

(2025) 11 MP CK 2002

In the Madhya Pradesh High Court, Gwalior Bench

Case No : Civil Revision No. 1013 Of 2024

Shantanu Bajpayee

APPELLANT

Vs

Dhramendra Agrawal And Others

RESPONDENT

Date of Decision : 14-11-2025

Acts Referred:

Code Of Civil Procedure, 1908 — Section 115

Madhya Pradesh Municipal Corporation Act, 1956 — Section 293, 307(5)

Citation : (2025) 11 MP CK 2002

Hon'ble Judges : G. S. Ahluwalia, J

Bench : Single Bench

**Advocate : Surendra Kumar Khare, Naval Kumar Gupta, Saket Sharma,
Purushottam Das Bidua**

Final Decision : Allowed

Judgement

G. S. Ahluwalia, J

1. This civil revision under Section 115 of CPC has been filed against the order dated 22/07/2024 passed by 7th District Judge, Gwalior, in M.J.C. No. 364/2017, by which an application filed by applicant under Section 307(5) of Madhya Pradesh Municipal Corporation Act, 1956 has been rejected.

2. It was the case of applicant that respondents No. 1 and 2 have started raising construction in the place of House No. 233/42 situated at Nai Sadak in front of Yadav Cinema, Lashkar, Gwalior without taking permission from the Municipal Corporation. Applicant had filed an application on 06/12/2016 before respondent No. 3 for demolition of illegal construction, and accordingly, respondent No. 3 had directed the Regional JDO to immediately stop the illegal construction which was going on, but the illegal construction was not stopped. In spite of the instructions given in the Jansunwai, respondents No. 1 and 2 did not stop the illegal construction, and accordingly, once again, another application dated 09/12/2016 was given by applicant to respondent No. 3 to stop the illegal construction, but the illegal construction was not stopped. As a result, it is

submitted that respondents have violated the provisions of the Madhya Pradesh Municipal Corporation Act. Again, on 13/12/2016, an application was given to the Municipal Corporation for stopping the illegal construction, and accordingly, respondent No. 3 had directed the Ward JDO to personally visit the spot and stop the illegal construction. Once again, another application was given on 27/12/2016 to respondent No. 3 to stop the illegal construction, but no steps were taken to stop the illegal construction. When the applicant filed an application under the Right to Information Act with regard to the building permission given to respondents No. 1 and 2, then the said information was not given by respondent No. 3 and only in appeal, the appellate authority gave an information that no application was ever made by respondents No. 1 and 2 for grant of building permission and a case for demolition of illegal construction raised by respondents No. 1 and 2 is in progress. It was further alleged that on 02/12/2016, applicant had taken the photographs of illegal construction, which was being raised by respondents No. 1 and 2, from which it is clear that the illegal construction is being raised, but no action was taken by respondents No. 1 and 2. Thus, it was alleged that the Municipal Corporation is also assisting respondents No. 1 and 2 to raise the illegal construction. It was further alleged that on 04/07/2017 also, applicant had given an application for removal of illegal construction, but no action was taken. The illegal construction has been raised without maintaining the minimum distance from the main road as required under the guidelines. Whenever a request was made by applicant to stop the illegal construction, then a threat was extended by respondents No. 1 and 2 that they have good relationship with the senior officers, therefore, applicant may make any number of applications or complaints, but he cannot stop them from raising illegal construction. Accordingly, it was pleaded that in case if respondents No. 1 and 2 do not demolish the illegal construction, then respondent No. 3 should be directed to demolish the illegal construction at the expense of respondents No. 1 and 2. It was also pleaded that respondents No. 1 and 2 may be directed to immediately stop raising illegal construction, as well as for demolition of the illegal construction which has already been raised.

3. Respondents No. 1 and 2 filed the written statement and claimed that no illegal construction is being raised. The complaints have been filed on false grounds. Applicant wants to put undue pressure on respondents No. 1 and 2 by filing false complaints, and accordingly, respondents No. 1 and 2 have also filed a civil suit against the applicant which is pending in the civil court. It was further pleaded that if the applicant and respondent No. 3, in connivance with each other, have prepared any file or document, still applicant would not be entitled to get the benefit of the same. The photographs, which have been relied upon by applicant, do not belong to the disputed place, but are of some other place which have been forged to be the place of construction. All other adverse contentions were also denied. It was further claimed that applicant has filed the application with an intention to blackmail respondents No. 1 and 2. Respondents No. 1 and 2 had purchased a double-storey building, and it is standing in its

original condition. No construction work has been done. In fact, applicant was running a paan cart. As he was stopped from using the place and the building was being used by respondents No. 1 and 2, therefore, applicant, with a dishonest intention and out of personal grudge, has started making false allegations against respondents No. 1 and 2. In fact, the intention of applicant is to blackmail and extract money from respondents No. 1 and 2.

