
(2015) 04 MP CK 0005
In the Madhya Pradesh High Court
Case No : Writ Petition No. 9223/2013

Nabhya Infotech Pvt. Ltd.

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 17, 29, 29(1), 29(2), 30

Citation : (2015) 04 MP CK 0005

Hon'ble Judges : Rajendra Menon, J.

Bench : Single Bench

Advocate : Siddharth Gupta, Learned Counsel, for the Appellant; Amit Seth, Learned Govt. Adv., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.—Challenge in this writ petition under Article 226 and 227 of the Constitution is made to an order dated 17.4.2013 passed by the State Government in the matter of cancelling a permission granted to the petitioner for development in accordance to the provisions of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (hereinafter referred to as the "Adhiniyam 1973"). Apart from challenging the cancellation of permission granted, petitioner seeks a declaration on account of a deemed permission said to have been granted by virtue of provisions of Section 29 read with Section 30(5) of the Adhiniyam of 1973 and further challenges a Town Development Scheme published under Section 50(7) of the Adhiniyam.

2. Petitioner claims to be a Private Limited Company registered under the provisions of the Companies Act. The certificate of registration is filed as Annexure P/2. It is seen that on 2nd of August, 2008 approval of the State Government was obtained for preparation of the Misrod, Bagli, Barai, Jatkhedi, Katara Scheme. It is the case of the petitioner that in the original proposal

submitted, Misrod village was not included, Annexure P/25 from page 124 to 125 is said to be the proposal submitted in this regard. Thereafter it is said that on 3.5.2006 the Town and Country Planning Department granted "No Objection Certificate" for approval of the scheme with a condition that prior to initiating proceedings for publication of the Drafts Scheme under Section 50(3) prior survey of the area should be undertaken. It is said that at this stage also Misrod village where the petitioner's property is situated, was not included in the scheme. Thereafter on 2.8.2006 it is the case of the petitioner that vide Annexure P/27 the State Government granted administrative approval for preparation of the scheme and on 20th October 2011 i.e. after a period of more than four years, declaration of intention for the scheme was published by the competent authority under Section 50(1) of the Adhiniyam 1973. Immediately after such an declaration was published, on 4.11.2011 petitioner moved an application under Section 29(1) read with Section 30 of the Adhiniyam of 1973 to the respondent No. 2, Directorate of Town and Country Planning, seeking permission for development in their land. This permission was sought under Rule 12 of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1975 and the provisions of M.P. Bhoomi Vikas Rules, 1984. On 18.11.2011 a gazette publication of the development scheme as required under Section 50(2) was made by the competent authority. It is the case of the petitioner that on 28.12.2011 the Town and Country Planning Department before whom the application filed by the petitioner under Section 29 on 4.11.2011 was pending, directed the petitioner to furnish a copy of "No Objection Certificate" from the Bhopal Development Authority as a pre condition for considering grant of development permission. It is said that on 3.1.2012 petitioner submitted a representation and indicate that NOC from the Bhopal Development Authority was not required either under the Adhiniyam of 1973 or in the statutory rules framed for grant of permission, there is no such requirement and therefore, petitioner indicated that if permission is not granted within 60 days as contemplated under Section 30(5), permission deemed in nature would be available to the petitioner as per operation of law. It is said that as no order either granting or refusing permission was communicated to the petitioner on 4.1.2012 the petitioner is deemed to have received the permission under the deeming clause as contemplated under Section 30(5) of the Adhiniyam. Thereafter, on 27.1.2012 it is said that the draft scheme as contemplated under Section 50(3) was published and while publishing the same for the first time, village Misrod was included in the scheme even though it did not form part in the initial proposal. That apart, it is pointed out that when the initial proposal was made in the year 2006, the proposed scheme consisted of 403.90 hectares but when the Draft Scheme under Section 50(3) was published, this area was reduced to 240.63 hectares and certain village like Misrod which did not form part of the initial proposal was included. Thereafter on 16.2.2012, petitioner again requested for issuance of a formal letter of permission indicating that after 4.1.2012 permission under the deeming clause of Section 30(5) is granted to the petitioner. However, vide letter dated 3.4.2012, this request of the petitioner was rejected and the Directorate of Town and Country Planning

informed the petitioner that his application for permission has been rejected as they did not produce the No Objection Certificate from the Bhopal Development Authority. Thereafter on 10.4.2012 advertisement inviting objections and suggestions from the public was published with regard to the scheme in question. In the meanwhile, petitioner challenged the order dated 3.4.2012 by filing an appeal before the Commissioner, Bhopal under Section 31 of the Adhiniyam and on 19.6.2012 the Commissioner, Bhopal allowed the appeal of the petitioner and remanded the matter back to the competent authority for reconsideration. In the meanwhile, on 27.8.2012 certain objections to the scheme made by the petitioner was rejected and on the basis of the order dated 19.6.2012 passed by the Commissioner in the appeal filed by the petitioner under Section 31, conditional permission was granted to the petitioner on 9.11.2012. After this permission was granted it is said that the Bhopal Development Authority filed a appeal before the State Government and the State Government initially stayed the permission granted to the petitioner and finally by the impugned order dated 17.4.2013 exercised its power of suo motu revision and quashed the permission granted on dated 9.11.2012. In the meanwhile, on 21.12.2012 the drafts scheme as required under Section 50(4) was approved. On 11.1.2013 final scheme was notified under Section 50(7) of the Adhiniyam and challenging the actions now this writ petition has been filed.

