
(2012) 03 CHH CK 0080
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 421 of 2012

Santosh Kumar Mittal and Another	Vs	APPELLANT
State of C.G. and Others		RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:

Chhattisgarh Municipal Corporation Act, 1956 — Section 305, 306

Citation : (2012) 3 CGBCLJ 310

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Division Bench

Advocate : Santosh Kumar Tiwari, for the Appellant; Satish Gupta, Govt. Advocate for the State/Respondents 1 and 3, Mr. H.B. Agrawal with Mrs. Meera Jaiswal, Municipal Corporation, for the Respondent

Judgement

Prashant Kumar Mishra, J.—It has been argued by learned counsel for the petitioners that in spite of an undertaking given by learned counsel for the respondent Corporation in W.P.C. 3477/2011 (Annexure P-5 in W.P.C. 421/2012 & Annexure P-4 in W.P.C. 422/2012), the Corporation proceeded to demolish the structure standing on the petitioners' land and now public road/drain is constructed over a part of the petitioners land without making payment of any compensation. He would submit that until the payment of compensation is made, the authorities should be restrained from raising any construction on petitioners land. On the other hand, learned State Counsel as well as learned counsel appearing for the respondent Corporation would submit that the construction of road/drain is made in public interest and the petitioners would be entitled to the benefits available to them in law.

2. Under sections 305 (sic) 306 of the C.G. Municipal Corporation Act, 1956 (for short "the Act, 1956) provisions have been made to regulate line of building and compensation. The said provisions are reproduced for ready reference:

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 burdened 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.

306. Compensation.-(1) No compensation shall be claimable by an owner for any damage which he may sustain in consequence of the prohibition of the erection of any building.

(2) The Corporation shall make reasonable compensation to the owner for damage or loss which he may sustain in consequence of the prohibition of the re-erection of any building or part of a building except in so far as the prohibition is necessary under any rule or byelaw:

provided that the Corporation shall make full compensation to the owner for any damage he may sustain in consequence of his building or any part thereof being set back unless for a period of three years or more immediately preceding such notice the building has by reason of its being in a ruinous or dangerous condition become unfit for human habitation or unless an order of prohibition issued u/s 286 has been and still is in force in respect of such building.

(3) The Corporation shall make reasonable compensation to the owner for any damage or loss which he may sustain in consequence of the inclusion of his land in a public street but in assessing such compensation, regard shall be had to the benefits accruing to that owner from the development of the land belonging to him and affected by such street.

3. In the matter of *Tarabai v. Indore Municipal Corporation, Indore* (1977) 1 MPWN 321 it has been held that setting back by legal fiction shall have the effect of vesting that land in Corporation and such vesting does not depend on payment of compensation. In view of this, it cannot be held that until payment of

compensation is made, the authorities are not competent to raise any construction for widening of road or for construction of drain. However, at the same time, every citizen whose land is included in the building line demarcated by the Corporation in accordance with section 305 of the Act is entitled to receive reasonable compensation as provided under the proviso to section 305 and u/s 306 of the Act, 1956, though subsection (3) of Section 306 further provides that in assessing such compensation, regard shall be had to the benefits accruing to that owner from the development of the land belonging to him and affected by such street.

4. In view of the above position of law, while refusing to restrain the Corporation to widen the road or to construct the drain, it is directed that the respondent Corporation shall ascertain the exact area owned by the petitioner(s) and shall thereafter determine the compensation to which the petitioners are entitled under Sections 305 & 306 of the Act, 1956 on an application submitted by the petitioners in this regard within a period of one month from today along-with a certified copy of this order. The respondent Corporation shall thereafter consider and decide the issue regarding compensation in accordance with law within reasonable time and preferably within a period of six months thereafter. With the above observations/direction, both the writ petitions stand finally disposed of at the admission stage.