
(2013) 05 CHH CK 0006
In the Chhattisgarh High Court
Case No : W.P. No. 2441 of 2001

Raj Kumar College and Another

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 06-05-2013

Acts Referred:

Citation : (2013) 4 MPJR 79

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Single Bench

Judgement

Satish K. Agnihotri, J.—By this petition, the petitioners challenges the legality and validity of the order dated 4-12-2001 (Annexure P/10) where under, it was proposed to change the land user of 60.000 sq.ft. in Nazul Land Plot Nos. 27, 30 and 31 from commercial to educational (public purpose) east of the petitioner college 40 x 1000 and near the gate on the west side 40 x 500 under the provisions of Section 23 of the Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (for short the Act, 1973). It was proposed to invite objections within a period of 15 days from the date of publication in the local daily newspaper. The said proposal was published in the newspaper on 4-12-2001 (Annexure P/11) The petitioner also challenge the legality and validity of the order dated 24-1-2001 (Annexure P/8) Where under the Principal of the petitioner/Rajkumar College (for short "the first petitioner") was informed that the land in question reserved for commercial use in the development plan 1991 has been changed, thus, no permission for construction of shops may be granted. Subsequently, the Raipur Development Plan (Revised) 2011, changing the use of said land from commercial to educational and also Raipur Development Plan (Revised) 2021 were also questioned, by amendment of the petition. The facts, in brief, as projected by the petitioners, are that the first petitioner-Raj Kumar College was established in 1882. On 24-10-1964 (Annexure-R/1-A), the lease for a period of 30 years was granted to the first petitioner over an area of 54,06,612 sq. fit. Which was subsequently renewed till 31.03.2022. On 1-2-1995 the first petitioner entered into agreement with the second

petitioner for construction of shops on the northern boundary wall of the first petitioner campus. The first petitioner also executed the contract agreement with the second petitioner on 9-9-1999 (Annexure-P/3) for construction on Block No. 27 plot No. 8, Block No. 30 plot No. 2 & Block No. 31 plot No. 2 admeasuring 40 ft x 2080 fit. Equivalent to 83,200 sq fit situated at college ward No. 54 facing G.E. Road. Raipur.

2. On 14-1-2000 (Annexure-P/4), the first petitioner submitted an application to the third respondent-Joint Director, Town & Country Planning Department, Raipur, u/s 29 of the Act, 1973 for approval of layout of the development plan, as per Rule 12 of the Madhya Pradesh Nagar Tatha Gram Nivesh Niyam, 1975 (for short "the Rules 1975") According to the petitioners, the said application was submitted in Form VII for construction of commercial complex when the land use was for Public and Semi-Public (Educational).

3. In the meantime, the State Government issued a notification on 14-9-2000 inviting objections for change of land use from Public and Semi-Public (Educational)" to "Commercial in Raipur Development Plan, 1991. According to the petitioners, no objection was filed by the petitioners, as the proposal was for change of land use from educational to commercial. Final notification was issued on 17-10-2000 (Annexure-P/5) approving the land use from "Public and Semi-Public (Educational)" to "Commercial, Vehicle Parking.

4. On 28-10-2000 (Annexure-P/22), the first petitioner made an application with the revised development plan for approval, wherein a reference was made about the application submitted on 14-1-2000. On 26-12-2000 (Annexure-P/6), the first petitioner received a communication from the third respondent that the application dated 28-10-2000 has been taken up for revision by the State Government under the provisions of Section 32 of the Act, 1973. On 13-1-2001 (Annexure-P/7) the first petitioner sent a communication to the third respondent raising objection that the State Government has no authority to take up the application u/s 32 in revision. The third respondent by communication dated 24-1-2001 (Annexure-P/8) informed the first petitioner that in view of the departmental guidelines for use of land, the matter is pending consideration before the State Government and, as such, no permission can be granted unless the Government takes decision in revision. It was also stated that the provisions of Section 32 of the Act, 1973 was wrongly mentioned in the earlier communication dated 26-12-2000. On 18-4-2001 (Annexure-P/14), final notification u/s 18 of the Act, 1973 was published. Case of the petitioners is that the first petitioner could not have objected because in the Draft Development Plan 2011, the land use was shown as "Commercial".