3. In the writ petition filed the relief claimed by the petitioner as is evident from para 7 reads as under:-

(i) This Hon''ble Court may kindly be pleased to issue an appropriate writ/order/direction quashing the impugned order dated 17.4.2013 passed by the respondent No. 1 department with respect to the petitioner and affirming the development permission dated 9.11.2012 so issued in favour of the petitioners.

(ii) This Hon''ble Court may kindly be pleased to issue an appropriate writ/order/direction quashing the subject town development scheme prepared and so published by BDA under various sub-sections of Section 50 in light of various submissions and grounds in the present petition with respect to the lands of the petitioners.

(iii) Any other order or direction deemed just and proper in the fact and circumstances of the case may also be passed with costs.

(iv) This Hon''ble Court may be pleased to issue an appropriate writ/order/direction directing release of lands of the petitioner at par with other similarly situated land owners (as referred to in the petition), by holding the applicability of bar under Section 53 from the stage of Section 50(3) notification of draft town development scheme.

(v) This Hon''ble Court may be pleased to issue an appropriate writ/order/direction directing independent inquiry by the Lokayukt organization into the preparation and publication of final subject town development scheme by the BDA and pass appropriate orders.

(vi) Call for the entire record, files, maps and documents relating to the subject town development scheme so prepared by the BDA for proper and complete adjudication of the present matter.

4. Shri Siddharth Gupta, learned counsel appearing for the petitioner took me through the documents and material available on record in detail and made the following claims:-

(i) It was his case that after the orders were passed by the Commissioner, Bhopal on 19.6.2012 on the appeal filed by the petitioner under Section 31, if the Bhopal Development Authority was aggrieved by this order, they should have filed an appeal under Section 31 or 32 of the Adhiniyam before the Competent Appellate Authority. They did not do so and instead the exercise of power of revision under Section 32 by the State Government, is said to be unsustainable. It is said that the State Government action in exercising the powers of revision on an appeal being filed before them by the Bhopal Development Authority is unsustainable. Accordingly, the first ground of challenge is to the order dated 17.4.2013 by saying that the State Government in the facts and circumstances of the case and in the absence of any appeal being filed by Bhopal Development Authority under Section 31 or 32 could not exercise the power of revision.

(ii) The second ground of challenge is that when the petitioner sought for development permission under Section 29 on 4.11.2011 and when the application submitted by the petitioner was complete in all respect and when the provisions of M.P. Bhoomi Vikas Rules, 1984 and clause 17(8)(b) of the same does not contemplates any provision for submission of a NOC by the Bhopal Development Authority, the application submitted by the petitioner on 4.11.2011 which was complete in all respect as per the request of law and when it was not replied to or decided within 60 days i.e. on or before 4.1.2012 then permission, deemed in nature, as contemplated under Section 30(5) is granted to the petitioner. It is said that mere asking of the NOC does not meet the requirement of law, nor will it attract the provisions of the proviso to Section 30(5) of the Adhiniyam so as to extend the period of 60 days for grant of permission. Accordingly, it is said that when the application for permission sought for by the petitioner was complete in all respect, in accordance to the statutory requirement, merely because a NOC which is not required under law is sought for, the respondents cannot deny existence or grant of deemed permission to the petitioner.

(iii) Finally by referring to the manner in which the proposal for the scheme was submitted to the State Government on 7.2.2006, inclusion of village Misrod in the Drafts Scheme after five years, change in the area of the scheme, i.e. its reduction from 403.90 hectares to 240.37 hectares between the period 7.2.2006 to 19.1.2012, non consideration of the Circulars of the State Government Annexure P/3, P/4 and P/5 dated 13.11.1997, 1.11.1988, 31.12.1985 in the matter of laying down guide lines for preparation of scheme, contending that no procedure as per these Circular for preparing the scheme was undertaken and

therefore, entire scheme is illegal, challenge is made to the scheme. It is also stated that the Committee constituted under Section 50(5) of the Adhiniyam in its recommendation dated 11.6.2012 had released land of more than 22 land owners in an arbitrary manner and in the case of the petitioner such facility has been denied, which amounts to discrimination. Thereafter, pointing out various discrepancies and the manner in which the scheme was prepared, approved and change of area and villages made, the entire scheme is challenged on the ground that it is untenable. It was argued that the impugned order dated 17.4.2013 has been passed by the State Government without taking note of the requirement of Section 29(1), Section 30(5) and the statutory rules of the M.P. Bhoomi Vikas Nigam and therefore, the same is unsustainable. Shri Siddharth Gupta took me in detail through the documents available on record with reference to the aforesaid illegalities and after placing reliance on the following judgments, emphasized that this petition should be allowed, permission under deeming provision having been granted to the petitioner by operation of law, it is said that writ petition be allowed and the directions issued. The judgments relied upon by Shri Siddharth Gupta are as under:-

Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others, ; Srinivasa Rao Vs. Land Tribunal Sehdam - (2001)9 SCC 383; Raj Kumar College Society and Another Vs. State of M.P. (Now Chhattisgarh) and Others, ; GTL Infrastructure Ltd. Pune Vs. Dhule Municipal Corporation - (2011)6 MPLJ 215 (Bom HC); Laxmi Educational Trust Vs. State of Punjab and others - (2009)5 RCR (Civil) 818 (PandH); Siddeshwari Cotton Mills (P) Ltd. Vs. Union of India (UOI) and Another, ; R.K. Mittal and Others Vs. State of Uttar Pradesh and Others, ; A.P. Gas Power Corpn. Ltd. Vs. A.P. State Regulatory Commission and Others, ; Government of Maharashtra and Others Vs. Deokar's Distillery, ; Edukanti Kistamma (Dead) thr. Lrs. and Others Vs. S. Venkatareddy (Dead) thr. Lrs. and Others, ; Kalinga Mining Corporation Vs. Union of India (UOI) and Others, ; Usha Stud and Agricultural Farms Pvt. Ltd. and Others Vs. State of Haryana and Others, ; Surinder Singh Brar and Others Vs. Union of India (UOI) and Others, ; Collector of Central Excise, Vadodra Vs. Dhiren Chemical Industries, ; UOI and Ors. Vs. Arviva Industries India Ltd. - (2014) 3 SCC 159; The Joint Action Committee of Airlines Pilots Associations of India and Others Vs. The Director General of Civil Aviation and Others, ; Hussein Ghadially Vs. State of Gujarat, ; Bhikhubhai Vitlabhai Patel and Others Vs. State of Gujarat and Another, ; Sanjay Gandhi Grah Nirman Samiti Vs. State of M.P. and others - AIR 1991 MP 290; Ahmedabad Municipal Corporation and Another Vs. Ahmedabad Green Belt Khedut Mandal and Others, ; The Joint Action Committee of Airlines Pilots Associations of India and Others Vs. The Director General of Civil Aviation and Others, and UOI Vs. Somasundram Vishwanath. 5. Shri Siddharth Gupta invited my attention to Section 73 of Adhiniyam of 1973, the circulars issued in pursuance to the said Adhiniyam, particularly Annexures P/3, P/4 and P/5 and argued that without completing all the formalities and requirement as contemplated in these circulars

in the matter of formulation and finalization of the scheme is the requirement of law and if the procedure contemplated under these circulars are not followed, the scheme itself is defective and liable to be quashed.

6. Shri Amit Seth, learned counsel appearing for the State Government argued that under the provisions of Section 32 of the Adhiniyam, it is only the applicant, who, if aggrieved by rejection of his application, under Section 29, can prefer an appeal. There is no right available to the Bhopal Development Authority or any other authority to prefer an appeal under Section 31 or 32. It is said that the only remedy available to the Bhopal Development Authority was to appeal to the State Government to exercise its power of suo motu revision under Section 32 and as State Government did this, precisely, there is no illegality in the matter of power exercised by the State Government. It is argued by him that as State Government has exercised powers of revision under Section 32 in accordance with the statute, therefore, now petitioner cannot challenge this exercise of power by the State Government. In support of his contention he invites my attention to the judgment of this Court in the case of Shriram Builders Vs. State of Madhya Pradesh and Others, . He further argued that the petitioner having accepted the objection and the order passed by the State Government on 3.4.2012 and having challenged this by filing an appeal under Section 31 before the Commissioner has waived his right to claim the right of deemed permission under Section 29 read with Section 30(5) because after the orders were passed in the appeal by the Commissioner on 19.6.2012, a conditional permission was granted to the petitioner on 9.11.2012 and as this permission on 9.11.2012 was granted at the instance of the petitioner due to his filing of appeal under Section 31, the petitioner cannot now turn around and say that deemed permission is already granted earlier. It is argued by Shri Amit Seth that once the petitioner was granted conditional permission on 9.11.2012, the question of deemed permission does not arise.

