. Section 295 of the Act is titled "Commissioner to refuse erection or re-erection of buildings" and indicates the cases in which the Commissioner shall refuse to sanction erection or re-erection of a building. Thus, the power to refuse sanction or to grant sanction for erection or re-erection of any building is exercised by the Commissioner u/s 295 of the Act and not u/s 293(1) of the Act.

A reading of Sub-section (2) of Section 403 of the Act quoted above would show that any person aggrieved by any notice or order issued or other action taken by the Commissioner inter alia u/s 295 of the Act may appeal to the Corporation within 30 days from the date of such order. Sub-section (3) of Section 403 further provides that such appeal shall be heard and disposed of by a Committee to be called the Appeal Committee appointed by the Corporation. Once it is clear that appeal against any notice or order issued or other action taken by the Commissioner u/s 295 of the Act is to be filed before the Corporation and has to be heard by the Appeal Committee appointed by the Corporation as provided in Sub-sections (2) and (3) of Section 403 of the Act, it is difficult to hold that an appeal against the order passed by the Commissioner refusing or sanctioning erection or re-erection of the building can also be filed before the District Court under Sub-section (3) of Section 293 of the Act. This is because the Legislature could not have intended two different appellate authorities against the orders passed by the Commissioner refusing to sanction or sanctioning erection or re-erection of any building.

It is also a well settled principle of interpretation that the Court should attempt to interpret the provisions of an Act harmoniously and avoid as far as possible conflict between two provisions of the same Act. In *Sultana Begum Vs. Prem Chand Jain*, , the Supreme Court has held that when there are two apparently conflicting provisions of an Act then they should be so interpreted that if possible, effect should be given to both the provisions. It may be apparent that against the order passed by the Commissioner, an appeal could be filed before the Corporation which is to be heard by the Appeal Committee of the Corporation

under Sub-sections (2) and (3) of the Act and at the same time an appeal could be filed before the District Court under Sub-section (3) of Section 293 of the Act. But this conflict is not a real one because we have seen that against the orders passed by the Commissioner u/s 295 of the Act refusing or granting sanction for erection or re-erection of the building and therefore against such orders of the Commissioner refusing sanctioning or granting sanction for erection or re-erection of the building, an appeal could only be filed before the Corporation to be heard by the Appeal Committee under Sub-sections (2) and (3) of Section 403 of the Act.

The question then is what is the scope of the appeal against an order passed by the Commissioner to District Court under Sub-section (3) of Section 293 of the Act. The answer to this question lies in the very language of Section 293 of the Act. Sub-section (1) of Section 293 of the Act provides inter alia that no person shall make any material external alteration to any building without permission of the Commissioner. A person therefore can make external alteration to his building which is not material. A person who has made an external alteration to his building may think that the alteration made to his building is not material. But Sub-section (2) of Section 293 of the Act quoted above provides that if a question arises whether a particular alteration in or addition to an existing building is or is not a material alteration, the matter would be determined by the Commissioner. Hence, Sub-section (2) of Section 293 contemplates an order by the Commissioner determining that the external alteration or addition to a building is a material alteration even though the owner of the building may think that the alteration made by him is not material. It is this order of the Commissioner passed under Sub-section (2) of Section 293 of the Act which is appealable under Sub-section (3) of Section 293 before the District Court. Infact, Sub-section (3) of Section 293 of the Act states that any person aggrieved by "the order of the Commissioner in this behalf" may appeal to the District Court. The expression "the order of the Commissioner in this behalf" in subsection (3) can only refer to the order of the Commissioner in subsection (2) of Section 293 of the Act. The scope of the appeal to the District Court under Sub-section (3) of Section 293 is thus confined to an order passed by the Commissioner determining whether a particular alteration in or addition to an existing building is or is not a material alteration within the meaning of Section 293(1)(3) read with Sub-section (2) of Section 293 of the Act. Our answer to the first question referred by the learned Single Judge therefore is that the appeal provided under Sub-section (3) of Section 293 is confined only to the order of the Commissioner when he determines that a particular proposed alteration is or is not a material alteration under Sub-section (2) of Section 293 of the Act.

Coming now to the second question referred to us by the learned Single Judge, we find on a perusal of the decision in *Sardarbi Noor Mohammad v. Municipal Corporation, Indore* and *Ors.* (supra) that the Division Bench in that case has proceeded as if the order of the Commissioner sanctioning construction of the building was u/s 293 of the Act. The Division Bench in para 5 of the judgment

raised the point for consideration as to whether a permission granted u/s 293(1) of the Act can be revoked or interfered with by the Appeal Committee of the Corporation u/s 403 of the Act and held in para 7 of the judgment that Section 293(3) of the Act clearly provides for an appeal to the District Court in the event of any person being aggrieved by the order of the Commissioner regarding permission to construct or reconstruct. As we have seen that the order of the Commissioner regarding permission to construct or reconstruct a building is really an order u/s 295 of the Act which empowers the Commissioner to refuse to sanction the erection or re-erection of any building and implicit in this power is the power to grant sanction for erection or re-erection of any building and under Sub-sections (2) and (3) of Section 403 of the Act such an order passed by the Commissioner is appealable to the Corporation and is to be heard by the Appeal Committee of the Corporation. We have also seen that the order passed by the Commissioner u/s 293 of the Act is only an order under Sub-section (2) of Section 293 determining whether a particular alteration in or in addition to an existing building is or is not material alteration and such an order passed by the Commissioner under subsection (2) of Section 293 only is appealable under Sub-section (3) of Section 293 of the Act to the District Court. The view taken by the Division Bench in *Sardarbi Noor Mohammad v. Municipal Corporation, Indore and Ors.* (supra) is therefore not correct view and is hereby overruled.

The writ petition will now be placed before the appropriate Bench for disposal in accordance with law on merits.