5. On 30-6-2001 (Annexure-P/15) the Raipur Development Plan (Revised) 2011 was suspended for inviting suggestions/objections from the concerned parties. On 30-10-2001 (Document "A"- pg. 1038 of paper book Vol. IV) the first petitioner moved an application before the fourth respondent-Municipal Corporation. Raipur for approval of the building plan.

6. Therefore, being aggrieved the petitioners preferred this petition before this Court on 20-11-2001 praying to issue directions to the fourth respondent to sanction building plan, as the layout plan was deemed to have been approved by the third respondent by virtue of operation of provisions of Section 30(5), *ibid* and also prayed to restrain the State Government from changing the land use.

7. On 4-12-2001 (Annexure-P/11) a notice was published in the newspaper inviting objections in respect of the land in dispute admeasuring 60,000 sq fit. Plot Nos. 27.30 & 31 for change of land use.

8. On 22-12-2001 (Annexure-P/12) the first petitioner filed a detailed objection to the notification dated 4-12-2001 published in the newspaper namely, Navbharat (Raipur edition) According to the petitioners, before filing the aforestated objection, on 8-12-2001, the petitioners sought amendment in the writ petition by filing application (IA No. 5570 of 2001) in respect of the proposed change of land use from commercial to educational purpose.

9. This Court on 7-1-2002 granted interim relief as under:

Until further orders, let the parties maintain status quo in respect of land in question, making it clear that no further construction shall be made nor shall anything be done which might change the status of land.

10. Final notification was published on 21-8-2002 (Annexure-P/17) changing the land use from "commercial" to educational". The second petitioner, thereafter, objected again on 30-30-2006 (Annexure-P/18) stating therein that in view of the interim order dated 7-1-2002, the change of land use was illegal.

11. The draft Raipur Development Plan 2021 was published (pg. 547 of paper book, vol. III), wherein the land use was shown as "educational as is evident from pg. 609 of paper book. Vol. III The second petitioner raised an objection on 26-10-2007 (Annexure-P/20) reiterating its view that the land use for educational was in violation of the interim order dated 7-1-2002 passed by this Court. In view of the aforesaid development in respect of charges of land use, on 23-2-2010 the petitioners moved an application (IA No. 5) for amendment in the writ petition.

12. Shri Ravindra Shrivastava, learned senior counsel appearing with Shri B.D. Guru, Shri Apoorv Kurup and Shri Anup Jain, learned Advocates for the petitioners, would submit that on 14-1-2000 the first petitioner submitted an application in the prescribed Form No. VII, as provided in the Rules, 1975 and thereafter, no communication of rejection or of approval was received. Even no decision was taken on the subsequent application dated 28-10-2000 also and, as such, the same was deemed to have been approved by operation of law. Even if the limitation is counted from the application dated 28-10-2000, 60 days period came to an end on 27-12-2000 and by virtue of deeming provision contained in Sub-section (5) of Section 30 of the Act, 1973, the permission is deemed to have been granted.

13. The second contention of Shri Shrivastava is that the State has no power to take up the issue in revision under the provisions of Section 32 of the Act, 1973 and as such, the communication 26-12-2000 was wholly irrelevant and does not change the position as provided u/s 30(5) of the Act, 1973.

14. It was further urged that the objection of the respondents that the application dated 28-10-2000 was not in Form No. VII as provided in the Rules, 1975, is without any basis "and afterthought, as the first application was made in accordance with the rules and the application dated 28-10-2000 was in continuation of the earlier application, The land use, which was prevailing at the time of making application was relevant, not the subsequent changes of land use, Even otherwise, in view of the interim order dated 7-1-2002 passed by this Court, the subsequent changes of land use was a nullity and contrary to the ratio laid down by the Supreme Court in Manohar Lal (D) by Lrs. Vs. Ugrasen (D) by Lrs. and Others, . Thus, the subsequent changes of land use was illegal.

