

(2014) 10 MP CK 0085

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 309/2014, 311/2014, 657/2014, 710/2014, 943/2014, 1112/2014, 1164/2014, 1407/2014, 1506/2014, 2855/2014, 6306/2014, 8075/2014 and 8491/2014

Prem Narayan Patidar

APPELLANT

Vs

Municipal Corporation, Bhopal

RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Constitution of India, 1950 — Article 21, 300A
Madhya Pradesh Municipal Corporation Act, 1956 — Section 286, 305, 305(1), 306
Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 50, 55, 56

Citation : (2014) 5 MPHT 434 : (2014) 53 MPLJ 649

Hon'ble Judges : Alok Aradhe, J

Bench : Single Bench

Advocate : Sanjay Agrawal, Vivek Rusia, Sidharth Gupta, K.L. Gupta and Ashish Giri, Advocate for the Appellant; Vijay Pandey, Rajneesh Upadhyay and Aditya Khandekar, Advocate for the Respondent

Judgement

Alok Aradhe, J.—In this bunch of writ petitions, the sole issue, which arises for consideration is whether the action of Municipal Corporation, Bhopal in taking possession of the lands and demolishing the buildings of the petitioners without acquiring the same and without even making payment of compensation to them, can be sustained in the eye of law, therefore, the writ petitions were heard analogously and are being decided by this common order.

In this bunch of writ petitions, the petitioners inter alia have assailed the validity of the action of the Municipal Corporation, Bhopal (in short "the Corporation") in demolishing, dismantling and taking action against the lands and buildings, of which the petitioners are owners. The petitioners also seek a direction to the Corporation to resort to the land acquisition proceeding in accordance with law. In order to appreciate the grievance of the petitioners, few facts need mention, which are stated infra.

Under the Jawaharlal Nehru National Urban Renewal Mission, the Central

Government has sanctioned a scheme called as Bus Rapid Transit System for improvement of public transport system to avoid hazardous traffic in the city of Bhopal. The Central Sanctioning and Monitoring Committee (in short "the Committee") constituted under the Ministry of Department of Urban Development Central Government in its 14th meeting dated 10-11-2006 sanctioned a sum of Rs. 237.76 crores for the city of Bhopal for construction of Bus Rapid Transit System from Bairagarh to Misronth. Thereafter, the Committee in its subsequent meetings, which were held on 1-7-2011 and 20-9-2013 revised and enhanced the sanctioned amount by Rs. 121.50 crores and Rs. 82.76 crores, respectively. It is not in dispute that for the purpose of implementation of the scheme in question, the Corporation is working as nodal agency. After sanction of the scheme by the Committee of the Ministry of Urban Development, the National Highway Authority of India entered into an agreement with the Corporation on 22-9-2009 and handed over the part of road, which is covered by the proposed Bus Rapid Transit System corridor.

2. The Corporation carried out survey of the road in Bhopal city scientifically and proposed complete route rationalisation plan, which was duly approved by the State Government and the routes were notified as per the said plan by the State Transport Authority. The petitioners are residents of Bhopal and are owners of the lands/houses, which are situate adjoining the National Highway Number 12, which connects Bhopal to Hoshangabad. The officers of the Corporation on or about 4-1-2013 visited the lands/houses of the petitioners along with bulldozers and JCB machines and started digging the lands and demolishing the various structures standing parallel to National Highway Number 12 starting from Habibganj Naka. The aforesaid exercise was undertaken by the officers of the Corporation without acquiring the lands of the petitioners. In the aforesaid factual backdrop, the petitioners have approached this Court.

3. Learned Counsel for the petitioners submitted that the Corporation has no authority in law to take possession of the lands/houses belonging to the petitioners forcibly, without even taking recourse to acquisition proceeding. It is further pointed out that Sections 55 and 56 of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (in short "the 1973 Act") contains the provisions for acquisition of the lands for public purpose. It is further submitted that the impugned action of the respondents in forcibly dispossessing the petitioners from their properties is violative of Article 300-A of the Constitution of India. It is also urged that Rule 61 of the M.P. Bhumi Vikas Niyam, 2012 (in short "the 2012 Rules") applies to a case where the owner surrenders the land/plot on his own volition and in the instant case, the petitioners are not willing to surrender their properties on their own volition. In support of their submissions, learned Counsel for the petitioners have placed reliance on the decision of the Supreme Court in R.L. Jain (D) by Lrs. Vs. DDA and Others, .

4. On the other hand, learned Counsel for the respondents submitted that no objection was preferred by the petitioners with regard to the draft development

plan, which was prepared sometime in the year 2005. It is further submitted that the proposed width of the road is 60 metres and at the time of preparation of development plan, objections and suggestions were invited from the aggrieved persons. However," the petitioners failed to submit any objection, therefore, they have no locus to submit any objection at this point of time. Learned Counsel for the respondents while referring the Sections 305 and 306 of the M.P. Municipal Corporation Act, 1956 (in short "the 1956 Act") submitted that the Corporation is ready and willing to compensate the petitioners in terms of Rule 61 of the 2012 Rules by allowing the additional floor area calculated twice the area of the plots in question. In support of their submissions, learned Counsel for the respondents have placed reliance on the decision in Mayank Rastogi Vs. V.K. Bansal and Others, .

