
(2012) 02 MP CK 0046

In the Madhya Pradesh High Court

Case No : Writ Petition No. 7372 of 2010

Rajesh Asnani and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Municipal Corporation Act, 1956 — Section 293, 299, 299A

Citation : (2012) ILR (MP) 883 : (2012) 5 MPHT 396

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : Shashank Shekhar, for the Appellant; Samdarshi Tiwari, G.A. for the respondents No. 1, 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

K.K. Trivedi, J.—The grievance of petitioners in this petition under Article 226 of the Constitution of India is that on being sent a proposal by the Commissioner of respondent no. 4, the respondent no. 1 has exercised the powers allegedly conferred u/s 299A of the M.P. Municipal Corporation Act, 1956 (hereinafter referred to as "Act" for short) and has remitted back the matter to the Municipal Corporation with certain directions. It is contended that such an order issued on 29.4.2010 Annexure P-19 is per se illegal as it is based on such circumstances, which were not made out or available on record. It is the contention of the petitioners that because of the prejudice and malafide action of the Commissioner of Municipal Corporation a proposal was made for cancellation of sanction granted to the petitioner to construct a building and without considering the reply submitted by the petitioner such an order has been passed. It is therefore prayed by the petitioners that the order impugned may be quashed and petitioners be permitted to carry out the construction, in accordance to the sanction granted.

2. The facts giving rise to this petition are that the petitioners after obtaining the

sanction intended to make a construction on the plot purchased by them. The building permission sanction was granted by the Municipal Corporation, respondent no. 4 vide order dated 8.4.2002. The action was initiated against the petitioners by stating that the construction was being made in a illegal colony, therefore the construction be stopped immediately. The petitioners were required to produce the relevant documents. The entire facts were explained and thereafter the building permission was again granted to the petitioners on 30.4.2008 vide Annexure P-9. This was done only after getting the entire enquiry conducted and after obtaining the reports. However all of a sudden another letter was issued to the petitioners on 7.8.2009 directing them to stop the construction of their building. It was said that the construction is being done on an area which is reserved for widening of the road. Since the area was reserved for such purpose, illegal colony was being constructed, the building permission granted to the petitioners was therefore liable to be stayed. Again the facts were brought to the notice of the authorities, but instead of considering those facts as were placed on record of the Corporation, the matter was referred vide memo dated 7.1.2010 to the State Government by the Commissioner of Corporation. Pursuance to this, the matter was taken up in hearing by the State Government Notice was also delivered to the petitioners and a detailed reply was submitted by the petitioners before the respondent no. 1. All relevant documents were also submitted. However nothing was seen and the order impugned was passed.

3. It is the contention of the petitioners that not only the sanction map, the earlier permission of building granted by the Corporation, but also the photographs and a particular order passed by the Lokayukt was produced before the respondent no. 1. It was also pointed out that the road was being made for BRTS scheme and the road was not going through the land purchased by the petitioners. Infact the construction of the petitioners was away from the road and there were other commercial buildings constructed on the same line. For the purpose of proving such fact the petitioners have annexed the photographs of the shops constructed on the same line of the building, where the building was being constructed by the petitioners. It is thus contended that from these documentary evidence it was made clear that there was no breach of any Municipal laws, rules or bye-laws, while granting sanction to construct building to the petitioners and as such power u/s 299A of the Act was not to be invoked. However ignoring this the order impugned was passed, not in accordance with the provisions of section 299A of the Act. Therefore the petitioner was required to approach this Court. With the writ petition several documents have been filed.

4. This Court has issued notice to the respondents and in response to the notice the respondent nos. 1, 2 & 3 have filed their return. The entire note sheet has been placed on record by the respondents indicating that opportunity of hearing was extended in full to the petitioners. The reports were obtained and it was found that grant of permission to the petitioner to construct was against the norms prescribed under the Municipal laws and regulations. It was found that certain officials of the Corporation have taken action in granting such permission

to the petitioners in violation of aforesaid laws, therefore while remitting back the matter to the Corporation, the respondent/ State has passed the order for taking suitable action against the respondent/authorities, who were involved in granting such permission to the petitioners.

