
(2019) 07 MP CK 0145

In the Madhya Pradesh High Court

Case No : Writ Petition No. 26280 Of 2018

Rajesh Ajemera

APPELLANT

Vs

Urban Administration And Environment Development

RESPONDENT

Date of Decision : 19-07-2019

Acts Referred:

Municipalities Act, 1961 — Section 2(7), 5, 18, 19, 54, 56, 57, 63, 65, 323
Constitution Of India, 1950 — Article 14, 16, 226, 227

Citation : (2019) 07 MP CK 0145

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : Aniket Naik, Arvind Sharma, V.K. Jain, A.R. Pande, Mohan Sharma, A.K. Sethi, Prateek Maheshwari

Final Decision : Dismissed

Judgement

The petitioners have filed the present petition being aggrieved by the order dated 04.10.2018, passed by the Principal Secretary, Development of Urban Administration and Environment in exercise of power conferred under Section 323 of the Municipalities Act, 1961 whereby the Resolution No.127 dated 07.04.2011 and Resolution No.128 dated 19.04.2011 have been set aside.

The respondents have raised the preliminary objection in respect of maintainability of the writ petition on behalf of the petitioners on the ground of locus-standi. In order to examine the said issue, brief facts of the case are as under:

The petitioner No.1 is an elected councillor from Ward No.32, petitioner No.2 is an elected councillor from Ward No.23, petitioner No.3 is an elected councillor of Ward No.35 and petitioner No.4 is an elected councillor from Ward No.6 of the Municipal Council, Neemuch. That the Neemuch Improvement Trust prepared a scheme in the year 1992-93 and reserved 3 plots viz 1047, 1048 and 1049 situated in the Scheme No.36, Sitaram Jatu Nagar for construction of Hospital. The respondent No.3 moved an application dated 06.04.1993 for allotment of

Plot No.1049 on long term lease for construction of Nursing Home. Vide order dated 16.04.1993 the then Collector Neemuch commenced the proceedings and allotted the Plot No.109 upon a premium of Rs.5,43,43,900/- to the respondent no.3. Thereafter, vide registered sale deed dated 06.11.1994 respondent no 3 sold the above plot to respondent no.4 . According to the petitioners as per Condition No.7 of the lease deed prior permission from the Neemuch Improvement Trust was mandatory before transfer of the land and violation of any condition of the lease will result into termination of the lease deed automatically and the land would vest with the Neemuch Improvement Trust. According to the petitioners, the respondent No.3 did not commence any construction on the plot within 24 months from the date of allotment but sold the same to respondent No.4 on 26.03.2011. The Municipal Council, Neemuch vide resolution 07.04.2011 has terminated the lease. According to the petitioners all the councillors including hem took the unanimous decision for termination of the lease/forfeiture.

After cancellation of the lease a show cause notice dated 11.04.2011 was issued to the respondent No.3 seeking explanation on 20.04.2011. The respondent No.3 through Attorney Holder and respondent No.3 appeared and presented their reply. After hearing them, respondent No.2 issued a notice for dispossession of respondent No.3. When the respondent No.3 and 4 did not hand over the possession, respondent No.2 instituted a civil suit bearing Civil Suit No.6-A/2011 before the District Judge, Neemuch. The said suit is still pending in which the respondent No.3 has filed the written statement and counter claim seeking relief to the effect that Resolution dated 19.04.2011 and Resolution dated 07.04.2011 be declared void and further declaration of title acquired by virtue of sale deed dated 06.11.1994.

Meanwhile, respondent No.4 Shri Sandeep Kothari has preferred a representation before the respondent No.1 where upon a notice was issued to respondent No.2. The respondent No.2 vide reply dated 16.08.2018 has informed that the lease dated 16.01.1994 has already been terminated by forfeiture, hence, the respondent No.4 is not having any right and title over Plot No.1049. The respondent No.1 in exercise of the power under Section 323 of the Municipalities Act,1961 has passed the impugned order dated 04.10.2018 whereby Resolution No.128 dated 19.04.2011 has been canceled resulting into revival of lease dated 06.01.1994. Being a councillor and the local residence the petitioners have invoked the jurisdiction of this Court by filing the writ petition under article 226 of the Constitution of India challenging the order dated 04.10.2018, passed by the respondent No.1.

The respondent No.1 has filed the return in detail justifying the validity of impugned order passed by the respondent No.1. The respondent No.2 also filed the return in support of the impugned order but also requested the State Government to review its order by filing application on 15.10.2018 (Annexure R/2-c).

The respondent Nos.3 & 4 have filed their independent returns raising preliminary objection for dismissal of the writ petition for want of locus standi of the petitioner, therefore, this Court has called upon Shri Aniket Naik, learned counsel to argue in reply to the preliminary objection raised by the respondents.

Shri Aniket Naik, learned counsel for the petitioners submitted that petitioners are elected councillors of respondent No.2 and by virtue of Section 19 of the Municipalities Act, 1961 the petitioners constituted a council after becoming its member and in such capacity the councillors are in relation as Trustee of the council and they have fiduciary relationship with the beneficiary of/from the council. Shri Aniket Naik, learned counsel for the petitioners has further tried to explain locus of the petitioners by submitting that they have participated in the process of passing the resolution dated 07.04.2011 by which the lease of the subject plots has been terminated.

