
(2010) 07 MP CK 0048
In the Madhya Pradesh High Court

Municipal Corporation

APPELLANT

Vs

Leelaram Ram and Others

RESPONDENT

Date of Decision : 08-07-2010

Acts Referred:

Constitution of India, 1950 — Article 19(1), 21, 226, 227

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : AIR 2010 MP 219 : (2011) 1 JLJ 60 : (2010) 4 MPLJ 110

Hon'ble Judges : Brij Kishore Dubey, J;A.K.Shrivastava, J

Bench : Division Bench

Judgement

A.K. Shrivastava, J.

The impugned orders dated 17/6/2010, 25/6/2010 and 1/7/2010 passed by learned Single Judge have been assailed by the appellant/Municipal Corporation, Gwalior by filing this Writ Appeal. The contention of learned senior Counsel for the appellant is that Maharaj Bada is the heart of Gwalior city having old monuments having its own value of architectural importance and other historical values which are to be saved. One of the prestigious building in Maharaj Bada, namely, Victoriya Market (also known as Maharani Laxmibai Market, but commonly termed as Victoriya Market even today) caught fire and is now in dilapidated condition. According to learned senior Counsel "Town Hall" in the same locality (Maharaj Bada) of Gwalior city is another prestigious building having its architectural, sculpting and other historical values. One catastrophe occurred in the midnight of 4th and 5th June, 2010 in the prestigious building Victoriya Market fire took place inside the said market and the loss caused to the appellant/Municipal Corporation, Gwalior and Nation was so great that to make it again Rs. twenty crore is to be spent and even then it will not be possible to bring it back to its own glory. On account of said mishap, the officers of the Corporation were shocked and were alarmed that such happening may not be repeated and, hence, a High Power Committee inspected other buildings like Town Hall (basement of which is the subject matter in issue) and other markets

with a view to avoid such catastrophe and it was found that the Town Hall is occupied from all sides by shopkeepers under different licenses granted to them and these shops were found underneath the main building of Town Hall and these shops which have been constructed by the licensees are of such a nature that if fire takes place, the whole building of the "Town Hall" will be blasted just like it happened in Victoriya Market. In the basement area of Town Hall the shopkeepers are having their godowns. As per the case of appellant, these godowns are full of fire prone goods like plastic, polythene, deodorants, cosmetics, high pressure perfumes etc. which may catch fire immediately, hence, decision was taken by the appellant/Municipal Corporation to revoke the license of the godown area which is hazardous to the Town Hall building itself. If the godowns are kept outside the building by keeping the arches closed, the problem would not be so grave as any fire can be extinguished from outside. But the building is at higher level and underneath to the main building there are hollow spaces assembled by Mehrab (arch) which can be used by leaning.

Looking to the seriousness and to keep the prestigious "Town Hall" building intact from any danger including the fire, the licenses of the shopkeepers were revoked vide order dated 12/6/2010 with immediate effect and it was directed to vacate the premises, which was given on license, within 24 hours. Initially the licensees by obeying the action of the appellant revoking their license and directing them to vacate the premises, started vacating the licensed premises, but later on filed Writ Petition before this Court challenging the action of the appellant revoking their licenses vide order dated 12/6/2010 and prayed to quash the said notice by which their licenses were revoked and further prayed that the writ petitioners/respondents 1 to 30 be permanently settled by granting lease to them on the basis of one order which was passed earlier by the Division Bench of this Court on 21/11/2005 in Writ Petition No. 1841/2003. The writ petitioners also prayed an ad-interim writ before the learned Writ Court to stay the operation of the notice Annexure P/8 by which the licenses have been revoked of all the writ petitioners and also prayed that the appellant may be restrained from taking coercive action against the writ petitioners in relation to the building in dispute and not to dispossess them from the shops till final disposal of the petition.

While hearing the interim relief during vacation as well as after re-opening of the Court after Summer Vacation, three different orders were passed by learned Single Judge which are impugned in this appeal and we think it apposite to quote those three orders.