7. Shri P.K. Kourav refuted the contentions advanced by Shri Siddharth Gupta and argued that once the notification under Section 50(2) was issued on 18.11.2011, the bar created under Section 50(3) applies and therefore, neither is there any question of deemed permission nor is the permission granted on 9.11.2012 sustainable in the eyes of law. He therefore, argues that this is a case where under Section 53 all development activities after publication of declaration under Section 50(2) is prohibited/freeze, therefore, neither can the petitioner claim benefit of deemed permission nor is the order dated 9.11.2012 passed by the Directorate, Town and Country Planning, sustainable. It is said that no permission can be granted in the facts and circumstances of the case after the stage of Section 50(2) declaration. He argues that in the backdrop of the aforesaid, an illegal order granting permission on 9.11.2012 cannot be restored by way of this writ petition and in support thereof, he invites my attention to the judgment rendered in the case of Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, ; Mohammad Swalleh and Others Vs. Third Addl. District Judge, Meerut and Another, ; Mukesh Prasad Vs. State of M.P. - 2011(4)

8. It is further argued by Shri P.K. Kourav that petitioner is a real estate company, it is not an agriculturist or a farmer whose livelihood depends upon the property. It is said that conduct of the petitioner should be viewed strictly by this Court and points out that after the intention for declaration of the scheme was issued on 20th October, 2011, petitioner applied for permission on 4.11.2011, that also when they knew that the draft declaration is to follow very soon. It is said that petitioner was clearly aware of the scheme prepared by the Bhopal Development Authority and to be notified and therefore, in the facts and circumstances of the case it is said that development scheme for use of the land that also for a better purpose in public interest should not be interfered with. In support thereof, reliance is placed on the judgment of Supreme Court in the case of *Girnar Traders Vs. State of Maharashtra and Others*, and *Pt. Lila Ram Vs. The Union of India and Others*, . It is further argued by Shri P.K. Kourav that there is no question of deemed permission being granted to the petitioner because submission of NOC from the Bhopal Development Authority was a requirement of law and without the said requirement being fulfilled, permission to the petitioner could not be granted. He submitted that in the matter of grant of permission, the provisions of Rule 12 of the M.P. Nagar Tatha Gram Nivesh Niyam, 1975 has to be followed and the permission has to be sought for in Form No. (vii) as prescribed under Rule 12. He invites my attention to the requirement of Clause 2(4) of Form No. (vii) and sub-clause (vi) wherein a general report showing development proposal with respect to the land in question is to be submitted by the applicant. It is said that in the present case for verifying the fact with regard to development proposal, if any in respect of the land, production of NOC from the Bhopal Development Authority was absolutely necessary and as the demand for NOC from the Bhopal Development Authority was in pursuance to the requirement of law as contemplated under the M.P. Nagar Tatha Gram Nivesh Niyam, 1975, Shri P.K. Kourav argues that no error has been committed by the respondents.

9. As far as applicability of M.P. Bhumi Vikas Niyam, 1984 and provisions of Clause 17(8)(ii)(b) is concerned, Shri P.K. Kourav points out that this pertains to specification and permission for sub division of the land and not with regard to permission for grant of development plan under Section 29(1). It is said that when the statutory provisions for permission for grant of development plan is specifically covered under Rule 12 of the M.P. Nagar Tatha Gram Nivesh Niyam, 1975 and the statutory rules framed thereunder, petitioner cannot claim any exemption from applicability of the aforesaid rule and in demanding the NOC from Bhopal Development Authority, no error has been committed. Shri Kourav argued that there is no legal bar in the State Government, exercising its powers of suo motu revision and in support thereof, he also places reliance on judgment of this Court in the case of *Shriram Builders (supra)* as relied upon by Shri Amit Seth. He argues that it is well settled principle of law that use of land is to be decided by the authority concerned and as in the present case action is taken by

the State Government in accordance to requirement of law, there is no error in the same warranting reconsideration.

10. Shri P.K. Kourav further argued that with regard to discrepancies in the scheme and procedural irregularity pointed out by Shri Siddharth Gupta, in formation of the scheme, this question is a mixed question of law and fact and for the same as statutory remedy of appeal/revision under Section 51 of the Adhiniyam is available to the petitioner, the petitioner should take recourse to the remedy as the validity of the scheme in the light of procedural irregularities can be more appropriately dealt with by the appellate authority.

11. Having heard learned counsel for the parties, I am of the considered view that the following four questions arises for consideration in this writ petition:

(1). Whether the exercise of suo-moto powers of revision by the State Government under Section 32 in the matter of passing the impugned order dated 17.4.2013 is proper or not?

(2). Whether the petitioner is entitled to a declaration of deemed permission as contemplated under Section 30(5) of the Adhiniyam of 1973 and whether the act of the Town and Country Planning in seeking a NOC from the Bhopal Development Authority by the computation date 23.10.2012 has the effect of preventing the petitioner from invoking the provisions of deemed permission in view of the proviso to Section 30(5) of the Adhiniyam and further whether the NOC from the Bhopal Development Authority was required to be obtained and is a requirement in accordance to statutory rules?

