

(2018) 01 MP CK 0031
In the Madhya Pradesh High Court
Case No : 20527 of 2017

NANDKISHORE PAGARE & OTHERS

APPELLANT

Vs

CHIEF MUNICIPAL OFFICER & OTHERS

RESPONDENT

Date of Decision : 16-01-2018

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Madhya Pradesh Municipalities Act, 1961, Section 201, Section 201</

Citation : (2018) 01 MP CK 0031

Hon'ble Judges : Vivek Rusia

Bench : Single Bench

Advocate : Amit Agrawal, Arjun Agrawal, A.K. Sethi, Manoj Manav, Vivek Patwa

Final Decision : Dismissed

Judgement

1. The petitioner has filed the writ petition challenging the action of the respondent No.1 by which the Municipal Council, Khargone has started

construction work on a piece of land which was marked for park as per lay out plan.

2. No relief has been claimed against the respondent Nos.2 and 3.

3. With the consent of parties, petition is heard finally at motion hearing stage.

4. The petitioners are the permanent resident of Khargone. Petitioner No.1 has purchased the house bearing No.MIG-124, petitioner No.2 has

purchased HIG B-52 and petitioner No.3 purchased MIG A-60 by way of registered sale deed. All the three houses are situated in the Vindhya

Vihar Colony (in short "colony")developed by the MP Housing and Infrastructure Development Board.

5. According to the petitioners they paid 5% additional cost of the house looking to the better location i.e. in front of open park, corner etc. In the

month of October- November, 2017, the respondent No.1 has started work for construction of water tank with total capacity of 5 lac gallons of

water in a small park situated within the colony in front of the house of the petitioner.

6. According to the petitioners, the Town and Country Planning Department has already approved the Map/Lay out plan in which certain areas

have already been marked and reserved for water tank, therefore, the Municipal Council cannot construct the water tank in deviation to the

sanctioned map and plan. The petitioners served a legal notice dated 17.11.2017, through their Advocate but the respondent No.1 did not stop

the work, therefore, they have no option but to approach this Court by way of filing writ petition before this high court

7. After notice, the respondent No.1/Municipal Council, Khargone has filed the reply to the writ petition by submitting the the Khargone is situated

in the Nimaar area which is suffering from water shortage since last so many years, therefore, the council has started the special project with aid of

World Bank to provide water facility to the resident of in the city. A detailed project report has been prepared and the same has been finalized and

the necessary fund has been sanctioned by the Government. The total cost of the project has been assessed as Rs.116 crore for which the World

Bank has given the financial support. The State Government has also approved the said project and after the approval, the construction work has

been started for implementation of the said project . That looking to the topography of the city and in order to provide to provide free flow water,

in four places, the overhead water tanks are required to be constructed. The said Vidhya Vihar Colony was developed by the Housing Board and

after completion of the project, same has been handed to the Municipal Council, Khargone by agreement dated 14.01.2015. After the aforesaid

agreement, certain liabilities in respect of the basic amenities like water, sanitation, drainage, road market etc have also been passed on to the

Municipal Council.

8. Even under the M.P. Municipalities Act, 1961, the Municipal Council is under obligation to provide water to the residents of the colony, as well

as residents of Khargone city. The present new project is being implemented to improve water supply in the whole city under which all the four

tanks are going to be connected through underground major pipelines. All the residents of Khargone would be benefited by this project. The

respondent has also raised objection about the locus and maintainability of the petition. Along with the return council has filed complete DPR.

9. Thereafter, the petitioner has filed the rejoinder by submitting that the only colony has been transferred to the Municipal Council for the purpose

of management but in the revenue records, still it is recorded in the name of respondent No.2.

10. Shri Amit Agrawal, learned senior counsel appearing on behalf of the petitioner submitted that under Section 187 D of the M.P. Municipalities

Act, 1961, the provisions of Madhya Pradesh Nagar Tatha Gram Niwesh Adhiniyam, 1973 applies in respect of control of the development and

use of land. Under Section 2 k (ii) Madhya Pradesh Nagar Tatha Gram Niwesh Adhiniyam, 1973 the "Local authority means "Municipal Council".

Under Section 24 over all control of development and use of the land in the State shall vest in the State Government. The State Government may

make rules to regulate the control of development and use of land in planing area and non planing area in the State. Under Section 29 any person

intending to carry out any development or any land is required to make an application in writing to the Director for permission. Under 30 the

Director may subject to the provision of the Act grant or refuse such a permission.

11. It is further submitted by the learned senior counsel that the plan in respect of the development of Vindhya Vihar Colony has already been

approved by the Director, Town and Country Planing Department and if Municipal Council wants any change in the said plan then it is required for

them to approach to the Director, Town and Country Planing with an application and without any permission no change is permissible, even the

change of land use is also not permissible. In the present case Municipal Council admittedly has not filed any application before the Director of

Town and Country Planing Department for change of land use or permission for construction of the Water Tank on a land reserved for play

ground/ park etc.