4. Respondent No. 3 filed its written statement and alleged that when respondents No. 1 and 2 started illegal construction in place of House No. 233/42, then an application dated 6/12/2016 was given by applicant to respondent No. 3 in Jansunwai, and accordingly, the Regional JDO was directed to stop the illegal construction, which was not stopped. Applicant has also filed Civil Suit No. 8/2017 in which a direction was given by the court on 16/1/2017 for maintaining the status quo. It was further claimed by respondent No. 3 that in spite of the directions given by it, respondents No. 1 and 2 have not stopped the construction, and they are going ahead with the construction. It was further pleaded that in case if the court comes to a conclusion that respondents No. 1 and 2 have raised illegal construction, then respondent No. 3 is ready to comply with the order passed by the court. It was also contended by respondent No. 3 that in spite of multiple notices issued to respondents No. 1 and 2, they have not stopped the illegal construction.

5. The trial Court, after framing issues and recording evidence, dismissed the application.

6. Challenging the order passed by the trial Court, it is submitted by counsel for applicant that in fact, a new construction was raised by respondents No. 1 and 2, and the application filed under Section 307(5) of Municipal Corporation Act has been wrongly dismissed.

7 . Per contra, it is submitted by counsel for respondents No. 1 and 2 that no new construction was ever raised. The double-storey building was purchased by respondents No. 1 and 2. Since it was in a dilapidated condition, therefore, some repair works were carried out, and the old building was never demolished, and no new construction was raised.

8. It is submitted by counsel for respondent No. 3 that in fact, a new construction was raised by respondents No. 1 and 2, and no building permission has been taken by respondents No. 1 and 2.

9. Since a disputed question had arisen as to whether respondents No. 1 and 2 have raised any new construction after demolishing the old construction which was purchased by them or not, this Court, by order dated 15/10/2025, directed the Commissioner, Municipal Corporation, Gwalior, to personally carry out the inspection of the disputed property, i.e., House No. 233/42 situated opposite to Yadav Colony, Nai Sadak, Lashkar, and he was also directed to give a specific report with regard to the age of the building.

10. The Commissioner, Municipal Corporation, Gwalior, has submitted the inspection report, which reads as under:

"INSPECTION REPORT

May it please this Hon'ble Court,

The humble, Commissioner, Municipal Corporation, Gwalior, most respectfully submits the inspection report dated 16.10.2025 as under:

1. That, the present case came up for hearing before this Hon'ble Court on 15.10.2025, wherein this Hon'ble Court was pleased to pass the following direction:

"Accordingly, the Commissioner, Municipal Corporation, Gwalior, is directed to personally carry out the inspection of the disputed building, i.e. House No. 233/42, situated opposite to Yadav Talkies, Nai Sadak, Lashkar, Gwalior. The Commissioner, Municipal Corporation, Gwalior, is also directed to give a specific report with regard to the age of the building.

Commissioner, Municipal Corporation, Gwalior is also directed to take photographs of the building which is existing on the spot."

2. That, in compliance with the aforesaid directions, the undersigned personally visited the site of the disputed building, i.e. House No. 233/42, Opposite Yadav Talkies, Nai Sadak, Lashkar, Gwalior, on 16. 10.2025 at 11:00 A.M., along with the staff of the Municipal Corporation. A thorough spot inspection was conducted, and photographs of the building were taken.

3. The inspection revealed that the building is a three-storey structure. Shops have been constructed on the ground and first floors, while the second floor is being utilized as a storage area. The inspection was carried out in the presence of Shri Rakesh Agrawal (husband of Respondent No. 2), Advocate Shri Surendra Khare, and the applicant Shri Shantanu Bajpai. A Panchnama was prepared at the time of inspection, and photographs were duly collected. A copy of the Panchnama is annexed and marked as Annexure B'. Copies of the photographs are annexed and marked as Annexure 'C'.

4. That, upon assessment, it has been found that the disputed building was constructed during the year 2016-2017, approximately 7 to 8 years ago, without obtaining prior permission from the Municipal Corporation, Gwalior. Accordingly, the estimated age of the building is around 7-8 years.

5. That, at the time of commencement of construction, the Municipal Corporation, Gwalior, had issued notices dated 26.12.2016 and 3. 01.2017, along with the site sketch, to Shri Dharmendra Agrawal, directing him to stop the unauthorized construction at the plinth level itself. Copies of the said notices along with the sketch are annexed and marked as Annexure A to A-1 (colly).