On 17/6/2010 the learned Vacation Judge passed the following interim order:

Heard on I.A. No. 9354/2010 filed on behalf of the petitioners for hearing during vacation. Application allowed.

Heard.

Learned Counsel for the petitioners submits that respondent No. 2 is likely to dispossess the petitioners forcibly from the premises concerned, hence, prayed

for the grant of relief for status-quo till next date of hearing so that detailed arguments can be heard on the petition.

Learned Counsel for the respondents are directed to file a detailed reply and necessary documents which create the necessity of dispossession of the petitioners from the premises concerned. Meanwhile, the respondents are directed to maintain status-quo meaning thereby not to dispossess the petitioners forcibly from the disputed premises till next date of hearing. It is made clear that if the petitioners willingly vacate the premises, then this stay order will not be effective. The detailed reply be filed by the respondents within two days.

List the matter for further hearing on 23.6.2010.

After reopening of the Court later on the interim prayer was disposed of by learned Single Bench on 25/6/2010, which reads thus:

Heard on I.A. No. 9356/10, which an application for issuance of Ad-interim writ for staying the effect and operation of the impugned notice (Annexure P/8) and also on I.A. No. 9459/10, which is an application for issuance of Ad-interim writ, directing the respondents to open the seal of shops of petitioners No. 1 to 5 and to remove the wall raised by them in front of their shops, which is said to have been constructed after passing of the order dated 17-06-2010.

Petitioners are lessees of the shops situated in the periphery of Town Hall Building. Earlier also, there was some dispute between the petitioners and respondent No. 2 for which Writ Petition No. 1841/03 was filed which was finally compromised and finally disposed of on 21-11-05 in terms of agreed compromise which is at page No. 28 of Annexure P/6. According to terms of compromise licence fee for the shop of Town Hall Building was fixed and that licence fee was agreed to be increased @ 10% after every three years. Therefore, the compromise was only with regard to licence fee. The Ad-interim writ sought by the petitioners to stay the effect and operation of the impugned notice (Annexure P/8) which is a notice given to one of the petitioners - Ramjidas for vacating the shop No. 4 within 24 hours and his lease and allotment was cancelled.

The reason behind issuing the notice (Annexure P/8) was that in the mid night of 4th/5th of June, 2010 fire broke down in the Victoriya Market which is also known as Maharani Laxmibai Market and whole building was destroyed. Victoriya Market is situated near the shop of the petitioners. It is alleged that the petitioners were given the shops in the periphery of Town Hall Building inside Mehrab or Barandah but they have made their own construction inside the shop. Some of the construction was made with the permission of Municipal Corporation but on inspection, it was found that many of shopkeepers have encroached inside the shop by making construction in the basement of the Town Hall and have started using that encroached area as Godown. After fire incident had taken place in the Victoriya Market, respondent No. 2 as a measure of precaution done survey of some buildings of historical importance, situated in Maharajbada area

of Gwalior. It is also admitted fact that with the consent of both the parties such encroached area was agreed to be closed and shopkeepers have to use only the area which was given to them on licence and they were not allowed to use that encroached place of Godown but according to respondents after passing of the order dated 17-06-2010 some of the petitioners demolished the wall which was raised to protect the basement of Town Hall. Thereafter, the Municipal Corporation Authorities sealed five shops and raised wall outside the shops so that entry to the shops may be restricted. Petitioners have filed Contempt Petition No. 211/2010 alleging that the respondents have disobeyed the order dated 17-06-2010 whereby status-quo was directed to be maintained.

The permission letters dated 31-05-2010 which are collectively filed as Annexure R/1 shows that in the public interest Municipal Corporation can get the premises vacated after giving notice of 24 hours. Further according to condition No. 3 the restriction is imposed that lessee will not encroach more than the land allotted to him.

