
(2006) 10 MP CK 0008
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1634 of 2003

Rajesh Sharma and Another	Vs	APPELLANT
State of M.P. and Others		RESPONDENT

Date of Decision : 07-10-2006

Acts Referred:

Indore City Municipal Act, 1909 — Section 36
Madhya Bharat Municipalities Act, 1954 — Section 48, 82

Citation : (2007) ILR (MP) 65 : (2007) 2 J LJ 267 : (2006) 4 MPLJ 611

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

Bench : Single Bench

Advocate : Ashok Lalwani, for the Appellant; Rahul Jain, Deputy Government Advocate for Respondent Nos. 1 and 2 and K.K. Trivedi, for the Respondent

Judgement

K.K. Lahoti, J.

Controversy in this case is very short one. Respondent No. 2 decided to construct 30 shops on the main road in the township of Mandla which is 10 feet wide strip adjoining to the main road. Petitioners' house is situated just behind the proposed construction of 30 shops. Petitioners have prayed that Respondents No. 1 and 2 be restrained to construct and alienate the aforesaid shops as it may cause obstruction in the traffic and also it will affect the entry to the Petitioners' land and house which would fall behind the aforesaid shope.

Facts of the case are that Petitioners and one Govind Dubey are owners of land situated on Nazul sheet No. 17 plot No. 10/1, 10/4, 10/24, 10/17 in the township of Mandla. These lands are situated on the side of the road of the township which is a main road connecting National Highway. Main road is about 80 feet wide and length of it is nearabout 3/4 km. This road is also a connecting road from the township of Mandla to Jabalpur and is a part of State Highway. On this road, Bungalow of Collector is also situated. Between the Petitioners' plot and the road, there is a strip of land adjoining to the road which is recorded as plot No. 9 in the revenue record. The Petitioners have explained the location on the spot in

the map Annexure P-3 which reflects the land of the Petitioners, proposed construction and the main road. Respondent No. 2 Nazul Officer by order dated 26.3.2003 Annexure P-9(i) and P-9 decided that the land on plot No. 9 be divided into two small pieces of 12" x 10" and these plots be auctioned for non-residential purpose which is beneficial to the State Government by fixing upset price of Rs. 47,250/-. An advertisement Annexure P-8(ii) alongwith map was also issued on 3.3.2003 in which proposed site of auction was shown. From the perusal of map Annexure P-9, it appears that 30 plots for non-residential purpose were planned. On 14.3.2003 a public notice was published in daily newspaper by which it was noticed that aforesaid 30 plots shall be auctioned and the conditions of auction were also shown in the aforesaid public notice. The Petitioners have challenged this action of the Respondents by filing this Petition on the grounds :

(i) That the aforesaid proposed plots and construction thereon shall obstruct the opening of the land of the Petitioners as aforesaid plots are covering the frontage of the Petitioners' land.

(ii) That the proposed auction relates to the land which is in fact is a part of the road and the Respondent No. 2 has no authority to auction the part of the road. Though at present width of road is shown as 40 feet and after leaving 10 feet open, 10 feet strip has been proposed to be road, meaning thereby that out of 20 feet strip of the road, 10 feet strip shall be side of road and remaining 10 feet strip of road will be utilized for the construction of shops. While factual position is that road is 80 feet wide and as per the master plan of the Mandla township, the road has been shown as 24 metres wide and in this regard they have referred the master plan of Mandla published by the Director of Town and Country Planning M.P. in which at page 31 the road which is known as Lalipur to Collector Residence has been shown as 24 metres wide, meaning thereby that the width of road shall be 24 metres which is equivalent to 78 feet 9 inches and when the width of road is 24 metres then none of the part of the road can be auctioned by the Nazul Officer for the construction of the shops by dividing it into plots.

(iii) That, if the strip of road is shown for commercial purpose, it will create obstruction in the traffic and future development plan shall also be affected with this and there will be no scope for the widening of the road.

(iv) That merely auction is beneficial to the Government will not be a ground to permit the Respondent No. 2 to auction the strip of the road or side of the road.

On the aforesaid grounds, Petitioner has challenged the action of the Respondent No. 2.

Respondent No. 2 has filed return in which it is stated :

(a) That Respondent No. 2 decided vide order dated 26.3.2006 to auction Nazul land out of the portion of the road situated on Nazul plot No. 9 for construction of 30 shops.

(b) It is submitted that plot No. 9 is nazul land and does not fall within road or part of the road. The road is 40 feet wide and 20 feet strip is situated at both the side. Respondent No. 2 after leaving 10 feet and immediately adjacent to the road proposed to auction remaining 10 feet strip for the construction of the shops.

