
(1996) 05 MP CK 0036

In the Madhya Pradesh High Court

Case No : M.C. Appeal No. 22 of 1994

Municipal Corporation

APPELLANT

Vs

Chambal Trading Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 11-05-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Municipal Corporation Act, 1956 — Section 295(3)

Citation : (1997) 1 MPLJ 526

Hon'ble Judges : Sreesh Chandra Pandey, J

Bench : Single Bench

Advocate : Prashant Singh, for the Appellant; Mohd. Ali, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Pandey, J.

This is an appeal under Order XLIII, Rule 1(r) of the CPC against the order dated 14-12-1993 passed by VII Additional District Judge, Bhopal, in Civil Suit No. 57-A of 1993.

The respondent No. 1 is a private company. It is owner of Khasra No. 141/87/1/1 and Khasra No. 150/87/1/1. It is also in possession of the land comprised in the aforesaid Khasras. The possession of the temporary constructions on the aforesaid pieces of land are not in dispute. The respondent No. 2 similarly, owns and possesses Khasra No. 147/87/1/1 and Khasra No. 150/87/1/1 and also controls the temporary constructions standing on these lands. The respondents were permitted to construct a boundary wall around these four structures on their lands on 10-6-1987.

The respondents pleaded on 16-7-1983 that they filed applications and other documents in the office of the appellant along with maps but the officers/servants of the appellant refused to take these applications. Thereupon respondents were forced to send these applications along with maps and other

relevant documents for sanction of the constructions of the buildings by registered post on 31-7-1993. The respondents claimed that after 30 days from the date of receipt of the applications, they acquired a right to construct as per section 295(3) of the Municipal Corporation Act, 1956 (hereinafter referred to as the Act) and accordingly started construction, as they did not receive any reply from the appellant. The officers and servants of the Municipal Corporation/appellant obstructed the said construction work and, therefore, a civil suit was filed for permanent injunction. On these basic facts an application under Order XXXIX, Rules 1 and 2 of the CPC was made for grant of temporary injunction.

The appellant claimed that the defective applications were sent back on 18-8-1983 and the respondents Nos. 1 and 2 have no right to start construction activity.

The trial Court found that it was not disputed before it that respondents were owners and holding possession of the suit land. The respondents had constructed the wall around their plots with permission and sanction of the appellant. The trial Court came to the conclusion that the respondents had right to use the property in the capacity of owners of the suit land. The trial Court also found that appellant was unable to show how the respondents had failed in their duty of filing the incomplete applications. The appellant-Corporation was not able to show if it had returned application to respondents on the grounds claimed by it. On the other hand, the respondents filed affidavit of Nasim Khan along with photocopy of the application and the concerned maps sent for sanction to the applicant. These applications were in accordance with the Act and rules framed thereunder. The appellant-Corporation had sat over the matter for more than thirty days. Thus, a right accrued in favour of the respondents and accordingly, they started construction, as delay would have caused resulting in irreparable injury which could not be compensated by money. The appellant did not file any affidavit controverting these facts and, therefore, the learned trial Judge granted temporary injunction restraining the appellant from interfering with construction activities as per map filed by the respondents in the Court below by way of evidence of the fact that they had sent the application for grant of sanction.

Having heard the counsel for the parties, this Court comes to conclusion that appellant had no case whatsoever in obstructing the construction activity on the part of respondents. The respondents were required to send applications and relevant documents by registered post due to refusal on the part of the officers/servants of the appellant-Corporation. They waited for 30 days and, thereafter, started construction activities because no reply was received by them. The counsel were heard on 14-3-1994 in part. The counsel for the appellant sought time to file document i.e. certified copy/affidavit etc. to show that appellant had filed document No. 1 annexed with the memo of appeal in this Court, before the trial Court. The trial Court has found in its order that appellant was unable to show how the applications filed by the respondents were not in order. It is rather unfortunate that counsel was unable to file any affidavit or certified copy showing

that the document No. 1 annexed to the memo of appeal, was ever sent to the appellant on or about 18-8-1993 and the matter was placed before the trial Court. In view of this situation, the trial Court was perfectly justified in its conclusion that appellant was unable to explain any defect in the applications filed by the respondents.

On the other hand, the conduct of the appellant does not appear to be bona fide. They have not dared to file any affidavit in this Court in support of the allegations made by them against the learned Judge of the trial Court. Actually, by their conduct it appears that they did not seriously oppose the applications in the trial Court and yet they are blaming the trial Judge. The case was adjourned to 26-3-1996 and 15-4-1996 by this Court. The appellant was thus given ample opportunity to show to this Court, if it had filed document No. 1 annexed with the memo of appeal, before the trial Court. Since the counsel for the appellant was unable to file any material before this Court, the only conclusion that could be drawn by this Court is that the appellant had not filed document No. 1, annexed with the memo of appeal, in the trial Court. The appellant did not file any application under Order XLI, Rule 27 of the CPC in support of their appeal for acceptance of Document No. 1 before this Court. Under the aforesaid circumstances, this Court relies on the order passed by the trial Court and comes to conclusion that the appellant had not placed any material in support of its case that the applications filed by the respondents were returned to them on 18-8-1993 for the reasons that they were defective and not in accordance with the rules framed under the Act. Thus there appears to be no ground for interference with the order passed by the trial Court.

It is rather unfortunate that, having failed to file the documents for which the counsel for the appellant had sought time, he suggested to this Court that the order of the Court below be modified by directing that the appellant shall not demolish the buildings, as they exist today, but the respondents may not be permitted to construct further. This argument of the counsel for the appellant deserves to be rejected. The appellant, having failed in its primary duty of filing the necessary documents, cannot claim any indulgence. The counsel representing the public bodies, need not behave in the same arrogant manner in this Court as the officers/servants of the Municipal Corporation have done with the respondents. I find from record initially this appeal was filed by Shri Anoop Chaudhary, Advocate and stay was granted on 12-1-1994 by this Court when his junior Shri K. S. Thakur, Advocate appeared on his behalf. Since then the respondents Nos. 1 and 2 have been restrained from further constructions and the appellant from demolition of the building already constructed. Shri Anoop Chaudhary had given up this case on his appointment as the Advocate General of the State and, thereafter, the appellant was represented by Shri R. N. Singh, Advocate, the Standing Counsel for the Corporation along with Shri Mrigendra Singh and Shri Prashant Singh, Advocates, after obtaining the permission of Shri Anoop Chaudhary, as per I.A. No. 2587/95. In this Court, Shri P. Singh, Advocate was appearing throughout. It appears that the learned counsel for the appellant

wants this Court to maintain the order passed by this Court on 12-1-1994. The counsel for the appellant should have realised, after having failed to" file the necessary evidence in support of document No. 1, the appellant had no case.

For the reasons aforesaid, the temporary injunction granted by the trial Court is maintained. The stay order granted by this Court on 12-1-1994 is vacated. The appeal fails and is dismissed with costs. Counsel fee Rs. 250/-, (Rupees two hundred fifty), if certified.