He has placed reliance over the judgement passed by the Apex Court in case of Calcutta Gas Company Vs. State of West Bengal, reported in AIR 1962 SC 1044 in which it has been explained that a person having the right as a trustee can maintain a writ petition under Article 226 of the Constitution of India. He has also placed reliance over the judgement passed in the case of Gadde Venkateshwara Rao Vs. Government of Andhra Pradesh and Others, reported in AIR 1966 SC 828 in which the Apex Court has held that in exceptional cases, as the expression "ordinarily" indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject-matter thereof. The appellant has certainly been prejudiced by the said order. The petition under Article 226 of Constitution at his instance is, therefore, maintainable.

In case of Fertilizer Corporation Kamgar Union (Regd.) Sindri and Others Vs. Union of India and Others, reported in (1981) 1 SCC 568 again the Apex Court has held that if a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him. But if he belongs to an organisation which has special interest in the subject matter, if he has some concern deeper than that of a busybody, he cannot be told off at the gates, although whether the issue raised by him is justiciable may still remain to be considered. therefore, writ petition would clearly have been permissible under Article 226.

He has also placed reliance over the judgement passed by the High Court of Orissa in case of Ashirbad Behera Vs. State of Orissa, reported in AIR 1980 Orrisa 79 in which in a similar facts and circumstances the writ petition filed by the councillor challenging the decision of the State Government canceling the resolution of Municipal Council has been held maintainable and the petitioner has been held person capable by the Government action and had locus standi to maintain the petition relief of certiorari.

Per contra shri A.K. Sethi, learned senior counsel appearing for the private respondent submitted the petitioners at the relevant point of time filed this writ petition directly to the High Court because the common code of conduct was in force and municipal council was not in a position to file the writ petition. In para 1 of the writ petition it has been disclosed by them. He further submitted that Municipal Council has already filed application for review before the State Government. The Civil suit in respect of same resolution is pending before the civil Court Neemach. The Municipal council is competent to challenge the action of the State Government hence the writ petition at the instance of councillor is not maintainable. Out of 4 writ petitioner , 3 have already filed affidavit for withdrawal of the writ petition. The petitioner No.1 is involved in the real estate; hence, he has filed the present petition with oblique motive. In support of his contention he has placed reliance over the judgement passed by the High Court of Chattisgarh in W.P.No.3714/2015, dated 29.04.2016.

Shri V.K. Jain, learned senior counsel appearing on behalf of the respondent No.2 has vehemently argued in support of the petitioners by submitting that State Government has wrongly exercised the power under Section 323 of the Municipalities Act,1961. He further submitted that though the council is bound by the decision of the State Government but the order is legally and liable to set aside. The Municipal Council is also aggrieved by the said order and filed application for review and before the State Government same is pending. The council has rightly passed the Resolution 07.04.2011 canceling the lease deed.

After hearing the arguments advanced by the learned counsels and perusing the provision of the law I of the considered opinion that the writ petition at the instance of councillors is not maintainable.

That the petitioners being councillors of Municipal Council, Neemuch have approached this Court challenging the validity of order dated 04.10.2018, passed by the Principal Secretary in exercise of power under section 323 of the Municipalities Act. In para 1 of the writ petition they have declared that they have preferred the present petition due to enforcement of code of conduct. The 'councillor' is defined under Section 2(7) of the Act of 1961 and according to which councillor means any person who is legally a member of municipal council constituted by or under the Act of 1961.

Section 18 provides the incorporation of the municipalities constituted under section 5 of the Act, shall be a body corporate by the name of Municipal Council or Nagar Parishad, as the case may be, and shall have perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable and subject to provisions of this Act or any rules made thereunder, to transfer any property held by it and to contract and to do all other things necessary for the purposes of this act may sue and be sued in its corporate name. The composition of Municipal Council is provided under Section 19 and a Municipal Council shall consist President elected by the direct elections, the councillors elected by the direct election from the ward etc. Section 54 provides

meeting of the counsel once in every two months.

Section 57 gives power to President and Vice President to call a special meeting on receipt of certain requisition signed by not less than 1/3rd of total number of elected councillors. Under Section 63 questions brought before the meeting shall be decided by majority of the votes of the President and elected councillors. Section 65 provides modification and cancellation of the resolution passed by the council. Any person once elected as a councillor under the Act is bound to act in accordance with the provisions of the Act. He is not entitled to vote or sanctioning part in the discussion in any manner minor in which he is directly or indirectly pecuniary interest. There is CMO appointed by the State Government to be a member executive member of counsel for carrying out the provisions of this Act, therefore, if councillor is having any demand or complaint in respect of any issue related with the Municipal Counsel he can raise the issue in the meeting under Section 56 . That 1/3rd of the total member of the councillor can also request the President or Vice President for convening a special meeting, therefore, all the business transactions of the Municipal Council are to be carried out through a meeting presided by the President and attended by the councillors. An individual councillor is not authorized to initiate the proceedings in the interest of counsel.