5. I have considered the respective submissions made by learned Counsel for the parties. Section 55 of the 1973 Act provides that the land needed for the purpose of town development scheme shall be deemed to be a land needed for a public purpose within the meaning of the Land Acquisition Act, 1894. Section 56 of the 1973 Act deals with acquisition of land for town and country development authority and provides that the authority may at any time after the date of publication of the final town development scheme under Section 50 but not later than three years therefrom proceed to acquire by agreement the land required for the implementation of the scheme and on its failure so to acquire, the State Government may, at the request of the authority proceed to acquire such land under the provisions of the Land Acquisition Act, 1894 and on payment of compensation awarded under the Act and any other charges incurred by the State Government in connection with the acquisition, the land shall vest in the Authority subject to such terms and conditions as may be prescribed. Section 305(1) of the 1956 Act reads as under:--

"305. Power to regulate line of buildings.-- (1) If any part of a building projects beyond the regular line of a public street, either as existing or as determined for the future or beyond the front of immediately adjoining buildings the Corporation may--

(a) if the projecting part is a verandah, step or some other structure external to the main building, then at any time, or

(b) if the projecting part is not such external structure as aforesaid, then whenever the greater portion of such building or whenever any material portion of such projecting part has been taken down or burned down or has fallen down,

require by notice either that the part or some portion of the part projecting beyond the regular line or beyond the front of the immediate adjoining building, shall be removed, or that such building when being rebuilt shall be set back to or towards the said line or front; and the portion of land added to the street by such setting back or removal shall henceforth be deemed to be part of the public street and shall vest in the Corporation:

Provided that the Corporation shall make reasonable compensation to the owner for any damage or loss he may sustain in consequence of his building or any part thereof being set back."

Sub-sections (1) and (2) of Section 306 of the 1956 Act read as under:--

"306. Compensation.-- (1) No compensation shall be claimable by an owner for any damage, which he may sustain in consequence of the prohibition of the erection of any building.

(2) The Corporation shall make reasonable compensation to the owner for damage or loss, which he may sustain in consequence of the prohibition of the re-erection of any building or part of a building except in so far as the prohibition is necessary under any rule or bye-law:

Provided that the Corporation shall make full compensation to the owner for any damage he may sustain in consequence of his building or any part thereof being set back unless for a period of three years or more immediately preceding such notice the building has by reason of its being in a ruinous or dangerous condition become unfit for human habitation or unless an order of prohibition issued under Section 286 has been and still is in force in respect of such building."

6. Thus, even under the provisions of the 1956 Act, the Corporation is under an obligation to make reasonable compensation to the owners for any damages or loss, which may be sustained by them in consequence of their buildings or any part thereof being set back. Note (1) appended to Rule 61 of the 2012 Rules is reproduced below for the facility of reference:--

"(1) In case where the owner surrenders a portion of his plot/land and vests its ownership in the Government/Authority for public purpose, an additional floor area calculated adding twice the area of plot/land surrendered by him may be allowed in the remaining area of the plot/land in lieu of the monetary compensation."

7. In *State of Haryana Vs. Mukesh Kumar and Others*, , the Supreme Court has held that right to property is not only the constitutional or statutory right but also a human right. Similarly, the Supreme Court in the case of *Tukaram Kana Joshi and Others thr. Power of Attorney Holder Vs. M.I.D.C. and Others*, , has held that even after right to property ceased to be a fundamental right, possession of the property of a citizen can be taken only in accordance with law as per the mandate contained in Article 300-A of the Constitution of India. In *Coffee Board, Karnataka, Bangalore Vs. Commissioner of Commercial Taxes, Karnataka and Others*, , it has been held that power of eminent domain can be exercised upon making just compensation.

8. In the instant case, admittedly, the respondent-Corporation has neither initiated any proceeding for acquisition of the land/property of the petitioners nor has paid any compensation to them. Reliance placed by learned Counsel for the respondents on Rule 61 of the 2012 rules is misplaced as the same applies to the

case of a person, who on his own volition surrenders the property to the Authority. In the present case, the petitioners are not ready and willing to surrender their lands/properties in favour of the Corporation, therefore, by unilaterally invoking Rule 61 of the 2012 Rules, the Corporation cannot be permitted to take possession of the properties of the petitioners which would tantamount to violation of Article 300-A of the Constitution of India. The power of "Eminent Domain" is in the nature of compulsory purchase of the property of the citizen for the purpose of applying to the public use. [See: Advanced Law Lexicon, 3rd Edition by R. Ramanatha Aiyar] This power can be exercised subject to payment of compensation as has been held in the case of Coffee Board (supra). For this reason in all the relevant provisions of law, i.e., the 1973 Act, 1956 Act as well as the 2013 Act, provisions for making payment of compensation to the person whose property is being acquired, have been incorporated. Therefore, the Corporation cannot be permitted to take possession of the lands in question without acquiring the same and without making payment of compensation. The Corporation has no right to take possession of the lands/houses of the petitioners, save by authority of law. A democratic polity like ours is governed by Rule of Law and the State cannot be allowed to deprive a citizen of his property without adhering to law. The deprivation of immovable property would amount to violation of Article 21 of the Constitution of India. The decision in Mayank Rastogi (supra), on which reliance has been placed by the respondents is of no assistance to them in the present fact situation as the same deals with the issue whether a person who has not submitted any objection to the change of land use can subsequently be permitted to raise an objection in this regard. Admittedly, the Corporation has not initiated any proceeding for acquisition of lands/houses in question, therefore, it is not necessary for this Court to deal with the issue whether the acquisition should take place under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 or under the provisions of the M.P. Municipal Corporation Act, 1956. However, the respondents are restrained from taking possession of the land/houses of the petitioners without acquiring the same in accordance with law. Accordingly, the writ petitions are disposed of on above terms.