(3). Whether the scheme in question suffers from the irregularities pointed out by Shri Siddharth Gupta, in the matter of inclusion of village Misrod and other irregularity in preparation and implementation of the scheme on account of non compliance with the requirement to be followed as contemplated under circulars P-3, P-4 and P-5.

(4). Whether the issuance of notification under Section 50(2) on 18.11.2011 has the effect of enforcing the bar created under Section 53 in the matter of granting permission.

12. As far as the first ground with regard to the exercise of powers of suo motu revision by the State Government under Section 32 of the Act and the Bhopal Development Authority in not challenging the order dated 19.6.2012 passed by the Commissioner on an appeal filed by the petitioner under Section 31 is concerned, I am of the considered view that this argument is wholly unsustainable. Under Section 31 of the Adhiniyam of 1973, a applicant aggrieved by the order granting permission on a condition or refusing permission under Section 30 has a right to file an appeal, this right to appeal under Section 31 is only available to an applicant who is seeking permission under Section 3D. There is no right to appeal available to any other person other than the applicant who is seeking permission. After the appeal filed by the applicant under Section 31 is

decided by the competent appellate authority there is no further appeal provided under Section 31. Under Section 32, the State Government is given powers of exercising the power of Suo Motu revision within 12 months from the date of passing the order under Section 31. That being so, it is clear that the right to file appeal is not available to the Bhopal Development Authority, it is argued by Shri Siddharth Gupta that against the order passed on 19.6.2012, as the BDA did not preferred any appeal, the same has attained finality, this argument cannot be accepted for the simple reason that against the order passed by the Commissioner on 19.6.2012 in the appeal of the petitioner under Section 31, no further right of appeal is available to the Bhopal Development Authority, the only right available to Bhopal Development Authority was to request the State Government to exercise powers of revision under Section 32 and this having being done, I see no error in the same warranting reconsideration. The aforesaid finding and reason recorded for rejecting the first contention of Shri Gupta finds support from a judgment of this Court in the case of Shriram Builders (supra). Accordingly, in the exercise of power of revision undertaken by the State Government under Section 32, this Court does not see any error warranting interference.

13. The second ground of challenge is as to whether "deemed permission" is seen to have been granted to the petitioner and whether demand of NOC from the Bhopal Development Authority is a requirement of law for processing the application for permission under Section 29.

14. Before advertng to consider the aforesaid question it would be proper to take note of the statutory provisions. Section 29(1) and (2), Section 30(5), Section 50(1), (2), (3) and (5) and Section 53 reads as under:-

"29. Application for permission for development by others - (1) Any person not being the Union Government, State Government, a local authority or a special authority constituted under this Act, intending to carry out any development on any land, shall made an application in writing to the Director for permission, in such form and containing such particulars and accompanied by such documents complying with the provisions of the Acts, rules and bye-laws relating to development control of the natural hazard prone area as may be prescribed.

(2) Such application shall also be accompanied by such fee as may be prescribed."

30. Grant or refusal of permission-

(5) If the Director does not communicate his decision whether to grant or refuse permission to the applicant within [sixty days] from the date of receipt of his application, such permission shall be deemed to have been granted to the applicant on the date immediately following the date of expiry of [sixty days]:

Provided that in computing the period of *[sixty days] the period in between the date of requisitioning any further information or documents from the applicant

and date of receipt of such information or documents from the applicant shall be excluded. Section 50. Preparation of town development schemes-

(1) The Town and Country Development Authority may, at any time, declare its intention to prepare a town development scheme:

[Provided that no such declaration of intent shall be made without prior approval of the State Government.] (2) Not later than thirty days from the date of such declaration of intention to make a scheme, the Town and Country Development Authority shall publish the declaration in the Gazette and in such other manner as may be prescribed.

(3) Not later than two years from the date of publication of the declaration under sub-section (2) the Town and Country Development Authority shall prepare a town development scheme in draft form and publish it in such form and manner as may be prescribed together with a notice inviting objections and suggestions from any person with respect to the said draft development scheme before such date as may be specified therein, such date being not earlier than thirty days from the date of publication of such notice.

(5) Notwithstanding anything contained in sub-section (4), the Town and Country Development Authority shall constitute a committee consisting of the Chief Executive Officer of the said Authority, an officer nominated by the Director, Chief Executive Officer or his nominee of such urban local body within whose jurisdiction the town development scheme is situated and Chief Executive Officer or his nominee of the Zila Panchayat in case the scheme lies wholly or partly in his jurisdiction.