(c) That the Petition has been filed with oblique and ulterior motive as frontage of the land belonging to the Petitioner which is adjacent to plot No. 9 shall be adversely affected.

(d) That the road in question belongs to the Public Work Department and is 40" wide. The land adjacent to the road belongs to the Nazul Department and the Nazul Department is fully competent to utilised the same as it deems fit and proper in the interest of revenue.

(e) That 7 plots have been auctioned by the Respondents which have been purchased by various persons after paying 25% of the auction money and third party interest has been created and if the auction is set aside the right of third party will be affected prejudicially who are not before the High Court. On the aforesaid grounds, Petition is opposed.

Respondent No. 3 has filed a reply in which Respondent No. 3 has supported the Petitioners. In para 1 of the return, it is stated by the Respondent No. 3 that the land which is to be auctioned is required to be left open for the purpose of widening the road. If the land is auctioned, permanent structure would be constructed and it would obstruct in widening of the road in future. The land is just in front of the house of the Petitioners and it will not be proper to auction such land. In para 2 it is stated that the construction may be permitted after leaving 40 feet land from the centre of the road and thereafter 6 feet land for parking and only thereafter, any permission for building construction would be granted. In this regard, letter Annexure R-3/1 has been placed on record showing the intention of the Municipal Council.

Petitioners have filed rejoinder in which they have placed the photographs of spot on record showing that on the road of both sides there are constructions, though some open land is available adjoining to the road on both sides. Document Annexure P-23 is placed on record in which the Municipal Council has also intimated that the road Lalipur Chowraha to Banjar Club (in question) is 80 feet wide. Petitioners have also placed a circular of the State Government dated 19.4.1971 on record by which it is directed that on the side of the road, no temporary patta be granted as it would reduce the width of the road. Petitioners have also filed standard for highway Annexure P-25 in support of their contention that road land (over-all) for National High way should be minimum 30 metres (150 feet), State Highway of 20 metres (100 feet) and for municipal road 25 metres (82 feet). Petitioners have also placed reliance to Revenue Book Circular Para 6 of Part IV, Chapter I in support of their contention that consultation from Municipality is necessary for the allotment of the land such as proposed by the

Respondent No. 2.

In this case, it is not in dispute that behind the proposed auction of the plots, land of Petitioner is situated. The width of the road which is at present is shown is 40 feet, while as per master plan and the letters produced by the Petitioners of Municipal Council, it is 24 metres. The master plan of Mandla has also been shown by Petitioner in which at page 31, width of the road in question has been shown as 24 metres nearabout 78 feet 9 inches. The aforesaid factual position shows that the land which is proposed for construction of the shops is in fact a part of the road and not beyond it. Though it is a Nazul land but when the land is part of the road, Nazul Department cannot auction it for permanent structure. After auction of the aforesaid land, purchaser would raise a pacca construction on the aforesaid strip and the road on the spot shall be reduced. Apart from this, in future for widening of the road, there shall be no scope and the total width of the road shall be reduced to 60 feet = 40"+10"+10". The master plan of Mandla, being a public document is taken on record and marked as Annexure P-27.

The apex Court in *Municipal Board, Manglaur Vs. Sri Mahadeoji Maharaj*, , in similar circumstances held thus :

8. The law on the subject may be briefly stated thus. Inference of dedication of a highway to the public may be drawn from a long user of the highway by the public. The width of the highway so dedicated depends upon the extent of the user. The side lands are ordinarily included in the road, for they are necessary for the proper maintenance of the road. In the case of a pathway used for a long time by the public, its topographical and permanent landmarks and the manner and mode of its maintenance usually indicate the extent of the user.

In the present case it is not disputed that the metalled road was dedicated to the public. As we have indicated earlier, the inference that the side lands are also included in the public way is drawn much easily as the said lands are between the metal road and the drains admittedly maintained by the Municipal Board. Such a public pathway vests in the Municipality, but the Municipality does not own the soil. It has the exclusive right to manage and control the surface of the soil and "so much of the soil below and of the space above the surface as is necessary to enable it to adequately maintain the street as a street". It has also a certain property in the soil of the street which would enable it as owner to bring a possessory action against trespassers. Subject to the rights of the Municipality and the public to pass and repass on the highway, the owner of the soil in general remains the occupier of it and, therefore, he can maintain an action for trespass against any member of the public who acts in excess of his rights.

If that is the legal position, two results flow from it, namely, (1) the Municipality cannot put up any structures on the public pathway which are not necessary for the maintenance or user of it is a pathway, (2) it cannot be said that the putting up of the structures for installing the Statue of Mahatma Gandhi or for piyo or

library are necessary for the maintenance or the user of the road as a public highway. The said acts are unauthorised acts of the Municipality. The Plaintiff, who is the owner of the soil, would certainly be entitled to ask for an injunction restraining the Municipality from acting in excess of its rights. But the Plaintiff cannot ask for possession of any part of the public pathway, as it continues to vest in the Municipality.

