
(2010) 07 CHH CK 0005
In the Chhattisgarh High Court
Case No : C.R. No. 157 of 2008

Municipal Corporation

APPELLANT

Vs

Bhushan Lal Sahu

RESPONDENT

Date of Decision : 13-07-2010

Acts Referred:

Chhattisgarh Municipal Corporation Act, 1956 — Section 286, 305, 305(1), 306, 383

Citation : AIR 2010 Chh 95 : (2011) 2 CGLJ 134 : (2011) 1 MPJR 6

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Prashant Kumar Mishra, J.—By this common order, Civil Revisions No. 157/2008, 150/2008, 151/2008, 152/2008, 153/2008, 154/2008, 155/2008, 158/2008, 159/2008 and 160/2008 are disposed of, Learned Counsel for the parties have raised their arguments on the basis of pleadings and documents made in Civil Revision No. 157/2008 and as such the main order is passed in Civil Revision No. 157/2008.

2. In this batch of civil revisions, the Petitioner Municipal Corporation, Raipur has called in question the legality and validity of the order dated 19-8-2008 passed by the District Judge, Raipur on an application moved by the Respondent u/s 387 of the Chhattisgarh Municipal Corporation Act, 1956 (henceforth "the Act"). By the impugned order dated 19-8-2008, the District Judge has appointed one Shri Satyendra Singh Thakur, Advocate, Raipur as Sarpanch for determination/assessment of damages suffered by the Respondent/tenant on account of loss of business at the time of acquisition of the land-building belonging to the owner and shifting the Respondent/tenant by allotting a shop by way of rehabilitation at home or other place.

3. The facts of the case are that the Respondent was a tenant of a shop owned by one Budhiyarinbai situated at Amapara, G.E. Road, Raipur. By issuing Gazette

Notifications dated 18-4-2001 and 15-9-2006 (as mentioned in paragraph 2 of the impugned order, though copy of the Gazette Notifications are not part of the record of this civil revision), the Municipal Corporation declared that the road from Sharda Chowk to Ampara shall be widened up to 24 meters under the Raipur Development Plan and notices were issued to the shopkeepers for vacating the shop. The Respondent preferred a writ petition bearing Writ Petition (C) No. 1120/2007 to challenge the notices issued to him for vacating the shop. The said writ petition was heard analogously with other connected matters and a common order was passed, the lead case being writ petition (C) No. 257/2007. The said writ petition was disposed of by order dated 29-3-2007 (Annexure P-3). The material part of the order reads thus:

3. Learned Counsel appearing for the Petitioner fairly submits that the Petitioner, who is in possession of the building, which is beyond the regular line of public street has no other right except right to reasonable compensation for any damages or loss that may be caused as a consequences in the process of widening of the public street (road).

4. The Petitioner, in this petition is questioning the basis for grant of compensation for any damages or loss occasioned by them. Learned Counsel further submits that the Petitioner be granted liberty to invoke provisions of Section 387 of the Act, 1956 in the event, the Petitioner is dissatisfied with the amount of compensation for damages or loss, paid by the Respondent/Corporation.

5. Shri Sanjay K. Agrawal with Shri Kashif Shakil, learned Counsel appearing for Respondent No. 1 and Shri V.V.S. Moorthy, learned Deputy Advocate General with Shri Utkarsh Verma, learned Deputy Government Advocate, appearing for Respondent No. 2 do not controvert the submission made by the learned Counsel appearing for the Petitioners.

6. In view of the foregoing, this petition is disposed of with liberty reserved to the Petitioners to invoke provisions of Section 387 of the Act, 1956 for appointment of arbitrator in accordance with the said provisions, if so advised. No order as to costs.