6. That, in further compliance with the order of this Hon'ble Court, the inspection

of House No. 233/42 was carried out between 11:00 A.M. to 11:30 A.M. on 16.10.2025, photographs were collected, and Panchnama was duly prepared and signed by the concerned persons present on the spot."

Respondents No. 1 and 2 have filed their objection to the inspection report, which reads as under:

"OBJECTION ON THE INSPECTION REPORT SUBMITTED BY MUNICIPAL CORPORATION ON 19.10.2025

Humble, Respondent no. 1 & 2 are submitting objection as under:

1. That, at the time of purchase of the building there was shop which is evident from the sale deed exhibit D-5 and this was not the case of the applicant before the Ld. Trial Court that on the ground floor there was no shop hence, the construction of the shop on the ground floor is wrong.
2. That, after first floor there was no second floor but there was temporary tin shade that has also been removed by the respondent no. 1 & 2.
3. That, purposefully in the inspection report it is not mentioned that in 2016 itself wall of the house of the non-applicant was in dilapidated condition and because of complaint made by neighbour to the municipal corporation and the corporation directed the respondent to remove or repair dilapidated wall of building to avoid human loss.
4. That, the respondent no. 1 & 2 has only repaired the walls and has constructed a false ceiling and the renovation of shop has been made, there was no new construction by the non-applicant.
5. That, purposefully the commissioner has not mentioned about the finding given by second civil judge Class- II, Gwalior in civil suit no. 244A/2017 by Judgment and decree dt. 24.09.2019 that there is no new construction and only there was repairing of the dilapidated wall and this judgment and decree was confirmed in regular civil appeal no. 205/2019 by judgment and decree dt. 28.06.2023 and contrary to the judgment and without any basis the report has been submitted which is wrong.
6. That, the fact as mentioned in para 4 of the report for that there was no basis available with the commissioner and without any basis straight away finding has been given which is wrong and contrary to the judgment and decree passed by competent court between the parties.
7. That, the Commissioner has not taken into consideration provision of section 293 of the Municipal corporation Act there was no material external alteration to the building neither any finding has been given in this regard the building is as it is and just a new showroom with decoration is there. Hence, the report as submitted by the Commissioner is liable to be rejected.

PRAYER

Hence, it is most respectfully submitted that the objection to the commissioner report may kindly be taken on record and be considered at the time of hearing."

Thus, it is clear that respondents No. 1 and 2 have once again taken a stand that they have not raised any new construction, but they have simply carried out the repair of the dilapidated wall of the building which was purchased by them.

11. Accordingly, in order to adjudicate the question as to whether the age of the existing building is 7 to 8 years or it is an old one, this Court gave an option to the counsel for respondents No. 1 and 2 that this Court can direct the Commissioner, Municipal Corporation, Gwalior, to conduct a scientific test to find out the age of the building and for that purposes, some samples of the pillar, beam, and bricks can be collected by scratching from different parts of the existing building, and accordingly, asked a specific question to the counsel for respondents No. 1 and 2 as to whether respondents No. 1 and 2 are ready for scientific examination of the building or not? Counsel for respondents No. 1 and 2 prayed for some time to seek instructions, and accordingly, the case was passed over and was taken up at 4:00 p.m. At 4:00 p.m., counsel for respondents No. 1 and 2 refused to give any consent for scientific examination of the age of the building. However, it was submitted by counsel for respondents No. 1 and 2 that the tin shed, which is visible on top of the building, has been removed, and it was further contended that the third storey is not in existence, and in fact, it is a projection which gives a false impression that a three-storey building has been constructed whereas the back portion of the third floor is completely open and submitted that so far as the projection showing that the building is of three storeys is concerned, respondents No. 1 and 2 are ready to remove the same within a period of 24 hours from today.

12. Considered the submissions made by counsel for applicant as well as counsel for respondents, specifically the stand taken by respondents No. 1 and 2 with regard to the scientific examination of age of the building.

13. It is the case of respondents No. 1 and 2 that they had purchased a building which was in a dilapidated condition, and they have merely carried out the repair works and have not demolished the original old construction, and have not raised any new construction.

14. The Commissioner, Municipal Corporation, Gwalior, has given a specific report that the age of the existing building is only 7 to 8 years. Applicant has filed the photographs of under-construction building as Exhibits P24 to P27. If the photographs of under-construction building are seen and compared with the existing design of the building, then it is clear that the photographs of the under-construction building, which have been filed as Exhibits P24, P25, P26, and P27, are that of the building in question.