53. Restriction on land use and land development. As from the date of publication of the declaration to prepare a town development scheme, no person shall within the area included in the scheme, institute or change the use of any land or building or carry out any development, save in accordance with the provisions of this Act prior to the publication of such declaration.

15. As far as this ground with regard to "deemed permission" is concerned, it is seen that an application for permission for development by any person who intends to carry out any development on any land has to be made in writing to the Director in such form and containing such particulars, accompanied by such documents complying with the provisions of the Acts, Rules and the bye-law. This is provided under Section 29(1) of the Adhiniyam and Section 29(2) contemplates that the application shall be accompanied by the requisite fee. The statutory rules for submitting an application is provided in the M.P. Nagar Tatha Gram Nivesh Niyam, 1975 as was existing at the relevant time and subsequently amended with effect from the year 2012 under the M.P. Nagar Tatha Gram Nivesh Niyam, 2012. However, in this case as the application was submitted and processed in the year 2011, the Niyam of 1975 would apply. Rule 12 contemplates and prescribes the form of application for permission for development of land and Form No. (vii) is the statutory prescribed form as

contemplated under Section 29(1) which is to be submitted by the person seeking permission for development. That apart, an application submitted as contemplated herein above, is to be considered and grant or refusal of permission is to be made as contemplated under Section 30 of the Adhiniyam. As already indicated herein above sub-section 5 of Section 30 provides for "deemed permission", if no grant or refusal is communicated within a period of 60 days from the date of receipt of application as contemplated under Section 29(1). However, the proviso to sub-section (5) to Section 30 contemplates that for the purpose of computing the period of 60 days, the period between the date of requisition any further information or document from the applicant and date of receipt of such information or document is to be excluded. That apart, petitioner has also indicated that under the M.P. Bhoomi Vikas Rules, 1984 and Rule 17(8)(ii)(b) there is no provision for demanding NOC from the Bhopal Development Authority.

16. For the purpose of considering the ground in this regard raised by the petitioner, it is relevant to first see as to whether the respondents were right in demanding from the petitioner the NOC from Bhopal Development Authority? According to the petitioner under the Bhumi Vikas Niyam, there is no provision for demanding of such an NOC. To that effect, petitioner may be right in as much as under the provisions of the M.P. Bhumi Vikas Niyam, 1984 and Rule 17(8)(ii)(b) there seems to be no such requirement. However, this provision refers to sub division of land and therefore, the same may not apply in the present case. However, the provisions of Rules of 1975 is clearly applicable because Rule 12 of the aforesaid Adhiniyam of 1975 clearly stipulates that an application under sub-section (1) of Section 29 has to be submitted in Form No. (vii). Form No. (vii) as prescribed under Rule 12 is a form under which the application for permission under sub-section 1 of Section 29 for development of land is to be submitted and sub-clause (2) of this form reads as under:-

"(i) Description of the land (Location with name on/off which the property abuts and boundaries).

(ii) Khasra plan showing Nos. of land in question and also adjoining Khasras filling within 200 meters from the outer limit of the land. The land applied for is shown in "red" Khasra Maps.

(iii) Location plan indicating the land in question, main approach roads, important public buildings like Hospitals School or Cinema, Petrol Pump and the existing uses surrounding the land.

(iv) attach herewith the following documents in triplicate namely, "the existing land use is (Residential) Commercial industrial/Public purposes/open spaces/vacant land.

(v) Survey plan to a scale of 1:500/1 : 1000 or 41.1/4" to an inch 82 1/2" to an inch scale. The plan shows the boundaries of land in question, natural features like nala, ponds, tree, slopes, contours plan at 5" or 10" interval. If high tension

line passing through or adjoining land upto a distance of 200 meters, existing road showing the right of way. Position of electric and telephone poles and all such other matters which need to be coordinated with adjoining areas.

(vi) A general report showing all development proposals with respect to land in question."

17. It was emphasized by Shri P.K. Kourav during the hearing that for the purpose of ascertaining as to whether any development proposal with respect to the land is pending, it was necessary to call for a NOC from the Bhopal Development Authority.