4. According to the Petitioner, both the parties appointed their arbitrators in pursuance to the order Annexure P-3 passed by this Court in the writ petition. The Petitioner appointed Mr. M.K. Gupta as its Panch, whereas the Respondent by Annexure P-4 appointed one Ram Khilawan Sharma as his Panch. Both the Panchas thereafter appointed one Shri Anil Tiwari as their Sarpanch by memo dated 24-4-2007 (Annexure P-6). The Panchas and the Sarpanch passed their award on 24-4-2007 (Annexure P-7). From the record, it does not appear that the Municipal Corporation has ever objected to this award Annexure P-7. The Corporation thereafter decided to rehabilitate and allot shop to each of the Respondents/tenants under the Chief Minister's Swawlamban Yojana/Deendayal Awas Yojana for which notice was issued on 26-4-2007 (Annexure P-8). The

Respondent, in response to the said notice of allotment, accorded his consent vide Annexure P-9 and shop No. 17 was allotted to him by issuing a detailed allotment order on 6-7-2007 (Annexure P-10).

5. The Respondent was a tenant of the shop owned by one Budhiyarinbai. According to the Corporation, the said Budhiyarinbai was paid compensation to the tune of Rs. 16,70,460/- on 28-4-2007 after executing an agreement and issuing receipt vide Annexure P-11, the owner was satisfied with the compensation and has not agitated the matter any further.

6. According to the Petitioner, when the matter thus remained concluded between the Corporation and the owner with regard to payment of compensation, the tenant/Respondent preferred the subject application u/s 387 of the Act vide Annexure P-12. The Petitioner preferred its objection to the said application u/s 387 of the Act preferred by the Respondent/tenant inter alia stating that the matter already stands concluded by payment of compensation to the owner by an award passed by the arbitrators and Sarpanch in pursuance to the order passed by the Hon"ble High Court in the writ petition, therefore, there is no question of appointment of arbitrator again and that the Corporation has already allotted shop for rehabilitating them.

7. Reiterating his submission, as projected in the memo of revision, learned Counsel for the Petitioner Municipal Corporation, Raipur would argue that provisions contained in Sections 305, 306 and 387 of the Act contemplate payment of compensation to the owner of the premises and not to the tenant. He submits that the issue has been settled by a Division Bench judgment of this High Court in Municipal Corporation, Raipur v. Smt. Mandakini Ram, 2009 (IV) MPJR CG 124, therefore, the application u/s 387 of the Act preferred by the tenant is not maintainable. He would also submit that although the Respondent/tenant was not entitled for any compensation yet in pursuance to the order passed by this Court in Writ Petition (C) No. 257/2007 and other connected matters (Annexure P-3), arbitrators were appointed by both the parties, who, in turn, appointed Sarpanch and an award was passed by the arbitrators on 24-4-2007 and thereafter, each of the Respondents/tenants have been allotted alternative shops for the purpose of rehabilitating them, therefore, the subject application is not maintainable. He would further submit that the compensation of Rs. 16,70,460/- has also been paid to the owner of the premises and the said owner has received the payment and has not agitated the matter any further, thus, the application for grant of compensation to the owner as contemplated under Sections 305, 306 and 387 of the Act remains concluded between the Corporation and the owner and for this reason also the subject application preferred by the Respondent before the District Judge is not maintainable.

8. Vehemently, opposing the arguments raised by learned Counsel for the Petitioner, learned Counsel for the Respondent would urge that the word "owner" occurring in Sections 305, 306 and 387 of the Act has to be understood in a broader sense to include a tenant, who is in occupation of the subject premises,

which were taken over and demolished by the Corporation for the purpose of widening the road and the tenant being a weaker section of the society, who was earning his livelihood from the shop in question, would be entitled to receive compensation under the said provisions. Alternatively, he submits that no notification u/s 305 of the Act has been issued to declare a public street as defined u/s 5(49) of the Act, therefore, otherwise also provisions of Section 305 of the Act are not attracted. Learned Counsel would further submit that in any case, a tenant would be covered and entitled for compensation u/s 383 of the Act for which an application u/s 387 of the Act is maintainable. Learned Counsel for the Respondent has also submitted that the arbitrators have not dealt with the question of grant of compensation to the tenants, therefore, the case of the tenant/Respondent u/s 387 of the Act remained unconsidered, therefore, the present application is maintainable. Learned Counsel for the Respondent has also argued that there being no error of jurisdiction, interference by this Court in exercise of its revisional jurisdiction u/s 115 of the Code of Civil Procedure, 1908 is not permissible and moreover, in view of the earlier order in the writ petition, the subject application before the District Judge was maintainable.