From the above circumstances and averments made in petition and its reply, it is clear that although the dispute is between the petitioners and respondents but after the incident of Victoriya Market, the public safety is also involved and both the parties are required to take care the public interest and safety. It is not the question of rights of petitioners or question of duties of respondents which is to be decided in this petition. The Court has to protect; building, rights of owner of building, and simultaneously the Court has to take step to protect the public safety also which can be done by giving direction to both the parties. Therefore, to protect the interest of petitioners and the duties casted on respondents and further to protect the public and property, both the petitioners and respondents are directed to abide by the following measures:

i - Petitioners shall allow the respondents to protect the basement of Town Hall by raising wall at the inside boundary of the premises.

ii - Respondents shall construct the wall mentioned in condition No. 1 within seven days.

iii - Petitioners shall have right to carry on the business only in the premises leased to them and no encroachment in front of the premises shall be made by them.

iv - Petitioners shall pay the agreed lease rent to the respondents.

v - If with the cooperation of the petitioners wall mentioned in condition No. 2 is completed, respondents shall remove the seal from the shops sealed by them.

vi - As a measure of safety, both the parties are directed to take steps by consulting Fire Brigade Authority for protecting the building from fire.

With the aforesaid, the I.A. No. 9356/10 and I.A. No. 9459/10 are disposed of accordingly. This order shall be applicable till disposal of the petition unless

modified by the Court for some reasons.

List the case after four weeks.

The writ petitioners by filing the interim application 10220/2010 sought clarification in the abovesaid order dated 25/6/2010, as a result of which, another impugned order dated 1/7/2010 was passed by learned Writ Court, which reads thus:

Heard on I.A. No. 10220/10, which is an application for modification/clarification of the order dated 25-06-2010 passed by this Court.

Respondents have filed the reply to the application (I.A. No. 10220/10) today.

Arguments tendered by both the parties are heard on I.A. No. 10220/10.

Learned Counsel for the petitioners submitted that after passing of order dated 25-06-2010 whereby the respondent No. 2 has been directed to raise/construct the wall only behind the premises leased to the petitioners, respondent No. 2 is trying to dispossess the petitioners from the back portion of the premises leased to them.

In the reply filed by the respondent No. 2, it has been mentioned that the licences of the petitioners have been cancelled and they are trying to vacate the licensed premises, hence the petitioners have no right to continue in the back portion of the shop i.e. basement of the Town Hall. Thus, it is clear that the respondent No. 2 is not properly interpreting the order dated 25-06-2010 because according to condition No. 3 of the order, petitioners were given right to carry on business only in the premises leased to them. This does not mean or authorise the respondent No. 2 to revoke the licences of any part of the premises leased to the petitioners and construct wall within the premises leased out to the petitioners. Order dated 25-06-2010 do not require any clarification but it is the act of respondents which is creating confusion and fear in the mind of petitioners that they will be dispossessed by the respondent No. 2 while the order dated 25-06-2010 is clear and specific.

The order dated 25-06-2010 is in respect of full premises leased by the respondent No. 2 to the petitioners and behind that premises they have to construct the safety wall. Further if with the consent of the petitioners or any of the petitioner vacated any portion of the premises then only respondents have a right in that particular premises to construct the wall even within the premises leased out to the petitioners, otherwise they are authorised to construct the wall only behind the premises leased out to the petitioners.

Five shops have been sealed by constructing wall in front of them for entry to those shops and facilitating construction of wall inside them, respondents shall have to remove the wall constructed in front of shops for sealing purpose.

From the above said discussion, there is no question of clarification or modification of the order dated 25-06-2010. It is only wrong belief of the

respondent No. 2 that they have to revoke licence for certain portion of the leased premises which has created misunderstanding between the parties, therefore, clarification is made as mentioned above.

With the aforesaid, I.A. No. 10220/10 is disposed of accordingly.

List the case for final hearing in due course.

In this manner, this Writ Appeal has been filed by the appellant who has been arrayed as respondent in the Writ Court.

REGARDING PRELIMINARY OBJECTION ABOUT THE MAINTAINABILITY OF THE APPEAL:

The purpose of quoting all the abovesaid impugned orders in toto is that at an interim stage the rights of appellant are vitally affected and jeopardized as well as such a situation is created that if any havoc would happen like fire as it took place in the midnight of 4th and 5th June, 2010 in Victoriya Market, the entire building will be blasted.

