

---

**(2018) 07 MP CK 0193**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition 16423 OF 2018**

Raghvendra Singh Sikarwar & Ors

APPELLANT

Vs

State Of Madhya Pradesh & Ors

RESPONDENT

---

**Date of Decision :** 23-07-2018

**Acts Referred:**

Madhya Pradesh Municipal Corporation Act, 1956 — Section 293, 294, 294(1), 295, 302, 302(2), 303, 303(1), 301(4), 302(4), 307, 307(5), 308A  
Indian Penal Code, 1860 — Section 302, 307(2)(a)

**Citation :** (2018) 07 MP CK 0193

**Hon'ble Judges :** Sanjay Yadav, J; S.K. Awasthi, J

**Bench :** Division Bench

**Advocate :** R.D. Jain, M.P.S. Raghuvanshi, Praveen Newaskar

**Final Decision :** Dismissed

---

## Judgement

Heard on admission.

Petitioners, who are 12 in number having been found raised unauthorized construction without seeking prior permission from the Municipal

Corporation, Gwalior under Section 294 of the M.P. Municipal Corporation Act, 1956, led the Municipal Corporation, Gwalior issued notice to the

petitioners respectively on 31.05.2018 under Section 302 read with subsection (2)(a) of Section 307 of the Act to show cause as to why the said

unauthorized construction be not removed. Each notice contained therewith the map depicting unauthorized construction. Evidently, no reply seems to

have been filed within the stipulated time, which led the Municipal Corporation, Gwalior to remove the unauthorized structures which were subjected

to the notices. After the initiation of action by the Corporation few of the occupiers approached the Corporation seeking compounding under Section

308A of 1956 Act. It is pertinent to note that some applications are dated 10.06.2018; however, it is not certain that whether these applications were

tendered to the Corporation, or prepared to take shelter in the petition. Be that as it may. It is on the strength of these applications and the contention

that since the construction is said to be within the periphery of 200 mts of the Defence Research Development Organization and unless the periphery

is determined by the adjudication which is subject matter of a Writ Petition 7789/2015 (PIL) the Corporation has no jurisdiction to initiate any action.

On these grounds, petitioners seek indulgence.

Admittedly, none of the petitioners have sanction in his/her favour from the Municipal Corporation & the no objection by the Nazul Department,

whereon reliance is placed by the petitioners will not tantamount to be a sanction by the Corporation for raising construction.

Section 293 of 1956 Act prohibits erection or re-erection of buildings without permission. It stipulates:

293. Prohibition of Erection or reerection of buildings without permission.- (1) No person shall-

(i) erect or re-erect any building; or

(ii) commence to erect or re-erect anybuilding; or

(iii) make any material external alterationto any building; or

(iv) construct or re-construct anyprojecting portion of a building which the Commissioner is empowered by section 305 to require to be set back or is

empowered to give permission to construct or reconstruct,-

(a) unless the Commissioner has eitherby an order in writing granted permission or has failed to intimate within the prescribed period his refusal of

permission for the erection or reerection of the building or for the construction or re-construction of the projecting part of the building; or

(b) after the expiry of one year from thedate of the said permission or such longer period as the Commissioner may allow or from the end of the

prescribed period, as the case may be:

Provided that nothing in this section shall apply to any work, addition or alteration which the Corporation may by byelaw declare to be exempt.

(2) If a question arises whether a particularalteration in or addition to an existing building is or is not a material alteration the matter will be determined

by the Commissioner.

(3) Any person aggrieved by the order of the Commissioner in this behalf may appeal to the district court within thirty days of such order in the manner prescribed therefor and the decision of the district court shall be final.â??

Furthermore Section 294 of 1956 Act envisages that every person who intends to erect or re-erect a building shall submit to the Commissioner an

application in writing for approval of the site together with a site plan of the land; and in the case of land which is the property of the Government or of

the Corporation a certified copy of the documents authorizing him to occupy the land, and if so required by the Commissioner the original document or

documents; an application in writing for permission to build together with a ground plan, elevation and section of the building and a specification of the

work to be done. It further provides that every plan of any building to be constructed wholly or partly of masonry, submitted under sub-section (1) of

Section 294 shall, in token of its having been prepared by him or under his supervision, bear the signature of a licensed surveyor.

Section 295 of 1956 Act empowers the Commissioner to refuse erection or re-erection of buildings.

Furthermore, Section 302 of 1956 Act empowers the Commissioner to stop progress of building work unlawfully commenced or carried on. Sub-

section (1) whereof stipulates that in any case in which the erection commenced is being carried on unlawfully as mentioned in Section 307, the

Commissioner may by written notice require the building operations to be discontinued from the date of service of such notice. Sub-section (2) of

Section 302 of the 1956 Act stipulates that any person failing to comply with the terms of such notice shall be punishable with a fine which may extend

to five thousand rupees and if he fails to comply with the terms of such notice after the first day of his failure so to do, with a further fine which may

extend to two hundred rupees for every such day after the first.

Section 303 of 1956 Act empowers the Commissioner to direct removal of person from building in which works are unlawfully carried on or which are

unlawfully occupied. Sub-section (1) of Section 303 envisages that if any person contravenes any provision of sub-section (4) of section 301 or section

302 or disobeys any direction of the Commissioner made thereunder, the Commissioner after giving twenty-four hours notice shall direct all persons

engaged in any capacity in the work of erecting or re-erecting the building in question or part thereof or constructing or re-constructing any projecting portion thereof or occupying or using such building or part thereof to remove themselves and shall take such measures as will prevent any one of such persons from again entering into or remaining upon such building or part thereof except with his permission. First proviso to subsection (1) of Section 303 envisages that any person occupying or using such building or part thereof either as tenant or as owner in contravention of sub-section (4) of section 301 shall not be directed to remove himself unless he has been served by the Commissioner with one week's notice in writing requiring him to vacate.