9. The question for determination in this civil revision is whether a tenant of a shop would be entitled to compensation under Sections 305, 306 and 387 of the Act when the land belonging to the owner/landlord has been acquired by the Corporation for widening of the road.

10. To find an answer to the question, which falls for consideration, reference would be necessary to the provisions contained in Sections 305, 306 and 387 of the Act, which are reproduced hereunder:

"305. Power to regulate line of buildings.-- (1) If any part of a building projects beyond the regular line of a public street, either as existing or as determined for the future or beyond the front of immediately adjoining buildings the Corporation may --

(a) if the projecting part is a verandah, step or some other structure external to the main building, then at any time; or

(b) if the projecting part is not such external structure as aforesaid, then whenever the greater portion of such building or whenever any material portion of such projecting part has been taken down or burned down or has fallen down, require by notice either that the part or some portion of the part projecting beyond the regular line or beyond the front of the immediate adjoining building, shall be removed, or that such building when being rebuilt shall be set back to or towards the said line or front; and the portion of land added to the street by such setting back or removal shall henceforth be deemed to be part of the public street and shall vest in the Corporation:

Provided that the Corporation shall make reasonable compensation to the owner for any damage or loss he may sustain in consequence of his building or any part thereof being setback.

(2) The Corporation may, on such term as it thinks fit, allow any building to be set forward for the improvement of the line of the street.

306. Compensation.-- (1) No compensation shall be claimable by an owner for any damage which he may sustain in consequence of the prohibition of the erection of any building.

(2) The Corporation shall make reasonable compensation to the owner for damage or loss which he may sustain in consequence of the prohibition of the re-erection of any building or part of a building except in so far as the prohibition is necessary under any rule or bye-law:

Provided that the Corporation shall make full compensation to the owner for any damage he may sustain in consequence of his building or any part thereof being set back unless for a period of three years or more immediately preceding such notice the building has by reason of its being in a ruinous or dangerous condition become unfit for human habitation or unless an order of prohibition issued u/s 286 has been and still is in force in respect of such building.

(3) The Corporation shall make reasonable compensation to the owner for any damage or loss which he may sustain in consequence of the inclusion of his land in a public street but in assessing such compensation, regard shall be had to the benefits accruing to that owner from the development of the land belonging to him and affected by such street.

387. Arbitration in cases of compensation, etc.-- (1) If an agreement is not arrived at with respect to any compensation or damage which are by this Act directed to be paid, the amount and if necessary the apportionment of the same shall be ascertained and determined by a Panchayat of three persons of whom one shall be appointed by the Corporation, one by the party, to/or from whom such compensation or damages may be payable or recoverable and one, who shall be Sarpanch, shall be selected by the members already appointed as above.

(2) If either party or both parties fail to appoint members within one month from the date of either party receiving written notice from the other of claim to such compensation or damages, or if the members fail to select a Sarpanch, such members as may be necessary to constitute the Panchayat shall be appointed, at the instance of either party, by the District Court.

(3) In the event of the Panchayat not giving a decision within one month or such other longer period as may be agreed to by both the parties from the date of the selection of Sarpanch or of the appointment by the District Court of such members as may be necessary to constitute the Panchayat, the matter shall, on application by either party be determined by the District Court which shall, in which the compensation is claimed in respect of land, follow as far as may be the procedure provided by the Land Acquisition Act, 1894, for proceedings in matters referred for the determination of the Court:

Provided that --

- (a) no application to the Collector for a reference shall be necessary; and
- (b) the Court shall have full power to give and apportion the costs of all proceedings in manner it thinks fit.
- (4) In any case where the compensation is claimed in respect of land and the Panchayat has given a decision, either party, if dissatisfied with the decision, may within a month of the date thereof apply to the District Court and the matter shall be determined by the District Court in accordance with the provisions of Sub-section (3).
- (5) In any case, where the compensation is claimed in respect of any land or building, the Corporation may after the award has been made by the Panchayat or the District Court, as the case may be, take possession of the land or building after paying the amount of the compensation determined by the Panchayat or the District Court to the party to whom such compensation, may be payable. If such party refuses to accept such compensation, or if there is no person competent to alienate the land or building, or if there is any dispute as to the title to the compensation or as to the apportion of it, the Corporation shall deposit the amount of the compensation in the District Court, and take possession of such property."