15. Shri Shrivastava would lastly submit that the right of the petitioners to use the land in accordance with their desire is a constitutional and human right and the same cannot be taken away by change of land use.

16. On the other hand, Shri Murthy, learned Dy. Adv. General appearing for the State/respondents No. 1 to 3, would submit that the building, permission is to be granted by the fourth respondent. The petitioners have to take permission, in writing, from the third respondent of approval of the lay out plan for development. The subsequent application dated 28-10-2000 was not in accordance with the provisions of Section 29 of the Act, 1973 and also as per the Rules, 1975 in Form VII. Thus, the same may not be treated as an application, if there was no application, the provision of deeming approval would not be came into play. The subsequent application dated 28.10.2000 cannot be held as in continuation of the earlier application dated 14-1-2000 was made after change of land use and, as such, the earlier notification has no relevance (as pleaded by the petitioners).

17. Shri Murthy would further submit that before changing the land use, the petitioners had full opportunity to file objections and the same was done also, as the final notification was suspended for inviting objections/suggestions. The first petitioners had filed objections on 22-12-2001 and after considering the objections/suggestions the Raipur Development Plan was published.

18. Shri Murthy would next submit that Section 23-A of the Act, 1973, permits the State Government to modify the development plan or zoning plan, in the changed circumstances. Thus, in the interest of public at large a draft notification was issued and also proper opportunity of hearing was afforded to the petitioners. In fact, the petitioners had, without waiting for due publication of the draft modification plan, rushed to this Court, by filing the instant petition.

19. Shri Murthy would also submit that the Master Plan 2011 was prepared by the erstwhile State of Madhya Pradesh in this draft master plan, the land in

dispute was shown to be reserved for commercial purpose. However, after hearing the objections, the use of the land in dispute was modified from commercial to public and semi public (educational) and final order was passed on 18-4-2001 u/s 19(4) of the Act, 1973 whereby, the Raipur Development Plan (2011) Revised was approved. In the final approved master plan, the use of the land in dispute was kept as public and semi public (educational) purpose. To provide some additional amenities and facilities for the capital of the final order dated 18-4-2001 was kept in abeyance vide order dated 30-6-2001.

20. Shri Murthy, would submit that the order to maintain status quo at the instance of the petitioner, was passed by the Court on 7-1-2002 and on the date of passing of the order of status quo, the effect and operation of the order dated 18-4-2001 was in abeyance. Subsequently, the master plan of Raipur city for the year 2011 was approved with some modification on 9-8-2002. This approval was notified in the official gazette on the State of Chhattisgarh on 21-8-2002 the use of the land in dispute in the master plan approved on 18-4-2001 and on 9-8-2002 was public and semi public (educational) purpose. The land use of the first petitioner was never changed in the said Master Plan of 2011; therefore, it remained educational prior to notification of 30.6.2001 and thereafter.

21. Shri Agrawal, learned counsel appearing for the fourth respondent adopts the arguments advanced by the State/respondents No. 1 to 3.

22. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

23. Indisputably, the first petitioner was granted, on permanent lease, an area of 54,06,612 sq. ft. for educational purposes for a period of 30 years, initially, thereafter, it was extended till 31-3-2022. Subsequently, the first petitioner decided to have commercial complex for the purpose of enhancing its resources. Accordingly, an application was made on 14-1-2000 for approval of layout development plan. The said application was made as per the provisions of Section 29 of the Act, 1973 and as per Rule 12 of the Rules, 1975, presumably in Form VII (as the copy of the said application in Form VII is not annexed to the writ petition). There after, a notification was issued on 14-9-2000 inviting objections for changes of land use from public and semi -public (educational) to commercial in the Raipur Development Plan, 1991, which was published in two daily newspapers on 16-9-2000 & 17-9-2000.

