

(1984) 09 MP CK 0009

In the Madhya Pradesh High Court

Case No : Civil Revision No. 292 of 1984

Municipal Council, Mandleshwar

APPELLANT

Vs

Ramesh Mangilal Fagna

RESPONDENT

Date of Decision : 22-09-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 151
Constitution of India, 1950 — Article 38

Citation : (1984) MPLJ 633

Hon'ble Judges : V.D. Gyani, J

Bench : Single Bench

Advocate : C.S. Chhazed, for the Appellant; Garg, for the Respondent

Final Decision : Dismissed

Judgement

V.D. Gyani, J.

Petty politiking in Nagar Palika has dragged a poor Panwala to the Court seeking protection against imminent uprootment of his "Gumati" quick in action the Nagar Palika has removed the Gumati, before the Court could come to his rescue, thus left in bewilderment on the street, the Panwala in his bid, succeeded in obtaining an order of restoration of "Gumati" to its original place, feeling more humbled than aggrieved, the Nagar Palika has come in revision against the order of restoration.

This revision petition, preferred by the Municipal Council, Mandleshwar, is against the order dated 5-3-1984, passed by the Civil Judge, Class II, Mandleshwar, in Civil Suit No. 9A of 1984, thereby directing the petitioner-defendant to restore the plaintiff-respondent's "Gumati" to its position and place as it was obtaining at 11.00 a.m. on 22-2-1984. It is this mandatory injunction granted by the trial Court, which has been made the subject-matter of challenge in this revision petition.

The moot question, which arises for consideration in this revision petition is

whether in exercise of its revisional jurisdiction can this Court interfere in the discretionary order passed by the trial Court, taking into account all the prevailing attending circumstances ?

It is well established that the revisional power of the High Court is confined only to cases where the Court below has acted in excess of its jurisdiction or has refused to exercise a jurisdiction vested in it by law or has acted illegally and with material irregularity in the exercise of its jurisdiction. It is to be further borne in mind that the exercise of jurisdiction u/s 115, Civil Procedure Code, by the High Court is discretionary and the High Court is not bound to interfere merely because the conditions in clauses (a), (b) or (c) of that section are satisfied. While exercising its discretion the Court can take into consideration such circumstances and facts as may disentitle the petitioner in a revision petition from being granted any relief. One of such relevant considerations would be whether the order sought to be revised has occasioned substantial failure of justice.

Facts material for answering the aforesaid question is that the respondent-plaintiff had his Pan-shop, a small "Gumati", on a piece of land, admeasuring 6" x 6", granted to him on a lease for one year on a monthly rent of Rs. 20. The period of lease had expired and according to the petitioner on 30-11-1983 during the subsistence of the lease the respondent-plaintiff had applied to the Administrator of the Municipal Council for extension of the lease for another period of three years and his application was rejected on 26-2-1984, after the date of expiry of the lease dated 30-11-1983. The Municipal Council issued a notice on 20-1-1984, directing the, respondent to remove his Gumati within a week. This notice was served on the respondent on 24-1-1984. As the Gumati was not removed within the period of 7 days, the Chief Municipal Officer directed the Revenue Inspector of the Municipal Council, who removed the Gumati from the place on 22-2-1984.

On 22-2-1984 the plaintiff-respondent filed a suit for a permanent injunction. It was accompanied by an application for an ad interim injunction, supported by his own affidavit as also the affidavit of Mahendrakumar and Radheshyam. These affidavits reveal that the land granted on lease to the plaintiff-respondent was at a low level on the road-crossing near bus-stand-Mandleshwar, which was reclaimed by the plaintiff-respondent by filling about 40 trucks load of metal and Murram, thus spending a huge amount so as to bring the land to the road level. He had his own electric connection in the Gumati. The plaintiff-respondent has stated on oath that the President and the Vice-President of the Municipal Council, Mandleshwar, bore personal grudge against him and the threatened action of removal of the Gumati was mala fide. Surprisingly, there is no counter affidavit on record by these office bearers. Till the institution of the suit the Gumati had not been removed, and as is the admitted position, it was removed at 4.30 p.m. according to the Panchnama filed by the petitioner-defendant. Thus, the fact that the Gumati was there at the place leased out to the plaintiff-respondent and the