15. Furthermore, it is submitted by counsel for respondents No. 1 and 2 that respondents No. 1 and 2 had filed a civil suit against the Municipal Corporation, Gwalior, which was decreed by Second Civil Judge, Class-II, Gwalior, in Civil Suit

No. 244A/2017 and it was held that the construction, which is being raised by respondents No. 1 and 2, is legal and has not been done contrary to the conditions of the Municipal Corporation. Copy of the judgment and decree dated 24/09/2019 passed by Second Civil Judge, Class-II, Gwalior, in Civil Suit No. 244A/2017 has been placed on record as Exhibit D1, and the judgment and decree dated 28/06/2023 passed by 15th District Judge, Gwalior, in R.C.A. No. 205/2019 has been filed as Exhibit D3.

16. From the judgment dated 24/09/2019, passed by Second Civil Judge, Class-II, Gwalior, in Civil Suit No. 244A/2017, it is clear from paragraph 19 that respondent No. 1 had made a categorical statement that he had not taken any building permission from the Municipal Corporation, Gwalior.

17. Under these circumstances, this Court is of considered opinion that once the construction has been raised without obtaining any building permission from the Municipal Corporation, Gwalior, then it cannot be said that the new construction raised by respondents No. 1 and 2 is in accordance with law. Furthermore, applicant was not a party to the civil suit filed by respondents No. 1 and 2. The judgment passed in Civil Suit No. 244A/2017 and the judgment passed by the appellate Court in R.C.A. No. 205/2019 cannot be said to be a judgment in rem, and therefore, the findings recorded by the Courts below in the aforesaid two judgments cannot be made applicable to applicant. Furthermore, why respondents No. 1 and 2 did not make the applicant as a party in the civil suit filed by them, specifically when notices were being issued by the Municipal Corporation, Gwalior, on the complaints made by applicant?

18. Under these circumstances, it is held that the judgment and decree dated 24/09/2019, passed by Second Civil Judge, Class-II, Gwalior, in Civil Suit No. 244A/2017, and judgment and decree dated 28/06/2023, passed by 15th District Judge, Gwalior, in R.C.A. No. 205/2019, are not binding on the applicant, and thus, they cannot be utilized for holding that the construction raised by respondents No. 1 and 2 was in accordance with law, specifically when respondents No. 1 and 2 have refused to undergo the scientific test of the age of the building in question. Thus, it is clear that there was a prima facie evidence to show that the existing building is a newly constructed building.

19. Furthermore, it is the stand of Municipal Corporation that multiple notices were issued to respondents No. 1 and 2 on different dates in the year 2016 and 2017, thereby directing them to stop the construction which was being raised without obtaining building permission. In order to do complete justice, this Court had given an option to respondents No. 1 and 2 that if they so desire, then this Court can direct for scientific examination of the age of the building by collecting samples from pillar, beam, and bricks from different parts of the building. Respondents No. 1 and 2 have specifically refused to undergo the scientific examination of the age of the building. Thus, it is clear that respondents No. 1 and 2 have constructed a new building where they are running commercial activities.

20. Admittedly, the said building has been constructed without obtaining any building permission. There is also nothing on record to show that any permission to carry out commercial activities has been obtained by respondents No. 1 and 2. Although respondents No. 1 and 2 have agreed to demolish the projection above the first floor within a period of 24 hours, but this Court is of considered opinion that the entire building is a new building having constructed without obtaining due building permission from the Municipal Corporation, Gwalior. Even respondents No. 1 and 2 have not filed any building permission from the Municipal Corporation, Gwalior, to show that any permission was obtained. The only stand, which has been taken by them, is that they had simply carried out some of the repair works of the building which was purchased by them.

21. Under these circumstances, this Court is of considered opinion that the trial Court committed a material illegality by rejecting the application filed under Section 307(5) of Municipal Corporation Act.

22. Accordingly, the order dated 22/07/2024, passed by 7th District Judge, Gwalior, in M.J.C. No. 364/2017, is hereby set aside, and application filed by applicant under Section 307(5) of Municipal Corporation Act is hereby allowed.

23. The Commissioner, Municipal Corporation, Gwalior, is directed to immediately seal the building in question and demolish the same. The compliance report of sealing of the building be filed by 18/11/2025, and the compliance report of demolition of building be submitted within a period of one month from today.

24. With aforesaid observations, the civil revision succeeds and is hereby allowed with cost of ₹ 25,000/- to be deposited by respondents No. 1 and 2 in the registry of this court within a period of one month from today, failing which the Principal Registrar shall not only take steps for recovery of cost but shall also initiate proceedings for Contempt of Court.