18. Admittedly, it is not the case of the petitioner that along with the statutory form submitted, they had submitted a report showing any development proposal with respect to the land in question pending before any authority. The provisions of rule as reproduced herein above clearly contemplates that a application is to be attached with various documents indicated therein and sub-rule 2(vi) provides for submission of a report showing development process, if any with respect to the land. This requirement of the statutory rules is wide enough and if for the purpose of ascertaining whether any development proposal with respect to the same land or area is pending with the Bhopal Development Authority, if the petitioner is directed to produce NOC from the Bhopal Development Authority, I am of the considered view that respondents have not committed any error. Contention of Shri Siddharth Gupta to the effect that application form submitted by the petitioner was complete in all respect, there was no lacuna in the same and all the statutory requirements is fulfilled may be correct with reference to requirement of M.P. Bhumi Vikas Niyam, 1984 but with reference to the Rules of 1975, statutory requirement as contemplated under which Form No. (vii) is prescribed, is not complied with. It was incumbent upon the petitioner to submit a report indicating as to whether any development proposal with respect to the land was pending before any authority and if the petitioner did not do so and if such report is called for by competent authority, may be in the form of NOC from the Bhopal Development Authority, I am of the considered view that this is nothing but a requirement contemplated under the Rule and contention of Shri Siddharth Gupta that application form submitted by him under Section 29(1) was complete in all respect cannot be accepted. It is a case where certain requirement of the statutory rules was not complied with by the petitioner and if for complying with the said requirement, any information is sought for by the competent authority, this is nothing but an information as required under the proviso to Section 30(5) and therefore, till such a information is not submitted by the petitioner, this period has to be excluded and deemed permission under Section 30(5) cannot be enforced in this particular case. Apart from the aforesaid, if the proviso to Section 30(5) is taken note of, it contemplates that the authority can ask for any information or document from the applicant. "Any information and document" as provided is a wide term and if it is found that information sought for or the document requisited is in conformity with the

requirement of law, this Court cannot hold, as prayed for by the petitioner, that demand of NOC from the Bhopal Development Authority is not proper. Accordingly, in the facts and circumstances of the case, I am of the considered view that the petitioner cannot take advantage of the deemed permission clause as contemplated under the statute as this is a case where the said provision will not apply in view of the reasons and grounds indicated herein above. Accordingly, question in this regard formulated is answered against the petitioner by holding that in this case the contention of the petitioner that deemed permission had been granted, cannot be accepted. It is a case where the proviso to Section 30(5) gets attracted and as the petitioner has not submitted the NOC till date, it cannot be held that he has received the deemed permission.

19. As far as the question with regard to applicability of the Bar under Section 53 due to publication of the declaration under Section 50(2) is concerned, this question need not detain us for long, as this aspect of the matter has already been considered by the Supreme Court and in the case of *Chairman Indore Vikas Pradhikaran* (supra) in para 77 the matter has been dealt with in the following manner:

"77. To accept that it is open to the town development authority to declare an intention to formulate a town development scheme even without a development plan and ipso facto bring into play a freeze on usage of the land under Section 53 would lead to complete misuse of powers and arbitrary exercise thereof depriving the citizen of his right to use the land subject to the permitted land use and laws relating to the manner of usage thereof. This would be an unlawful deprivation of the citizen's right to property which right includes within it the right to use the property in accordance with the law as it stands at such time. To illustrate the absurdity to which such an interpretation could lead it would then become open to the town development authority to notify an intent to formulate a town development scheme even in the absence of a development plan, freeze all usage of the property by a owner thereof by virtue of Section 53 of the Act, and should no development plan be finalized within 3 years, such scheme would lapse and the authority thereupon would merely notify a fresh intent to formulate a town development scheme and once again freeze the usage of the land for another three years and continue the same ad infinitum thereby in effect completely depriving the citizen of the right to use his property which was in a manner otherwise permitted under law as it stands."

(Emphasis Supplied)

20. It is therefore, clear that the freeze for usage of land contemplated under Section 53 would only become operational when the draft scheme is published under Section 50(3) and not at the stage when the notification for intention to public a scheme under Section 5(2) is published, the matter is also dealt with in para 79, 80 and 81 in the following manner in the case of *Indore Vikas Pradhikaran* (supra):

78. The essence of planning in the Act is the existence of a development plan. It is a development plan, which under Section 17 will indicate the areas and zones, the users, the open spaces, the institutions and offices, the special purposes, etc. Town planning would be based on the contents of the development plan. It is only when the development plan is in existence, can a town planning scheme be framed. In fact, unless it is known as to what the contents of a possible town planning scheme would be, or alternatively, whether in terms of the development plan such a scheme at all is required, the intention to frame the scheme cannot be notified.

79. Section 50 of the Act no doubt uses the word "at any time". The question, however, is what that would imply. The town planning scheme, it would bear repetition to state, is made for the purpose of implementation of a development plan. Ordinarily, therefore, it would envisage the time period for coming into force of the development plan and the expiry thereof. Unless such a construction is to be given to the words "at any time", it would lead to manifest injustice and absurdity which is not contemplated by the statute. For giving an effective meaning to the provisions of Section 50 of the Act, the same is required to be read in the context of other provisions of the statute and in particular the interpretation clauses which we have noticed hereinbefore.

80. Section 50(1) of the Act provide for declaration of this intention to prepare town development scheme "at any time". The words "at any time" do not confer upon any statutory authority an unfettered discretion to frame the town development scheme whenever it is so pleases. The words "at any time" are not charter for the exercise of an arbitrary decision as and when a scheme has to be framed. The words "at any time" have no exemption from all forms of limitation for unexplained and undue delay. Such an interpretation would not only result in the destruction of citizens' rights but would also go contrary to the entire context in which the power has been given to the authority.