same was got removed by 4.30 in the afternoon, is fully borne out from the record. The suit, which was filed on 22-2-1984, before the Civil Judge was listed for hearing on 23-2-1984. In the meanwhile the position, as a result of removal of the Gumati, had materially changed and this fact was brought to the notice of the Court by the plaintiff-respondent. The suit was accordingly amended and an application was preferred seeking ad interim mandatory injunction directing the petitioner-defendant to restore the Gumati to its original position. This application was marked as I.A. No. 3 and it was directed to be heard on 1-3-1984 at Mandleshwar. On 1-3-1984, the defendant-petitioner made its appearance and submitted its reply to the application u/s 151, CPC (I.A. No. 3) and list of documents. It is this application which was heard and decided on 5-3-1984 and the order passed thereon is the subject-matter of challenge in this petition. The defendant-petitioner filed as many as nine documents. The reply filed on behalf of the petitioner-Municipal Council is signed by its President as also the Chief Municipal Officer. But surprisingly enough the facts, which the plaintiff-respondent has stated on oath in his affidavit as also the affidavits of Mahendrakumar and Radheshyam, have not been controverted on oath. There is no counter affidavit from the petitioner's side. There are specific categorical allegations of misuse of powers by the President and Vice-President of the Municipal Council in the application and the affidavits sworn on 22-2-1984. However, the fact remains that the allegations made against the Municipal Council authorities and officers have not been controverted. A reading of the reply filed by the defendant-petitioner shows that the defendant in reply to paragraph 1 of the application pleaded ignorance to the suit as well as the application under Order 39, Rules 1 and 2, CPC and in the same breath stated that they came to know about it only through the application u/s 151, Civil Procedure Code, since they had not been served with notice of the suit as well as the aforesaid applications under Order 39, Rules 1 and 2. It does not stand to reason that the defendant while filing this reply was ignorant and even if that be so can such ignorance be of any avail to the defendant? Needless to say that this is a lame excuse advanced by the defendant-petitioner. One cannot escape the conclusion that the reply is an evasive one on material points, although the allegation of removal of the Gumati after institution of the suit has been denied as also the malice attributed to the President of the Municipal Council. On the other hand, the defendant has come out with a case that the plaintiff-respondent has instituted the present suit against public good on instigation by some persons on political considerations. The action of removal of the Gumati was sought to be justified during the course of arguments before the trial Court with reference to section 223 of the Madhya Pradesh Municipalities Act.

The Court below on consideration of these facts and the provisions of the law, referred to above, came to the conclusion that the status quo ante, as obtaining on the date and time of institution of the suit should be restored and directed the petitioner-defendant to restore the Gumati. Immediately on passing of this order an application (I.A. No. 4) was preferred by the defendant-petitioner before the

trial Court, praying that the operation of the order should be stayed for 15 days so as to enable the Council to obtain the appropriate stay order from this Court. this Court on 9-3-1984 passed an order staying the operation of the order dated 5-3-1984, passed by the trial Court.

At the time of hearing, a preliminary objection was raised by the Learned Counsel for the respondent Shri Garg that this revision petition is" not maintainable, as according to him the orders on application, such as I.A. No. 3, are appealable. Shri Chhazed, on the other hand, placing reliance on *Mohaiyatdin v. Ramayansingh* 1978 (II) MPWN 270, submitted that such a revision is maintainable. In view of the support drawn from the authorities, Shri Garg also did not press his objection. Now, therefore, this petition is being decided on merits.

