

(1962) 05 MP CK 0018
In the Madhya Pradesh High Court
Case No : S.A. No. 64 of 1962 (G)

Ramkishan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 05-05-1962

Acts Referred:

Madhya Bharat Municipalities Act, 1954 — Section 203

Citation : (1964) JLJ 452

Hon'ble Judges : Shiv Dayal Shrivastava, J

Bench : Single Bench

Advocate : B.D. Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

Shivdayal, J.—This appeal arises out of a suit instituted by the appellants against the State of Madhya Pradesh and the Municipal Corporation Shivpuri, for setting aside an order passed by the Collector of Shivpuri, u/s 203 of the Municipal Act. The circumstances in which the order was passed were these. The plaintiffs applied on May 4, 1953, to the Municipal Committee for sale of a piece of a land 95 36/4 x 6". The Municipal "Committee by its resolution dated August 26, 1953, decided to sell the land to the plaintiffs at Rs. 3 per sqr. yard. By another resolution dated August 2, 1954, the Municipal Committee decided to execute the deed of sale and to deliver possession to the plaintiffs. On August 7, 1954, the plaintiffs deposited Rs. 193/4/ and applied that a sale deed may be executed and possession may be delivered. However, before the sale deed could be executed and possession could be given, on October 4, 1954, the Inspector General of Municipalities wrote to the Municipal Committee to reconsider its resolution. On November, 15, 1954, the Municipal Committee again reiterated its resolution. On November 16, 1954, an application was made by some persons from the public to the Collector. On November 30, 1954, the Collector stayed the execution of the resolution passed by the Municipal Committee and referred the matter to the Inspector General of Municipalities. On May 19, 1955, the Collector

confirmed the stay order passed on November 13, 1954.

2. This suit was instituted challenging the validity of the orders passed by the Collector on November 30, 1954, and May 19, 1955, and praying that they be quashed.

3. The trial Judge dismissed the suit holding that the Collector acted within his power when he passed the order u/s 203 of the M.B. Municipalities Act (No. 1 of 1954). This decree has been upheld by the Additional District Judge, Shivpuri. The appellate Court has upheld the finding reached by the trial Judge that the sale of the land construction on it would have narrowed the public road and, as such, the orders passed by the Collector were intra vires.

4. In this second appeal Shri Bhagvandas Gupta, learned counsel for the plaintiffs raises only one point before me. It is strenuously maintained that the orders of the Collector do not fall within the purview of section 203 of the Municipal Act. Findings of fact have not been; and could not be, assailed before me in second appeal. Indeed, I am not called upon to express any opinion on the propriety of the orders which were passed by the Collector. To put it differently, it is not for me: to decide whether in the peculiar facts and circumstances of the case the collector should or should not also have intervened. All that this Court is asked to examine is whether the Collector exceeded his powers u/s 203 of the Municipal Act when he suspended the execution of the resolution passed by the Municipal Committee. My answer is in the negative. Section 203 (1) reads thus:

If, in the opinion of the Government in the case of City Municipality, and the Collector in the case of other Municipalities the execution of any order or resolution of a Municipality, or the doing of anything which is about to be done by or on behalf of the municipality, is causing or is likely to cause injury" or annoyance to the public, or to lead to a breach of the peace, or is unlawful, it or he may by order in writing under his signature, suspend the execution or prohibit the doing thereof.

Now, the significant words are "is causing or is likely to cause injury or annoyance to the public". In the impugned order the Collector after stating the preliminary facts has observed :

Main swyam bhi moqe ka nirikshan kiya, Ismain koi shak nahi hai ki yeh bhoomi des jaker agar dael mill ki building aur age badha dee jawe to yeh building age badhakar baqi building ki line se kafi age in kal jawaji aur badnuma malum hoker us jagah sarak me bhi kuch tangi as jayegi. Maine is sambandh main na nirikshan moqa ke atirikta bahas abhishhashak, applicant wa Secretary Municipal Committee ko suna wa record ko dekha.

It is transparent that the order passed by him was based on his opinion that the projected building would disturb the line and also that the public road would be narrowed. That being so, it is impossible to hold that in the opinion of the

Collector the sale of the land would not cause or was not likely to cause injury or annoyance to the public. The words "injury" and also "annoyance" are of wide connotation. "Injury means damage; impairment; harm. It is stated in Corpus Juris Secundum (Volume 43):

The word "injury" is not a technical term but it has a popular and well understood meaning and very wide application, (page 1109).

"It has been variously defined as meaning to cause loss or detriment to, to damage and lessen the value of; to damage, to do harm to, or to hurt; to harm; specifically to hurt or wound the person; also to impair or deteriorate in any way; to impair or to impair the soundness of, as health; to make worse or less valuable; to subject to any deleterious or noxious action or influence; to vex." (page 1109)

"So in common use, it is employed broadly enough to cover both the *damnum* and the *injuria* of the common law, and at this day its common and approved legal usage extends to and includes any hurtful or damaging effect which may be suffered by anyone, and is often used even in statutes and other instruments, not in its technical legal sense, but in its popular and usual sense, as meaning damage resulting from an unlawful act or from a violation of a legal right, (page 1113).

"Public injuries are breaches and violations of rights and duties which affect the whole community as a community." (page 1121)

Annoyance means; that which causes trouble; disturbance or harm.

5. In this view of the matter there is no substance in this appeal. It is summarily dismissed.