

(2010) 06 CHH CK 0011
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 1367 of 2007

Ram Kumar Pandey

APPELLANT

Vs

Municipal Corporation and Another

RESPONDENT

Date of Decision : 23-06-2010

Acts Referred:

Chhattisgarh Municipal Corporation Act, 1956 — Section 293, 305
Constitution of India, 1950 — Article 226

Citation : (2010) 4 MPHT 70 : (2010) 4 MPJR 1

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—By this petition filed under Article 226 of the Constitution of India, the petitioner seeks a direction to the respondent Municipal Corporation, Korba, for awarding compensation in favour of the petitioner and further seeks a direction to the respondent Corporation to acquire 5 feet of land on both sides of the road for road widening and not from only one side of the road.

2. The indisputable facts, in nutshell, as projected by the petitioner, are that the petitioner is the bhoomiswami of land bearing Khasra No. 493/316, admeasuring 0.06 acre equivalent to 2652 sq. ft. The said land was purchased by the father of the petitioner from one Smt. Bhagyawati Devi on 16-7-1960. Thereafter, the same was transferred in the name of the petitioner, as is evident from the settlement deed dated 17-2-1989 (Annexure P-1).

3. On the request of the petitioner, the Special Area Development Authority, Korba (for short "SADA"), granted permission to construct the house on the land in question on 28-3-1989 (Annexure P-2). After dissolution of SADA, the respondent No. 1 Corporation has been substituted in place of SADA. The South Eastern Coalfields Limited has also given No Objection Certificate in favour of the petitioner for construction of double storied building on 17-1-1989 (Annexure P-4). The petitioner is regularly paying the property tax, as is evident from

Annexure P-5. However, all of a sudden the petitioner received a notice dated 15-12-2006 (Annexure P-6) from the respondent Corporation mentioning that the petitioner has constructed the house against the provisions of Section 293 of the Chhattisgarh Municipal Corporation Act, 1956 (for short "the Act, 1956") and asked him to submit his reply within three days. In response to the said notice the petitioner submitted his reply vide Annexure P-7. Thereafter, on 10-2-2007 the respondent Corporation demolished some portion of the house of the petitioner. Against the said action of the respondent Corporation, the petitioner lodged a written report before the Station House Officer, Police Station Kotwali, Korba, on 11-2-2007 (Annexure P-8) and requested him to take necessary action.

4. Shri Dadariya, learned Counsel appearing for the petitioner, would submit that for widening of roads without acquiring the land of the petitioner properly and without paying any compensation, the house of the petitioner has been demolished by the respondent Corporation in an illegal and arbitrary manner in spite of the fact that the petitioner has constructed the house in question only after obtaining necessary permission and he is also paying the property tax. The respondent Corporation, without appreciating the reply submitted by the petitioner in its letter and spirit, demolished his house.

5. Learned Counsel appearing for the petitioner in support of his contention placed reliance upon the decision of the Supreme Court rendered in *State of U.P. and Others Vs. Manohar*, wherein a direction to determine the compensation was made while dismissing the appeal filed by the State with costs.

6. On the other hand, Shri Agrawal, learned Senior Counsel appearing with Ms. Meera Jaiswal, learned Counsel for the respondent No. 1, would submit that only after issuing the notice to the petitioner, some portion of the house of the petitioner has been demolished for the purpose of widening of roads. Shri Agrawal would farther submit that the respondent Corporation is ready to grant compensation to the petitioner in accordance with the provisions of law.

7. Shri Roy, learned Panel Lawyer appearing for the State adopts the submission made by Shri Agrawal, learned Senior Counsel appearing on behalf of the respondent No. 1.

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

9. The averments made in the writ petition are not adverted to by the respondent Corporation with regard to demolition of part of the house owned by the petitioner and appears to be without proper opportunity of hearing. However, having demolished the property and constructed road thereon the respondent Corporation has clearly taken a stand to compensate the petitioner for the loss caused to him as well as market value of the property/land, which has been taken over by the respondent Corporation for the purpose of widening of the road.

10. In view of foregoing and further under the provisions of Section 305 of the Act, 1956 wherein the Corporation is permitted to regulate line of a public street, either as existing or as determined for the future or beyond the front of immediately adjoining buildings, the land owner is entitled to reasonable compensation for any damage or loss he may sustain in consequence of his building or any part thereof being set back.

11. Section 305 of the Act, 1956 reads as under:

305. Power to regulate line of buildings.- (1) If any part of a building projects beyond the regular line of a public street, either as existing or as determined for the future or beyond the front of immediately adjoining buildings the Corporation may:

(a) if the projecting part is a verandah, step or some other structure external to the main building, then at any time, or

(b) if the projecting part is not such external structure as aforesaid, then whenever the greater portion of such building or whenever any material portion of such projecting part has been taken down or burned down or has fallen down, require by notice either that the part or some portion of the part projecting beyond the regular line or beyond the front of the immediate adjoining building, shall be removed, or that such building when being rebuilt shall be set back to or towards the said line or front; and the portion of land added to the street by such setting back or removal shall henceforth be deemed to be part of the public street and shall vest in the Corporation:

Provided that the Corporation shall make reasonable compensation to the owner for any damage or loss he may sustain in consequence of his building or any part thereof being set back. (2) The Corporation may, on such terms as it thinks fit, allow any building to be set forward for the improvement of the line of the street.

12. Having regard to the fact that the averments made by the petitioner in the writ petition have not been adverted to properly and the respondent Corporation decided to compensate for any damage or loss caused to the petitioner, it is directed that the respondent Corporation after having afforded reasonable opportunity of hearing to the petitioner shall determine the compensation at market value and further for any damage or loss caused to the petitioner.

13. The determination of compensation for loss of property as well as further damages and loss caused to the petitioner shall be done within a period of six weeks from the date of receipt of a copy of this order and the payment thereof shall be made within a further period of two weeks.

14. For the reasons mentioned hereinabove, the relief Clause 7.3 as prayed for in this petition to acquire 5 feet of the land on both sides of the road for road widening cannot be granted, as this is for the respondent Corporation to regulate line of a public street as per the plan and requirement.

15. In the result, the writ petition is allowed to the extent indicated above.
16. There shall be no order as to costs.