The ambit and scope of revisional jurisdiction of this Court has already been indicated above. The question that arises for consideration is whether the order under revision suffers from any such infirmity ? It cannot be disputed that the Court has power and jurisdiction to grant an ad interim mandatory injunction, of course, inappropriate cases. Where the defendant acts in disturbing the status quo as obtaining at the time of institution of the suit the Court can in certain cases direct the defendant to restore the status quo ante. This jurisdiction of the civil Court cannot be legitimately disputed and has in fact not been disputed by the Learned Counsel for the petitioner. However, on facts he submits that the impugned order could not have been passed, as according to him, the removal had taken place in ignorance of the pending proceedings before the civil Court. Shri Garg, Learned Counsel for the respondent placing reliance on *B.F. Varghese v. Joseph Thomas* AIR 1957 TC 286, contended that the order passed by the trial Court is fully justified in the circumstances of the case, The documents placed on record by the defendant-petitioner have been referred to and carefully gone into. The Learned Counsel for the petitioner on the basis of these documents urged that the removal was in regular course of discharge of duties, quite unaware of the proceedings instituted by the plaintiff-respondent. A glance on these documents would go to show that the removal Panchnama is timed at 4-30 p.m. and the seizure-memo is timed at 4-35 p.m. and intimation to the police intimating the proposed removal at 2.00 p.m. on 22-2-1984 and the receipt executed by one Shoukatali, to whom the Gumati after removal was entrusted for sole custody, is timed at 4.45 p.m. But this meticulous perfection in timing itself goes to show over-anxiousness on the part of the defendant-petitioner to make things appear as regular rather than being regular in reality. The height is reached when the Chief Municipal Officer of the Municipal Council issues an order to Padam Rathore, a peon, which is also put in the outward-dak-book, numbered at 127, directing him to be on night duty to keep a watch on the Gumati, which had been removed. It does not stand to reason that a peon in the Municipal Council would be that fortunate to get a written order of duty duly entered in the dak-book from his Chief Municipal Officer. This unnaturalness itself affects the veracity of the documents placed on record, for whatever purpose and worth

they are. this Court cannot help holding that it is a mechanical attempt at belying the case put forth by the plaintiff-respondent.

It was contended that the Municipal Council could have acted u/s 223 of the M.P. Municipalities Act, 1961, in removing the Gumati. Section 223 of the M.P. Municipalities Act, reads as follows :

S. 223. --Obstructions and encroachments upon public streets and open spaces,--
(1) Whoever, in any place after it has become a Municipality, shall have built or set up, any wall or any fence, rail, posts, stall, verandah, platform, plinth, step or any projecting structure or thing or other encroachment or obstruction, in any public street or shall deposit or caused to be placed or deposited any box, bale, package or merchandise or any other thing in such street, or over or upon, any open drain, gutter, sewer or aqueduct in such street, shall be punished with fine which may extend to two hundred and fifty rupees and with further fine which may extend to five rupees for every day on which such projection, encroachment, obstruction or deposit continues after the date of first conviction for such offence.

(2) The Council shall have power to remove any such obstruction or encroachment and shall have the like power to remove any unauthorised obstruction or encroachment of the like nature in any open space not being private property, whether such space is vested in the Council or not, provided that if the space is vested in the State Government, the permission of the Collector shall have first been obtained and the expense of such removal shall be paid by the person who has caused the said obstruction or encroachment and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter VIII.

(3) Whoever, not being duly authorised in that behalf, removes earth, sand or other material from, or makes any encroachment in or upon any open space which is not private property, shall be punished with fine which may extend to fifty rupees, and, in the case of an encroachment, with further fine which may extend to ten rupees for every day on which the encroachment continues after the date of first conviction for such offence.

(4) Nothing contained in this section shall prevent the Council from allowing any temporary occupation or erection in any public street on occasions of festivals and ceremonies, or the piling of fuel in bystreets and spaces for not more than ten days, and in such manner as not be inconvenience to the public or any individual, or from allowing the occupation of, or temporary erection of structures for any other purpose in accordance with by-laws made under this Act.

(5) Nothing contained in this section shall apply to any projection duly authorised under sub-section (1) of section 194.

A mere reading of this section would show that the removal of Gumati by the Municipal Council, does not fall within the purview of section 223. The

justification advanced by the defendant-petitioner was of a public cause of providing a water-hut in the memory of late Dr. James Shantsheel. A lofty ideal by itself would be no justification for an illegal act. The means justify the ends, and the end in this case, in the manner and with means it was sought to be achieved, would certainly harm and hurt the noble cause professed and pleaded by the Municipal Council in its reply. In its special pleadings the defendant-petitioner has come out with a case that the land where the Gumati was installed was needed for a water-hut in the memory of late Dr. James Shantsheel and the Council had resolved to give this land for the purpose and it was for this reason that the Gumati was required to be removed. To support this special pleading the Council had filed a copy of the resolution dated 30-12-1983. The Resolution No. 9, which came before the Council for consideration was regarding an application for a water-hut made by Dr. Dongre. The decision thereon is signed by the President of the Municipal Council, is reproduced hereunder :

PRAKARAN DEKHA. KARYAWAHI KA AVLORAN KIYA GAYA. JIS STHAN PAR PYAU LAGAI JANA HAI VAH STHAN TATKAL RIKTA KARAYA JAVE. TATPASCHAT PRAKARAN PARISHAD ME PESH KIYA JAVE.