12. The petitioners who are resident of that area have purchased the house of better location to have free light and air and facility to use play

ground available in front of their house. Therefore, they have a locus to challenge the action of the respondent No.1 as after construction of the

Water Tank it would reduced the area of play ground and would effect their easementary right. That, the respondent before starting the construction

at least ought to have invited an objection from the residents of the colony. The DPR has been prepared behind the back of the petitioners and

same is being implemented without inviting objections from general public specially resident of the colony therefore, the principle of natural justice

has not been followed. Hence, the respondents are required to be restrain to construct the Water Tank over the land reserved for the park. In

support of his contention, he has placed reliance over the judgment passed in the case of Municipal Corporation, Gwalior and Another Vs. Anil

Sharma and Others, reported in 2002 (2) MPLJ 595 in which the Division Bench has held held the land earmarked for the public amenities cannot

be changed while revising the lay out plan under Section 28. The petitioners have also placed heavy reliance over the judgment passed by the

Supreme Court in case of Bangalore Medical Trust Vs. B.S. Muddappa & Others, reported in 1991 (4) SCC 54 in which, it has been held that

the protection of environment open space for recreation of fresh air, play ground for children and other conveniences and amenity are matter of

great public concern and vital interest to be taken care of in a development scheme. Reservation of open space for park and play ground is a

universally recognize as a legitimate exercise of a statutory power related to the protection of locality from ill effect of urbanisation.

13. Shri A.K. Sethi, learned senior counsel appearing on behalf of the respondent No.1 submitted that the petitioners have not claimed relief for

themselves but they are claiming relief in general therefore, they ought to have approached this court by filing a petition in the nature of PIL. The

petitioners have not alleged violation of their either statutory or constitutional right. The Municipal Council has prepared a detailed project report in

order to ensure the water supply to the residents of Khargon city. Entire project is being funded by the World Bank and approved by the State as

well as by the Central Government. The colony, after development, has been transferred to the Municipal Council, therefore, the land of the colony

also now belongs to the Municipal Council. The construction of water tank is in the public interest, therefore, the individuals are required to

sacrifice their interest, if any, effected in a larger public interest, therefore, the writ petition is not tenable and liable to be dismissed.

14. That the Vindhya Vihar Colony was developed by the M.P. Housing Board and thereafter by way of agreement same has been transferred to

the Municipal Council, Khargone. In the said colony, certain part of the land have been reserved for park and play ground for the use of general

public and resident of the colony. The land /area in question has been kept vacant and reserved for the garden/play ground. The sole question is

under consideration whether the construction of water tank in the said area would amount to change the land use or change in map /plan. If it

comes under the category of change of land use then certainly the provision of Madhya Pradesh Nagar Tatha Gram Niwesh Adhiniyam, 1973

would apply and no local authority is permitted to deviate from the plan or change the land use without prior permission of Director, Town and

Country Planning.

15. The Municipalities under Section 219 of the Municipalities Act, 1961 is under obligation and also having power to provide water and its

distribution to the local resident .The Council shall have the same powers and be subject to the same restrictions for carrying, renewing, repairing

and altering water-mains, pipes and ducts within or without the Municipal area as available under sec 201. That under Section 201, the

municipality is having power to carry any drain, sewer, conduit, tunnel, culvert, piper of water course through across or under city or any place any

land whatsoever within the municipal area. A council or any person acting for such purpose may enter upon and construct any new drain of an

existing drain in any land wherein the drain vested in the council, therefore, under Section 219, the Municipal Council is having power to use any

area or land within or without the municipal area for carrying out the water supply.

16. The Municipal council has prepared a detailed project report for supply of water to its residents. The said project report has been approved

has by the State Government as well as by the Central Government. In order to make the effective water supply, Municipal Council is required to

construct 7 water tanks on different locations. As per the technical report one of the tank is falling inside the Vindhya Vihar Colony except open

space in the park, there is no other suitable place for construction of the water tank. For the construction of water tank over pillars/ column not less

then 1% of the entire area of play ground is required to be used. The nature of the land is not going to be changed after construction of water tank.

The remaining area of park/play ground can be used as it is. All the judgments cited by the Id sr. counsel appearing for the petitioners are not

applicable for the simple reason that in all cases entire area reserve for the park or garden had been used or changed for construction of

building/hospital / complex etc but in the present case only small part of the area of the park/play ground is being used for construction of the water

tank in public interest.

17. In case like this, interest of individuals cannot be placed above or preferred over large public interest.

18. Therefore, in view of the above, no case for interference by the High Court in a writ petition under Article 226 of the Constitution of India is

made out.

19. Petition is accordingly dismissed.