5. The respondent no. 4 has filed a separate return and has contended that the action was properly taken. There were reports received and it was found that the grant of sanction to construct the building to the petitioners was not proper. Since such a power to cancel the building permission after commencement of construction is not vested in the Corporation, it was left with no option to refer the matter to the State Government for taking an action u/s 299A of the Act. The petitioners were accorded full opportunity of defence and thereafter the order was passed by the State.

6. Refuting the allegations made in the return the petitioners have filed rejoinder and have reiterated the facts as stated in the writ petition. It is contended by the petitioner that from the documentary evidence as well as the photographs annexed with the writ petition and rejoinder, it was clear that the construction of the road was already done. The land was not needed for the construction of the road. The plot of the petitioner was away from the road and sufficient land was available even for widening of the road, if needed in future. There was no other irregularity committed in granting the sanction, inasmuch as, the other persons were allowed to make construction. Even commercial buildings were constructed with the sanction of the Corporation in the very same area and in the line of the building of petitioner. By filing an interlocutory application, I.A. No. 1657/2011, the order of the Lokayukt has been brought on record as Annexure P-26, in which it is specifically directed by the Lokayukt that the case registered in respect of illegal colony has been closed and the Commissioner, Municipal Corporation was directed to see that the construction of the building is done in accordance to the revised sanction granted on 30.4.2008. Thus, it is contended that when there is nothing available against the petitioners, no irregularity was found even by the investigating agency, no finding could have been given by the respondent no. 1 that the sanction to construct granted to the petitioner was in any way violative of any Municipal laws, rules or regulations or bye-laws. It is thus prayed that the petitioners are entitled to the reliefs claimed in writ petition.

7. Heard the learned counsel for the parties at length and perused the record.

8. The provisions of section 299A of the Act are inserted in the Act in the year 1998 by way of amendment only, because though in the provision of section 299 of the Act powers of Commissioner to direct modification of sanctioned plan of a building before its completion is provided, but that power is restricted to be exercised only before the commencement of the work. The provision of section 299 contemplates that the Commissioner may before any work has been commenced in pursuance of any permission granted by it u/s 293 of Act, revoke such permission and may give fresh permission in lieu thereof on such conditions, in accordance with this Act and the rules. Thus if the provisions of

section 299 of the Act are examined, the said powers could be exercised before the commencement of construction. Undisputedly on grant of sanction to construct by revised order dated 30.4.2008 Annexure P-9, the petitioner had already initiated construction and that is why it was held by the Commissioner, Municipal Corporation that it will not be possible for the Commissioner, Municipal Corporation to pass any order in respect of grant of sanction to construct the building to the petitioner. Because of this reason it appears that the matter was referred by the Commissioner, Municipal Corporation to the State Government for exercising the powers u/s 299A of the Act. For the purpose of proper appreciation of action taken by the respondent/State, it would be better to look into the provision of section 299A of the Act, which reads thus :-

299A Power of State Government to cancel or revise permission for construction of a building - If it is found that any permission for construction of a building has been given in violation of any provision of this Act or Rules or bye-laws made thereunder or in the opinion of the State Government it is necessary in the Public interest that the permission granted by the Municipal Corporation deserves to be cancelled or revised the State Government shall have power to cancel or revise such permission and on such cancellation or revision, as the case may be, any construction contrary to the order regarding cancellation or revision shall be deemed to be without permission and shall be dealt with in accordance with the provisions of this Act and the rules made thereunder:

Provided that no such order shall be passed unless the aggrieved party has been given an opportunity of being heard.

A plain and simple reading of this provision makes it clear that if it is found that any permission for construction of a building has been given in violation of any provision of this Act or Rules or bye-laws made thereunder or in the opinion of the State Government in the public interest it is so required, then the permission granted by the Municipal Corporation can be cancelled or revised by the State Government. There is no condition prescribed that the said power cannot be exercised after the commencement of construction pursuant to the sanction granted. Thus it was required to be seen by the State Government that if sanction was per se illegal or was violative of any provision of the Act, the same was to be revoked or revised. There is nothing else provided in the Act.