In the present case by resolution dated 07.04.2011 the municipal council by way of unanimous decision has terminated the lease, thereafter on request the State Government initiated the proceedings under Section 323 in which the council has participated through CMO. Thereafter, being dissatisfied with the order passed by the State Government , the municipal council Neemach has filed an application seeking review, which is pending.

The council has also filed civil suit against respondent Nos.3 & 4 and in the said suit the respondent Nos.3 & 4 have filed the written statement as well as counter claim, therefore, the dispute in respect of cancellation of lease is pending before the civil Court as well as before the State Government and both the proceedings are being contested by the Municipal Council.

It is important to note that in the present petition, the petitioners are not alleging that the Municipal Council is in hand in glove with respondent Nos.3 & 4 or the Municipal Council is not taking any action in this matter. There is no allegation that the Municipal Council is not taking interest for protection of its properties and fund. It is also not the case of the petitioner that on their request the President is not calling special meeting in this issue, therefore, the writ petition under art. 226 of Constitution of India challenging the order passed by the State Government at the instance of the present petitioners is not maintainable. The issue is related to the business of the municipality which is governed under the provisions of municipality and the rules mad therein. The Municipality is competent enough to initiate legal proceedings in its name .

Ordinarily, a person who seeks relief under Article 227 of the Constitution of

India must have a person or individual right in the subject matter and who has been prejudicially effected by any act or omission of any authority. A person can approach the High Court with the writ petition if he is not having any other efficacious remedy available to him under any law. The Black's Law Dictionary (Sixth Edition) defines "person aggrieved" as under:

"Aggrieved party. One whose legal right is invaded by an act complained of, or whose pecuniary interest is directly and adversely affected by a decree or judgment. One whose right of property may be established or divested. The word "aggrieved" refers to a substantial grievance, a denial of some personal, pecuniary or property right, or the imposition upon a party of a burden or obligation. See Party; Standing. Person aggrieved. To have standing as a W.P. (S)No.3714/2015 "person aggrieved" under equal employment opportunities provisions of Civil Rights Act, or to assert rights under any federal regulatory statute, a plaintiff must show (1) that he has actually suffered an injury, and (2) that the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute in question. Foust v. Trans-america Corp., D.C.Cal., 391 F. Supp. 312, 314." "

Being the councillor the petitioners are bound to act under the M.P. Municipalities Act, 1961. They can approach the High Court for their individual cause against the municipalities but if he is challenging any action of the Government in the interest of municipalities then he is having remedy to raise issue in the general or special meeting and if any resolution is passed then the municipal council may take up with the issue through CMO.

In case of Vinoy Kumar Vs. State of U.P. & Others, reported in (2001) 4 SCC 724, the Apex Court has held that the relief under 226 of the Constitution is based on the existence of a right in favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas- corpus or quo warranto or filed in public interest. It is a matter of prudence, that the court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party where there is an effective legal aid organisation which can take care of such cases. Even in cases filed in public interest.

In case of Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra and Others, reported in (2013) 4 SCC 465, the Apex Court has held that in the exceptional circumstances as referred to above, if the actual persons aggrieved, because of ignorance, illiteracy, inarticulation or poverty, are unable to approach the court, and a person, who has no personal agenda, or object, in relation to which, he can grind his own axe, approaches the court, then the court may examine the issue and in exceptional circumstances. Otherwise, the writ jurisdiction at the instance of other party is not maintainable. Relevant portion of the above verdict is reproduced below:

"21. In *Balbir Kuar & Anr. Vs. Uttar Pradesh Secondary Education Services Selection Board Allahabad & Others*, (2008) 12 SCC 1, it has been held that a violation of the equality clauses, enshrined in Articles 14 and 16 of the Constitution, or discrimination in any form, can be alleged, provided that, the writ petitioner demonstrates a certain appreciable disadvantage qua other similarly situated persons. While dealing with the similar issue, this Court in *Raju Ramsingh Vasave Vs. Mahesh Deorao Bhiavapurkar & Ors.*, (2008) 9 SCC 54 held:

"We must now deal with the question of locus standi. A special leave petition ordinarily would not have been entertained at the instance of the appellant. Validity of appointment or otherwise on the basis of a caste certificate granted by a committee is ordinarily a matter between the employer and the employee. This Court, however, when a question is raised, can take cognizance of a matter of such grave importance suo motu. It may not treat the special leave petition as a public interest litigation, but, as a public law litigation. It is, in a proceeding of that nature, permissible for the court to make a detailed enquiry with regard to the broader aspects of the matter although it was initiated at the instance of a person having a private interest. A deeper scrutiny can be made so as to enable the court to find out as to whether a party to a lis is guilty of commission of fraud on the Constitution. If such an enquiry subserves the greater public interest and has a far reaching effect on the society, in our opinion, this Court will not shirk its responsibilities from doing so."

Therefore in view of the above, without entering into the merits of the case, this Court is of the considered opinion that the writ petition in respect of challenging the order dated 04.10.2010 at the instance of the petitioners is not maintainable, hence, petition is accordingly dismissed.

No order as to cost.