Furthermore, Section 307 of 1956 Act empowers the Commissioner to require removal or alteration of work not in conformity with byelaws or any scheme or any other requirement. It stipulates:-

307. Power to require, removal or alteration of work not in conformity with byelaws or any scheme or any other requirement.- (1) If any building

is erected or re-erected in contravention of any town planning scheme mentioned under section 291 or of any building byelaws made under section

427, the Commissioner without prejudice to his right to take proceedings for a fine in respect of the contravention, may by notice require the owner

either to pull down or remove the work or, if he so elects, to effect such alterations therein as may be necessary to make it comply with the said

scheme or byelaws.

(2) If a building is erected or re-erected-

(a) without any sanction as required by section 293(1) or

(b) when sanction has been refused, or (c) in contravention of the terms of any sanction granted, or

(d) when sanction has lapsed under section 300, the Commissioner, unless he deems it necessary to take proceedings in respect of such building or

work under section 294, shall-

(a) by written notice, require the person who is erecting such building or executing such work or has erected such building or executed such work on or

before such day as shall be specified in such notice, by a statement in writing subscribed by him or by an agent duly authorised by him in that behalf

and addressed to the Commissioner, to show sufficient cause why such building or work shall not be removed, altered or pulled down, or;

(b) shall require the said person on such day and at such time and place as shall be specified in such notice to attend personally or by an agent duly

authorized by him in that behalf, and show sufficient cause why such building or work shall not be removed, altered or pulled down.

(3) If such person shall fail to show sufficient cause, to the satisfaction of the Commissioner, why such building or work shall not be removed, altered

or pulled down, the Commissioner may remove, alter or pull down the building or work and the expenses thereof shall be paid by the person.

(4) If the plans are approved by the Commissioner and the approval is communicated to the person intending to build the house or if the plans are

rejected by the Commissioner but no notice of their rejection is given to person intending to build the house within the prescribed period it shall not be

open to the Commissioner to give a notice under sub-sections (1) and (2) on the ground that the building is erected or re-erected in contravention of

any scheme or byelaws or any other requirements under the chapter.

(5) Nothing in this section shall affect the right of the Corporation or any other person to apply to the District Court for an injunction for the removal or

alteration of any building on the ground that it contravenes any provisions of this Act or the byelaws made thereunder, but if the building is one in

respect of which plans have been deposited and the plans have been passed by the Commissioner, or notice that they have been rejected has not been

given within the prescribed period after the deposit thereof, and if the work has been executed in accordance with the plans, the District Court on

granting an injunction shall have power to order the Commissioner to pay to the owner of the work such compensation as the District Court thinks just,

but before making any such order the District Court cause the Commissioner if not a party to be joined as a party to the proceedings.

Evident it is that in case any action is taken against a person, who is found to have erected a building without any authority and in possession thereof

has been subjected to eviction and demolition such an unauthorized construction, has a remedy under sub-section 5 of Section 307 of 1956 Act to

apply to the District Court for an injunction.

In view whereof, the petitioners since have alternative, effective remedy to

approach the District Court; in case if they feel that the construction which is being raised over the land is after due permission.

A shelter has been taken by the petitioners that they had applied for compounding under Section 308A of 1956 Act and therefore their constructions cannot be razed. Section 308A of 1956 Act stipulates:

308-A. Compounding of offences of construction of buildings with permission.- Notwithstanding anything contained in this Act or any other Act,

for the time being in force or any rules or byelaws made thereunder, the offence of constructing buildings without permission or contrary to the

permission granted, may be compounded, if-

(a) such construction does not affect the regular building line;

(b) the unauthorized construction made in the marginal open spaces or in excess of the prescribed floor area ratio does not exceed ten percent of the

prescribed floor area ratio;

(c) such construction does not come within the area notified by the State Government as a hill station or a place of tourist importance or sensitive from

the point of ecology;

(d) such construction does not come within the area specified for parking of vehicles;

(e) such construction does not come within the boundary of roads or within the area affecting alignment of public roads;

(f) such construction does not come within the area specified for tanks (Talab);

(g) such construction does not come within thirty metres or such further distance from the river bank as may be specified in the master plan of the

concerned town;

(h) such construction does not come within the area of any nallah and water stream:

Provided that in compounding the cases in respect of unauthorized construction, including the unauthorized constructions in the illegal colonies taken

over under management by the competent authority for regularization, the fee shall be charged at such rate and on such conditions as may be

prescribed by the State Government.

[xxx]

Provided also that nothing contained in this Section shall apply to any person who does not have any right over the building or the land on which the construction has been made.â??

Thus, it being incumbent upon the petitioners to establish that the applications preferred by them to regularize the construction raised by them over the land in question does not affect the regular building line and that the unauthorized construction made is in the marginal open spaces or in excess of the prescribed floor area ratio and that such construction does not come within the boundary of roads or within the area affecting alignment of public roads.

In view whereof, the petitioners do not gain much ground merely because they have filed applications for compounding under Section 308A of 1956

Act, to prevent the Municipal Corporation from taking action against unauthorized construction.

Taking any view of the matter, as the unauthorized constructions are found to have been raised without seeking prior sanction from the Municipal

Corporation, we are not inclined to cause any indulgence in the action taken by the Municipal Corporation.

Consequently, present petition fails and is dismissed. No cost.