24. By notification dated 17-10-2000 (Annexure-P/5), the change of land use in respect of the area in question from public and semi-public (educational) to commercial purpose, vehicle parking was approved. The earlier application filed by the first petitioner was not carried forward on account of change of land use. The first petitioner filed a fresh application on 28-10-2000 (Annexure-P/22) wherein a reference was made in respect of application dated 14-1-2000. The application was not in Form VII, as required under Rule 12 of the Rules, 1975. Form VII reads as under:

FORM VII

(See Rule 12)

FORM OF APPLICATION FOR PERMISSION UNDER SUB-SECTION (1) OF SECTION 29 FOR DEVELOPMENT OF LAND

From

To,

....

The Director, Town & Country Planning, Madhya Pradesh, Bhopal.

Dated....

Sir,

I/We beg to apply for permission to undertake/carry out the development of the undermentioned land:--

(a) Description of land (location with name of Road (s) on/off which the property abuts and boundaries.)

(b) Area...sq. ft.... Acres....

2. I/We attach herewith the following documents in triplicate namely:

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

(ii) Khasra plan showing Nos. of land in question and also adjoining Khasras falling 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) The existing land use in (Residential) Commercial Industrial/Public purposes/open spaces/vacant land.

(v) Survey plan to a scale of 1:500/1:1000 or 4 1/4 to an inch 8 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 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.

(vii) A plan showing details of utilities and service like water supply drainage

electricity, the specific tank is provided and is shown alongwith the disposals of sludge water.

(viii) Other architectural details.

(ix) A note indicating the type of development proposed namely residential, commercial or industrial.

3. The plans have been prepared by.... Name of the registered Planner Architect/ Surveyor, Registration No. Address....

4. I have deposited a fee of Rs. ...in accordance with the scale prescribed.

Your's Faithfully Signature of the applicant Address....

25. It is clear from Form VII that requirement for consideration of lay out plan is details of the land stating, inter alia, that description of the land; Khasra plan; existing land, use; survey plan; general report showing all development proposals with respect to land in question; plan showing details of utilities and services like water supply drainage electricity, the septic tank is provided and is shown along with the disposal of sludge water; other architectural details; including the type of development proposed namely residential, commercial or industrial, etc.

26. Instead of application on Form VII, a letter was sent by the first petitioner to the third respondent on 28.10.2000 (Annexure-P/22) therefore, it cannot be held that the same was an application, as required under the provisions of law, as aforesaid. The earlier letter dated 14.1.2000 cannot be taken as a part of the letter dated 28.10.2000, as when the application was moved on 14.1.2000 the land use was public and semi public (educational) and on the date when the letter was sent i.e. on 28.10.2000, the land use was converted from educational to commercial. Even otherwise, the above-stated letter cannot be held as application, as Form VII prescribed under Rule 12 of the Rules, 1975 requires certain more information's, as explained, hereinabove.

27. It is well settled that the contents of the letter decides whether the letter was an application seeking for construction of a commercial building on a land. (See: Union of India and Others Vs. Dev Raj Gupta and Others,)

28. Reliance of the first petitioner on the earlier letter dated 14.1.2000 on the ground that the letter dated 28.10.2000 was continuation of the earlier letter does not merit acceptance. Thus, the first petitioner has not filled proper application by letter dated 28.10.2000, and as such, there was no application in the eye of law.

29. It is further well settled principle of law that if the application without all the requisite information is filed, the limitation for deeming approval would commence not from the date of filing incomplete application/letter, but from the date of proper application.

30. Sub-section (5) of Section 30 of the 1973 provides that 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 this applicant, such permission shall be deemed to have been granted to the applicant on the date immediately following the date of expiry of sixty days. Proviso to sub-section (5) makes it clear 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 the date of receipt of such information or documents from the applicant shall be excluded meaning thereby the object is to compute the period of sixty days from the date complete application in all respects is filed. Thus, the deeming provision, as aforestated, would not be attracted in this case.