The apex Court has held that the road is dedicated to the public and it is for the long time user of the public and existence of vacant side between the road and the drainage at either side of the road is necessary and no structure should be put on vacant sides which are necessary for the maintenance or use of it as of pathway.

The Division Bench of this Court recently has issued similar directions in First Appeal No. 112/2000 Dashmesh Enterprises v. State of M.P. and Anr., decided on 24.8.2006 2006(3) J.L.J. 299. For ready reference, aforesaid directions read thus :

Thus, the State is to be reminded of its duties to be performed so as provide better amenities to its citizens.

Firstly, they should conduct regular checking in the city they are posted to find out with regard to construction activities, going on, whether master plan is already in existence and planning areas have been shown by issuance of the Notifications. This would facilitate them to verify with regard to the necessary permission and sanction having been obtained by the persons, who are constructing buildings or are carrying on construction activities. If the same is not found in order, immediate action be taken against the builder/owner/person/colonizer.

Secondly, they should be careful and vigilant at the time construction is started so that they can take appropriate action to stop it forthwith, if it is not in accordance with the sanctioned map and permission granted, instead of allowing the construction to be completed and thereafter further allowing the builder to create third party rights, which causes irreparable loss and harassment to the bona fide and innocent purchasers.

Thirdly, the State should endeavour to take appropriate action against all such erring officers, who have failed to notice such construction activities, which are being carried out without obtaining necessary permission and sanction from the Defendant No. 2. Unless this is observed strictly, unauthorized and illegal constructions would continue to mushroom in Jabalpur, Bhopal, Indore and Gwalior and other cities of State of Madhya Pradesh, where there is great dearth of open space.

Fourthly, State should not allow constructions to be completed, where no proper sanction and permission has been obtained by the persons, builders and colonizers. If such a procedure is adopted by Defendants then there is no reason why it would not greatly curtail unauthorized and illegal constructions in the

State of Madhya Pradesh and would provide better amenities to the residents of the cities.

A Single Bench of the Court in Bashiruddin v. Ramprasad 1963 J.L.J. 831, had an occasion to consider the similar controversy and after considering it, it is held thus :

12. From a perusal of all the cases cited above the view is that the Municipal Committee has no power to lease out a portion of the public street to the detriment of the right of the owners by the side of the street. It is no doubt that the roads vest in the Municipality but the roads vest as roads. The reading of Section 48 of the M.B. Municipalities Act corresponding Section 36(g) of the Indore Municipal Act and Section 82(g) of the Municipal Corporation Act will show that the Municipality holds the streets for Municipal purposes. I have already observed that the purposes of the street cannot be served by having Gomoties. The purpose for which the streets are vested in the Municipal Committee cannot claim general ownership of the street it has got only a limited right.

In this case, the position is similar. As per master plan, Annexure P-27 width of road is 24 metres and if the road width is taken as 24 metres, there is no iota of doubt that the proposed auction place of the plot falls within the aforesaid area. When under the master plan, the road itself has been declared as 24 metres wide road, then there is no question of auctioning any part of the land of road by the Respondent No. 2. Apart from this, every citizen has a right of exit from his house or land to the public land and this cannot be obstructed by the Respondents in any manner. Municipal Council, Mandla, has also opposed the action of the Respondent No. 2 by which the part of the land has been proposed to put for auction. In aforesaid circumstances, action of Respondent No. 2 is untenable under the law.

Now last objection raised by the Respondent No. 2 may be seen by which Respondent No. 2 has raised an objection that 7 plots have been put to auction and the interest of the purchasers is involved in this case. But the Respondent No. 2 has not stated that the auction has been knocked down in their favour or aforesaid persons have deposited bid amount. This Court on 31.3.2003 while issuing notice to the Respondents directed that no construction be raised over the area in question till further orders. The Respondent No. 2 has not stated anything except that their bid was accepted and their deposit of 25% amount to Respondent No. 2, but any further action has been taken in this matter, nothing has been brought on record. Until and unless a right is created in favour of the auction purchasers, it is not necessary at this stage to issue notices to the aforesaid persons. However, liberty is granted to the aforesaid bidder to approach this Court seeking review of the order, if they are having some grievance against this order. If any amount has been deposited by the aforesaid auction bidders, Respondent No. 2 shall refund the amount to the aforesaid bidders alongwith interest at the rate of 6% forthwith, so that aforesaid bidders may not be put to any loss by this order.

Consequently, this Petition is allowed. Orders Annexures P-8(i), 0-8(ii) and P-9 are hereby quashed. No order as to costs.