In order to deal with the preliminary objection raised by learned Counsel for the respondents 1 to 31, we think it appropriate to quote Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam, 2005, which reads thus:

2. (1) An appeal shall lie from a Judgment or order passed by one Judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India, to a Division Bench Comprising of two judges of the same High Court:

Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

The Full Bench of this Court in Arvind Kumar Jain and Others Vs. State of Madhya Pradesh and Others, dealt with the point in issue while interpreting proviso to Section 2(1) of the Adhiniyam, 2005. In para 18 it was categorically held that when an interlocutory order has semblance with final order or affect the rights of the party, it can be treated as an order for all practical purposes. For better understanding it would be profitable to quote para 18 which reads thus:

18. Regard being had to the aforesaid fundamental concept of the term "order" it has to be understood that the statute permits an order to be appealed against. The proviso stipulates that no appeal would lie against an interlocutory order. But an eloquent and pregnant one, when an interlocutory order has the semblance of final order or affect the rights of the parties, it can be treated as an order for all practical purposes. The said exception cannot be treated in absolute terms to nullify the enactment. Therefore, the order has to be a final order by way of final disposal. It cannot be regarded as the correct interpretation of the proviso in entirety, for a writ Court can issue directions or pass orders in its inherent jurisdiction which can assume the colour and contour of finality and, at an

interim stage, can vitally affect the rights of the parties or destroy the rights or create a situation by which the relegation to the original stage would become impossible.

Looking to the nature of the impugned interlocutory orders, we have no scintilla of doubt in holding that the effect of the impugned orders is having semblance of final order and have affected the rights of the appellant. Hence, according to us, the instant appeal is maintainable and the preliminary objection is thus rejected.

We have already admitted the appeal and this has been so mentioned in today's (8/7/2010) order-sheet.

Learned Counsel for the parties are heard on I.A. No. 10672/2010, which is an application for stay of the execution of the impugned orders dated 17/6/2010, 25/6/2010 and 1/7/2010.

It has been argued by learned senior Counsel for the appellant that Municipal corporation, Gwalior and its officers have taken a lesson on account of havoc which took place in Victoriya Market and in order to protect the glorious structure of Town Hall in its entirety and to prevent it from all kind of disasters including fire, license of all the shopkeepers of Town Hall has been revoked vide order dated 12/6/2010. One important document which has been placed on record in the writ Court and which has been marked as Annexure R-2/I dated 31/5/2010 is the license issued by the appellant to different shopkeepers. In this document inter alia one of the condition of the license is that in the larger public interest the premises can be vacated by giving notice of 24 hours. The authenticity of this document is not disputed even by the writ petitioners because they themselves have filed this document during pendency of the writ petition. By this document prima facie it appears that the status of all the shopkeepers are that of licensees only and the premises which were given to them were given on license basis. Specifically we put a question to learned Counsel for the writ petitioners/respondents 1 to 30 that what is the status of the shopkeepers, straightway he replied that their status is that of "lessee". On being put another question to him that which is the document of lease, he frankly stated that although there is no lease-deed in favour of any of the shopkeepers, but looking to the order passed by Division Bench of this Court in earlier writ petition No. 1841/2003 dated 21/11/2005 they are claiming their status to be as a lessee. We have also gone through the above said order dated 21/11/2005 and we find that nowhere in the said order it has been held that these shopkeepers are the lessee, on the other hand, everywhere it has been written that the license fee of the shops of Town Hall Market, Maharaj Bada shall be at the rate of Rs. 8.50 per square feet per month and it shall be determined as per the size of each shop and thus considering the abovesaid order in its true spirit we find that it goes against the writ petitioners as in this order also they have been termed as licensees. Needless to say, the law about license and the status of licensees is very clear and license can be revoked at any moment. Hence, prima facie we find that license of all the shopkeepers have already been revoked.