A plain reading of the above-quoted provisions would reveal that the proviso to Section 305(1) of the Act speaks of the liability of the Corporation to make reasonable compensation to the "owner". Similarly, Section 306 of the Act, which deals specifically about the compensation, has used the word "owner" in all material portion of the provision in the entire section.

11. Learned Counsel for the Respondent has made fervent submission to the effect that the word "owner" should be read as any person who is in occupation of the building for the purpose of receiving compensation as otherwise it would be arbitrary and unreasonable to evict a tenant from the tenanted premises and shift him to another place which may not be a market place having sound business potential and as such the word "owner" should also be read to encompass within its sweep all persons whether he is an "owner" or not and particularly when the tenant has suffered set back in his business by the act of the Corporation in widening the road and proceeding u/s 305 of the Act.

12. The arguments raised by learned Counsel for the Respondent shall have to be appreciated within the four corners of the provisions contained in the Act itself. Sub-section (41) of Section 5 of the Act defines the word "occupier" and Sub-section (43) of Section 5 of the Act defines the word "owner". Those definitions contained in the Act are reproduced hereunder:

"5. Definitions.-- In this Act, unless there is anything repugnant in the subject or context:

xxx xxx xxx

(41) "occupier" means any person in actual possession of any land or building and includes an owner in actual possession, and a tenant or licensee, whether such tenant or licensee is liable to pay rent or not; xxx xxx xxx

(43) "owner" when used with reference to any land or building includes the person for the time being receiving the rent of the land or building or of any part of the land or building whether on his own account or as agent or trustee for any person or society or for any religious or charitable purpose, or as a receiver, who would receive such rent if the land, building or part thereof were let to a tenant, or a manager or mortgagee in possession;

13. The word "tenant" has not been separately defined under the Act and has been included within the meaning of the term "occupier". The word "owner" has been defined separately and by no method of interpretation, it can be said that a tenant would be an "owner" as defined u/s 5(43) of the Act, which has been reproduced above.

14. Definitions of words or connotations are internal aids to construction. In *The Vanguard Fire and General Insurance Co. Ltd., Madras Vs. Fraser and Ross and Another*, it has been held by the Hon'ble Supreme Court that when a word has been defined in the interpretation clause prima facie, that definition governs whenever that word is used in the body of the Statute. In *Wyre Forest District Council v. Secretary of State for the Environment* (1990) 1 All ER 780 (785), Lord Lowry has held thus:

"...if Parliament in a statutory enactment defines its terms (whether by enlarging or by restricting the ordinary meaning of a word or expression), it must intend that, in the absence of a clear indication to the contrary, those terms as defined shall govern what is proposed, authorised or done under or by reference to that enactment...."

Section 5 of the Act begins with the words "in this Act, unless there is anything repugnant in the subject or context to indicate that in the absence of any repugnancy in the subject or context the definition or the meaning assigned to each of the words defined in the Act shall carry its meaning through out the Statute as has been defined. On scrutiny of the provisions contained in Sections 305 and 306 of the Act, it does not appear that there is anything repugnant in the subject or context in which the word "owner" has been used in the said provisions. Thus, this Court has no hesitation in holding that a tenant would not be covered within the sweep and ambit of Sections 305, 306 and 387 of the Act so as to be entitled to compensation in the event the land or building belonging to its owner/ landlord is acquired by the Corporation.

15. The above view of this Court is also supported by observation made in a Division Bench judgment of this Court in *Municipal Corporation, Raipur v. Smt. Mandakini Ram* (supra). In paragraph 8 of the report, the Division Bench has observed that "in such vesting, the Corporation shall make reasonable compensation to the "owner" for any damage or loss he may sustain in

consequence of his building or any part thereof being set back". In the later part of paragraph 8, the Division Bench has further observed that "the only right which can be claimed against the Corporation under this Act on such vesting is the right of reasonable compensation which can be claimed by the owner of the land only". (Emphasis supplied by me).