9. If the order impugned is examined in view of the provision of section 299A of the Act, things were considered by the State Government, but no finding was recorded as to how it was found that such a sanction was not in accordance to the provisions of the Act or the same was violative of any rules or bye-laws. In paragraph 3 of the order impugned only the contention or the facts as have been mentioned by the Commissioner, Municipal Corporation have been recorded. What are the findings on the basis of such, what has been stated by the petitioners and whether such a contention of petitioners is just and acceptable or not, no finding is recorded in this respect. In paragraph 4 a conclusion has been drawn in respect of recommendation made by the Commissioner, Municipal

Corporation that some error have been found in the sanction order to construct the building granted by the Municipal Corporation and thereafter the matter is remitted back to the Municipal Corporation. This is not the power available to the State Government under the provisions of section 299A of the Act. The State Government is required to either cancel or revise the plan already sanctioned by the Municipal Corporation. If such an order is passed cancelling or revising the permission to construct and if any construction is done, the same is to be treated as violative of sanction of construction and the action is to be taken as per the provisions of the Act. The direction as has been given by the respondent/State in this order contains action against those officers who were responsible to grant building construction permission to the petitioners. The other direction was to make recovery of the loss caused to the Corporation from those officers and then third direction was to place the matter before the MIC or the Corporation in its meeting for passing a resolution in this respect. These are not the power conferred on the State Government under the provision of section 299A of the Act. The only part in the order impugned granting some solace to the petitioners is to direct payment of compensation to the petitioners for the loss caused to them. This all is not provided under the Act and therefore the order cannot be sustained in the eye of law.

10. Another aspect is that, as has been put forth by the petitioners by placing various photographs on record alongwith the writ petition, and also with rejoinder that there are several constructions made on the same road in the same site and on the same line of the building by various persons. The road has already been constructed and it has become operational. It is seen from the photographs that certain lands are even just after the road, just touching the boundary of the road and even no place is left for making pavement. The photographs relates to the building of petitioner reflect that there is a Bank building constructed just by the side of the building of petitioner and its frontage is more extended to the road rather than the building of petitioner. A hospital is also constructed just by the side of building of the petitioner adjoining the building of the Bank. Sufficient land is available in front of the building of the petitioner for the purpose of construction of pavement. Thus to say that there was no clear frontage available even for making pavement or the widening of the road in front of the building of petitioner because of the grant of such building sanction order is not acceptable. The documents produced by the petitioner indicates that FAR in the area where the building of petitioner is constructed, indicate same ratio for other building also and all such buildings are constructed for the commercial purpose. This fact is evident from an information made available by the officers of the Municipal Corporation, Bhopal placed on record along with the rejoinder of the petitioner as Annexure P-28. The order of Lokayukt office itself indicates that the petitioners were to be granted permission to construct the building as per the sanction granted by the Municipal Corporation. Such authorities after making investigation have reached to such a finding that the construction of the building in the area was not illegal. All these

facts were available before the State authority, but none of them have been referred or taken into consideration by the said authority. These documents were already annexed with the reply of the petitioner, which was filed before the respondent no. 1, as is clearly indicated in the reply document Annexure P-17. In rebuttal, nothing has been indicated in the return. Not a single word is said. Para wise reply has not been filed. Those allegations made against the respondents have not been denied specifically. In view of this as per the law, such allegations are to be treated as proved. Further it is clear from the perusal of the impugned order and the findings recorded by the authority of the respondent no. 1 that none of such documents of the petitioners were seen, examined or taken into consideration while the order impugned was passed. In view of this, it cannot be said that the power was rightly exercised by the respondent no. 1 in passing the order impugned. In view of the findings reached hereinabove, the order of respondent no. 1 cannot be given a stamp of approval by this Court. Accordingly, this writ petition is allowed. The order dated 29.4.2010 Annexure P-19 is hereby quashed. The petitioners be allowed to make construction in accordance with the sanction granted by the Municipal Corporation. There shall be no order as to costs.