The purpose of quoting all the above said impugned orders and particularly orders dated 25/6/2010 and 1/7/2010 is that the learned writ Court was under impression that the status of writ petitioners is that of lessees and, therefore, in these orders by denoting the writ petitioners as lessees the interim orders were passed in their favour. But, the situation prima facie appears to be quite otherwise. There is no single document in favour of writ petitioners by which prima facie it can be inferred that they are lessees, on the other hand, it is borne out from the record prima facie that they are the licensees and, hence, the foundation on the basis of which the impugned orders are passed is erroneous and the impugned orders have been passed with an understanding that the writ petitioners are the lessees. The writ petitioners themselves have sought relief that a document of lease-deed may be executed in their favour and this is another reason to hold that prima facie they are not the lessees.

Learned Counsel for the parties and particularly learned Counsel for the writ petitioners vehemently contended that the fundamental right of writ petitioners enshrined under Article 19(1)(g) of the Constitution of India has been violated and, therefore, the said grievance can be redressed in the writ petition. Since vehemently a submission has been made by learned Counsel for the writ petitioners, we are constrained to deal with argument raised by learned Counsel for the writ petitioners that the fundamental right as enshrined under Article 19(1)(g) of the Constitution of India has been violated or not. According to us, firstly the said argument cannot be sustained on the ground that if the license has been revoked, a citizen cannot say by taking aid of the abovesaid provision that his right is protected within the purview of Article 19(1)(g) of the Constitution. Even if for the sake of argument, we hold that some fundamental right as enshrined under Article 19(1)(g) of the Constitution of India has been violated, according to us, it is to be tested via a vis Article 21 of the Constitution which speaks about the protection of life and personal liberty. By taking lesson of havoc of "Victoriya Market" in the same locality where the "Town Hall" is in existence, in order to protect the life of human being at large including the protection of the prestigious monument of Town Hall, if fire is taken place nothing can be done except the one will stand just like a silent spectator and will see how the entire building is blasted on account of fire which may took place from the basement and would see falling of the entire building on account of the fire, which for the God sake may not happen.

We do not find any merit in the contention of learned Counsel for the writ petitioners/respondents 1 to 30 in this appeal that all the shopkeepers/licensees shall install all the equipments and all safety measures in order to extinguish the fire if it may take place in future will be taken, therefore, these shopkeepers be allowed to continue their business in the basement of the Town Hall. Even if for the sake of arguments we accept this preposition, what will happen if the fire may take place during odd hours in the night as it happened in Victoriya Market in which several shops on account of fire were ablaze and damaged and, therefore, in order to prevent the life of human being at large this argument and

the alternative arrangement suggested by learned Counsel for the respondents cannot be accepted.

While dealing with the right enshrined under Article 19(1)(g) of the Constitution of India via a vis to Article 21 of the Constitution of India, we may say that Article 21 essentially deals with protection of life and personal liberty of the citizens and has nothing to do with the right to own property as such and, therefore, if the action has been taken by the appellant terminating the license of the shopkeepers, it cannot be said that deprivation of the property would lead to deprivation of life or livelihood. In this context we may profitably place reliance on the decision of Supreme Court State of Maharashtra and Anr. v. Basantibai Mohanlal Khetan and Ors. AIR 1986 SC 1476.

Learned Counsel for the writ petitioners vehemently contended that the action of the appellant is jeopardizing their fundamental rights. Although this is to be dealt with by learned writ Court, but since it has been insisted and the point has been raised by learned Counsel for the writ petitioners/respondents 1 to 30, we would like to say that reasonable restrictions can always be imposed on the citizens enjoying the fundamental rights as enshrined under Article 19(1) of the Constitution of India.

For the reasons stated hereinabove I.A. 10672/2010 is hereby allowed and the operation of the impugned orders dated 17/6/2010, 25/6/2010 and 1/7/2010 passed by learned Writ Court is hereby stayed.

Needless to say whatever the observations we have made hereinabove are for the purpose of disposing of interim stay application (I.A. No. 10672/2010).

List this appeal for final hearing in next week.