16. Learned Counsel for the Respondent has argued that in the absence of any notification u/s 305 of the Act, it cannot be said that there was widening of the public street as defined u/s 5(49) of the Act, therefore, Sections 305 and 306 of the Act have no application. This argument of learned Counsel for the Respondent has no legal backing and in fact is no longer *res integra* in view of the judgment rendered by the Hon'ble Supreme Court in *Municipal Corporation, Indore Vs. Shri K.N. Palshikar, Indore*, in which the Hon'ble Supreme Court, in paragraph 14 of the report, has held thus:

"14. Regarding point No. 1, we agree with the High Court that there is no provision in the Act for enabling the Corporation to withdraw from the acquisition proceedings. In fact, it seems to us that there is automatic vesting of the land in the Corporation u/s 305 once the requisite conditions are satisfied...."

In view of what has been held by the Hon'ble Supreme Court in *The Municipal Corporation, Indore v. K.N. Palsikar* (supra), more particularly in view of the observation made by the learned District Judge in paragraph 2 of the impugned order, referring to Gazette notifications dated 18-4-2001 and 15-9-2006, this Court is of the opinion that the provisions of Sections 305, 306 and 387 of the Act are applicable in the present case qua the "owner".

17. There is yet another reason why the application preferred by the tenant/Respondent u/s 387 of the Act would not be maintainable inasmuch as after the order passed by this Court in the writ petition the owner and the tenants by a common notice Annexure P-4 issued to the Corporation appointed their Panch. The opening paragraph of the notice says that this notice is sent on behalf of 92 parties including 53 house owners and 39 tenants. The Corporation also appointed its Panch by Annexure P-5 and both the Panchas appointed the Sarpanch by Annexure P-6. The Panchas and the Sarpanch passed the award by Annexure P-7 and none of the parties have ever objected to this award by submitting that the claim of any of the parties has not been considered. Allotment of alternative shop was made to the tenant on 26-4-2007 by Annexures P-9 and P-10. Thus, the rehabilitation of the tenant was made by the Corporation by allotting alternative shop. The question as to sufferance of loss in business by the tenant in the event of acquisition of the shop belonging to his owner is not contemplated under the provisions of Sections 305, 306 and 387 of the Act. Thus, the application preferred by the tenant was not maintainable on this count also.

18. To bring his application u/s 387 of the Act within the purview of the tenant being entitled to compensation, learned Counsel for the Respondent has invited

attention of the Court to the provisions contained in Section 383 of the Act, which reads as under:

"383. General power of Commissioner to pay compensation. - In any case not otherwise expressly provided for in this Act, or in any rule or bye-law made thereunder the Commissioner may, with the previous approval of the Mayor-in-Council, pay compensation to any person who sustains damage by reason of the exercise of any of the powers vested by this Act or by any such rule or bye-law in the Commissioner, or in any municipal officer or servant."

The above-quoted provision is only an enabling provision conferring power on the Commissioner to grant compensation to any person with the previous approval of the Mayor-in-Council, if the said person has sustained damages by reason of exercise of any of the powers by the Corporation under the Act. In the opinion of this Court, the allotment of shop to the tenants by the Municipal Corporation, Raipur vide Annexures P-9 and P-10 is an exercise by the Corporation to rehabilitate the tenants upon their removal from the shops in question because otherwise the Corporation was not obligated under Sections 305, 306 and 387 of the Act to rehabilitate the tenants. In the Panch Faisala (Annexure P-7), the proposal at clause No. 7 of the first part was to the effect that the tenants would be rehabilitated and allotted shops. This proposal was ultimately made a part of the Panch Faisala at clause No. 5 of the award in its operative part. In the opinion of this Court, the tenant having agreed to obtain allotment of the shop by way of rehabilitation vide Annexure P-9, cannot now be permitted to agitate that the tenant has not been compensated.

19. For the foregoing reasons, this Court finds that the application filed by the tenants u/s 387 of the Act was not maintainable and the learned District Judge has committed an error of law by appointing a Sarpanch for determination of damages in exercise of powers u/s 387(2) of the Act.

20. All the civil revisions, thus, succeed and are allowed. The impugned order dated 19-8-2008 passed by the District Judge, Raipur is set aside. Parties to bear their own costs.

21. A copy of this order be placed on the record of the connected civil revisions.