31. The second question with regard to the fact is as to whether the change of land use, after passing the interim order on 7.1.2002, as aforestated, has become nullity. In the interim order there was a prohibition to change the status of land while maintaining the status quo in respect of the land in question." The notification u/s 19(4) was issued on 18.4.2001. However, the said notification was suspended, on 30.6.2001 for inviting suggestions/objections from all the parties concerned for the purpose of change of land use i.e. from "commercial" to "educational".

32. The order dated 4.12.2001 was published in the newspaper inviting objections in respect of change of the land use of land in question i.e. 40 x 100 to the east gate & 40 x 500 to the west gate of the first petitioner institute from commercial to educational (public and semi public). On 22.12.2002, the first petitioner filled a detailed objection stating therein that the instant writ petition was pending consideration in the High Court. On 7.1.2002, an interim order was passed by this court directing the parties to maintain the status quo.

33. In the notification dated 21.8.2002, it was referred that the draft of the modified plan, under the provisions of Section 23-A(2) of the Act, 1973, dated 27.2.2002 was published in two daily newspapers on 28.2.2002. The final notification of the approval of Raipur Development Plan, 2011 (Revised) was published in the official gazette on 20.8.2002. Thus, use of land in question was changed from commercial to educational.

34. The aforesaid action of the respondent authorities may be case of disobedience of the interim order passed by this Court. However, the same may not be held as nullity, as the first petitioner has not taken any steps by filing an appropriate application in the instant petition questioning the alleged action, which, according to the petitioner, was a case of disobedience of the interim order passed by this Court, and the second petitioner made an application dated 30.3.2006 in this regard before the Principal Secretary to the Government of Chhattisgarh, Department of Housing and Environment after lapse of 42 months. There is nothing on record to show that the first petitioner had objected either to the respondent authorities or filed any application in the pending petition questioning the disobedience on the part of the respondent authorities, if any.

35. It appears that a contempt petition, being contempt No. 267 of 2007, was filled by the second petitioner herein before this Court on 21.11.2007 (Anand Singhanian v. Shri S.S. Baja and other), which is being dealt with separately.

36. The Supreme Court in *Mulraj Vs. Murti Raghonathji Maharaj*, has clearly laid down the ratio that the stay order is more or less in the same position as an order of injunction with one difference. Violation of an injunction order/stay order by a party to the dispute, the party could be penalized for disobeying it. However, if the Court proceeds against the said order despite knowledge of the order, the proceeding are a nullity.

37. In case on hand, the party who had disobeying it, however, the same cannot be held as nullity, It is informed, at the bar, that till date no construction has been carried out, no third party interest has been created and the land in the question remains undisturbed.

38. In *Manohar Lal (supra)* the facts were that notification u/s 4 of the Land Acquisition Act, 1894 (for short "the Act") was issued on 13.8.1962 covering about 32 acres of land. Declaration u/s 6 of the Act in respect of the said land was made on 24.5.1965 along with notification u/s 17(1) invoking the urgency clause. Possession of the land except one acre was taken on 13.7.1965 and award u/s 11 of the act was made on 11.5.1970. The High Court restrained the authorities from making allotment to anyone else from the land allotted to him as per the letter dated 7.3.1980. Subsequently, despite clear interim order, the State Government directed the Ghaziabad Development Authority (GDA) to make the allotment of land in favour of Shri Ugrasen. Thus, there was a clear violation of the Court's order. In the said facts of the case, the Supreme Court held that the subsequent order passed in violation of the interim order was nullity.

39. The petitioners have further challenged the Raipur Development Plans 2011 & 2021. It is for the State Government to take a policy decision. for development of a city/town in the public interest for the purpose of healthy living of the citizen. Nothing has been pointed out that the policy decision of the Development Plan does not sub serve the public interest at large or the same is unreasonable, unconstitutional, irrational or arbitrary. There is no allegation of mala fide also against any officer to the respondents. All the concerned parties have been given full opportunity to raise objections/suggestions before the draft Raipur Development Plans, as forestated, were approved. Thus, no interference is warranted in the matter. For the reasons mentioned hereinabove, the writ petition, substratum, is dismissed, leaving the parties to bear their own costs.