81. The words "at any time" have to be interpreted in the context in which they are used. Since a town development scheme in the context of the Act is intended to implement the development plan, the declaration of intention to prepare a scheme can only be in the context of a development plan. The starting point of the declaration of the intention has to be upon the notification of development plan and the outer limit for the authority to frame such a scheme upon lapsing of the plan. That is the plausible interpretation of the words "at any time" used in Section 50(1) of the Act. *State of H.P. and Others Vs. Rajkumar Brijender Singh and Others*, .

21. Accordingly, the objection in this regard raised by Shri P.K. Kourav has to be rejected and the finding recorded in the impugned order passed by the State Government to that effect quashed.

22. Finally, the last ground canvassed was that in the matter of formulation of the scheme certain guide lines and circulars of the State Government as

contemplated in Annexure A/2, A/3 and A/4 have not been complied with, Shri Siddharth Gupta is right in contending that in view of provisions of Section 73 and the judgments relied upon by him the Competent Authority is required to ensure that the scheme is formulated in a manner as is contemplated under the law. But at the same time the question as to whether the scheme can be given effect to and whether the objections of the petitioner in the matter of non conduct of survey, taking note of the changes in the area during the period from 2000 to 2011, exclusion of 22 land owners from the applicability of the scheme, change in the area of the scheme are all questions of facts requiring a detailed enquiry and appreciation of various factual aspects of the matter, that is why under the statute a provision for specific appeal/revision under Section 51 of the Adhiniyam is contemplated, wherein the State Government is authorized to go into each and every question and thereafter, under Section 52 issue directions in the matter of modification of the scheme. The question as to whether the scheme has been formulated in the present case in accordance to guidelines issued by the State Government and further whether the scheme has to be modified or given up in view of the lacuna pointed out by the petitioner as indicated in the petition is itself a disputed question and when a statutory remedy is available under Section 51 of the Act and when the expert body exercising its statutory power can go into all these questions in detail and consider the objections of the petitioner, it is not appropriate for a writ Court to venture into this area of fact finding enquiry and examine the scheme in the light of objections raised. Objections raised are not pure questions of law, they involve various factual aspects which require enquiry in detail and thereafter, arriving at conclusion as to whether the scheme has been formulated in accordance to the guide lines of the State Government or the objection, if any, raised by the petitioner warrant consideration. This can be more appropriately dealt with by the experts in town planning development etc. and not by a writ Court exercising limited jurisdiction in a petition under Article 226/227 of the Constitution. Accordingly, there is much force in the objection raised by Shri P. K. Kourav to say that petitioner should take recourse to the statutory remedy available under Section 51 in case he wants to challenge the scheme on merit. Contention of Shri Siddharth Gupta that once the petition is taken up for consideration, on merit the petitioner should be relegated to take recourse to the statutory alternate remedy, may not apply in the facts and circumstances of the present case, The draft scheme was notified only on 27.1.2012, objections were invited on 10.4.2012 and the drafts scheme under Section 50(4) was approved only on 21.12.2012 and the final scheme under Section 50(7) was only approved on 11.1.2013 and this petition was filed by the petitioner immediately thereafter in the year 2013. That being so, it is not a case where the petition is pending for a long period and therefore, petitioner cannot be relegated to take recourse to the alternate remedy. On the contrary, this is a fit case where the petitioner should have taken recourse to the remedy under Section 51 and as the said remedy is still available to the petitioner as the period spent in agitating the matter before this Court can be excluded, accordingly, this Court grants liberty to the petitioner to take

recourse to the aforesaid remedy in case he has any grievance with regard to the scheme and its implementation so far as it relates to exclusion of petitioner's land.

23. The question of exclusion of petitioner's land from the scheme on account of various irregularities pointed out in formulation of the scheme is a matter which is to be considered by the competent authority of the department and it is not appropriate for this Court to go into such question as fact for exclusion of the petitioner's land from the said scheme or order modification to the scheme etc. there are matters which are to be considered by the competent authority dealing with town development and planning and therefore, I am of the considered view that this is a fit case where in the matter of challenge to the implication of the scheme in merit and lacuna to the scheme as claimed, the petitioner should take recourse to the statutory remedy available under Section 51.

24. Even though during the course of hearing, various judgments have been cited by Shri Siddharth Gupta and Shri P.K. Kourav, but keeping in view of the finding recorded herein above the legal questions involved, it is not necessary now to go into those judgments in detail.

25. Accordingly, finding no ground to interfere on various grounds canvassed, this petition is dismissed with liberty to the petitioner to challenge the scheme on merit by taking recourse to the statutory remedy available.

No order as to costs.