
(2013) 08 MP CK 0394
In the Madhya Pradesh High Court
Case No : W.A. No. 340 of 2013

Ramkatori Goyal	Vs	APPELLANT
Municipal Corporation and Another		RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Citation : (2013) ILR (MP) 2513 : (2013) 4 MPLJ 533

Hon'ble Judges : Sujoy Paul, J;Sheel Nagu, J

Bench : Division Bench

Advocate : N.K. Gupta, for the Appellant; Ami Prabal for Respondent No. 1 and H.K. Shukla, for the Respondent

Judgement

Sheel Nagu, J.—This writ appeal filed u/s 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nayayapeeth Ko Appeal) Adhiniyam, 2005 assails the final order of the learned Single Judge passed in Writ Petition No. 5406/2010 on 10-7-2013, whereby the petition has been disposed of with a direction to the Municipal Corporation, Gwalior to grant permission for construction in accordance with law after satisfying itself that the development work carried out by the respondent No. 2/Society is complete. Learned counsel for the rival parties are heard on the question of admission and is being finally decided with the consent of rival parties.

2. Learned counsel for the appellant/petitioner primarily contends thus:

(i) that there is no statutory provision requiring issuance of completion certificate as a pre-requisite for the appellant/petitioner to start construction on her individual plot; and

(ii) that despite the respondent No. 2/Society having completed process of development of the plot, the Municipal Corporation, Gwalior is neither granting permission for construction to the appellant/petitioner nor it is taking any action under Rule 13 of the M.P. Nagar Palika Registration of Colonizers (Terms and Conditions) Rules, 1998 (for brevity the "Rules of 1998").

3. As regards the first contention, it is seen from perusal of the statutory provision contained in Rule 12-A of the Rules of 1998 that issuance of certificate of completion of development work is not a pre-requisite for grant of permission to commence building construction in any colony, but nonetheless it is obligatory upon the competent authority under Rule 12-A of the Rules of 1998 to ensure completion of development process is completed by the colonizer (respondent/Society herein) before permission for construction of building is granted.

4. Learned counsel for the Municipal Corporation, Gwalior contends that the respondent/Society has failed to complete the process of development in terms of the letter dated 25-3-2006 (vide Annexure P/5), by which the respondent/Society was granted permission by the respondent/Corporation to commence process of development.

5. Per contra, the learned counsel for respondent/Society refuting the stand of the Municipal Corporation contends that the process of development is complete and the fault lies with the Municipal Corporation in failing to grant permission to the appellant/petitioner to commence construction of building on her plot.

6. The writ Court has issued necessary directions to the Corporation to verify completion of development work and thereafter to grant permission for construction to the appellant/petitioner.

7. Pertinently Rule 13 of the Rules of 1998 bestows ample power upon the respondent/Municipal Corporation to take necessary remedial action in case of failure of the colonizer to complete with the process of development.

8. Thus, the Municipal Corporation is not remediless as projected by the learned counsel for respondent/Corporation. It is admitted by the learned counsel for respondent/Corporation that no action has been taken against the respondent/Society under the provisions of Rule 13 of the Rules of 1998.

9. It appears that due to the contentions and counter-contentions of the respondent/Society, who is the colonizer on one hand and the respondent/Corporation, which is the competent authority on the other, the ultimate sufferer is the appellant/petitioner, who is unable to commence construction over her plot for no fault of her.

10. It is an undisputed fact that on 9-6-2004 (vide Annexure P/4), the Department of Town and Country Planning granted development permission to the Society, which was valid for three years extendable by two further years. Further, the Municipal Corporation on 25-5-2006 (vide Annexure P/5) granted development permission to the Society on the same terms and conditions as imposed by the Department of Town and Country Planning (vide Annexure P/4) and also imposed the condition that all the plots shall remain pledged with the Corporation till compliance of all the conditions imposed by the Department of Town and Country Planning is made. It is further undisputed that the appellant/petitioner has not yet been able to commence construction over her plot on

account of the prevailing dispute about completion or non-completion of the process of development between the Municipal Corporation on one hand and the respondent/Colonizer on the other.

11. The case at hand discloses a disturbing trend where a law abiding citizen to fulfill her dream to have a house of her own is made to wait for years together (6-7 years in the instant case) despite complying with all the legal requisites within the prescribed time. The Municipal Corporation despite being a creature of a statute and boasting itself to be an instrumentality of a welfare State, chooses to degenerate itself to a mute spectator by failing to step in and perform its statutory duty of completing the development work of the colony which is left incomplete by the colonizer society. The Rules of 1998 vest the Corporation with ample remedial powers. Yet the Corporation chooses to remain inactive doing nothing except blaming the colonizer society in the instant case. The respondent Corporation has thus exposed itself to the liability of bearing the cost of this avoidable litigation.

12. In view of the above, to do complete justice in the matter, this Court modifies the impugned order of the learned Single Judge to the following extent:--

(i) Respondent/Municipal Corporation is directed to carry out the necessary inspection of the development work carried out by the respondent/Society within a period of four weeks from the date of communication of this order;

(ii) In case the Municipal Corporation finds that the development work carried out by the respondent/Society is in terms of the letter dated 25-3-2006 (vide Annexure P/5), the necessary permission for construction shall be issued in favour of the appellant/petitioner within a period of two weeks thereafter;

(iii) In case the Municipal Corporation, Gwalior finds that the development process carried out by the respondent/Society is incomplete, then action in terms of Clause (4) of the letter dated 25-3-2006 (vide Annexure P/5) read with the statutory provisions of Rule 13 of the Rules of 1998 shall be taken by the respondent/Corporation and concluded within a period of eight weeks from the date of knowledge of the development process being incomplete;

(iv) After complying with the directions as contained in clause (iii) above, the respondent/Corporation shall issue necessary permission to the appellant/petitioner for carrying out construction on her plot within a further period of two (2) weeks.

(v) The respondent Corporation is liable to pay cost which is quantified as Rs. 15,000/- to be paid to the appellant/petitioner to the extent of Rs. 10,000/- whereas the remaining Rs. 5,000/- to be paid in favour of M/s. Institute of Advocate Continuing Legal Education, Gwalior for consuming precious time of the Court for adjudicating an avoidable piece of litigation.

With the abovesaid directions, this writ appeal stands disposed of.