It is far from saying that the Gumati land was decided to be allotted for the water-hut, as the matter was still required to be placed before the Council. There is no such order of allotment of land for the water-hut in memory of late Dr. James Shantsheel. The special pleading made by the defendant-petitioner so as to make out a case of a noble cause amply stands belied by its own document. Be that as it may, the question that remains is whether the discretion exercised by the Court in such circumstance should be interfered. The Municipal Council has come out with a justification for the hasty action under the cover and cloud of the aforesaid noble public cause, but the rights of an individual can also not be allowed to be trampled with, in the manner the Council has chosen to do.

Pavement dwellers or trespassers on public property cannot be allowed to be illegally thrown out as public nuisance, particularly by the statutory bodies such as the petitioner. Our Constitution envisions a social order in which justice, social, economic and political, shall inform all the institutions of the national life (Article 38). Shri Garg, Learned Counsel for the respondent has placed a certified copy of an order passed on 12-5-1979, in Banwarilal Mohanlal v. Municipal Corporation, Ahmedabad (U. No. 2467/83) by M.P. Thakkar, J. of the Gujarat High Court (as he then was). The relevant portion of which is being reproduced herein-below:

It is regrettable that the Advocates for the Corporation have refused to accept intimation and even refused to appear before the Court. Under the circumstances in view of the urgency prayer for interim relief has to be heard without their presence. The averments show that in blatant and brazen disregard of the undertaking given to the Court the hut of the poor petitioner has been demolished by an agency of the state which is expected to respect the law and not to violate it. It is no duty of Corporation officials to act in an inhuman

manner in violation of solemn undertaking given to the Court. One would not like to believe that this can happen when there is no emergency and when fundamental rights have not been suspended. Under the circumstances justice demands that equal protection of law must be extended to the petitioner, his poverty and helplessness notwithstanding. Respondents are, therefore, directed to reinstall the hut at the same place and reinstate it in the same condition on or before 16-5-1979 by way of ad interim relief.

An undertaking GIVEN by such a body would not make any material difference for undertaking or no undertaking, every statutory body is expected to act in accordance with law. An undertaking merely exposes such a body in the event of its breach to further penal consequences, but it cannot be said that in absence of an undertaking a statutory body is free to act the way it likes. It is inherent in every such statutory body, an unwritten, ungiven undertaking, that it would act in accordance with law. Its actions must be informed with reason and fairness. The petitioners cannot be permitted to destroy the subject-matter of the suit, during the pendency of the lis and then advance an argument that no relief can be granted in absence of the subject-matter of the suit itself. The trial Court was, therefore, right in directing installation of the "Gumati", and the discretionary order passed on proper consideration of all the facts, cannot be interfered in revisional jurisdiction of this Court. The other aspect of the matter may also be considered. If the order under revision is allowed to stand, no prejudice or injury is going to be caused to the Municipal Council, inasmuch as it will have open opportunity to contest the application for injunction, which is still pending consideration; while if it is quashed the respondent-plaintiff would be at such a loss that the case instituted by him would in absence of the subject-matter of the suit itself result in futility.

It was stated by the petitioner before the trial Court that compliance of the order under revision would result in a stalemate and the whole Municipal administration would come to a stand-still. One fails to see as to how such installation of a Gumati at its Original place would lead to such a result. It merely indicates an attitude and approach of the defendant-petitioner. It is strange to find that public bodies acting in concert can remove a citizen's property without following the procedure and disconnect the electric connection. Such actions run counter to our expected ways of life and the very concept of the rule of law.

This revision petition fails and is accordingly dismissed with costs. Needless to add that the stay order dated 9-3-1984, passed by this Court stands vacated. Counsel's fee Rs. 250, if certified. this Court would have left it with the hope that the petitioner Municipal Council would install the Gumati at its original place, as has already been directed by the trial Court. However, it also appears necessary that a specific direction for installation of the Gumati should also be made. It is, therefore, directed that the petitioner Municipal Council, Mandleshwar, shall ungrudgingly reinstall the Gumati at the same place and reinstate it in the same condition within a week from today.